LAWS AND RESOLUTIONS

OF THE

STATE OF MONTANA

ENACTED BY THE

Fifty-Third Legislature
In Regular Session

and the

Fifty-Second Legislature
In Special Session

Held at Helena, the Seat of Government
January 4, 1993 to April 24, 1993
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OFFICERS AND MEMBERS
OF THE MONTANA SENATE
1993

50 Members

30 Democrats — 20 Republicans

OFFICERS

President	Fred Van Valkenburg
President Pro Tempore	J.D. Lynch
Majority Leader	Greg Jergeson
Majority Whip	Steve Doherty
Minority Leader	Bruce Crippen
Minority Whip	John Harp
Secretary of the Senate	Claudia Clifford

MEMBERS

Name	Residence or Mailing Address	Dist No	Party
Aklestad, Gary C.	PO Box 32, Galata MT 59444	6	Republican
Bartlett, Sue	416 N Beattie, Helena MT 59601	23	Democrat
Beck, Thomas A. (Tom)	651 Greenhouse Rd, Deer Lodge MT 59722	24	Republican
Bianchi, Don	490 Secretariat Circle, Belgrade MT 59714	39	Democrat
Blaylock, Chet	502 3rd Ave, Laurel MT 59044	43	Democrat
[1]Brenden, John	Box 970, Scobey MT 59263	10	Republican
Brown, Robert (Bob)	333 Cougar Trail, Whitefish MT 59937	2	Republican
Bruski-Maus, Betty	PO Box 234, Wibaux MT 59353	12	Democrat
Burnett, James H. (Jim)	PO Box 4460, Luther MT 59051	42	Republican
Christiaens, B.F. (Chris)	709 4th Ave N, Great Falls MT 59401	18	Democrat
Crippen, Bruce D.	PO Box 80747, Billings MT 59108-0747	45	Republican
Devlin, Gerry	PO Box 186, Terry MT 59349	13	Republican
Doherty, Steve	1531 3rd Ave SW, Great Falls MT 59404	20	Democrat
Eck, Dorothy	10 W Garfield, Bozeman MT 59715	40	Democrat
Forrester, Gary	2527 Gardiner St R 8, Billings MT 59101	49	Democrat
Franklin, Eve	4021 4th Ave S, Great Falls MT 59405	17	Democrat
Fritz, Harry	1817 Daniel Dr, Missoula MT 59802	28	Democrat
Gage, Delwyn	PO Box 787, Cut Bank MT 59427	5	Republican
Grosfield, Lorents	HC 87, Box 2145, Big Timber MT 59011	41	Republican
[2]Hager, Connye	150 Norris Ct, Billings MT 59105	48	Republican
[3]Hager, Thomas O. (Tom)	150 Norris Ct, Billings MT 59105	48	Republican
Halligan, Mike	201 W Main Suite 310, Missoula MT 59802	29	Democrat
Harding, Ethel M.	PO Box 251, Polson MT 59860	25	Republican
Harp, John G.	53 Willow Dr, Kalispell MT 59901	4	Republican
Hertel, John R.	Rte 1, PO Box 30, Moore MT 59464	15	Republican
Hockett, Bob	Shambo Rte, Box 306, Havre MT 59501	7	Democrat
Jacobson, Judy H.	330 Blacktail Canyon Rd, Butte MT 59701	36	Democrat
Jergeson, Greg	RR 71, Box 8, Chinook MT 59523	8	Democrat
Keating, Thomas F.	PO Box 20522, Billings MT 59104	44	Republican
Kennedy, Jr., John (Ed)	5567 Montana Hwy 35, Kalispell MT 59901	3	Democrat
Klampe, Terry	PO Box 368, Florence MT 59833	31	Democrat
Koehnke, Francis	PO Box 692, Townsend MT 59644	16	Democrat
Lynch, John (J.D.)	527 W Mercury, Butte MT 59701	35	Democrat
McClernan, Henry	3 N Excelsior, Butte MT 59701	34	Democrat
Mesaros, Kenneth (Ken)	2191 Millegan Rd, Cascade MT 59421	21	Republican
[4]Nathe, Dennis G.	PO Box 4, Redstone MT 59257	10	Republican

Pipinich, Bob	4430 Hwy 200 Marshall Grade, Missoula MT 59802	33	Democrat
Rea, Jack (Doc)	PO Box 1106, Helena MT 59624	38	Democrat
Rye, David	2211 Oak St, Billings MT 59102	47	Republican
Stang, Barry (Spook)	142 Montana Hwy.135 S, St. Regis MT 59866	26	Democrat
Swift, Bernie A.	236 Rose Ln, Hamilton MT 59840	32	Republican
Swysgood, Charles (Chuck)	506 S Atlantic, Dillon MT 59725	37	Republican
Toews, Daryl	SR 266 Box 34, Lustre MT 59225	9	Republican
Towe, Thomas E. (Tom)	2525 Sixth Ave N, Billings MT 59101	46	Democrat
Tveit, Larry J.	RR 1, Box 1475, Fairview MT 59221	11	Republican
Van Valkenburg, Fred R.	112 University, Missoula MT 59801	30	Democrat
Vaughn, Eleanor L.	251 Mahoney Rd, PO Box 45, Libby MT 59923	1	Democrat
Waterman, Mignon	530 Hazelgreen Place, Helena MT 59601	22	Democrat
Weeding, Cecil F.	PO Box 78, Jordan MT 59337	14	Democrat
Weldon, Jeff	24460 Doney Rd, Arlee MT 59821	27	Democrat
Wilson, William F. (Bill)	1305 2nd Ave N, Great Falls MT 59401	19	Democrat
Yellowtail, Bill	PO Box 308, Wyola MT 59089	50	Democrat

[1] Assumed Senator Nathe's position March 2, 1993.
[2] Assumed Senator Thomas Hager's position May 10, 1993.
[3] Deceased April 24, 1993.
[4] Deceased February 21, 1993.

OFFICERS AND MEMBERS OF THE MONTANA HOUSE OF REPRESENTATIVES
1993

100 Members

53 Republicans 47 Democrats

OFFICERS

Speaker	John Mercer
Speaker Pro Tempore	Marian Hanson
Majority Leader	Larry Hal Grinde
Majority Whip	Jim Rice
Minority Leader	Ted Schye
Minority Whip	Bill Strizich
Chief Clerk of the House	Marilyn Miller

MEMBERS

Name	Residence or Mailing Address	Dist No	Party
Anderson, Shiell	Hayhook Ranch, Rte 85 Box 4251, Livingston MT 59047	81	Republican
Bachini, Bob	409 19th St, Havre MT 59501	14	Democrat
Bardanouve, Francis	PO Box 367, Harlem MT 59526	16	Democrat
Barnett, Joe	204 N Davis, Belgrade MT 59714	76	Republican
Barnhart, Beverly	614 S 6th, Bozeman MT 59715	80	Democrat
Benedict, Steve	PO Box 668, Hamilton MT 59840	64	Republican
Bergman, Ellen	1019 S Strevell, Miles City MT 59301	26	Republican
Bergsagel, Ernest	HC 84, Box 8045, Malta MT 59538	17	Republican
Bird, Joann T. (Jody)	50 T-Bird Ln, Superior MT 59872	52	Democrat
Boharski, William E.	PO Box 2965, Kalispell MT 59901	4	Republican
Bohlinger, John C.	2712 Virginia Ln, Billings MT 59102	94	Republican
Brandewie, Ray	25200 Hwy 35, Bigfork MT 59911	49	Republican
Brooke, Vivian M.	1610 Madeline Ave, Missoula MT 59801	56	Democrat
Brown, Dave	3040 Ottawa, Butte MT 59701	72	Democrat
Clark, Robert C.	PO Box 216, Ryegate MT 59074	31	Republican
Cobb, John	PO Box 388, Augusta MT 59410	42	Republican
Cocchiarella, Vicki	535 Livingston Ave, Missoula MT 59801	59	Democrat
Daily, Fred (Fritz)	1057 W Steel, Butte MT 59701	69	Democrat
Davis, Ervin	604 N Main, Charlo MT 59824	53	Democrat
DeBruycker, Roger	HC 77 Box 8, Floweree MT 59440	13	Republican
Dolezal, Edward J.	3236 Fifth Ave S, Great Falls MT 59405	34	Democrat
Dowell, Tim	46 West View Dr, Kalispell MT 59901	5	Democrat
Driscoll, Jerry L.	4344 Stone St, Billings MT 59101	92	Democrat
Elliott, Jim	100 Trout Creek Rd, Trout Creek MT 59874	51	Democrat
Ellis, Jr., Alvin A.	Rte 1, Box 4840, Red Lodge MT 59068	84	Republican
Endy, William R. (Bill)	178 Kountz Rd, Whitehall MT 59759	74	Democrat
Ewer, David	1016 5th Ave, Helena MT 59601	45	Democrat
Fagg, Russell	PO Box 176, Billings MT 59103	89	Republican
Feland, Gary	215 11th Ave N, Shelby MT 59474	12	Republican
Fisher, Marjorie I.	Box 565, Whitefish MT 59937	3	Republican
Foster, Mike	PO Box 126, Townsend MT 59644	32	Republican
Galvin, Patrick G.	105 29th Ave NW, Great Falls MT 59404	40	Democrat
Gervais, Floyd (Bob)	PO Box 1810, Browning MT 59417	9	Democrat
Gilbert, Bob	PO Drawer 1228, Sidney MT 59270	22	Republican

Grady, Edward J. (Ed)	Star Route, Canyon Creek MT 59633	47	Republican
Grimes, Duane	Gruber Estates, Box 81, Clancy MT 59634	75	Republican
Grinde, Larry Hal	RR 3, Lewistown MT 59457	30	Republican
Hansen, Stella Jean	841 Woodford St, Missoula MT 59801	57	Democrat
Hanson, H.S. (Sonny)	2237 Green Terrace Dr, Billings MT 59102	87	Republican
Hanson, Marian W.	PO Box 237, Ashland MT 59003	100	Republican
Harper, Hal	9 Comstock Rd, Helena MT 59601	44	Democrat
Harrington, Dan W.	1201 N Excelsior, Butte MT 59701	68	Democrat
Hayne, Harriet	PO Box 285, Dupuyer MT 59432	10	Republican
Herron, Jack R.	360 5th Ave E N, Kalispell MT 59901	6	Republican
Hibbard, Chase	725 Madison, Helena MT 59601	46	Republican
Johnson, John	124 Gresham, Glendive MT 59330	23	Democrat
Johnson, Royal C.	2915 Illinois, Billings MT 59102	88	Republican
Kadas, Mike	922 Taylor, Missoula MT 59802	55	Democrat
Kasten, Betty Lou	HC 77, Box A-14, Brockway MT 59214	28	Republican
Keller, Vernon V.	HC 55, Box 355, Fishtail MT 59028	83	Republican
Knox, Dick	HCR Box 14, Winifred MT 59489	29	Republican
Larson, Don	PO Box 285, Seeley Lake MT 59868	65	Democrat
Mason, Gary D.	1368 Auction Way, Corvallis MT 59828	63	Republican
McCaffree, Ed	PO Box 1354, Forsyth MT 59327	27	Democrat
McCarthy, Bea	1906 Ogden, Anaconda MT 59711	66	Democrat
McCulloch, Scott T.	611 Tabriz Dr, Billings MT 59105	96	Democrat
Menahan, William T. (Red)	1304 W Fifth, Anaconda MT 59711	67	Democrat
Mercer, John A.	PO Box 450, Polson MT 59860	50	Republican
Mills, Norm	1908 9th St W, Billings MT 59104	90	Republican
Molnar, Brad	Box 524, Laurel MT 59044	85	Republican
Nelson, Linda J.	HC 51, Box 30, Medicine Lake MT 59247	19	Democrat
Nelson, Thomas E.	1116 Moon Valley Rd, Billings MT 59105	95	Republican
Orr, Scott J.	PO Box 1318, Libby MT 59923-1318	2	Republican
Pavlovich, Robert J. (Bob)	1375 Harrison Ave, Butte MT 59701	70	Democrat
Peck, Ray	729 Fourth Ave, Havre MT 59501	15	Democrat
Peterson, Mary Lou	234 Glen Lake Dr, Eureka MT 59917	1	Republican
Quilici, Joe	3040 Kossuth, Butte MT 59701	71	Democrat
Raney, Bob	212 S Sixth St, Livingston MT 59047	82	Democrat
Ream, Robert R. (Bob)	5950 Wildcat Rd, Missoula MT 59802	54	Democrat
Rehbein, Jr., William	PO Box 156, Lambert MT 59243	21	Republican
Rice, Jim	1525 Williamsburg Rd, Helena MT 59601	43	Republican
Rice, Sheila	1501 4th Ave N, Great Falls MT 59401	36	Democrat
Rose, John (Sam)	Box 604, Choteau MT 59422	11	Republican
Russell, Angela	PO Box 333, Lodge Grass MT 59050	99	Democrat
Ryan, William M. (Bill)	8 18th Ave S, Great Falls MT 59405	38	Democrat
Sayles, Tim	4528 N Ave West, Missoula MT 59801	61	Republican
Schwinden, Dore	Box 6060, Wolf Point MT 59201	20	Democrat
Schye, Ted	N Star Route, Glasgow MT 59230	18	Democrat
Simon, Bruce T.	217 Clark Ave, Billings MT 59101	91	Republican
Simpkins, Richard D.	1221 Park Garden Rd, Great Falls MT 59404	39	Republican
Smith, Liz	311 Freezeout Ln, Deer Lodge MT 59722	48	Republican
Spring, Wilbur	2383 Penwell Bridge Rd, Belgrade MT 59714	77	Republican
Squires, Carolyn M.	2111 S Tenth St W, Missoula MT 59801	58	Democrat
Stanford, Wayne	420 Dry Gulch Rd, Stevensville MT 59870	62	Democrat
Stovall, Jay	8325 Pryor Rd, Billings MT 59101	98	Republican
Strizich, William S. (Bill)	736 27th Ave NE, Great Falls MT 59404	41	Democrat
Swanson, Emily	1716 S Willson, Bozeman MT 59715	79	Democrat
Tash, Bill	45 Vista Dr, Dillon MT 59725	73	Republican
Toole, Howard	1625 McDonald, Missoula MT 59801	60	Democrat
Tunby, Rolph	PO Box 56, Plevna MT 59344	24	Republican
Tuss, Carley	1910 Colorado Ave, Black Eagle MT 59414	35	Democrat
Vogel, Randy	5953 Lazy Ln, Billings MT 59106	86	Republican
Wagner, Douglas T.	PO Box 21, Hungry Horse MT 59919	8	Republican
Wallin, Norm	2422 Springcreek Dr, Bozeman MT 59715	78	Republican
Wanzenried, David E.	307 1st Ave E #12, Kalispell MT 59901	7	Democrat
Whalen, Timothy J.	101 Avenue C, Billings MT 59101	93	Democrat
Winslow, Karyl	4608 Box Canyon, Billings MT 59103	97	Republican
Wiseman, William R.	3310 Centennial Ct, Great Falls MT 59404	33	Republican
Wyatt, Diana E.	300 31st St S, Great Falls MT 59405	37	Democrat
Zook, Tom	c/o Broadus Stage, Miles City MT 59301	25	Republican

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267 *(Senate Bill No. 168; Beck)* AN ACT GENERALLY REVISING THE TAXATION OF AGRICULTURAL LAND; REVISING THE METHOD OF VALUING AGRICULTURAL LANDS IN CLASS THREE PROPERTY FOR PROPERTY TAX PURPOSES; PROVIDING FOR THE DETERMINATION OF NET INCOME FROM AGRICULTURAL LAND; HOLDING CONSTANT THE STATEWIDE TOTAL TAXABLE VALUE OF CLASS THREE PROPERTY BETWEEN REAPPRAISAL CYCLES; PHASING IN THE CHANGE IN THE TAXABLE VALUE OF AGRICULTURAL LANDS; TAXING CLASS THREE PROPERTY AT THE RATE

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268 *(House Bill No. 342; Strizich)* AN ACT ALLOWING AN AIRPORT OPERATOR TO ENTER INTO A CONTRACT OR LEASE FOR A TERM NOT EXCEEDING 40 YEARS; ALLOWING AN AIRPORT OPERATOR LATITUDE IN DETERMINING REASONABLE CHARGES; EXEMPTING AIRPORT AUTHORITIES FROM CHARGES; AND AMENDING SECTIONS 67-10-302, 67-11-211, AND 67-11-306, MCA *852*

269 *(House Bill No. 364; Mercer)* AN ACT ALLOWING COUNTY COMMISSIONERS TO ASSESS PROPERTY WITHIN A RURAL IMPROVEMENT DISTRICT AND WITHIN A ROAD IMPROVEMENT DISTRICT IN EQUAL AMOUNTS BASED ON THE TOTAL COST OF THE IMPROVEMENT; ALLOWING A CITY COUNCIL OR COMMISSION TO ASSESS PROPERTY WITHIN A SPECIAL IMPROVEMENT DISTRICT IN EQUAL AMOUNTS BASED ON THE TOTAL COST OF THE IMPROVEMENT; AND AMENDING SECTIONS 7-12-2151, 7-12-4162, AND 7-14-2907, MCA *854*

270 *(House Bill No. 502; Barnett)* AN ACT REQUIRING THE RETURN OF A BAIL BOND TO THE SURETY WITHIN 30 DAYS AFTER A CONVICTION; PROVIDING THAT BAIL FORFEITURE BE DISCHARGED IF THE DEFENDANT APPEARS AND SATISFACTORILY EXCUSES AN ABSENCE WITHIN 90 DAYS AFTER THE FORFEITURE; AND AMENDING SECTION 46-9-503, MCA *857*

271 *(Senate Bill No. 139; Towe)* AN ACT ALLOWING A LOCAL GOVERNMENT TO INVEST IN GOVERNMENT OBLIGATIONS GUARANTEED BUT NOT ISSUED BY THE UNITED STATES; AND AMENDING SECTIONS 7-6-202 AND 7-6-206, MCA *858*

272 *(House Bill No. 408; Fagg)* AN ACT GENERALLY REVISING THE MONTANA SUBDIVISION AND PLATTING ACT; CHANGING THE DEFINITION OF SUBDIVISION; REMOVING THE OCCASIONAL SALE EXEMPTION; REMOVING THE 20-ACRE LIMITATION; MODIFYING THE FAMILY SALE EXEMPTION; CHANGING THE CRITERIA FOR LOCAL GOVERNMENT SUBDIVISION REVIEW; AMENDING SECTIONS 76-3-102, 76-3-103, 76-3-104, 76-3-207, AND 76-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES *859*

273 *(House Bill No. 64; Grady)* AN ACT DELAYING THE EFFECTIVE DATE OF THE LAW ESTABLISHING A SOLID WASTE MANAGEMENT FEE ON WASTE GENERATED OUT OF STATE; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES TO ESTABLISH A FEE ON THE DISPOSAL OR INCINERATION OF SOLID WASTE GENERATED OUTSIDE MONTANA; LIMITING THE LENGTH OF TIME THE FEE IS APPLICABLE TO SOLID WASTE INCINERATORS AND CERTAIN SOLID WASTE DISPOSAL FACILITIES; AMENDING SECTIONS 75-10-118, 75-10-204, AND 75-10-206, MCA, AND SECTION 8, CHAPTER 398, LAWS OF 1991; AND PROVIDING EFFECTIVE DATES *863*

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274 *(House Bill No. 107; Cobb)* AN ACT ELIMINATING THE REQUIREMENT TO CONDUCT SUNRISE AUDITS; AMENDING SECTION 5-11-210, MCA; AND REPEALING SECTIONS 2-8-201, 2-8-202, 2-8-203, 2-8-204, 2-8-205, 2-8-206, 2-8-207, 2-8-208, AND 5-4-207, MCA *866*

275 *(House Bill No. 148; Ellis)* AN ACT AUTHORIZING THE BOARD OF CHIROPRACTORS TO ADOPT RULES TO REGISTER INTERNS AND PRECEPTORS; AUTHORIZING THE ISSUANCE OF CHIROPRACTIC LICENSES BASED ON SUCCESSFUL COMPLETION OF EXAMINATIONS GIVEN BY THE NATIONAL BOARD OF CHIROPRACTIC EXAMINERS; AMENDING SECTIONS 37-12-201 AND 37-12-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *868*

276 *(House Bill No. 232; Clark)* AN ACT PROVIDING THAT THE EXEMPTION, FOR TRUCKS OR TRUCK TRACTORS HAVING THREE OR MORE AXLES, FROM THE GENERAL REQUIREMENT THAT MOTOR VEHICLES MUST HAVE BRAKES ACTING ON ALL WHEELS APPLIES ONLY TO TRUCKS OR TRUCK TRACTORS THAT WERE MANUFACTURED BEFORE JULY 25, 1980; AND AMENDING SECTION 61-9-304, MCA *869*

277 *(House Bill No. 237; Grady)* AN ACT CLARIFYING THE TYPES OF ESTABLISHMENTS THAT QUALIFY FOR THE REDUCED FEE FOR THE LICENSURE OF A PUBLIC SWIMMING POOL OR BATHING PLACE; AND AMENDING SECTION 50-53-203, MCA *870*

278 *(House Bill No. 336; Bird)* AN ACT ABOLISHING THE REQUIREMENT THAT A CERTIFICATION OF PROOF OF COMPLIANCE WITH THE FINANCIAL RESPONSIBILITY LAW BE SIGNED BY A MOTOR VEHICLE OWNER BEFORE THE OWNER MAY REGISTER THE VEHICLE; ABOLISHING THE PENALTY FOR FALSIFYING A CERTIFICATION; PROVIDING THAT THE REGISTRATION RECEIPT MUST STATE THAT IT IS UNLAWFUL TO OPERATE A VEHICLE WITHOUT COMPLYING WITH THE FINANCIAL RESPONSIBILITY LAW; AND AMENDING SECTION 61-6-302, MCA *871*

279 *(House Bill No. 344; D. Brown)* AN ACT GENERALLY REVISING THE LAWS RELATING TO AIRPORTS; REDEFINING "GOVERNING BODY"; ALLOWING A LOCAL GOVERNMENT TO DESIGNATE AN AIRPORT INFLUENCE AREA AT ANY TIME; ALLOWING AN AIRPORT AUTHORITY TO ADOPT RULES FOR THE DISPOSAL OF PROPERTY; ALLOWING AN AIRPORT AUTHORITY TO CREATE A RESERVE FUND; AND AMENDING SECTIONS 67-1-101, 67-4-201, 67-4-202, 67-4-313, 67-5-211, 67-11-232, AND 67-11-304, MCA *872*

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281 *(House Bill No. 417; Tunby)* AN ACT PROVIDING FOR THE ASSESSMENT OF ADMINISTRATIVE PENALTIES UNDER THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT; PROVIDING RULEMAKING AUTHORITY TO ADOPT AN ADMINISTRATIVE PENALTY SCHEDULE AND A SYSTEM FOR ASSESSMENT OF ADMINISTRATIVE PENALTIES, NOTICE, AND APPEALS; PROVIDING FOR PENALTY FUNDS TO BE PAID INTO THE STATE GENERAL FUND; PROVIDING FOR APPROPRIATIONS FROM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES' UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT FOR THE PURPOSE OF SUPPORTING THE DEPARTMENT'S ADMINISTRATIVE PENALTY PROGRAM; AMENDING SECTIONS

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283 *(House Bill No. 435; Sayles)* AN ACT REQUIRING A REPORT TO THE 54TH LEGISLATURE ON THE FUNDING AVAILABLE IN THE VOLUNTEER FIREFIGHTERS' FUND; CLARIFYING THE CRITERIA FOR THE RECEIPT OF PARTIAL PENSION BENEFITS BY A VOLUNTEER FIREFIGHTER; REVISING THE PROCEDURE FOR CALCULATING PARTIAL PENSION BENEFITS; REMOVING THE LIMIT ON THE MONTHLY PENSION AMOUNT A VOLUNTEER FIREFIGHTER MAY RECEIVE; AMENDING SECTIONS 19-12-202, 19-12-401, AND 19-12-404, MCA; AND PROVIDING AN EFFECTIVE DATE 885

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287 *(House Bill No. 491; Simon)* AN ACT REVISING PROCEDURES FOR PREPARING AND FILING DEATH CERTIFICATES; CHANGING THE BURIAL TRANSIT PERMIT TO A DEAD BODY REMOVAL AUTHORIZATION; REVISING THE CATEGORIES OF DEATH AND DISPOSITION REQUIRING INQUIRY BY THE CORONER; REQUIRING IMMEDIATE NOTIFICATION TO THE COUNTY CORONER BY A PERSON FINDING HUMAN REMAINS; AND AMENDING SECTIONS 46-4-122, 50-15-403, AND 50-15-405, MCA 894

288 *(House Bill No. 506; Tash)* AN ACT ALLOWING A RELIGIOUS GROUP OR NONPROFIT ORGANIZATION TO HOLD A RAFFLE FOR WHICH THE PRIZE IS REAL PROPERTY CERTIFIED IN WRITING BY A LICENSED APPRAISER TO BE WORTH MORE THAN $5,000; AND AMENDING SECTION 23-5-413, MCA 896

289 *(House Bill No. 543; Ewer)* AN ACT PERMITTING A FIDUCIARY TO ACQUIRE AND INVEST FIDUCIARY FUNDS IN A MANAGEMENT INVESTMENT COMPANY OR INVESTMENT TRUST EVEN IF THE FIDUCIARY OR AN AFFILIATE OF THE FIDUCIARY IS PROVIDING COMPENSATED SERVICES TO THE MANAGEMENT INVESTMENT COMPANY OR INVESTMENT TRUST; REQUIRING THE FIDUCIARY TO DISCLOSE TO TRUST BENEFICIARIES THE COMPENSATION THE FIDUCIARY IS RECEIVING FROM A MANAGEMENT INVEST-

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291 *(House Bill No. 646; Peterson)* AN ACT INCREASING THE ALLOWABLE SALE PRICE OF THE MONTANA CODE ANNOTATED TO THE COST PRICE PLUS 25 PERCENT; PROVIDING THAT SALES TO STATE AND LOCAL GOVERNMENT AGENCIES AND TO NONPROFIT ORGANIZATIONS MAY BE AT COST PLUS 5 PERCENT; AMENDING SECTION 1-11-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 900

292 *(Senate Bill No. 37; Towe)* AN ACT CREATING THE OFFENSE OF STALKING; PROVIDING FOR RESTRAINING ORDERS; REQUIRING NOTIFICATION OF VICTIMS WHEN ACCUSED STALKERS ARE RELEASED ON BAIL; EXEMPTING THE OFFENSE OF STALKING FROM BAIL SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND 46-9-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 901

293 *(Senate Bill No. 120; Franklin)* AN ACT RELATING TO TREATMENT AND DISCHARGE OF PATIENTS ADMITTED TO A MENTAL HEALTH FACILITY; REVISING THE REQUIREMENTS GOVERNING THE ESTABLISHMENT AND PERIODIC REVIEW OF PATIENT TREATMENT PLANS, THE KEEPING OF PATIENT RECORDS, AND THE DEVELOPMENT OF INDIVIDUALIZED DISCHARGE PLANS; AND AMENDING SECTIONS 53-21-162 AND 53-21-165, MCA 906

294 *(Senate Bill No. 150; Bartlett)* AN ACT CONFORMING WITH FEDERAL LAW THE STATE CHILD SUPPORT ENFORCEMENT LAWS RELATING TO CHILD SUPPORT GUIDELINES AND PATERNITY BLOOD TESTING FEES; AMENDING SECTIONS 40-4-204, 40-5-210, 40-5-226, AND 40-6-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 910

295 *(Senate Bill No. 163; Harp)* AN ACT CREATING THE MONTANA SAFETY CULTURE ACT; REQUIRING EMPLOYERS TO ESTABLISH SAFETY PROGRAMS; REQUIRING SAFETY TRAINING AND EDUCATION PROGRAMS; REQUIRING WORKERS' COMPENSATION INSURERS TO PROVIDE SAFETY CONSULTATION SERVICES; GRANTING IMMUNITY TO INSURERS FOR CERTAIN OCCURRENCES; CREATING A SAFE EMPLOYMENT EDUCATION AND TRAINING ADVISORY COMMITTEE; ALLOWING THE STATE FUND TO IMPLEMENT VARIABLE PRICING LEVELS; ALLOWING THE STATE FUND TO PLACE A SURCHARGE ON HIGH-LOSS EMPLOYERS; AMENDING SECTION 39-71-2311, MCA; AND PROVIDING EFFECTIVE DATES 918

296 *(Senate Bill No. 164; Harp)* AN ACT CREATING A WORKERS' COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE IN THE DEPARTMENT OF JUSTICE; CREATING A WORKERS' COMPENSATION FRAUD PREVENTION AND DETECTION UNIT IN THE STATE FUND; CLARIFYING CRIMINAL PENALTIES FOR WORKERS' COMPENSATION FRAUD; AMENDING SECTIONS 39-71-206, 39-71-316, 39-71-701, 39-71-702, AND 39-71-2001, MCA; AND PROVIDING AN EFFECTIVE DATE 923

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297 *(Senate Bill No. 166; Towe)* AN ACT REVISING CERTAIN DEFINITIONS RELATING TO OCCUPATIONAL THERAPY; ESTABLISHING CRITERIA FOR THE USE OF OCCUPATIONAL THERAPY TECHNIQUES; AMENDING SECTION 37-24-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *927*

298 *(Senate Bill No. 228; Stang)* AN ACT EXPANDING THE CATEGORIES OF PETROLEUM PRODUCTS FOR WHICH A PETROLEUM STORAGE TANK CLEANUP FEE IS ASSESSED; DEFINING THE TERMS "AVIATION GASOLINE", "DISTRIBUTOR", "EXPORT", "EXPORTER", "HEATING OIL", "IMPORT", AND "SPECIAL FUEL"; AMENDING SECTIONS 75-11-302 AND 75-11-314, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE *933*

299 *(Senate Bill No. 138; Gage)* AN ACT CLARIFYING THAT THE LOCAL GOVERNMENT SEVERANCE TAX WAS ENACTED TO REPLACE PROPERTY TAX LEVIES; REQUIRING CERTAIN SCHOOL DISTRICTS TO REPAY AN OVERDISTRIBUTION OF FOUNDATION PROGRAM MONEY FOR SCHOOL FISCAL YEAR 1991 THAT IS ATTRIBUTABLE TO AN OVERDISTRIBUTION OF LOCAL GOVERNMENT SEVERANCE TAX REVENUE; AMENDING SECTION 15-36-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE *936*

300 *(Senate Bill No. 218; Kennedy)* AN ACT REVISING THE LAWS RELATING TO OUT-OF-STATE MAIL SERVICE PHARMACIES; REQUIRING MONTANA REGISTRATION FOR ANY PHARMACIST DISPENSING PRESCRIPTION DRUGS VIA A MAIL SERVICE PHARMACY LOCATED OUTSIDE THIS STATE FOR SHIPMENT INTO THIS STATE; REQUIRING FILING AND APPROVAL IN CERTAIN INSTANCES OF A UTILIZATION PLAN FOR THE EMPLOYMENT OF A PHARMACY TECHNICIAN BY AN OUT-OF-STATE MAIL SERVICE PHARMACY; SPECIFYING THAT A GROUP HEALTH INSURANCE CONTRACT OR PLAN FOR A UNIT OF STATE OR LOCAL GOVERNMENT MAY ONLY BE WITH AN OUT-OF-STATE MAIL SERVICE PHARMACY THAT IS REGISTERED AS A FOREIGN CORPORATION IN THIS STATE; PROVIDING DISCIPLINARY PROCEDURES; GRANTING PUBLIC EMPLOYEES THE RIGHT TO PATRONIZE IN-STATE PHARMACIES; AMENDING SECTIONS 2-18-704, 37-7-701, AND 37-7-703, MCA; AND PROVIDING AN EFFECTIVE DATE *941*

301 *(House Bill No. 19; R. Johnson)* AN ACT ESTABLISHING A JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES; APPROPRIATING FUNDS FOR USE BY THE OVERSIGHT COMMITTEE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE *944*

302 *(House Bill No. 21; Menahan)* AN ACT CLARIFYING THE STAFFING RESPONSIBILITY OF THE LEGISLATIVE COUNCIL; AMENDING SECTIONS 2-4-401, 5-11-112, AND 5-18-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *946*

303 *(House Bill No. 102; Schye)* AN ACT EXTENDING THE TIME FOR THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ACT ON APPLICATIONS FOR RESERVATIONS OF WATER IN THE MISSOURI RIVER BASIN BELOW FORT PECK DAM AND IN THE LITTLE MISSOURI RIVER BASIN; AMENDING SECTION 85-2-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *949*

304 *(House Bill No. 118; Cocchiarella)* AN ACT REVISING THE MONTANA CHILD CARE ACT; DEFINING "DAY CARE" TO EXCLUDE CARE PROVIDED BY A PARENT OR OTHER PERSON LIVING WITH THE

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305 *(House Bill No. 132; Wyatt)* AN ACT EXEMPTING THE SALE OR LEASE OF MUNICIPAL PROPERTY ACQUIRED BY TAX DEED FROM THE REQUIREMENT THAT A CITY OR TOWN COUNCIL MUST OBTAIN VOTER APPROVAL BEFORE AUTHORIZING THE SALE OR LEASE OF ANY MUNICIPAL PROPERTY HELD IN TRUST FOR A SPECIFIC PURPOSE; AND AMENDING SECTION 7-8-4201, MCA *951*

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307 *(House Bill No. 355; Harper)* AN ACT REQUIRING THE BOARD OF PHARMACY TO ADOPT A RULE UNDER CERTAIN CIRCUMSTANCES; AND REQUIRING THE MONTHLY POSTING OF 20 TOP-SELLING PRESCRIPTION DRUGS BY LICENSED PHARMACIES *953*

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309 *(House Bill No. 368; Wyatt)* AN ACT CLARIFYING THAT MUNICIPAL AND COUNTY RESOLUTIONS ARE IMMEDIATELY EFFECTIVE UNLESS THE RESOLUTION PROVIDES OTHERWISE; REDUCING FROM UNANIMOUS TO TWO-THIRDS THE VOTE REQUIRED TO ADOPT AN EMERGENCY ORDINANCE IN A MUNICIPAL COMMISSION-MANAGER FORM OF LOCAL GOVERNMENT; AMENDING SECTIONS 7-3-4325 AND 7-5-4203, MCA; AND REPEALING SECTIONS 7-5-2201 AND 7-5-2202, MCA *954*

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313 *(Senate Bill No. 104; Gage)* AN ACT REVISING THE LAW GOVERNING THE POOLING AND SPACING OF OIL AND GAS WELLS; PROVIDING FOR TEMPORARY AND PERMANENT SPACING OR POOLING;

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330 *(House Bill No. 278; Bardanouve)* AN ACT GENERALLY REVISING THE DISTRICT COURT CRIMINAL REIMBURSEMENT PROGRAM; PROVIDING A STATUTORY APPROPRIATION; REVISING THE TIME FOR APPLYING FOR GRANTS; ELIMINATING THE REIMBURSEMENT OF CERTAIN AMOUNTS TO COUNTIES; AMENDING SECTIONS 3-5-901, 7-6-2352, 17-7-502, 46-15-116, AND 61-3-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE *1041*

331 *(House Bill No. 394; Benedict)* AN ACT EXTENDING INVESTMENT AUTHORITY FROM THE PERMANENT COAL TAX TRUST FUND; GENERALLY REVISING THE MONTANA SCIENCE AND TECHNOLOGY FINANCING ACT; AMENDING SECTIONS 17-6-201, 17-6-308, 90-3-102, 90-3-305, 90-3-505, 90-3-523, 90-3-524, AND 90-3-525, MCA; AND PROVIDING AN EFFECTIVE DATE *1046*

332 *(House Bill No. 474; Peterson)* AN ACT REQUIRING THAT THE BUDGET INFORMATION SUBMITTED BY THE DEPARTMENT OF JUSTICE INCLUDE INFORMATION CONCERNING THE STATE'S SHARE OF COUNTY ATTORNEY SALARIES; PROVIDING THAT A COUNTY IS RESPONSIBLE FOR ANY INCREASE IN SALARY IF IT FAILS TO PROVIDE THE NECESSARY INFORMATION TO THE DEPARTMENT OF JUSTICE; AND AMENDING SECTIONS 7-4-2502 AND 17-7-112, MCA *1053*

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334 *(House Bill No. 575; Debruycker)* AN ACT REVISING THE LAWS RELATING TO FARM MUTUAL INSURERS; REMOVING THE REQUIREMENT FOR DEPARTMENT OF COMMERCE APPROVAL OF INVESTMENTS IN GENERAL OBLIGATION BONDS OR WARRANTS; ALLOWING A FARM MUTUAL INSURER TO INVEST IN CORPORATE BONDS AND MONEY MARKET FUNDS; REVISING THE TYPES OF BUILDINGS ON WHICH A FARM MUTUAL INSURER MAY PROVIDE

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336 *(House Bill No. 659; Peterson)* AN ACT TRANSFERRING THE OFFICE ON AGING FROM THE GOVERNOR'S OFFICE TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTIONS 2-15-231 AND 2-15-232, MCA; AND PROVIDING AN EFFECTIVE DATE 1071

337 *(House Bill No. 448; Orr)* AN ACT REQUIRING A SEWAGE LAGOON TO BE SITED AND CONSTRUCTED NOT LESS THAN 500 FEET FROM A WATER WELL; AND AMENDING SECTIONS 75-5-103 AND 75-5-605, MCA 1072

338 *(House Bill No. 454; Vogel)* AN ACT AMENDING THE MEGALANDFILL SITING ACT; CLARIFYING THE DEFINITION OF "MEGALANDFILL"; AND AMENDING SECTIONS 75-10-903, 75-10-921, AND 75-10-950, MCA 1074

339 *(House Bill No. 512; Gilbert)* AN ACT REQUIRING THE PETROLEUM TANK RELEASE COMPENSATION BOARD TO REIMBURSE ELIGIBLE EXPENSES FOR ACCIDENTAL PETROLEUM RELEASES FROM PROPERLY INSTALLED DOUBLE-WALLED TANK SYSTEMS AT THE RATE OF 100 PERCENT; AMENDING SECTIONS 75-11-301, 75-11-302, 75-11-307, 75-11-308, AND 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1077

340 *(House Bill No. 571; D. Brown)* AN ACT CLARIFYING THE TERM "POLLUTION"; AUTHORIZING SHORT-TERM EXEMPTIONS FROM THE WATER QUALITY STANDARDS; AND AMENDING SECTION 75-5-103, MCA 1086

341 *(House Bill No. 592; Grimes)* AN ACT ESTABLISHING HAZARDOUS WASTE MANAGEMENT PERMIT FEES; ESTABLISHING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AMENDING SECTION 75-10-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1088

342 *(Senate Bill No. 398; Rea)* AN ACT ALLOWING A LANDLORD TO DEDUCT CLEANING CHARGES WITHOUT ADVANCE NOTICE IF THE TENANT VACATES WITHOUT NOTICE; REDUCING THE TIME FOR CLEANING BY A TENANT; REDUCING THE DAMAGES FOR WRONGFUL WITHHOLDING OF A SECURITY DEPOSIT; CLARIFYING THE TIME FOR FURNISHING A STATEMENT OF CONDITION OF THE PREMISES AND REVISING THE CONTENT OF THE STATEMENT; AND AMENDING SECTIONS 70-25-201, 70-25-204, 70-25-205, AND 70-25-206, MCA 1092

343 *(Senate Bill No. 251; Towe)* AN ACT CLARIFYING THE LAW RELATING TO CITY COURT JURISDICTION; PROVIDING FOR THE SERVICE OF A SUMMONS OUTSIDE OF THE COUNTY IN WHICH A CITY COURT IS LOCATED; PROVIDING CONCURRENT JURISDICTION OVER LANDLORD-TENANT MATTERS; AND AMENDING SECTIONS 25-31-407 AND 70-24-103, MCA 1095

344 *(Senate Bill No. 238; Crippen)* AN ACT ELIMINATING CERTAIN WARRANT AND BOND REQUIREMENTS FOR OBTAINING POSSIBLE STOLEN PROPERTY FROM A PAWNBROKER OR DEALER; AMEND-

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345 *(House Bill No. 241; Strizich)* AN ACT PROVIDING FOR THE LICENSURE OF CLINICAL LABORATORY SCIENCE PRACTITIONERS; AND PROVIDING EFFECTIVE DATES *1097*

346 *(House Bill No. 397; McCulloch)* AN ACT INCREASING THE FEES FOR COPIES OF MONTANA DRIVING RECORDS; PROVIDING FOR THE ISSUANCE OF AN IDENTIFICATION CARD TO ANY APPLICANT; INCREASING THE FEE FOR IDENTIFICATION CARDS; APPROPRIATING MONEY TO THE DEPARTMENT OF JUSTICE TO FUND IMPROVEMENTS IN THE SECURITY OF MONTANA DRIVER'S LICENSES; LIMITING INFORMATION THAT MAY BE PLACED ON A DRIVER'S LICENSE MAGNETIC STRIPE; AMENDING SECTIONS 61-11-105, 61-12-501, AND 61-12-504, MCA; AND PROVIDING AN EFFECTIVE DATE *1104*

347 *(Senate Bill No. 344; Waterman)* AN ACT CLARIFYING THE CONDITIONS IN WHICH SPECIAL PROFESSIONAL EVALUATIONS ARE REQUIRED IN THE PREPARATION OF PRESENTENCE INVESTIGATIONS; CLARIFYING THE ENTITY RESPONSIBLE FOR THE COST OF EVALUATIONS; AMENDING SECTION 46-18-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1105*

348 *(Senate Bill No. 217; Nathe)* AN ACT PROVIDING FOR SUSPENSION OF PROFESSIONAL AND OCCUPATIONAL LICENSES OF PERSONS DETERMINED BY A COURT OR BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO BE DELINQUENT IN THE PAYMENT OF CHILD SUPPORT; PROVIDING FOR NOTICE AND AN OPPORTUNITY FOR A HEARING PENDING SUSPENSION OF A LICENSE; AND PROVIDING FOR A STAY OF SUSPENSION UPON A SHOWING OF HARDSHIP OR AN OBLIGOR'S AGREEMENT TO ENTER INTO A PAYMENT PLAN *1106*

349 *(Senate Bill No. 384; Lynch)* AN ACT GENERALLY REVISING STATUTES GOVERNING AND REQUIRING REPORTS TO THE LEGISLATURE; REPEALING OBSOLETE OR REDUNDANT REPORTING REQUIREMENTS; SIMPLIFYING AND REDUCING BUDGET PUBLICATION REQUIREMENTS; AMENDING SECTIONS 1-11-204, 2-4-411, 2-7-104, 2-8-208, 2-15-108, 2-15-2021, 2-18-209, 2-18-301, 2-18-811, 2-18-1103, 3-1-702, 5-7-207, 5-11-210, 5-13-304, 5-17-103, 10-4-102, 13-37-120, 15-1-205, 17-4-107, 17-5-1650, 17-6-305, 17-7-123, 18-7-303, 19-4-201, 20-9-346, 20-25-236, 20-25-301, 33-22-1513, 37-1-106, 44-2-304, 44-12-206, 44-13-103, 53-2-1107, 53-6-110, 53-20-104, 53-21-104, 53-24-204, 53-30-133, 72-16-202, 75-1-203, 75-1-324, 75-1-1101, 75-10-533, 75-10-704, 76-11-203, 76-12-109, 82-11-161, 85-1-621, 87-2-722, 87-2-724, 90-3-203, 90-4-111, 90-4-606, AND 90-6-304, MCA; AND REPEALING SECTIONS 53-24-210, 69-1-404, 80-12-402, 80-12-403, AND 87-5-123, MCA *1112*

350 *(House Bill No. 97; Quilici)* AN ACT APPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION AND LIGHTING RETROFIT PROJECTS FOR FISCAL YEARS 1994 AND 1995; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE

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351 *(House Bill No. 281; Grady)* AN ACT GENERALLY REVISING THE LAWS RELATING TO SNOWMOBILES; EXEMPTING RACING SNOWMOBILES FROM CERTIFICATION AND REGISTRATION REQUIREMENTS; PROVIDING FOR REGISTRATION OF A SNOWMOBILE OWNED AND OPERATED SOLELY AS A COLLECTOR'S ITEM; AMENDING SECTIONS 23-2-602, 23-2-611, 23-2-615, 23-2-616, 23-2-619, 23-2-632, 23-2-634, 23-2-635, 23-2-641, 23-2-642, AND 23-2-654, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1149*

352 *(House Bill No. 283; Elliott)* AN ACT GENERALLY REVISING THE CIGARETTE TAX LAWS; APPLYING THE CIGARETTE SALES TAX TO ALL USE AND CONSUMPTION OF CIGARETTES ON AN INDIAN RESERVATION; PROVIDING AN EXCEPTION TO THE TAX FOR USE AND CONSUMPTION OF CIGARETTES BY A MEMBER OF AN INDIAN TRIBE ON AN INDIAN RESERVATION; PROVIDING A REFUND OR CREDIT TO A WHOLESALER FOR TAXES PAID ON CIGARETTES SOLD TO A TRIBAL MEMBER; REQUIRING THE DEPARTMENT OF REVENUE TO SHARE REVENUE WITH A TRIBAL GOVERNMENT THAT HAS ENACTED A CIGARETTE TAX SIMILAR TO THE STATE TAX; PROVIDING A CIVIL PENALTY FOR THE UNAUTHORIZED POSSESSION OR TRANSPORTATION OF UNSTAMPED CIGARETTES; PROVIDING FOR SEARCH, SEIZURE, AND FORFEITURE OF UNSTAMPED CIGARETTES; PROVIDING FOR A DISTRIBUTION OF PROCEEDS FROM A SALE OF PROPERTY SEIZED; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 16-11-111, 16-11-131, 16-11-147, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE *1159*

353 *(House Bill No. 307; DeBruycker)* AN ACT AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT RULES ALLOWING NEW AMUSEMENT GAMES TO BE OFFERED FOR PLAY AND PLAYED; AND AMENDING SECTION 23-6-104, MCA *1166*

354 *(House Bill No. 401; Kadas)* AN ACT AUTHORIZING THE ISSUANCE OF A LOAN TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FROM THE COAL SEVERANCE TAX PERMANENT FUND TO BE APPROPRIATED FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE LITIGATION IN THE CLARK FORK RIVER BASIN AND OTHER POTENTIAL SITES IN THE STATE; REAUTHORIZING THE 1992-93 BIENNIUM INTERENTITY LOAN FROM THE GENERAL FUND AS A LOAN FROM THE COAL SEVERANCE TAX PERMANENT FUND; EXTENDING REPAYMENT OF THE LOANS THROUGH THE 1995 BIENNIUM IN ACCORDANCE WITH SECTION 17-2-107, MCA; REQUIRING AN IRREVOCABLE AGREEMENT TO REPAY THE COAL SEVERANCE TAX PERMANENT FUND FROM ANY AMOUNT RECOVERED IN THE LITIGATION; AMENDING SECTION 17-6-310, MCA; AND PROVIDING AN EFFECTIVE DATE *1172*

355 *(House Bill No. 423; Gilbert)* AN ACT CLARIFYING THE PETROLEUM TANK RELEASE COMPENSATION BOARD HEARING REQUIREMENTS FOR REIMBURSEMENT OF ELIGIBLE COSTS; AND AMENDING SECTION 75-11-309, MCA *1174*

356 *(House Bill No. 494; Dowell)* AN ACT GENERALLY REVISING THE SPECIAL EDUCATION LAWS TO COMPLY WITH THE REQUIRE-

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357 *(House Bill No. 500; Mercer)* AN ACT REQUIRING THAT A PROPOSED SUPPLEMENTAL APPROPRIATION MUST CONTAIN A PLAN FOR REDUCING EXPENDITURES IN THE SECOND YEAR OF THE BIENNIUM THAT ALLOWS THE AGENCY TO CONTAIN EXPENDITURES WITHIN APPROPRIATIONS; PROVIDING CERTAIN EXCEPTIONS; AUTHORIZING THE GOVERNOR TO IMPLEMENT THE PLAN; PROHIBITING DURING THE SECOND FISCAL YEAR OF A BIENNIUM NONMANDATORY EXPENDITURES THAT WILL CAUSE EXPENDITURES TO EXCEED APPROPRIATIONS; AND AMENDING SECTIONS 17-7-301 AND 17-7-311, MCA *1184*

358 *(House Bill No. 638; Grimes)* AN ACT PROHIBITING THE PLACEMENT OF A STATUS OFFENDER IN A STATE YOUTH CORRECTIONAL FACILITY; PROHIBITING THE INITIAL COMMITMENT OR PROLONGED CONFINEMENT OF A MENTALLY ILL YOUTH IN A STATE YOUTH CORRECTIONAL FACILITY; CLARIFYING WHO SUPERVISES A YOUTH FOLLOWING A MENTAL HEALTH COMMITMENT; AMENDING SECTIONS 41-5-523, 52-5-126, AND 52-5-127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1186*

359 *(Senate Bill No. 31; Blaylock)* AN ACT CLARIFYING REIMBURSEMENT RATES IN SCHOOL DISTRICT TRANSPORTATION LAWS; ELIMINATING A REFERENCE TO THE COUNTY TRANSPORTATION FUND OPERATING RESERVE; AMENDING SECTIONS 20-10-101, 20-10-142, AND 20-10-146, MCA; AND PROVIDING AN EFFECTIVE DATE . . . *1191*

360 *(Senate Bill No. 39; Keating)* AN ACT PROVIDING FOR DISCONTINUING LICENSED ACUTE HOSPITAL CARE ON THE GALEN CAMPUS OF THE MONTANA STATE HOSPITAL; AMENDING SECTION 53-21-601, MCA; REPEALING SECTION 50-17-104, MCA; AND PROVIDING AN EFFECTIVE DATE *1195*

361 *(Senate Bill No. 40; Keating)* AN ACT PROVIDING THAT THE MONTANA STATE HOSPITAL AT GALEN CEASE TO PROVIDE INTERMEDIATE NURSING CARE; AMENDING SECTION 53-21-601, MCA; AND PROVIDING AN EFFECTIVE DATE *1197*

362 *(Senate Bill No. 70; B. Brown)* AN ACT PROVIDING THAT A COURT MAY NOT MAKE A DISPOSITION IN A CHILD ABUSE, NEGLECT, OR DEPENDENCY PROCEEDING THAT REQUIRES AN EXPENDITURE OF MONEY BY THE DEPARTMENT OF FAMILY SERVICES UNLESS THE DEPARTMENT IS NOTIFIED AND A TIMELY COURT HEARING IS SET; PROVIDING THAT THE DEPARTMENT IS THE PAYOR OF LAST RESORT; AMENDING SECTIONS 41-3-403 AND 41-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1199*

363 *(Senate Bill No. 73; Devlin)* AN ACT CREATING A PENALTY FOR FAILURE OF A RAILROAD CORPORATION TO MAINTAIN FENCES; CREATING A PROCESS OF NOTIFICATION TO A RAILROAD CORPORATION WHEN FENCES ARE IN DISREPAIR; SETTING A TIME LIMIT FOR PAYMENT ON A JUDGMENT OF LIABILITY FOR THE VALUE OF A KILLED OR MAIMED ANIMAL AND PROVIDING FOR CHARGING INTEREST WHEN THAT TIME LIMIT IS EXCEEDED; AND AMENDING SECTION 69-14-701, MCA *1202*

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364 *(Senate Bill No. 105; Stang)* AN ACT ELIMINATING THE CLASS E MOTOR CARRIER CATEGORY AND THE REGULATIONS RELATED TO TRANSPORTING LOGS; AMENDING SECTIONS 69-12-101, 69-12-102, 69-12-201, 69-12-205, 69-12-301, 69-12-321, 69-12-322, 69-12-407, AND 69-12-611, MCA; AND REPEALING SECTIONS 69-12-315, 69-12-333, 69-12-334, AND 69-12-335, MCA *1203*

365 *(Senate Bill No. 153; Doherty)* AN ACT REVISING THE MANDATORY MOTOR VEHICLE REGISTRATION AND LIABILITY PROTECTION LAWS; PROVIDING THAT THE SENTENCE FOR DRIVING WITHOUT INSURANCE MAY NOT BE DEFERRED; ABOLISHING THE REQUIREMENT THAT A MOTOR VEHICLE REGISTRATION RECEIPT AND PROOF OF INSURANCE CERTIFICATE BE SIGNED BY THE OWNER; REVISING THE PROOF OF INSURANCE REQUIREMENTS; INCREASING THE PENALTY FOR DRIVING WITHOUT INSURANCE; ADDING ADDITIONAL PENALTIES; AND AMENDING SECTIONS 46-18-201, 61-3-322, 61-3-535, 61-6-302, 61-6-304, 61-11-203, AND 61-13-104, MCA *1209*

366 *(Senate Bill No. 189; Doherty)* AN ACT REQUIRING THAT CURRENT AND DELINQUENT TAXES BE PAID BEFORE REAL PROPERTY MAY BE SPLIT OR COMBINED AND BEFORE A DIVISION OR MERGER OF REAL PROPERTY MAY BE RECORDED; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE AND THE COUNTY TREASURER KEEP RECORDS OF THE SEPARATION OF THE TAXES BETWEEN THE PORTION OF THE PROPERTY BEING SOLD AND THE REMAINING PARCELS; AND AMENDING SECTIONS 7-4-2613, 15-8-702, AND 76-3-207, MCA *1216*

367 *(Senate Bill No. 203; Fritz)* AN ACT TO PROVIDE A ONE-TIME, AD HOC COST-OF-LIVING INCREASE IN THE MONTHLY SERVICE, DISABILITY, OR SURVIVORSHIP BENEFIT BEING PAID TO CERTAIN RETIRED MEMBERS BY THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND PROVIDING AN EFFECTIVE DATE *1219*

368 *(Senate Bill No. 206; Bruski-Maus)* AN ACT CLARIFYING THAT AVERAGE DAILY PRODUCTION OF 60,000 CUBIC FEET OR LESS FROM A NATURAL GAS WELL IS EXEMPT FROM THE 7 PERCENT SEVERANCE TAX SURTAX; AMENDING SECTION 15-36-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE *1219*

369 *(Senate Bill No. 215; Van Valkenburg)* AN ACT ALLOWING A COUNTY OR A MUNICIPALITY TO DONATE TAX-DEED LAND TO A NONPROFIT CORPORATION FOR THE CONSTRUCTION OF RESIDENTIAL HOUSING; AMENDING SECTIONS 7-8-2301 AND 15-17-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1220*

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372 (*Senate Bill No. 249; Yellowtail*) AN ACT CLARIFYING THE REQUIREMENT FOR REAR-END TELEMETRY DEVICES ON TRAINS; AND AMENDING SECTION 69-14-116, MCA *1242*

373 (*Senate Bill No. 260; Bartlett*) AN ACT CLARIFYING THE STATUTE OF LIMITATIONS IN PATERNITY ACTIONS; AND AMENDING SECTION 40-6-108, MCA *1244*

374 (*Senate Bill No. 264; Van Valkenburg*) AN ACT ABOLISHING THE REQUIREMENT THAT NOTICE BE GIVEN OF RELEASES FROM JAIL; AND AMENDING SECTION 44-2-601, MCA *1245*

375 (*Senate Bill No. 278; Christiaens*) AN ACT GENERALLY REVISING THE LAWS RELATED TO EDUCATIONAL SERVICES IN CHILDREN'S PSYCHIATRIC HOSPITALS AND RESIDENTIAL TREATMENT FACILITIES; LIMITING STATE APPROPRIATIONS TO COSTS THAT ARE NOT REIMBURSABLE UNDER OTHER PROVISIONS OF STATE OR FEDERAL LAW; CLARIFYING RESPONSIBILITIES AMONG AGENCIES; AMENDING SECTIONS 20-7-420, 20-7-421, 20-7-422, 20-7-435, 20-7-436, AND 20-9-343, MCA; AND PROVIDING AN EFFECTIVE DATE *1246*

376 (*House Bill No. 288; Feland*) AN ACT GENERALLY REVISING THE REQUIREMENTS FOR OIL AND GAS OPERATIONS; REQUIRING THE FILING OF GEOLOGICAL SAMPLE LOGS, MUD LOGS, CORE DESCRIPTIONS, AND ORDINARY CORE ANALYSIS, IF ANY ARE MADE; CLARIFYING THAT THE ENTIRE BOND MAY BE FORFEITED; AMENDING SECTION 82-11-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND FOR RETROACTIVE APPLICABILITY *1253*

377 (*Senate Bill No. 425; B. Brown*) AN ACT REVISING JUDICIAL SELECTION PROCEDURES TO CONFORM TO RECENT CONSTITUTIONAL AMENDMENTS; PROVIDING FOR SENATE CONFIRMATION OF APPOINTMENTS EXCEPT IN CERTAIN CASES; REQUIRING AN APPOINTED JUDGE OR JUSTICE TO STAND FOR ELECTION AT THE FIRST GENERAL ELECTION FOLLOWING APPOINTMENT, EXCEPT IN CASES IN WHICH THE APPOINTMENT IS MADE AFTER THE CANDIDATE FILING DEADLINE FOR THE OFFICE; PROVIDING FOR RETENTION ELECTIONS IN CASES IN WHICH AN INCUMBENT DOES NOT FACE AN ELECTION CHALLENGER; AMENDING SECTIONS 3-1-1013 AND 3-1-1014, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1254*

378 (*Senate Bill No. 291; Doherty*) AN ACT REVISING UTILIZATION REVIEW PROVISIONS; AND AMENDING SECTION 33-32-201, MCA *1256*

379 (*Senate Bill No. 294; Keating*) AN ACT PROVIDING FOR THE DEFINITION OF THE TERMS "COAL", "GAS", AND "OIL"; CLARIFYING THAT THE DEFINITION OF "GAS" IN THIS ACT ALSO APPLIES TO TITLE 15; CLARIFYING THE NATURE OF HYDROCARBON GASES FOUND IN COAL FORMATIONS; AND AMENDING SECTIONS 15-1-101 AND 82-11-101, MCA *1257*

380 (*Senate Bill No. 298; Bartlett*) AN ACT AMENDING THE MUNICIPAL FINANCE CONSOLIDATION ACT OF 1983 TO INCLUDE AN ASSESS-

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381 *(Senate Bill No. 321; Christiaens)* AN ACT REVISING THE CRITERIA FOR MEDICAL PAROLE; AND AMENDING SECTION 46-23-210, MCA *1265*

382 *(Senate Bill No. 330; Nathe)* AN ACT REVISING AND CLARIFYING THE LAW CONCERNING SUSPENSION AND REVOCATION OF TEACHER, ADMINISTRATOR, OR SPECIALIST CERTIFICATES; PROVIDING A PENALTY FOR FAILING TO REPORT; AMENDING SECTION 20-4-110, MCA; AND PROVIDING AN EFFECTIVE DATE *1266*

383 *(Senate Bill No. 340; Doherty)* AN ACT ESTABLISHING A POLICY ON RESIDENTIAL ENERGY EFFICIENCY; PROVIDING FOR THE APPLICABILITY OF THE ENERGY CONSERVATION PROVISIONS OF THE STATE BUILDING CODE TO RESIDENTIAL BUILDINGS; REQUIRING THAT THE ADOPTION OF RULES FOR ENERGY CONSERVATION IN BUILDINGS CONFORM TO CERTAIN POLICIES; PROVIDING FOR THE CERTIFICATION OF INSTALLATION OF ENERGY EFFICIENCY FEATURES BY BUILDERS; PROVIDING FOR THE LABELING OF ENERGY EFFICIENCY FEATURES IN NEW HOMES; AND AMENDING SECTIONS 50-60-102 AND 50-60-203, MCA *1268*

384 *(Senate Bill No. 352; Keating)* AN ACT AMENDING THE PHYSICIAN, NURSE, PHYSICAL THERAPIST, OCCUPATIONAL THERAPIST, CHIROPRACTOR, DENTIST, AND HOSPITAL LIEN ACT TO INCLUDE PSYCHOLOGISTS, LICENSED SOCIAL WORKERS, AND LICENSED PROFESSIONAL COUNSELORS; AND AMENDING SECTIONS 71-3-1111, 71-3-1112, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA *1272*

385 *(House Bill No. 395; Foster)* AN ACT TEMPORARILY CLOSING THE UPPER MISSOURI RIVER BASIN TO FURTHER APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER, NONCONSUMPTIVE WATER USE, DOMESTIC, MUNICIPAL, OR STOCK USE, AND STORAGE PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE *1275*

386 *(Senate Bill No. 399; Eck)* AN ACT AUTHORIZING A LOCAL GOVERNMENT TO LEVY 1 MILL FOR ECONOMIC DEVELOPMENT BY A VOTE OF THE GOVERNING BODY; SUBJECTING THE LEVY TO THE PROVISIONS OF TITLE 15, CHAPTER 10, PART 4, UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 90-5-112, MCA . . . *1276*

387 *(Senate Bill No. 77; Swysgood)* AN ACT CONTINUING THE JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . . *1277*

388 *(Senate Bill No. 78; Gage)* AN ACT PROVIDING THAT IN A HEARING REQUESTED BY A PERSON WHOSE DRIVER'S LICENSE HAS BEEN SUSPENDED OR REVOKED FOLLOWING A DUI CHARGE, THE CITY ATTORNEY MAY REPRESENT THE STATE IF THE INCIDENT LEADING TO THE SUSPENSION OR REVOCATION RESULTED IN A CITY OR MUNICIPAL CHARGE; AND AMENDING SECTION 61-8-403, MCA *1279*

389 *(Senate Bill No. 100; Forrester)* AN ACT DEFINING THE TERM "DESIGNATED SMOKING AREA"; RESTRICTING ALL SMOKING AREAS TO DESIGNATED SMOKING AREAS; EXEMPTING MONTANA UNIVER-

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390 *(Senate Bill No. 318; Weldon)* AN ACT GENERALLY REVISING THE LAWS RELATING TO ELECTIONS; PROVIDING A DEFINITION OF "REGULAR ELECTION"; REVISING REGISTRATION OF ELECTORS; REQUIRING THAT AFFIDAVITS OF CIRCULATION ACCOMPANY PETITIONS FOR NOMINATION OF PRESIDENTIAL CANDIDATES; PROVIDING FOR AMENDMENT OF NOMINATING PETITIONS; REVISING THE STAMPING OF BALLOTS; AUTHORIZING THE SECRETARY OF STATE TO PRESCRIBE THE FORM OF THE VOTER INFORMATION PAMPHLET AND PROVIDING FOR THE MAILING OF THE PAMPHLET; AMENDING SECTIONS 13-1-101, 13-2-202, 13-2-203, 13-10-405, 13-10-503, 13-10-504, 13-10-601, 13-13-116, 13-25-101, 13-27-401, AND 13-27-410, MCA; REPEALING SECTION 13-2-102, MCA; AND PROVIDING AN EFFECTIVE DATE *1283*

391 *(Senate Bill No. 223; Bartlett)* AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD LABOR; AND REPEALING SECTIONS 41-2-101, 41-2-111, 41-2-113, 41-2-114, AND 41-2-121, MCA *1290*

392 *(House Bill No. 27; Squires)* AN ACT RELATING TO LICENSING OF RESPIRATORY CARE PRACTITIONERS; ESTABLISHING A UNIFORM DATE FOR RENEWING LICENSES TO PRACTICE RESPIRATORY CARE THERAPY; PROVIDING QUALIFICATIONS FOR A TEMPORARY PERMIT; AMENDING SECTIONS 37-28-203 AND 37-28-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1298*

393 *(House Bill No. 139; Grinde)* AN ACT EXEMPTING LAND SURVEYORS WHO ARE HAND DIGGING FOR CERTAIN PURPOSES FROM THE PROVISION REQUIRING EXCAVATORS TO OBTAIN INFORMATION ON THE LOCATION OF UTILITIES; DETERMINING LIABILITY FOR DAMAGES INCURRED, SUFFERED, OR CAUSED BY LAND SURVEYORS OR PERSONS UNDER THE LAND SURVEYORS' CONTROL; DETERMINING LIABILITY FOR GOVERNING AUTHORITIES FOR DAMAGES CAUSED OR SUFFERED BY LAND SURVEYORS OR PERSONS UNDER THE LAND SURVEYORS' CONTROL; DETERMINING LIABILITY FOR PUBLIC UTILITIES, MUNICIPAL CORPORATIONS, OR OTHER PERSONS HAVING THE RIGHT TO BURY UNDERGROUND FACILITIES FOR DAMAGES SUFFERED BY LAND SURVEYORS OR PERSONS UNDER THE LAND SURVEYORS' CONTROL; AND AMENDING SECTION 69-4-502, MCA *1299*

394 *(House Bill No. 170; Gilbert)* AN ACT REVISING THE MEMBERSHIP ON THE BOARD OF AERONAUTICS; AND AMENDING SECTION 2-15-2506, MCA *1300*

395 *(House Bill No. 201; Hibbard)* AN ACT GENERALLY REVISING THE LAWS RELATING TO BANKING; REVISING THE LAWS RELATING TO THE STATE BANKING BOARD; REMOVING THE DIRECTOR OF THE DEPARTMENT OF COMMERCE AS THE CHAIRMAN OF THE BOARD; AUTHORIZING THE BOARD TO ELECT A PRESIDING OFFICER; REDUCING THE TIME BETWEEN BANK INSPECTIONS; AUTHORIZING THE ACCEPTANCE OF FEDERAL REPORTS IN LIEU OF EXAMINATIONS; CLARIFYING THE PURPOSE OF THE BANKING

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396 *(House Bill No. 222; Stanford)* AN ACT REVISING LICENSURE REQUIREMENTS FOR PERSONS SELLING, INSTALLING, AND SERVICING FIRE PROTECTION EQUIPMENT; AMENDING SECTIONS 50-39-101, 50-39-102, 50-39-103, 50-39-104, AND 50-39-105, MCA; AND PROVIDING AN APPLICABILITY DATE *1332*

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398 *(House Bill No. 272; J. Rice)* AN ACT REVISING AND CLARIFYING THE GAMBLING LAWS; DEFINING "GIFT ENTERPRISE"; EXPANDING THE DEFINITION OF "LICENSE"; REVISING THE TRANSFER OF OWNERSHIP NOTIFICATION REQUIREMENT AND REQUIRING DEPARTMENT APPROVAL; REVISING THE THEFT DEDUCTION FROM THE VIDEO GAMBLING MACHINE TAX; CLARIFYING THAT A MANUFACTURER-DISTRIBUTOR MAY NOT SUPPLY UNAPPROVED MACHINES; AND AMENDING SECTIONS 23-5-110, 23-5-111, 23-5-112, 23-5-113, 23-5-115, 23-5-117, 23-5-118, 23-5-123, 23-5-136, 23-5-157, 23-5-161, 23-5-162, 23-5-171, 23-5-172, 23-5-309, 23-5-610, 23-5-631, AND 23-7-302, MCA *1340*

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406 *(House Bill No. 478; Toole)* AN ACT REVISING THE DISABILITY PARKING LAW; INCREASING THE PENALTY FOR A VIOLATION; REQUIRING THAT A SIGN DESIGNATING A DISABILITY PARKING SPACE STATE THE PENALTY FOR A VIOLATION; EXEMPTING "NOTICE OF VIOLATION" CARDS FROM LITTERING ORDINANCES; LIMITING NEW PERMITS TO 4 YEARS; AND AMENDING SECTIONS 7-5-2109, 7-5-4104, 49-4-302, 49-4-305, AND 49-4-307, MCA *1372*

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416 (House Bill No. 637; Ryan) AN ACT ESTABLISHING MINIMUM POLICY LANGUAGE STANDARDS FOR PROPERTY AND CASUALTY POLICIES DELIVERED IN THE STATE OF MONTANA; AND PROVIDING AN APPLICABILITY DATE 1427

417 (House Bill No. 648; Anderson) AN ACT REVISING THE LIVESTOCK LAWS; INCLUDING ALPACAS IN THE LAWS RELATING TO THE CONTAINMENT OF LIVESTOCK AND THE UNAUTHORIZED MOVEMENT OR TRANSPORTATION OF LIVESTOCK; PROVIDING FOR THE TAXATION OF ALPACAS; EXEMPTING LLAMAS FROM BRAND REQUIREMENTS; AND AMENDING SECTIONS 15-1-101, 15-24-921, 81-2-702, 81-3-201, 81-4-201, 81-4-214, 81-4-215, 81-4-306, 81-4-401, 81-4-402, 81-4-601, 81-5-101, AND 81-5-104, MCA 1430

418 (House Bill No. 84; Fagg) AN ACT REVISING THE DAM SAFETY ACT; REVISING THE AUTHORITY OF THE DISTRICT COURT AND COUNTY COMMISSIONERS TO CONSIDER DAM SAFETY COMPLAINTS; AMENDING SECTIONS 85-15-106, 85-15-107, 85-15-209, 85-15-211, 85-15-212, 85-15-213, AND 85-15-216, MCA; AND REPEALING SECTIONS 85-15-306, 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311, 85-15-402, 85-15-403, 85-15-404, AND 85-15-501, MCA 1438

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421 *(Senate Bill No. 313; Towe)* AN ACT CONCERNING DISABLED ADULTS; AUTHORIZING THE DEPARTMENT OF FAMILY SERVICES TO LICENSE IN CERTAIN CIRCUMSTANCES ADULT FOSTER FAMILY CARE HOMES FOR MORE THAN LIGHT PERSONAL CARE OR CUSTODIAL CARE; SPECIFYING WHO MAY SERVE ON PROTECTIVE SERVICE TEAMS; SPECIFYING PERSONS REQUIRED TO REPORT SUSPECTED CASES OF ABUSE, NEGLECT, OR EXPLOITATION; DESIGNATING PERSONS WHO MAY ACCESS CERTAIN GOVERNMENT RECORDS OF ABUSED, NEGLECTED, OR EXPLOITED PERSONS; AND AMENDING SECTIONS 52-3-305, 52-3-805, 52-3-811, AND 52-3-813, MCA *1467*

422 *(Senate Bill No. 370; Rye)* AN ACT PROVIDING FOR LOCAL GOVERNMENT DISCRETION TO SUSPEND OR CANCEL DELINQUENT PROPERTY TAXES ON COMMERCIAL, AGRICULTURAL, OR RESIDENTIAL PROPERTY SUBJECT TO A STATE OR FEDERAL STATUTORY DUTY IN ORDER TO FACILITATE THE PURCHASE OR CONTINUED USE OF THE PROPERTY; AMENDING SECTION 15-24-1702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE *1470*

423 *(Senate Bill No. 395; Harp)* AN ACT LIMITING THE ALLOWABLE LENGTH FOR A VEHICLE COMBINATION HAULING LOGS; ESTABLISHING LIMITATIONS ON THE MAXIMUM OVERHANG LENGTH OF LOGS; AND AMENDING SECTION 61-10-104, MCA *1472*

424 *(Senate Bill No. 396; Forrester)* AN ACT ALLOWING A TAXING UNIT THAT EXPERIENCED A 5 PERCENT OR MORE DECREASE IN TAXABLE VALUATION FROM THE 1986 TAX YEAR TO CONTINUE TO LEVY ADDITIONAL MILLS WHEN THE TAXING UNIT'S TAXABLE VALUATION IS GREATER THAN 95 PERCENT BUT LESS THAN 100 PERCENT OF THE TAXING UNIT'S TAXABLE VALUATION IN TAX YEAR 1986; AMENDING SECTION 15-10-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE *1474*

425 *(Senate Bill No. 406; Bartlett)* AN ACT EXPANDING THE TEMPORARY RESTRAINING ORDER LAWS AND THE CRIMINAL LAWS THAT PROTECT PERSONS AGAINST DOMESTIC ABUSE; DEFINING "FAMILY MEMBER" FOR PURPOSES OF BOTH AREAS OF LAW; APPLYING BOTH AREAS OF LAW TO PARTNERS; DEFINING THE TERM "PARTNERS"; APPLYING THE PROTECTIONS IN THE TEMPORARY RESTRAINING ORDER LAWS TO ALL FAMILY MEMBERS; AND AMENDING SECTIONS 40-4-121, 45-5-206, 46-6-311, 46-6-602, AND 46-9-302, MCA *1477*

426 *(Senate Bill No. 408; Christiaens)* AN ACT AMENDING THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT; CLARIFYING THE DEFINITION OF NEGLECT; PROVIDING FOR THE MEMBERSHIP AND DUTIES OF ADULT PROTECTIVE SERVICE TEAMS; AND AMENDING SECTIONS 52-3-803 AND 52-3-805, MCA *1482*

427 *(Senate Bill No. 412; Aklestad)* AN ACT CLARIFYING THAT THE BENEFICIAL USE OF PROPERTY HELD BY A PORT AUTHORITY IS EXEMPT FROM PROPERTY TAXATION; AMENDING SECTION 15-24-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE *1484*

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428 *(Senate Bill No. 417; Weeding)* AN ACT REVISING THE BAD DEBT CREDIT ALLOWANCE ON GASOLINE AND SPECIAL FUEL TAXES PAYABLE TO THE DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE DEPARTMENT TO WRITE OFF THE COLLECTION OF A TAX, PENALTY, OR INTEREST DUE WHENEVER THE DEPARTMENT DETERMINES THAT IT IS NOT COST-EFFECTIVE TO ATTEMPT TO COLLECT THE TAX, PENALTY, OR INTEREST; AMENDING SECTIONS 15-70-221 AND 15-70-328, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE *1485*

429 *(Senate Bill No. 392; Waterman)* AN ACT INCREASING THE STATE'S ABILITY TO ENFORCE SUPPORT OBLIGATIONS; PROVIDING FOR A LIEN ON LOTTERY WINNINGS WHEN THE WINNER OWES A DEBT TO OR COLLECTED BY A IV-D AGENCY; REVISING THE CRIME OF NONSUPPORT; AND AMENDING SECTIONS 17-4-105 AND 45-5-621, MCA *1487*

430 *(Senate Bill No. 429; Gage)* AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO GIVE PRIORITY, UNDER CERTAIN CONDITIONS, TO RECLAMATION AND DEVELOPMENT GRANT REQUESTS FROM THE BOARD OF OIL AND GAS CONSERVATION; AMENDING SECTION 90-2-1113, MCA; AND PROVIDING AN EFFECTIVE DATE *1492*

431 *(House Bill No. 151; Vogel)* AN ACT DEFINING THE TERM "CRIMINAL JUSTICE AGENCY" FOR PURPOSES OF THE MONTANA CRIMINAL JUSTICE INFORMATION ACT TO INCLUDE AGENCIES OF FOREIGN NATIONS THAT ADMINISTER CRIMINAL JUSTICE; AMENDING SECTION 44-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1493*

432 *(Senate Bill No. 316; Towe)* AN ACT AMENDING THE TREASURE STATE ENDOWMENT PROGRAM TO ALLOW COUNTY WATER, SEWER, AND SOLID WASTE DISTRICTS TO APPLY FOR ASSISTANCE; ALLOWING THE TREASURE STATE ENDOWMENT PROGRAM TO BORROW FROM THE BOARD OF INVESTMENTS; PERMITTING INTEREST RATE SUBSIDIES TO BE PAID OVER THE LIFE OF LOANS OR BONDS; AMENDING THE ORDER OF PRIORITY FOR INFRASTRUCTURE PROJECTS; AND AMENDING SECTIONS 90-6-701, 90-6-703, AND 90-6-710, MCA *1496*

433 *(House Bill No. 23; Peck)* AN ACT GENERALLY REVISING THE LAW CONCERNING BUDGET AMENDMENTS; ESTABLISHING CRITERIA FOR THE ACCEPTANCE AND EXPENDITURE BY STATE AGENCIES OF CERTAIN MONEY FROM PRIVATE SOURCES; EXEMPTING CERTAIN FUNDS AND FUND TRANSFERS FROM THE BUDGET AMENDMENT PROCESS; PROVIDING FOR TRANSFER OF FUNDS BETWEEN AGENCIES; ELIMINATING THE EVALUATION CRITERIA REQUIREMENT FOR BUDGET AMENDMENTS; AMENDING SECTIONS 17-2-102, 17-7-402, 17-7-403, AND 17-8-101, MCA; AND PROVIDING AN EFFECTIVE DATE *1499*

434 *(House Bill No. 67; Cocchiarella)* AN ACT PROHIBITING THE APPOINTMENT OF CERTAIN PUBLIC EMPLOYEES TO REPRESENT CHILDREN IN CERTAIN JUDICIAL PROCEEDINGS; PROHIBITING A COURT FROM ORDERING THE DEPARTMENT OF FAMILY SERVICES TO CONDUCT A CHILD CUSTODY INVESTIGATION EXCEPT IN CERTAIN CASES; AMENDING SECTIONS 40-4-205, 40-4-215, 40-6-110, AND 41-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1505*

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435 *(House Bill No. 124; McCaffree)* AN ACT REQUIRING AN ADULT CHILD TO PAY BURIAL, ENTOMBMENT, OR CREMATION COSTS FOR AN INDIGENT PARENT; ALLOWING A COUNTY OR THE STATE TO SEEK REIMBURSEMENT OF COSTS FOR BURIAL, ENTOMBMENT, OR CREMATION OF INDIGENTS; PROHIBITING OFFSETS AGAINST CONTRACT CHARGES FOR INDIGENT BURIALS; REQUIRING REIMBURSEMENT FOR RECOVERY AFTER PAYMENT OF A CONTRACT CHARGE; AND AMENDING SECTIONS 40-6-301, 53-3-110, AND 53-3-114, MCA *1507*

436 *(House Bill No. 128; D. Brown)* AN ACT PROVIDING FOR NOTICE AND PUBLIC MEETINGS AS PART OF THE DEVELOPMENT OF A COUNTY DRINKING AND DRIVING PREVENTION PROGRAM; AND AMENDING SECTION 61-2-106, MCA *1508*

437 *(House Bill No. 134; Peterson)* AN ACT ALLOWING THE BOARD OF CRIME CONTROL TO SUSPEND OR REVOKE THE CERTIFICATION OF PEACE OFFICERS, PUBLIC SAFETY COMMUNICATIONS OFFICERS, DETENTION OFFICERS, AND DETENTION CENTER ADMINISTRATORS; PROVIDING PENALTIES FOR VIOLATIONS OF SUSPENSION OR REVOCATION; AND AMENDING SECTIONS 7-31-203, 7-32-303, AND 44-4-301, MCA *1509*

438 *(House Bill No. 149; Larson)* AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES RELATING TO THE TAXATION OF CERTAIN FUELS AND LIMITING THE POWERS THAT THE DEPARTMENT MAY DELEGATE IN THE AGREEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1513*

439 *(House Bill No. 168; Rehbein)* AN ACT REVISING THE DEFINITION OF "ADEQUATE HEALTH CARE" AND OTHER TERMS USED UNDER MONTANA'S CHILD ABUSE AND NEGLECT LAWS IN ORDER TO CONFORM WITH FEDERAL REQUIREMENTS; AND AMENDING SECTIONS 40-8-111, 41-3-102, AND 41-3-609, MCA *1513*

440 *(House Bill No. 221; Schye)* AN ACT ALLOWING COUNTIES TO ESTABLISH GRANT PROGRAMS FOR PRIVATE, NONPROFIT MUSEUMS AND PRIVATE, NONPROFIT FACILITIES FOR THE ARTS AND THE HUMANITIES, TO BE FUNDED BY A MILL LEVY NOT EXCEEDING 2 MILLS; AND AMENDING SECTIONS 7-16-2202 AND 7-16-2205, MCA *1518*

441 *(House Bill No. 235; Toole)* AN ACT ADOPTING THE UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT; PROVIDING FOR THE ENFORCEMENT IN MONTANA OF FOREIGN MONEY-JUDGMENTS; PROVIDING FOR NONRECOGNITION OF CERTAIN JUDGMENTS; AND PROVIDING GUIDELINES FOR THE EXERCISE OF PERSONAL JURISDICTION *1519*

442 *(House Bill No. 258; Toole)* AN ACT EXCLUDING FROM THE INTERIM EARNINGS DEDUCTION IN A SUCCESSFUL WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO THE REASONABLE COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT; CLARIFYING THE ORIGINAL LEGISLATIVE INTENT OF THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT WITH RESPECT TO ARBITRATION; AND AMENDING SECTIONS 39-2-905 AND 39-2-914, MCA *1521*

443 *(House Bill No. 299; Wallin)* AN ACT RECOGNIZING THE LOCAL GOVERNMENT CENTER AT MONTANA STATE UNIVERSITY AND

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444 *(House Bill No. 339; Driscoll)* AN ACT EXEMPTING PETROLEUM REFINERIES FROM THE PROVISIONS OF THE STATE BUILDING CODE; EXEMPTING PETROLEUM REFINERIES FROM THE PROVISIONS OF THE STATE BUILDING CONSTRUCTION STANDARDS PERTAINING TO ELECTRICAL INSTALLATIONS; AMENDING SECTIONS 50-60-102 AND 50-60-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1524

445 *(House Bill No. 365; Rose)* AN ACT CLOSING THE TETON RIVER BASIN TO FURTHER CONSUMPTIVE APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER, CERTAIN STORAGE PROJECTS, AND DOMESTIC, MUNICIPAL, AND STOCK USES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1525

446 *(House Bill No. 393; Wagner)* AN ACT COMBINING CERTAIN TIMBER HARVESTING FEES INTO ONE FOREST IMPROVEMENT FEE; GENERALLY CLARIFYING STATUTORY LANGUAGE REGARDING TIMBER SALES AND HARVESTING ON STATE LANDS; AMENDING SECTION 77-5-204, MCA; AND PROVIDING AN EFFECTIVE DATE 1526

447 *(House Bill No. 409; Pavlovich)* AN ACT REQUIRING THAT POOR PERSONS PROVIDE A FINANCIAL STATEMENT AND THAT A COURT OR ADMINISTRATIVE TRIBUNAL ORDER OF APPROVAL BE ISSUED BEFORE FILING FEES ARE WAIVED; PROVIDING AN EXCEPTION TO THE FINANCIAL STATEMENT REQUIREMENT; ALLOWING FILING OF A PLEADING SUBJECT TO SUBSEQUENT APPROVAL OF INDIGENCE STATUS; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT AN AFFIDAVIT FORM BY RULE; AND AMENDING SECTION 25-10-404, MCA 1527

448 *(House Bill No. 429; Strizich)* AN ACT CREATING THE OFFENSE OF CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS; SEPARATING THE OFFENSE FROM THE OFFENSE OF CRIMINAL SALE OF DANGEROUS DRUGS; PROVIDING PENALTIES FOR THE PRODUCTION OR MANUFACTURE OF VARIOUS TYPES OF DANGEROUS DRUGS; ELIMINATING THE REQUIREMENT THAT THE FIRST 2 YEARS OF A PRISON SENTENCE MAY NOT BE DEFERRED OR SUSPENDED; AND AMENDING SECTIONS 41-5-206 AND 45-9-101, MCA 1528

449 *(House Bill No. 433; Ellis)* AN ACT PROVIDING THAT A BAR MAY CONDUCT A RACE BETWEEN PIGS, GERBILS, OR HAMSTERS AND CONDUCT ONE OR MORE SPORTS POOLS ON THE RACE; AMENDING SECTIONS 23-4-301 AND 23-5-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1533

450 *(House Bill No. 485; Grady)* AN ACT PROVIDING AD HOC AND AUTOMATIC POSTRETIREMENT COST-OF-LIVING ADJUSTMENTS FOR CERTAIN BENEFIT RECIPIENTS UNDER THE GAME WARDENS' RETIREMENT SYSTEM; INCREASING THE STATE'S CONTRIBUTION FROM CERTAIN FINES AND FORFEITURES TO PAY FOR THE NORMAL COST OF GAME WARDENS' RETIREMENT BENEFITS; REQUIRING THE DEVELOPMENT OF LEGISLATIVE PROPOSALS FOR EQUITABLE POSTRETIREMENT ADJUSTMENTS FOR PUBLIC RETIREMENT SYSTEMS; AMENDING SECTIONS 17-7-502 AND 19-8-504, MCA; AND PROVIDING AN EFFECTIVE DATE 1534

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451 *(House Bill No. 545; Tuss)* AN ACT GENERALLY REVISING THE LAWS RELATING TO THE REGULATION OF INSURERS AND MOTOR CLUB SERVICE COMPANIES; REVISING THE EFFECTIVE DATE PROVISION FOR HAIL INSURANCE; AMENDING SECTIONS 15-16-601, 33-1-316, 33-1-501, 33-2-302, 33-2-305, 33-2-307, 33-2-312, 33-2-313, 33-2-705, 33-2-708, 33-2-1113, 33-3-305, 33-4-101, 33-4-203, 33-11-104, 33-11-108, 33-14-201, 33-14-305, 33-15-303, 33-16-106, 33-17-231, 33-17-237, 33-20-101, 33-20-121, 33-20-127, 33-20-603, 33-22-101, 33-22-130, 33-22-131, 33-22-132, 33-22-201, 33-22-202, 33-22-1703, AND 80-2-203, MCA; REPEALING SECTIONS 15-1-505, 33-17-206, AND 33-22-216, MCA; AND PROVIDING EFFECTIVE DATES *1537*

452 *(House Bill No. 564; Bergsagel)* AN ACT GENERALLY REVISING THE AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN STANDARDS ACT RELATING TO LICENSE FEES, REVENUE ACCOUNTS, BONDING REQUIREMENTS, AND PASSAGE OF TITLE ON AGRICULTURAL COMMODITY SALES; PROVIDING FOR A PRODUCER'S LIEN ON AGRICULTURAL COMMODITIES; CREATING A COMMODITY DEALER/PUBLIC WAREHOUSE OPERATORS ACCOUNT AND STATUTORILY APPROPRIATING ACCOUNT FUNDS TO THE DEPARTMENT OF AGRICULTURE FOR OPERATION OF THE ACT; AMENDING SECTIONS 17-7-502, 80-4-402, 80-4-422, 80-4-425, 80-4-427, 80-4-429, 80-4-503, 80-4-505, 80-4-525, 80-4-527, 80-4-538, 80-4-602, 80-4-604, 80-4-608, AND 80-4-612, MCA; AND PROVIDING AN EFFECTIVE DATE *1566*

453 *(House Bill No. 613; Ewer)* AN ACT GENERALLY REVISING THE LAWS RELATING TO COUNTY AND MUNICIPAL GENERAL OBLIGATION BONDS AND REVENUE BONDS; REVISING THE REDEMPTION PROCEDURE FOR GENERAL OBLIGATION BONDS; CLARIFYING THE AUTHORITY OF A MUNICIPALITY TO ISSUE REVENUE BONDS FOR WATER AND SEWER SYSTEMS WITHOUT AN ELECTION; CLARIFYING THE AUTHORITY OF A MUNICIPALITY TO ISSUE REVENUE BONDS WITHOUT AN ELECTION TO FINANCE AN IMPROVEMENT DISTRICT FOR A PEDESTRIAN MALL OR OFFSTREET PARKING; AMENDING SECTIONS 7-7-2268, 7-7-2269, 7-7-4268, 7-7-4269, 7-13-4301, AND 7-14-4714, MCA; AND REPEALING SECTIONS 7-13-4302, 7-13-4303, 7-13-4321, 7-13-4322, 7-13-4323, 7-13-4324, 7-13-4325, 7-13-4326, 7-13-4327, 7-13-4328, 7-13-4329, 7-13-4330, 7-13-4331, 7-13-4332, 7-13-4333, 7-13-4341, 7-13-4342, 7-13-4343, 7-13-4344, AND 7-13-4345, MCA *1580*

454 *(House Bill No. 619; Whalen)* AN ACT CLARIFYING THAT THE LIEN OF CERTAIN MEDICAL PRACTITIONERS APPLIES ONLY FOR SERVICES RELATING TO THE DIAGNOSIS AND TREATMENT OF MEDICAL CONDITIONS; AND AMENDING SECTIONS 71-3-1112 AND 71-3-1114, MCA *1583*

455 *(House Bill No. 641; Foster)* AN ACT CLARIFYING THAT TAX REVENUE MUST BE DISTRIBUTED ACCORDING TO THE STATUTE GOVERNING ALLOCATION OF THE TAX THAT WAS IN EFFECT FOR THE PERIOD THE TAX REVENUE WAS RECORDED FOR ACCOUNTING PURPOSES; SPECIFYING THAT TAX REVENUE MUST BE RECORDED AS PRESCRIBED BY THE DEPARTMENT OF ADMINISTRATION IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AMENDING SECTIONS 15-1-501, 15-23-716, 15-25-122, 15-31-702, 15-35-108, 15-36-112, 15-36-126, 15-37-117, 15-38-106, 15-38-136, 15-51-103, 15-53-114, 15-59-108, 15-59-208, 15-60-210, 15-65-121, 15-65-136, 15-70-101, 15-71-104,

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456 *(Senate Bill No. 81; Crippen)* AN ACT PROHIBITING THE TAKING OF CRAYFISH FOR SALE OR COMMERCIAL DISTRIBUTION EXCEPT FROM PRIVATE PONDS OR FOR FISHING BAIT; PROVIDING A PENALTY; AND AMENDING SECTION 87-4-609, MCA *1608*

457 *(Senate Bill No. 91; Christiaens)* AN ACT EXTENDING WORKERS' COMPENSATION BENEFITS TO CERTAIN INMATES EMPLOYED WHILE PARTICIPATING IN PRERELEASE CENTER PROGRAMS AND DIVERSIONARY PROGRAMS; AND AMENDING SECTION 39-71-744, MCA *1609*

458 *(Senate Bill No. 256; Swysgood)* AN ACT DEFINING A NONRESIDENT AS AN "EMPLOYEE OR WORKER IN THIS STATE"; PROVIDING FOR ELECTION OF COVERAGE FOR CERTAIN NONRESIDENTS; REQUIRING OUT-OF-STATE EMPLOYERS ENGAGED IN THE CONSTRUCTION INDUSTRY TO OBTAIN WORKERS' COMPENSATION COVERAGE FOR THEIR OUT-OF-STATE EMPLOYEES UNDER THE PROVISIONS OF MONTANA LAW; AMENDING SECTIONS 39-71-117, 39-71-118, AND 39-71-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1610*

459 *(Senate Bill No. 258; Harp)* AN ACT CLARIFYING THAT A WORKERS' COMPENSATION INSURER IS ENTITLED TO SUBROGATION UNLESS THE INJURED EMPLOYEE IS ABLE TO DEMONSTRATE DAMAGES IN EXCESS OF THE WORKERS' COMPENSATION BENEFITS AND THE THIRD-PARTY RECOVERY COMBINED; AND AMENDING SECTION 39-71-414, MCA *1614*

460 *(Senate Bill No. 280; Grosfield)* AN ACT IMPLEMENTING THE 1992 STATE WATER PLAN; INCLUDING WATER QUALITY AS A CRITERION FOR WATER PERMIT, CHANGE AUTHORIZATION, CONTROLLED GROUND WATER AREA, AND BASIN CLOSURE DETERMINATIONS; AMENDING SECTIONS 85-2-311, 85-2-319, 85-2-402, AND 85-2-506, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE . . . *1616*

461 *(Senate Bill No. 292; Fritz)* AN ACT CLARIFYING THE APPROPRIATION OF ADMINISTRATIVE COSTS FOR THE YOUTH DETENTION SERVICES GRANT PROGRAM; AMENDING SECTION 23-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE *1628*

462 *(Senate Bill No. 314; Christiaens)* AN ACT TREATING EACH SERIES, PORTFOLIO, OR OTHER SUBDIVISION OF AN INVESTMENT COMPANY OR SIMILAR ISSUER AS A SEPARATE ISSUER OF SECURITIES; REQUIRING EACH SUBDIVISION TO PAY A PORTFOLIO REGISTRATION FEE; AND AMENDING SECTIONS 30-10-115 AND 30-10-209, MCA *1629*

463 *(Senate Bill No. 323; Christiaens)* AN ACT AUTHORIZING THE ESTABLISHMENT OF A BOOT CAMP INCARCERATION PROGRAM FOR OFFENDERS CONVICTED OF CERTAIN FELONIES; PROVIDING FOR POTENTIAL SENTENCE REDUCTION FOR SUCCESSFUL COMPLETION OF THE PROGRAM; PROVIDING GUIDELINES FOR THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE *1630*

464 *(Senate Bill No. 329; Klampe)* AN ACT REVISING THE REQUIREMENT FOR PREVAILING WAGE ON A PROJECT FINANCED FROM THE

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PROCEEDS OF BONDS ISSUED ON OR AFTER JULY 1, 1993; AMENDING SECTIONS 17-5-1526, 17-5-1527, 18-2-403, 90-5-114, AND 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1632*

465 *(Senate Bill No. 334; Beck)* AN ACT INCREASING PESTICIDE APPLICATOR AND DEALER LICENSE FEES AND DESIGNATING THE REVENUE TO A WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; INCREASING FARM PESTICIDE APPLICATOR FEES AND ALLOCATING THE REVENUE TO EDUCATIONAL AND TRAINING PROGRAMS; PROVIDING THAT THE DEPARTMENT OF AGRICULTURE MAY ESTABLISH STANDARDS FOR PESTICIDE STORAGE, PESTICIDE MIXING OR LOADING SITES, AND BULK PESTICIDE FACILITIES; ALLOWING THE USE OF CANCELED PESTICIDES UNDER CERTAIN CONDITIONS; CHANGING FARM APPLICATOR QUALIFICATION STANDARDS TO PURCHASE AND USE RESTRICTED-USE PESTICIDES; ALLOWING FOR CERTAIN LOCAL GOVERNMENT REGULATION OF PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-111, 80-8-201, 80-8-203, 80-8-205, 80-8-207, 80-8-209, AND 80-8-213, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE . . . *1637*

466 *(Senate Bill No. 348; Halligan)* AN ACT AUTHORIZING FULL-TIME SPECIAL PUPILS TO BE REGULARLY ENROLLED FOR ANB PURPOSES; AMENDING SECTIONS 20-7-431, 20-7-457, 20-9-147, 20-9-303, 20-9-311, 20-9-313, 20-9-321, AND 20-9-507, MCA; REPEALING SECTION 20-7-458, MCA; AND PROVIDING EFFECTIVE DATES *1649*

467 *(Senate Bill No. 381; Forrester)* AN ACT DEFINING UNDERINSURED EMPLOYERS AS EMPLOYERS WHO KNOWINGLY MISREPRESENT EMPLOYEES' WORK DESCRIPTIONS IN ORDER TO PAY LOWER WORKERS' COMPENSATION PREMIUMS; PROVIDING FOR THE COLLECTION OF PAYMENTS; PROVIDING PENALTIES OR FINES; AND CREATING REMEDIES FOR ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY *1659*

468 *(House Bill No. 174; Clark)* AN ACT ALLOWING A POLICE OFFICER AND A SHERIFF'S DEPUTY COVERED BY A COLLECTIVE BARGAINING AGREEMENT TO APPEAL A DISCIPLINARY ACTION PURSUANT TO A GRIEVANCE PROCEDURE CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT; PROVIDING THAT IN A CITY OR TOWN WITH A POLICE COMMISSION, THE MAYOR, CITY MANAGER, OR CHIEF EXECUTIVE, RATHER THAN THE POLICE COMMISSION, HAS THE AUTHORITY TO TAKE DISCIPLINARY ACTION AGAINST A MEMBER OF THE POLICE FORCE; PROVIDING FOR APPEALS TO THE POLICE COMMISSION; AMENDING SECTIONS 7-32-2109, 7-32-2110, 7-32-4152, 7-32-4153, 7-32-4155, 7-32-4156, 7-32-4157, 7-32-4158, 7-32-4160, 7-32-4161, AND 7-32-4164, MCA; AND REPEALING SECTIONS 7-32-4162 AND 7-32-4163, MCA *1661*

469 *(House Bill No. 236; Toole)* AN ACT PROVIDING FOR IMMUNITY FROM CIVIL SUIT FOR A HEALTH CARE PROVIDER WHO DISCLOSES HEALTH CARE INFORMATION TO A PATIENT OR THE PATIENT'S DESIGNEE PURSUANT TO A WRITTEN AUTHORIZATION FOR DISCLOSURE; AND SPECIFYING THE FORM OF THE WRITTEN AUTHORIZATION *1664*

470 *(House Bill No. 245; Kadas)* AN ACT ESTABLISHING EXCLUSIVE GROUNDS FOR LANDLORDS' TERMINATION OF RENTAL AGREEMENTS WITH TENANTS WHO OWN MOBILE HOMES OR RENT SPACE IN MOBILE HOME PARKS; AMENDING SECTIONS 70-24-103 AND 70-24-311, MCA; AND PROVIDING AN EFFECTIVE DATE . . . *1665*

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471 *(House Bill No. 617; Grady)* AN ACT PROVIDING THAT THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES MAY OBTAIN FEDERAL CERTIFICATION FOR SPECIFIC PRISON INDUSTRIES PROGRAMS; PROVIDING THAT THE DEPARTMENT MAY CONTRACT WITH PRIVATE COMPANIES FOR THE EMPLOYMENT OF INMATES IN A FEDERALLY CERTIFIED PRISON INDUSTRIES PROGRAM; ALLOWING THE DEPARTMENT TO COLLECT 15 PERCENT OF AN INMATE'S NET WAGES FOR DEPOSIT IN THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT; ALLOWING THE DEPARTMENT TO CHARGE INMATES WHO ARE PARTICIPATING IN FEDERALLY CERTIFIED PRISON INDUSTRIES PROGRAMS FOR ROOM AND BOARD; PROVIDING THAT INMATES EMPLOYED BY A PRIVATE COMPANY MUST BE PAID THE SAME RATE AS THE RATE PAID FOR SIMILAR WORK AND MUST BE COVERED BY THE STATE COMPENSATION MUTUAL INSURANCE FUND; ALLOWING PRODUCTS OR SERVICES OF A CERTIFIED PRISON INDUSTRIES PROGRAM TO BE PROVIDED TO PUBLIC AND PRIVATE ENTITIES; CLARIFYING THAT REVENUE RAISED FROM A PRISON INDUSTRIES PROGRAM MAY BE USED FOR THE PAYMENT OF INMATE WAGES; AND AMENDING SECTIONS 39-71-118, 53-1-301, 53-30-131, 53-30-132, AND 53-30-133, MCA *1669*

472 *(Senate Bill No. 320; McClernan)* AN ACT PROVIDING A TIME LIMIT IN WHICH TO CHALLENGE BOARD OF LAND COMMISSIONERS' MINING DECISIONS; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES FOR CHALLENGES; EXTENDING THE COMPLETENESS REVIEW PERIOD FOR APPLICATIONS FOR NEW PERMITS; DEFINING AND PROVIDING CRITERIA FOR AMENDMENTS TO MINE PERMITS; AMENDING SECTIONS 82-4-303, 82-4-337, AND 82-4-351, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1675*

473 *(House Bill No. 49; Dolezal)* AN ACT GENERALLY REVISING THE COSMETOLOGY LAWS; REDEFINING CERTAIN TERMS; REQUIRING A HIGH SCHOOL DIPLOMA TO PRACTICE COSMETOLOGY; REDUCING THE NUMBER OF HOURS OF PROFESSIONAL TEACHER TRAINING ANNUALLY REQUIRED OF ACTIVE TEACHERS; AND AMENDING SECTIONS 37-31-101, 37-31-301, 37-31-302, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-322, 37-31-331, AND 39-51-204, MCA *1681*

474 *(House Bill No. 157; Vogel)* AN ACT REVISING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND FOR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE; AUTHORIZING SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR THIRD OR SUBSEQUENT VIOLATIONS OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA *1691*

475 *(House Bill No. 169; Ewer)* AN ACT INCREASING THE COMPETITIVE BID LIMITS FOR MUNICIPAL PURCHASE AND CONSTRUCTION CONTRACTS; DECREASING THE LIMIT ON MUNICIPAL INSTALLMENT PURCHASE CONTRACTS; AND AMENDING SECTIONS 7-5-4302 AND 7-5-4306, MCA *1696*

476 *(House Bill No. 220; Simon)* AN ACT REQUIRING A HEALTH CARE FACILITY TO NOTIFY AN EMERGENCY SERVICES PROVIDER OF EXPOSURE TO AN INFECTIOUS DISEASE; AND AMENDING SECTIONS 50-16-701, 50-16-702, 50-16-703, 50-16-704, 50-16-705, AND 50-16-1007, MCA *1697*

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477 *(House Bill No. 522; Squires)* AN ACT PROVIDING PROTECTION FOR STATE EMPLOYEES WHOSE POSITIONS ARE ELIMINATED AS A RESULT OF PRIVATIZATION, REORGANIZATION OF A STATE AGENCY, OR CLOSURE OF OR A REDUCTION IN FORCE AT A STATE AGENCY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE *1703*

478 *(House Bill No. 608; Bergsagel)* AN ACT ALLOCATING A PORTION OF THE RESOURCE INDEMNITY TAX PROCEEDS; ESTABLISHING MINIMUM FUNDING LEVELS FOR GRANT PROGRAMS; CHANGING THE DISTRIBUTION OF INTEREST EARNINGS FROM THE RESOURCE INDEMNITY TRUST FUND; COMBINING THE WATER DEVELOPMENT AND RENEWABLE RESOURCE DEVELOPMENT PROGRAMS TO CREATE THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; REINVESTING THE INTEREST EARNINGS OF THE WATER STORAGE STATE SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 15-38-106, 15-38-202, 17-5-701, 17-5-702, 17-5-706, 85-1-102, 85-1-601, 85-1-602, 85-1-603, 85-1-604, 85-1-605, 85-1-606, 85-1-608, 85-1-609, 85-1-610, 85-1-611, 85-1-612, 85-1-613, 85-1-614, 85-1-615, 85-1-616, 85-1-617, 85-1-618, 85-1-619, 85-1-620, 85-1-621, 85-1-623, 85-1-631, 85-2-105, 90-2-1103, 90-2-1104, AND 90-2-1105, MCA; REPEALING SECTIONS 85-1-607, 90-2-101, 90-2-102, 90-2-103, 90-2-104, 90-2-107, 90-2-108, 90-2-109, 90-2-110, 90-2-111, 90-2-112, 90-2-121, 90-2-122, 90-2-123, 90-2-124, 90-2-125, 90-2-126, 90-2-127, AND 90-2-128, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE *1705*

479 *(House Bill No. 668; Bergsagel)* AN ACT REVISING THE APPLICATION PROCEDURE FOR A CULTURAL AND AESTHETIC GRANT FOR A COUNTY OR MUNICIPAL FACILITY; SPECIFYING THE TYPES OF SUPPORT FOR THE FACILITY; AND AMENDING SECTION 22-2-308, MCA *1730*

480 *(Senate Bill No. 169; Beck)* AN ACT DIRECTING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO TRANSFER THE BUILDINGS AND LAND OF THE OLD MONTANA STATE PRISON COMPLEX TO THE POWELL COUNTY MUSEUM AND ARTS FOUNDATION FOR CONTINUED OPERATION AS A MUSEUM *1731*

481 *(Senate Bill No. 192; Waterman)* AN ACT DIRECTING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO REVIEW BENEFITS PAID BY PUBLIC RETIREMENT SYSTEMS AND TO RECOMMEND COST-OF-LIVING ADJUSTMENTS TO THE LEGISLATURE; AND AMENDING SECTIONS 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-12-201, AND 19-13-202, MCA *1732*

482 *(Senate Bill No. 373; Beck)* AN ACT GENERALLY REVISING THE LAWS RELATING TO MOTOR VEHICLES; CLARIFYING THE PROCESS FOR THE FILING OF COLLATERAL LIENS; INCREASING TITLE TRANSFER FEES FOR OFF-HIGHWAY VEHICLES; REVISING THE DEFINITION OF MOTOR VEHICLE BROKERS; CLARIFYING THE PROCESS OF LICENSING MOBILE HOME DEALERS; CLARIFYING SURETY LANGUAGE IN REGARD TO BONDED TITLES; AMENDING SECTIONS 23-2-508, 23-2-611, 23-2-811, 23-2-812, 61-1-318, 61-1-501, 61-3-103, 61-3-208, AND 61-4-101, MCA; AND PROVIDING EFFECTIVE DATES *1735*

483 *(Senate Bill No. 427; Halligan)* AN ACT ALLOWING A TAXING JURISDICTION THAT INCLUDED SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND LEVIES IN THE LIMITATION ON THE AMOUNT OF TAXES LEVIED TO CONTINUE TO INCLUDE THE AMOUNT OF

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484 *(House Bill No. 233; Benedict)* AN ACT REQUIRING THE DRIVER OF A MOTOR VEHICLE TO YIELD TO A PEDESTRIAN CROSSING THE ROADWAY WITHIN A CROSSWALK WHEN THE PEDESTRIAN IS NOT UPON THE HALF OF THE ROADWAY UPON WHICH THE VEHICLE IS TRAVELING AND WHEN THE PEDESTRIAN IS NOT CLOSE ENOUGH TO BE IN DANGER; AND AMENDING SECTION 61-8-502, MCA *1755*

485 *(House Bill No. 308; Kasten)* AN ACT REQUIRING A COUNTY TREASURER TO NOTIFY THE COMMISSIONERS OF AN IRRIGATION DISTRICT WHEN DISTRICT ASSESSMENTS ARE PAID; AND AMENDING SECTION 85-7-2136, MCA *1756*

486 *(House Bill No. 367; Wyatt)* AN ACT CLARIFYING REQUIREMENTS CONCERNING THE OATH OF OFFICE TO BE TAKEN BY ELECTED AND APPOINTED MUNICIPAL OFFICIALS; AMENDING SECTION 7-1-4137, MCA; REPEALING SECTIONS 7-3-4318 AND 7-4-4108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1757*

487 *(House Bill No. 422; Larson)* AN ACT ESTABLISHING STANDARDS FOR ADOPTION OF RULES GOVERNING MOBILE HOME PARKS; AUTHORIZING THE CREATION OF MOBILE HOME PARK TENANT ASSOCIATIONS; AND AMENDING SECTIONS 70-24-103, 70-24-311, AND 70-24-431, MCA *1757*

488 *(Senate Bill No. 428; Aklestad)* AN ACT PROVIDING THAT LOTTERY PROCEEDS IN EXCESS OF $5,000 ARE SUBJECT TO THE STATE WITHHOLDING TAX; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE *1761*

489 *(House Bill No. 7; Bergsagel)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; AND ESTABLISHING CONDITIONS FOR GRANTS *1762*

490 *(House Bill No. 9; Bergsagel)* AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECT GRANT AWARDS; AND APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC PROJECT GRANTS *1765*

491 *(House Bill No. 181; Barnett)* AN ACT REVISING THE DEFINITIONS, REGISTRATION FEES, AND PENALTIES APPLICABLE TO THE PRACTICE OF APICULTURE; AMENDING SECTIONS 80-6-101, 80-6-105, AND 80-6-303, MCA; AND PROVIDING AN EFFECTIVE DATE *1771*

492 *(House Bill No. 529; Strizich)* AN ACT STATUTORILY APPROPRIATING A PORTION OF THE DRIVER'S LICENSE REINSTATEMENT FEE MONEY TO THE DEPARTMENT OF JUSTICE FOR THE PURCHASE AND MAINTENANCE OF EQUIPMENT USED TO ANALYZE BREATH FOR THE PRESENCE OF ALCOHOL; AMENDING SECTIONS 17-7-502 AND 61-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE *1773*

493 *(House Bill No. 559; Anderson)* AN ACT PROVIDING THAT APPLICANTS FOR ADMISSION TO THE STATE BAR OF MONTANA PAY THE APPLICATION FEE TO THE STATE BAR INSTEAD OF TO THE CLERK OF THE SUPREME COURT; PROVIDING FOR AN ANNUAL REPORT

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494 *(Senate Bill No. 119; Halligan)* AN ACT GENERALLY REVISING THE LAW CONCERNING ESTATES, WILLS, AND DONATIVE TRANSFERS; REVISING THE ELECTIVE SHARE OF A SURVIVING SPOUSE; INCREASING EXEMPT PROPERTY; REVISING THE LAW CONCERNING WRITINGS INTENDED AS WILLS; REVISING THE RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS; REVISING THE LAW CONCERNING PROBATE AND NONPROBATE TRANSFERS; PROVIDING FOR HONORARY TRUSTS AND TRUSTS FOR PETS; PROVIDING FOR NONPROBATE TRANSFERS ON DEATH; PROVIDING FOR PAYABLE-ON-DEATH DESIGNATIONS ON ACCOUNTS IN FINANCIAL INSTITUTIONS; PROVIDING FOR TRANSFER-ON-DEATH REGISTRATION FOR SECURITIES; REVISING THE STATUTORY FORM POWER OF ATTORNEY; AMENDING SECTIONS 3-7-402, 32-3-501, 70-1-703, 72-1-103, 72-1-108, 72-2-101, 72-2-102, 72-2-103, 72-2-104, 72-2-105, 72-2-201, 72-2-202, 72-2-203, 72-2-204, 72-2-205, 72-2-206, 72-2-207, 72-2-210, 72-2-212, 72-2-213, 72-2-214, 72-2-301, 72-2-302, 72-2-304, 72-2-305, 72-2-306, 72-2-311, 72-2-312, 72-2-313, 72-2-314, 72-2-321, 72-2-322, 72-2-323, 72-2-401, 72-2-402, 72-2-502, 72-2-504, 72-2-512, 72-2-513, 72-2-514, 72-2-515, 72-2-516, 72-2-517, 72-2-518, 72-2-519, 72-2-601, 72-2-602, 72-2-702, 72-2-703, 72-2-704, 72-2-705, 72-2-706, 72-2-707, 72-2-801, 72-2-802, 72-2-803, 72-2-804, 72-3-212, 72-3-213, 72-3-222, 72-11-101, 72-11-102, 72-11-103, 72-11-104, 72-12-206, 72-16-313, 72-31-201, 72-31-202, 72-31-203, 72-31-204, 72-31-205, 72-31-206, 72-31-207, 72-31-208, 72-31-211, 72-31-212, AND 72-36-206, MCA; REPEALING SECTIONS 32-1-442, 32-1-443, 33-20-151, 70-1-309, 72-1-102, 72-1-110, 72-2-303, 72-2-501, 72-2-503, 72-2-511, 72-10-101, 72-10-102, 72-10-103, 72-10-104, 72-10-105, 72-10-106, 72-10-107, 72-10-108, 72-10-109, 72-10-110, 72-10-111, 72-10-112, 72-10-113, 72-10-201, 72-10-202, 72-10-203, 72-10-204, 72-11-105, 72-11-201, 72-11-202, 72-11-203, 72-11-204, 72-11-205, 72-11-301, 72-11-302, 72-11-303, 72-11-304, 72-11-305, 72-11-306, 72-11-307, 72-11-308, 72-11-309, 72-11-310, 72-11-311, 72-11-312, 72-11-313, 72-11-314, 72-11-315, 72-11-316, 72-11-317, 72-11-318, 72-11-319, 72-11-320, 72-11-321, 72-11-322, 72-11-331, 72-11-332, 72-11-333, 72-12-104, 72-12-201, 72-12-202, 72-12-203, 72-12-204, 72-12-205, 72-12-301, 72-12-302, 72-12-501, 72-12-502, 72-12-503, 72-12-601, 72-12-602, 72-12-603, 72-12-604, 72-12-605, 72-12-701, 72-12-702, 72-12-703, 72-12-704, 72-12-801, 72-12-802, 72-12-803, 72-12-901, 72-12-1001, 72-12-1002, 72-12-1003, 72-12-1004, 72-13-101, 72-13-102, 72-13-103, 72-13-201, 72-13-202, 72-13-203, 72-13-301, 72-31-209, 72-31-210, 72-31-213, 72-31-214, 72-31-215, AND 72-31-216, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE *1776*

495 *(House Bill No. 655; Simon)* AN ACT APPROPRIATING $200,000 OF FEDERAL DINGELL-JOHNSON MONEY FOR THE RIVER RESTORATION PROGRAM *1872*

496 *(House Bill No. 10; Bergsagel)* AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE *1872*

497 *(House Bill No. 12; Bardanouve)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE WATER DEVELOPMENT PROGRAM; APPROVING THE ISSUANCE OF COAL SEVERANCE TAX BONDS TO PROVIDE FUNDS FOR LOANS TO POLITICAL SUBDIVISIONS AND

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LOCAL GOVERNMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS AND TO PROVIDE FUNDS TO PAY A PORTION OF THE STATE'S SHARE OF THE COSTS OF THE TONGUE RIVER DAM REHABILITATION PROJECT; REAUTHORIZING COAL SEVERANCE TAX BONDS FOR CERTAIN PROJECTS APPROVED BY THE 52ND LEGISLATURE; APPROPRIATING COAL SEVERANCE TAX INCOME FOR DEBT SERVICE; AUTHORIZING THE CREATION OF A STATE DEBT; AUTHORIZING THE ISSUANCE OF REVENUE BONDS TO REFUND EXISTING BONDS; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1876*

498 *(House Bill No. 17; S. Rice)* AN ACT AUTHORIZING THE DEPARTMENT OF COMMERCE TO ESTABLISH PETROLEUM DEALER AND LIQUEFIED PETROLEUM DEALER LICENSE FEES BY RULE; REQUIRING DEPOSIT OF THE FEES IN A STATE SPECIAL REVENUE FUND; AMENDING SECTION 82-15-105, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE *1882*

499 *(House Bill No. 196; Driscoll)* AN ACT CAPPING THE AMOUNT OF REIMBURSEMENT PAID TO ELIGIBLE TAXING JURISDICTIONS FOR TAXABLE YEARS 1993 AND THEREAFTER TO THE SAME AMOUNT PAID IN FISCAL YEAR 1991, BUT ALLOWING CERTAIN ADJUSTMENTS BECAUSE OF DISSOLVED AND COMBINED TAXING JURISDICTIONS; REVISING THE DEFINITION OF "TAXING JURISDICTION"; PROVIDING A PROCEDURE FOR THE TREATMENT OF DISSOLVED AND COMBINED TAXING JURISDICTIONS; AMENDING SECTION 15-1-111, MCA; AND PROVIDING AN APPLICABILITY DATE *1883*

500 *(House Bill No. 303; S. Rice)* AN ACT EXPANDING URBAN RENEWAL AND INDUSTRIAL INFRASTRUCTURE DEVELOPMENT PROJECTS TO INCLUDE THE COST OF FACILITIES OR EQUIPMENT FOR POLLUTION CONTROL; AND AMENDING SECTION 7-15-4288, MCA . . *1885*

501 *(House Bill No. 314; Raney)* AN ACT DESIGNATING AND ESTABLISHING CERTAIN MONTANA STATE PARKS AS PRIMITIVE PARKS; LIMITING DEVELOPMENT IN PRIMITIVE PARKS; AND ELIMINATING USER FEES FOR MONTANA RESIDENTS WHO VISIT PRIMITIVE PARKS *1886*

502 *(House Bill No. 318; S. Rice)* AN ACT GENERALLY REVISING THE LAWS RELATING TO AIR QUALITY; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM FOR THE ISSUANCE AND RENEWAL OF AIR QUALITY OPERATING PERMITS; AMENDING THE CONFIDENTIALITY PROVISIONS RELATING TO AIR QUALITY; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM FOR THE ISSUANCE OF AIR QUALITY PERMITS FOR CONSTRUCTION, INSTALLATION, ALTERATION, OPERATION, OR USE; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT FEES FOR OPERATING AND CONSTRUCTION PERMITS; DESIGNATING FEES TO AN ACCOUNT IN THE SPECIAL REVENUE FUND; PROVIDING FOR AN ADMINISTRATIVE CIVIL PENALTY IN THE CLEAN AIR ACT OF MONTANA; CLARIFYING AND AMENDING THE CRIMINAL PUNISHMENT APPLICABLE TO VIOLATIONS OF AIR QUALITY STATUTES, RULES, ORDERS, AND PERMITS; CLARIFYING AND AMENDING THE CIVIL PUNISHMENT APPLICABLE TO VIOLATIONS OF AIR QUALITY STATUTES, RULES, ORDERS, AND PERMITS; AMENDING

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503 *(House Bill No. 350; Mason)* AN ACT REVISING THE DESIGNATION OF LOCAL GOVERNMENTS ELIGIBLE FOR COAL IMPACT GRANTS AND LOANS; INCLUDING CERTAIN NEWLY CONSTRUCTED RAILROADS IN THE DESIGNATION FOR COAL IMPACT GRANTS; LIMITING THE AMOUNT OF GRANTS AND LOANS THAT MAY BE MADE TO NONDESIGNATED LOCAL GOVERNMENTS; TRANSFERRING THE UNEXPENDED BALANCE IN THE LOCAL IMPACT ACCOUNT TO SCHOOL EQUALIZATION AID AT THE END OF EACH FISCAL YEAR; AMENDING SECTIONS 90-6-207 AND 90-6-212, MCA; AND PROVIDING AN EFFECTIVE DATE *1911*

504 *(House Bill No. 374; Ewer)* AN ACT PROVIDING AN ADMINISTRATIVE PENALTY IN THE MONTANA WATER QUALITY LAWS; AMENDING SECTIONS 75-5-201 AND 75-5-611, MCA *1913*

505 *(House Bill No. 375; Brandewie)* AN ACT CREATING A PRESUMPTION WITH RESPECT TO ZONING REGULATIONS THAT DISCRIMINATE BETWEEN CERTAIN MANUFACTURED AND SITE-BUILT HOUSING; AND AMENDING SECTIONS 76-2-202 AND 76-2-302, MCA *1916*

506 *(House Bill No. 382; Foster)* AN ACT ESTABLISHING THE VALUE OF LIMESTONE MINED FOR THE PRODUCTION OF QUICKLIME FOR NET PROCEEDS PROPERTY TAX PURPOSES AND FOR RESOURCE INDEMNITY TRUST TAX PURPOSES; ESTABLISHING A SPECIFIC RESOURCE INDEMNITY TRUST TAX RATE FOR LIMESTONE; AMENDING SECTIONS 15-6-131, 15-8-111, 15-23-103, 15-23-106, 15-23-115, 15-23-502, 15-23-503, 15-23-521, 15-38-103, AND 15-38-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE *1918*

507 *(House Bill No. 388; Gilbert)* AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT FEES TO OFFSET WATER QUALITY PROGRAM COSTS FOR ISSUING PERMITS AND MONITORING ACTIVITY; REQUIRING THE DEPARTMENT TO PROVIDE NOTICE OF THE FEE ASSESSMENT; PROVIDING AN APPEAL PROCEDURE FOR RESOLUTION OF FEE DISPUTES; PROVIDING FOR THE DISPOSITION OF FEES; AMENDING SECTION 69-7-111, MCA; AND PROVIDING AN APPLICABILITY DATE *1927*

508 *(House Bill No. 413; Quilici)* AN ACT CLARIFYING THE METHOD FOR DETERMINING THE PUBLIC SERVICE COMMISSION FEE AND CONSUMER COUNSEL FEE BY THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 69-1-223, 69-1-224, 69-1-402, AND 69-1-403, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE *1932*

509 *(House Bill No. 419; Grady)* AN ACT PROVIDING AN ADMINISTRATIVE PENALTY IN THE MONTANA HAZARDOUS WASTE AND UNDER-

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GROUND STORAGE TANK ACT; AND AMENDING SECTION 75-10-405, MCA 1935

510 *(House Bill No. 436; T. Nelson)* AN ACT CLARIFYING THE DEFINITION OF AIR AND WATER POLLUTION EQUIPMENT FOR PROPERTY TAX PURPOSES; PROVIDING REQUIREMENTS FOR RULES GOVERNING THE CERTIFICATION OF THE EQUIPMENT; SPECIFYING THE ROLES OF THE DEPARTMENT OF REVENUE AND OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IN CLASSIFYING AND VALUING AIR AND WATER POLLUTION EQUIPMENT; AMENDING SECTION 15-6-135, MCA; AND PROVIDING AN APPLICABILITY DATE 1938

511 *(House Bill No. 463; Boharski)* AN ACT ALLOCATING A PERCENTAGE OF THE BOAT FEE IN LIEU OF TAX TO THE MOTORBOAT ACCOUNT IN THE STATE SPECIAL REVENUE FUND; REQUIRING USE OF THE FEES BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR BOATING FACILITIES UNDER THE CONTROL OF THE DEPARTMENT; ALLOWING USE OF THE FEES FOR MATCHING AVAILABLE FEDERAL FUNDS; CREATING THE BOATING ADVISORY COUNCIL AND PROVIDING THAT COSTS ASSOCIATED WITH THE COUNCIL BE PAID FROM THE FEES; PROVIDING THAT THE MEMBERS OF THE COUNCIL ARE NOT ENTITLED TO COMPENSATION OR TRAVEL EXPENSES; AMENDING SECTION 23-2-518, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1941

512 *(House Bill No. 511; Hibbard)* AN ACT DIRECTING THE DEPARTMENT OF LABOR AND INDUSTRY TO DEVELOP A WORKERS' COMPENSATION DATA BASE SYSTEM TO GENERATE MANAGEMENT INFORMATION ON MONTANA'S WORKERS' COMPENSATION SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1942

513 *(House Bill No. 537; Bardanouve)* AN ACT REVISING MONTANA DEVELOPMENTAL CENTER LOAN PROVISIONS; APPROPRIATING STATE SPECIAL REVENUE FUNDS TO THE DEPARTMENT OF ADMINISTRATION; AND AMENDING SECTION 2, CHAPTER 819, LAWS OF 1991, AND SECTIONS 90-7-220 AND 90-7-317, MCA 1943

514 *(House Bill No. 563; Swanson)* AN ACT ESTABLISHING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND INTO WHICH SUBDIVISION REVIEW FEES MUST BE DEPOSITED; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO SPEND MONEY FROM THE ACCOUNT TO PAY COSTS OF IMPLEMENTING THE SUBDIVISION REVIEW PROGRAM; AMENDING SECTION 76-4-105, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1945

515 *(House Bill No. 616; Driscoll)* AN ACT PROVIDING A CLEAN COAL TECHNOLOGY DEMONSTRATION LOAN TO THE MHD DEVELOPMENT CORPORATION; ESTABLISHING TERMS AND CONDITIONS AROUND WHICH A LOAN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION AND THE MHD DEVELOPMENT CORPORATION WILL BE ESTABLISHED; CONTINUING THE APPROPRIATION FOR THE CLEAN FUELS INFORMATION DEPOSITORY, DISTRIBUTION, AND MARKET DEVELOPMENT CENTER; AMENDING SECTION 17-5-703, MCA, SECTION 11, CHAPTER 722, LAWS OF 1991, AND SECTION 1, CHAPTER 793, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1946

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516 *(House Bill No. 654; DeBruycker)* AN ACT REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF STATE LANDS PROVIDE A YOUTH FOREST CAMP WORK PROGRAM; REPEALING SECTION 52-5-104, MCA; AND PROVIDING AN EFFECTIVE DATE *1955*

517 *(House Bill No. 663; Harper)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS AND LOANS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS AND LOANS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND LOANS; AUTHORIZING THE ISSUANCE OF TREASURE STATE ENDOWMENT BONDS TO FUND GRANTS; AUTHORIZING THE CREATION OF A STATE DEBT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1955*

518 *(House Bill No. 674; Bergsagel)* AN ACT GENERALLY REVISING THE LAWS RELATING TO STATE CONSTRUCTION PROJECTS; INCREASING TO $50,000 THE COST FOR A BUILDING THAT MAY BE CONSTRUCTED WITHOUT LEGISLATIVE CONSENT; AUTHORIZING THE GOVERNOR TO TRANSFER FUNDS AND AUTHORITY FOR THE EMERGENCY REPAIR OF BUILDINGS; REMOVING THE BOARD OF EXAMINERS FROM CERTAIN BUILDING FUNCTIONS; ALLOWING THE DEPARTMENT OF ADMINISTRATION TO CONTRACT FOR WORK IF RESPONSIBLE BIDS ARE NOT RECEIVED; INCREASING TO $10,000 THE AMOUNT OF ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES THAT MAY BE CONTRACTED FOR BY DIRECT NEGOTIATION; AMENDING SECTIONS 18-2-102, 18-2-103, 18-2-105, 18-2-111, 18-2-112, 18-2-301, AND 18-8-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1959*

519 *(House Bill No. 216; Grady)* AN ACT REVISING THE MOTOR FUEL MARKETING UNFAIR PRACTICES LAW; PROVIDING THAT AN ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR SUBSTANTIALLY LESSEN COMPETITION; REMOVING THE TERMINATION OF THE REGULATION OF RETAIL MOTOR FUEL PRICING; AMENDING SECTION 30-14-804, MCA, AND SECTION 9, CHAPTER 499, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1963*

520 *(House Bill No. 330; Bird)* AN ACT CLARIFYING THE STATUTE OF LIMITATIONS FOR INDIVIDUAL INCOME TAX ASSESSMENTS AND REFUND CLAIMS; AMENDING SECTIONS 15-30-145, 15-30-147, 15-30-149, AND 15-30-303, MCA; REPEALING SECTION 15-30-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE *1964*

521 *(House Bill No. 402; Strizich)* AN ACT CHANGING FROM 10 YEARS TO 5 YEARS THE TIME WHEN PERSONAL PROPERTY TAXES MAY BE CANCELED IF THE COUNTY HAS EXHAUSTED ALL EFFORTS TO SEIZE AND SELL THE PROPERTY; CLARIFYING THAT PERSONAL PROPERTY TAXES UNPAID BECAUSE OF BANKRUPTCY OR OTHER LITIGATION NEED NOT BE LISTED AS UNCOLLECTED; AND AMENDING SECTION 15-16-701, MCA *1968*

522 *(House Bill No. 430; Strizich)* AN ACT INCREASING THE RETIREMENT BENEFITS OF A MEMBER OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM WHO WORKS MORE THAN 20 YEARS; REMOVING THE MAXIMUM RETIREMENT BENEFIT THAT MAY BE

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EARNED FOR MORE THAN 20 YEARS OF SERVICE; INCREASING EMPLOYEE CONTRIBUTIONS TO PAY FOR THE BENEFIT INCREASE; AMENDING SECTIONS 19-9-601 AND 19-9-804, MCA; AND PROVIDING AN EFFECTIVE DATE *1969*

523 *(House Bill No. 482; Bohlinger)* AN ACT PROVIDING FOR CIVIL CONTEMPT FOR FAILURE TO PAY SUPPORT; PROVIDING A PATERNITY ACKNOWLEDGMENT PROCESS; AND PROVIDING FOR THE SUSPENSION OF STATE-ISSUED LICENSES FOR FAILURE TO PAY SUPPORT *1971*

524 *(House Bill No. 532; Tunby)* AN ACT PROVIDING EXCEPTIONS TO THE MORATORIUM ON IMPORTATION OF SOLID WASTE; AMENDING SECTION 75-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *1980*

525 *(House Bill No. 539; D. Brown)* AN ACT IMPOSING THE COLLECTION OF SPECIAL FUEL TAXATION AT THE DISTRIBUTOR LEVEL RATHER THAN THE RETAIL LEVEL; AMENDING SECTIONS 15-70-301, 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306, 15-70-307, 15-70-309, 15-70-311, 15-70-312, 15-70-315, 15-70-321, 15-70-323, 15-70-324, 15-70-325, 15-70-326, 15-70-327, 15-70-328, 15-70-329, 15-70-330, 15-70-331, 15-70-332, 15-70-333, AND 20-15-403, MCA; REPEALING SECTIONS 15-70-316 AND 15-70-322, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE *1981*

526 *(House Bill No. 579; Russell)* AN ACT CREATING A MONTANA STUDENT VOLUNTEER PROGRAM; ESTABLISHING A SPECIAL REVENUE FUND IN WHICH TO DEPOSIT FUNDS FROM PRIVATE AND CORPORATE DONORS AND FOUNDATIONS AND FROM FEDERAL GRANT PROGRAMS; USING THE FUND TO PROVIDE LIVING ALLOWANCES AND TO PROVIDE TUITION VOUCHERS OR PARTIAL STUDENT LOAN REPAYMENTS FOR INDIVIDUALS PERFORMING FULL-TIME VOLUNTEER WORK FOR PRIVATE NONPROFIT HUMAN AND SOCIAL SERVICE ORGANIZATIONS; STATUTORILY APPROPRIATING THE FUND; CREATING A MONTANA STUDENT VOLUNTEER PROGRAM COMMITTEE TO IMPLEMENT THE PROGRAM; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2001*

527 *(House Bill No. 585; Cocchiarella)* AN ACT PROVIDING FOR RECOGNITION OF A UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROFICIENCY LISTING FOR PERSONS WHO PROVIDE RADON TESTING AND MITIGATION SERVICES; PROVIDING FOR VOLUNTARY DISCLOSURE OF RADON INFORMATION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR CONDUCTING LEGITIMATE SCIENTIFIC STUDIES; ESTABLISHING A PUBLIC EDUCATION AND OUTREACH PROGRAM; REQUIRING NOTIFICATION OF RADON HAZARDS ON REAL ESTATE TRANSACTIONS; PROVIDING AN APPROPRIATION; ESTABLISHING A RADON CONTROL ACCOUNT IN THE SPECIAL REVENUE FUND; AND PROVIDING AN EFFECTIVE DATE *2005*

528 *(House Bill No. 587; Harper)* AN ACT CHANGING THE MEMBERSHIP OF THE CLASSIFICATION AND RATING COMMITTEE FOR WORKERS' COMPENSATION INSURANCE COVERAGE; GRANTING RULEMAKING AUTHORITY TO THE COMMITTEE; ESTABLISHING INFORMAL HEARING PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 33-16-1011 AND 33-16-1012, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2009*

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529 *(House Bill No. 593; Schye)* AN ACT ESTABLISHING A SEASONAL BEER AND WINE LICENSE FOR THE YELLOWSTONE AIRPORT; AND PROVIDING AN EFFECTIVE DATE *2011*

530 *(House Bill No. 601; Schye)* AN ACT PROVIDING A ONE-TIME BENEFIT INCREASE TO CERTAIN RETIRED MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; ADJUSTING THE EMPLOYER CONTRIBUTION RATE; AMENDING SECTION 19-4-605, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE *2012*

531 *(House Bill No. 639; Driscoll)* AN ACT REQUIRING THE DEPARTMENT OF COMMERCE TO ESTABLISH A PROGRAM TO PROVIDE STATE FUNDS TO MATCH LOCAL ECONOMIC DEVELOPMENT FUNDS CONTINGENT UPON THE AVAILABILITY OF STATE MATCHING MONEY AND TO FUND THE CERTIFIED COMMUNITIES PROGRAM ADMINISTERED BY THE DEPARTMENT OF COMMERCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2013*

532 *(House Bill No. 640; Driscoll)* AN ACT CHANGING THE DEFINITION OF THE AVERAGE LEVY FOR THE TAXATION OF RAILROAD CAR COMPANIES TO BE THE AVERAGE STATEWIDE RATE ON COMMERCIAL AND INDUSTRIAL PROPERTY INSTEAD OF THE AVERAGE APPLICABLE TO FLEET MOTOR CARRIERS; AMENDING SECTION 15-23-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE *2014*

533 *(House Bill No. 652; Larson)* AN ACT INCREASING THE AMOUNT OF REVENUE RETURNED TO THE SCHOOL TRUST BY ALLOCATING AN AMOUNT OF INCOME RECEIVED FROM THE SALE OF TIMBER FROM STATE TRUST LANDS TO THE DEPARTMENT OF STATE LANDS TIMBER SALE PROGRAM TO BE USED TO INCREASE ACTIVITIES THAT WILL RESULT IN ADDITIONAL TIMBER SALES; CLARIFYING STATUTORY REFERENCES TO DEDUCTIONS MADE FOR THE DEVELOPMENT OF STATE LANDS; ELIMINATING THE TERMINATION DATE ON THE TIMBER SALE PROVISION; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 17-3-1003, 18-2-107, 20-25-422, 77-1-606, 77-1-607, AND 77-1-608, MCA, AND SECTION 6, CHAPTER 14, SPECIAL LAWS OF JANUARY 1992; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE *2015*

534 *(House Bill No. 660; Peterson)* AN ACT ESTABLISHING A MONTANA COMMUNITY, CONSERVATION, AND VOLUNTEER SERVICE CORPS TO PROVIDE A VARIETY OF PUBLIC SERVICE OPPORTUNITIES FOR MONTANANS; ASSIGNING ADMINISTRATION AND COORDINATION RESPONSIBILITIES TO THE GOVERNOR'S OFFICE; CREATING AN ADVISORY COUNCIL ON COMMUNITY SERVICE; ESTABLISHING SPECIAL REVENUE ACCOUNTS AND PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 23-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE *2018*

535 *(House Bill No. 680; Ream)* AN ACT PROVIDING THAT THE REIMBURSEMENT FOR INTEREST RATE DIFFERENTIALS FOR LOW INTEREST ENERGY LOANS AND INSTALLATIONS PROVIDED BY PUBLIC UTILITIES THAT PROVIDE ELECTRICITY OR NATURAL GAS BE FINANCED FROM A UTILITY RATE BASE RATHER THAN BY A TAX CREDIT; PROVIDING THAT GRANTS FOR INSTALLATIONS PROVIDED BY PUBLIC UTILITIES BE INCLUDED IN A UTILITY RATE BASE; ELIMINATING THE PROVISION OF LOW INTEREST ENERGY LOANS BY FINANCIAL INSTITUTIONS; AMENDING SEC-

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TIONS 15-32-107 AND 69-3-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE *2026*

536 *(House Bill No. 687; Elliott)* AN ACT TEMPORARILY ALLOCATING A PERCENTAGE OF THE COAL SEVERANCE TAX TO A SPECIAL REVENUE ACCOUNT FOR USE BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR THE STABILIZATION AND PRESERVATION OF HISTORIC AND CULTURAL SITES WITHIN THE STATE PARK SYSTEM; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE *2028*

537 *(House Bill No. 690; Wiseman)* AN ACT CLARIFYING THE AUTHORITY OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO PROVIDE ASSISTANCE TO PROGRAMS FOR THE VISUALLY IMPAIRED OR HEARING IMPAIRED; REQUIRING THE SCHOOL TO CHARGE A FEE FOR THE ASSISTANCE; AMENDING SECTION 20-8-102, MCA; AND PROVIDING AN EFFECTIVE DATE *2032*

538 *(House Bill No. 691; Cobb)* AN ACT PROVIDING FOR THE DEPOSIT OF CERTIFICATE OF NEED FEES IN A SPECIAL REVENUE ACCOUNT; AMENDING SECTION 50-5-310, MCA; AND PROVIDING AN EFFECTIVE DATE *2033*

539 *(Senate Bill No. 106; Gage)* AN ACT REVISING THE REFUND OF LOCAL GOVERNMENT TAXES BY A COUNTY; PROVIDING FOR JUDICIAL REVIEW OF A TAX REFUND DECISION BY COUNTY COMMISSIONERS; AMENDING SECTIONS 15-16-602, 15-16-612, 15-16-613, 15-24-920, AND 20-15-403, MCA; AND REPEALING SECTION 15-16-601, MCA *2033*

540 *(Senate Bill No. 357; Doherty)* AN ACT LIMITING THE RIGHT OF A WITNESS IN A PROCEEDING BEFORE THE SECURITIES COMMISSIONER TO CLAIM THE PRIVILEGE AGAINST SELF-INCRIMINATION IN ORDER TO EXCLUDE THE USE OF THE TESTIMONY IN ANY CRIMINAL CASE; REVISING THE DURATION OF A TEMPORARY ORDER ISSUED BY THE COMMISSIONER PRIOR TO A HEARING ON AN ALLEGED VIOLATION OF STATE SECURITIES LAW; AMENDING SECTIONS 30-10-304 AND 30-10-305, MCA; AND PROVIDING AN EFFECTIVE DATE *2037*

541 *(Senate Bill No. 359; Nathe)* AN ACT ENHANCING LOCAL RAIL TRANSPORTATION SERVICES IN MONTANA; PROVIDING LOANS AND GRANTS FOR THE CONTINUED OPERATION OF LOCAL RAIL FREIGHT TRANSPORTATION SERVICES AND FOR THE DEVELOPMENT AND IMPROVEMENT OF INTERMODAL TRANSPORTATION FACILITIES TO MITIGATE LONG-TERM HIGHWAY IMPACTS AND TO PROMOTE EFFICIENCY AND EFFECTIVENESS IN THE STATEWIDE TRANSPORTATION SYSTEM; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE LOANS OR GRANTS TO CERTAIN RAILROADS AND PORT AUTHORITIES; AMENDING SECTIONS 60-11-111, 60-11-121, 60-11-122, AND 60-11-123, MCA; AND PROVIDING AN EFFECTIVE DATE *2039*

542 *(Senate Bill No. 368; Doherty)* AN ACT PROVIDING FOR THE PARTIAL WITHDRAWAL OF THE CONSENT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES TO PUBLIC LAW 280 JURISDICTION ON THE FLATHEAD RESERVATION; AMENDING SECTION 2-1-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2042*

543 *(House Bill No. 666; Wanzenried)* AN ACT REVISING THE STATUTORY APPROPRIATION FOR THE PETROLEUM TANK RELEASE CLEANUP

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544 *(Senate Bill No. 235; Crippen)* AN ACT GENERALLY REVISING TAXATION; ENACTING A 4 PERCENT SALES AND USE TAX; ALLOWING EXEMPTIONS FROM THE SALES TAX AND USE TAX; EXEMPTING CERTAIN PROPERTY FROM TAXATION; REVISING DEBT LIMITS FOR LOCAL GOVERNMENTS AND SCHOOLS; REVISING INDIVIDUAL INCOME TAXES AND PROPERTY TAXES; ALLOWING CREDITS AGAINST INDIVIDUAL INCOME TAX LIABILITY; PROVIDING FOR DISTRIBUTION OF SALES TAX AND USE TAX REVENUE; PROVIDING STATE SUPPORT FOR CERTAIN SCHOOL FUNDING; PROVIDING THAT THIS ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE STATE AT A SPECIAL ELECTION; AMENDING SECTIONS 7-1-2111, 7-3-1321, 7-6-2211, 7-6-4121, 7-6-4254, 7-7-107, 7-7-108, 7-7-2101, 7-7-2203, 7-7-4201, 7-7-4202, 7-13-4103, 7-14-236, 7-14-2524, 7-14-2525, 7-14-4402, 7-16-2327, 7-16-4104, 7-31-106, 7-31-107, 7-34-2131, 15-1-111, 15-6-133, 15-6-138, 15-6-141, 15-6-144, 15-6-207, 15-8-205, 15-23-703, 15-24-301, 15-30-101, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-117, 15-30-122, 15-30-126, 15-30-131, 15-30-137, 15-30-142, 15-30-177, 15-30-323, 15-31-131, 15-32-303, 15-36-112, 15-51-101, 16-1-306, 16-1-411, 16-2-301, 17-3-213, 19-11-503, 19-11-504, 20-3-205, 20-6-702, 20-9-331, 20-9-333, 20-9-343, 20-9-344, 20-9-346, 20-9-347, 20-9-351, 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-406, 20-9-407, 20-9-439, 20-9-501, 20-10-104, 20-10-141, 20-10-142, 20-10-144, 20-10-145, 20-15-311, 33-7-410, 61-3-303, 61-3-317, 61-3-502, 61-3-504, 61-3-506, 61-3-509, 61-3-701, AND 61-4-112, MCA; REPEALING SECTIONS 15-10-401, 15-10-402, 15-10-406, 15-10-411, 15-10-412, 15-30-121, 15-30-156, 15-30-157, 15-30-159, 15-30-160, AND 20-10-146, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES 2044

545 *(Senate Bill No. 289; Crippen)* AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII OF THE MONTANA CONSTITUTION TO LIMIT TO 4 PERCENT THE RATE OF A GENERAL STATEWIDE SALES TAX OR USE TAX; AND PROVIDING AN EFFECTIVE DATE 2150

546 *(House Bill No. 3; Cobb)* AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1993; APPROPRIATING MONEY TO THE DEPARTMENT OF FAMILY SERVICES, THE SECRETARY OF STATE'S OFFICE, AND THE DEPARTMENT OF MILITARY AFFAIRS FOR FISCAL YEAR 1994; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2151

547 *(House Bill No. 11; R. Johnson)* AN ACT APPROPRIATING MONEY FOR THE MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK; AMENDING SECTION 20-32-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2154

548 *(House Bill No. 46; J. Johnson)* AN ACT RESERVING A PERCENTAGE OF THE CIGARETTE TAX FOR THE OPERATION AND MAINTENANCE OF STATE VETERANS' NURSING HOMES; PROVIDING FOR THE ESTABLISHMENT OF A SPECIAL REVENUE ACCOUNT IN THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; AMENDING SECTIONS 16-11-119 AND 17-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE 2155

549 *(House Bill No. 65; Cocchiarella)* AN ACT CREATING A STATUTORY LEGISLATIVE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS; APPROPRIATING FUNDS FOR THE COMMITTEE; AND

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550 *(House Bill No. 145; Cobb)* AN ACT PROVIDING AN APPROPRIATION FOR A HEALTH CARE AUTHORITY AND AN APPROPRIATION TO THE STATE AUDITOR'S OFFICE; AND PROVIDING AN EFFECTIVE DATE *2159*

551 *(House Bill No. 167; Brandewie)* AN ACT GENERALLY REVISING THE NURSERY LAWS; INCREASING THE NURSERY LICENSE FEE; MAKING IT UNLAWFUL TO SELL NOXIOUS WEEDS; PROVIDING CIVIL PENALTIES; ESTABLISHING QUARANTINES BY DEPARTMENT RULE; SETTING NURSERY STOCK CERTIFICATION STANDARDS BY DEPARTMENT RULE; ESTABLISHING A SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 80-7-104, 80-7-114, AND 80-7-133, MCA; REPEALING SECTIONS 80-7-101, 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113, 80-7-115, 80-7-116, 80-7-117, 80-7-118, 80-7-119, 80-7-120, 80-7-131, 80-7-134, 80-7-201, 80-7-202, 80-7-203, 80-7-204, 80-7-205, 80-7-206, 80-7-207, 80-7-208, 80-7-209, 80-7-210, 80-7-301, 80-7-302, 80-7-303, AND 80-7-304, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE *2160*

552 *(House Bill No. 190; Mason)* AN ACT SPECIFYING THE REQUIREMENTS FOR LICENSURE OF LICENSED SOCIAL WORKERS, LICENSED CLINICAL SOCIAL WORKERS, LICENSED PROFESSIONAL COUNSELORS AND LICENSED CLINICAL PROFESSIONAL COUNSELORS; AMENDING THE PROCEDURE FOR CHARGING OF LICENSE VIOLATIONS BY LICENSED CLINICAL SOCIAL WORKERS; PROVIDING THE REQUIREMENTS FOR LICENSE RENEWAL AND CREATING AN INACTIVE STATUS FOR LICENSED CLINICAL SOCIAL WORKERS AND PROFESSIONAL COUNSELORS; AMENDING SECTIONS 37-22-301, 37-22-304, 37-22-305, 37-22-312, 37-23-201, 37-23-202, 37-23-205, AND 37-23-212, MCA; AND PROVIDING APPLICABILITY DATES *2164*

553 *(House Bill No. 193; Tuss)* AN ACT IMPLEMENTING THE MONTANA PRODUCE ACT BY GENERALLY UPDATING PROCEDURES AND REPLACING LAWS RELATED TO HORTICULTURE AND FARM PRODUCE; REPEALING SECTIONS 80-3-101, 80-3-102, 80-3-103, 80-3-104, 80-3-105, 80-3-106, 80-3-107, 80-3-108, 80-3-109, 80-3-110, 80-3-111, 80-3-201, 80-3-202, 80-3-203, 80-3-204, 80-3-205, 80-3-206, 80-3-207, 80-3-211, 80-3-212, 80-3-601, 80-3-602, 80-3-603, 80-3-604, 80-3-605, 80-3-606, 80-3-607, 80-3-608, 80-3-609, 80-3-610, 80-3-611, 80-3-612, 80-3-613, 80-3-701, 80-3-702, 80-3-703, 80-3-704, 80-3-705, 80-3-706, 80-3-707, 80-3-708, 80-3-709, 80-3-710, 80-3-711, 80-3-712, AND 80-3-713, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TRANSITION PROVISION *2170*

554 *(House Bill No. 273; Dolezal)* AN ACT PROHIBITING MOTOR VEHICLE INSURANCE COMPANIES FROM DIRECTING INSUREDS TO SPECIFIC COMPANIES OR LOCATIONS FOR AUTOMOBILE GLASS REPLACEMENT, GLASS REPAIR SERVICE, OR GLASS PRODUCTS; PROHIBITING THE ESTABLISHMENT OF AN AGREEMENT WITH A COMPANY TO ARRANGE PAYMENT THROUGH A THIRD PARTY FOR AUTOMOBILE GLASS REPLACEMENT OR GLASS REPAIR SERVICE; PROHIBITING A COMPANY FROM ACTING AS GLASS BROKER FOR AN INSURANCE COMPANY WHEN THE GLASS BROKER SETS A PRICE THAT MUST BE MET BY A GLASS REPAIR SHOP AS A CONDITION TO DOING GLASS REPAIR WORK; DEFINING GLASS BROKER; PROHIBITING THE ESTABLISHMENT OF A PRICE TO BE

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555 *(House Bill No. 287; Wiseman)* AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; DELETING THE UNINSURED EMPLOYERS' FUND FROM THE DEFINITION OF "INSURER"; CLARIFYING WHO IS SUBJECT TO ADMINISTRATIVE ASSESSMENT; ALLOWING ISSUANCE OF SUBPOENAS; EXEMPTING FROM WORKERS' COMPENSATION A PERSON WHO IS EMPLOYED BY AN ENROLLED TRIBAL MEMBER AND WHO OPERATES WITHIN THE BOUNDARIES OF A RESERVATION; PROVIDING FOR STATUTORY APPROPRIATIONS FOR THE UNINSURED EMPLOYERS' FUND AND THE SUBSEQUENT INJURY FUND; EXCLUDING FROM THE UNINSURED EMPLOYER PENALTY THE WAGES PAID TO SPOUSES OF SOLE PROPRIETORS OR SPOUSES OF PARTNERS; PROVIDING FOR A LIEN FOR AN UNPAID UNINSURED EMPLOYER PENALTY; CLARIFYING THE DEPARTMENT OF LABOR AND INDUSTRY'S ROLE IN COMPENSATION FOR DISFIGUREMENT; PROVIDING FOR PAYMENT OF ADMINISTRATIVE COSTS OUT OF THE SUBSEQUENT INJURY FUND; CHANGING THE SELF-INSURED EMPLOYER ANNUAL RENEWAL FROM THE DEPARTMENT'S FISCAL YEAR TO THE EMPLOYER'S POLICY YEAR; RECOGNIZING THE NATIONAL COUNCIL ON COMPENSATION INSURANCE AS AN AGENT FOR INSURERS; PROVIDING FOR BOOK-ENTRY SECURITIES; AUTHORIZING THE DEPARTMENT TO CONVERT SECURITIES TO CASH AND RELEASE SECURITIES TO THE MONTANA INSURANCE GUARANTY ASSOCIATION; CHANGING THE ASSESSMENT PERIOD FOR THE SELF-INSURERS GUARANTY FUND; CLARIFYING THE DEPARTMENT'S ROLE IN PAYMENT OF NONDISABLING OCCUPATIONAL DISEASE BENEFITS; PROVIDING FOR PAYMENT OF EXAMINATION COSTS BY THE REQUESTOR WHEN OCCUPATIONAL DISEASE CAUSES DEATH; PROVIDING A TIME LIMIT TO APPEAL AN UNINSURED EMPLOYERS' FUND BENEFIT ISSUE TO MEDIATION; PROVIDING FOR REVIEW AND MODIFICATION OF CLAIMS EXPENDITURES CODES; AMENDING SECTIONS 17-7-502, 39-71-116, 39-71-201, 39-71-304, 39-71-401, 39-71-503, 39-71-506, 39-71-708, 39-71-902, 39-71-907, 39-71-2104, 39-71-2106, 39-71-2204, 39-71-2205, 39-71-2206, 39-71-2615, 39-72-405, AND 39-72-608, MCA; REPEALING SECTIONS 39-71-2109 AND 39-71-2207, MCA; AND PROVIDING AN EFFECTIVE DATE *2179*

556 *(House Bill No. 323; McCarthy)* AN ACT ALLOWING A COURT, UPON A CONVICTION OF CRUELTY TO ANIMALS, TO PROHIBIT OR LIMIT THE DEFENDANT'S OWNERSHIP, POSSESSION, OR CUSTODY OF ANIMALS, AS THE COURT BELIEVES APPROPRIATE DURING THE TERM OF THE SENTENCE; AMENDING SECTION 45-8-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2193*

557 *(House Bill No. 327; McCaffree)* AN ACT CLARIFYING THAT THE $5 MINIMUM PROPERTY TAX APPLIES TO ALL REAL AND PERSONAL PROPERTY TAXES; CLARIFYING THAT THE EXCESS IS TO BE DEPOSITED IN THE COUNTY GENERAL FUND; PROVIDING THAT

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558 *(House Bill No. 333; Cobb)* AN ACT EXTENDING APPLICATION OF THE UTILIZATION FEE ON NURSING FACILITIES TO BED DAYS REIMBURSED BY ALL PAYORS IN ORDER TO MEET REQUIREMENTS FOR OBTAINING FEDERAL MATCHING FUNDS FOR FEE REVENUE EXPENDED BY THE STATE FOR MEDICAID ITEMS AND SERVICES; INCREASING THE UTILIZATION FEE; CREATING A STATE SPECIAL REVENUE ACCOUNT; DEPOSITING THE FEE IN THE ACCOUNT; APPROPRIATING FUNDS FOR THE 1995 BIENNIUM; AMENDING SECTIONS 15-60-101, 15-60-102, AND 15-60-210, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY PROVISION . . *2195*

559 *(House Bill No. 372; S. Rice)* AN ACT AUTHORIZING COUNTIES TO ISSUE SMALL DENOMINATION GENERAL OBLIGATION BONDS TO BE KNOWN AS "CITIZEN BONDS"; AMENDING SECTIONS 7-7-103, 7-7-2209, 7-7-2238, 7-7-2251, 7-7-2261, AND 7-7-2265, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2197*

560 *(House Bill No. 405; Fisher)* AN ACT CREATING THE CRIMINAL OFFENSE OF RITUAL ABUSE OF A MINOR; PROVIDING THE TIME WITHIN WHICH THE OFFENSE MUST BE PROSECUTED; CREATING A STATUTE OF LIMITATIONS FOR CIVIL ACTIONS TO RECOVER DAMAGES FOR INJURY SUFFERED AS A RESULT OF RITUAL ABUSE OF A MINOR; AMENDING SECTIONS 27-2-204 AND 45-1-205, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE . *2201*

561 *(House Bill No. 427; Cobb)* AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC ASSISTANCE; REVISING THE STATE ASSUMPTION OF COUNTY WELFARE ASSISTANCE; REVISING THE MILL LEVY LIMIT FOR A COUNTY; ELIMINATING EMERGENCY GRANTS; ELIMINATING GENERAL RELIEF; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PRESENT ALTERNATIVE PLANS FOR THE ADMINISTRATION OF PUBLIC ASSISTANCE PROGRAMS TO THE 54TH LEGISLATURE; AMENDING SECTIONS 7-6-2512, 7-6-2523, 15-10-412, 15-16-117, 33-32-103, 39-71-118, 40-4-215, 41-3-1122, 52-1-110, 53-2-201, 53-2-203, 53-2-207, 53-2-322, 53-2-601, 53-2-606, 53-2-608, 53-2-610, 53-2-801, 53-2-802, 53-2-803, 53-2-811, 53-2-812, 53-2-813, 53-2-1101, 53-2-1103, 53-2-1109, 53-3-205, AND 53-3-310, MCA; REPEALING SECTIONS 53-2-321, 53-2-323, 53-2-821, 53-2-822, 53-3-109, 53-3-110, 53-3-112, 53-3-113, 53-3-114, 53-3-121, 53-3-122, 53-3-201, 53-3-205, 53-3-207, 53-3-208, 53-3-209, 53-3-210, 53-3-211, 53-3-212, 53-3-215, 53-3-303, 53-3-304, 53-3-305, 53-3-307, 53-3-308, 53-3-309, 53-3-310, 53-3-311, 53-3-313, 53-3-314, 53-3-318, 53-3-321, 53-3-322, 53-3-323, 53-3-324, 53-3-325, 53-3-326, 53-3-327, 53-3-328, AND 90-4-211, MCA; AND PROVIDING EFFECTIVE DATES *2204*

562 *(House Bill No. 437; Harrington)* AN ACT REVISING THE DEFINITION OF NET BUSINESS INCOME IN DETERMINING THE ELIGIBILITY FOR LOW-INCOME PROPERTY TAX RELIEF; AMENDING SECTION 15-6-134, MCA; AND PROVIDING AN APPLICABILITY DATE *2228*

563 *(House Bill No. 469; Cocchiarella)* AN ACT REVISING THE TUITION LAWS; PERMITTING A CHILD TO ATTEND A SCHOOL DISTRICT OUTSIDE THE CHILD'S DISTRICT OF RESIDENCE, SUBJECT TO DISCRETIONARY APPROVAL BY THE TRUSTEES OF THE RESIDENT DISTRICT AND THE DISTRICT OF CHOICE; REQUIRING MAN-

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564 *(House Bill No. 483; Toole)* AN ACT PROVIDING THAT A PERSON OPERATING A VEHICLE UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC CONSENTS TO MORE THAN ONE TEST FOR THE PRESENCE OF ALCOHOL OR DRUGS; PROVIDING THAT AN ALCOHOL TEST BE GIVEN FIRST AND THAT A DRUG TEST MAY NOT BE GIVEN IF THE ALCOHOL TEST IS FAILED; AND AMENDING SECTIONS 61-8-402, 61-8-403, 61-8-404, AND 61-8-405, MCA *2248*

565 *(House Bill No. 505; Cocchiarella)* AN ACT ALLOWING AN INDIVIDUAL INCOME TAX DEDUCTION FOR EMPLOYMENT-RELATED EXPENSES CONSIDERED TO HAVE BEEN PAID FOR A CHILD CARED FOR AT A LICENSED DAY-CARE HOME OPERATED BY THE CHILD'S PARENT; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE *2251*

566 *(House Bill No. 516; DeBruycker)* AN ACT IMPOSING AN ASSESSMENT ON CLASS I MILK TO FUND MILK INSPECTION AND DIAGNOSTIC LABORATORY FUNCTIONS; AMENDING SECTION 81-23-202, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE *2253*

567 *(House Bill No. 517; Harper)* AN ACT PROVIDING A RETIREMENT INCENTIVE FOR MEMBERS WHO ARE ELIGIBLE TO RETIRE UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND WHO TERMINATE EMPLOYMENT WITHIN A PRESCRIBED WINDOW OF ELIGIBILITY; PROVIDING A VOLUNTARY TERMINATION INCENTIVE FOR CERTAIN MEMBERS WHO ARE ELIGIBLE TO RETIRE UNDER THE TEACHERS' RETIREMENT SYSTEM AND WHO TERMINATE EMPLOYMENT WITHIN A PRESCRIBED WINDOW OF ELIGIBILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A TERMINATION DATE, AND A RETROACTIVE APPLICABILITY DATE *2255*

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571 *(House Bill No. 572; Galvin)* AN ACT REVISING FEES FOR OVERWEIGHT VEHICLE PERMITS; AMENDING SECTION 61-10-125, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE *2268*

572 *(House Bill No. 581; S. Rice)* AN ACT CREATING A STATE HOUSING TASK FORCE; PROVIDING FOR THE APPOINTMENT OF THE MEMBERS OF THE TASK FORCE; PROVIDING FOR THE POWERS AND DUTIES OF THE TASK FORCE; AND PROVIDING A TERMINATION DATE *2269*

573 *(House Bill No. 588; Tunby)* AN ACT ALLOWING THE SUPERVISORS OF A CONSERVATION DISTRICT TO LEVY, WITH VOTER APPROVAL, AN ANNUAL SPECIAL ADMINISTRATIVE ASSESSMENT FOR THE ADMINISTRATIVE COSTS AND EXPENSES OF THE DISTRICT; PROVIDING FOR THE REDUCTION OR REPEAL OF THE ADMINISTRATIVE ASSESSMENT; EXCLUDING THE SPECIAL ADMINISTRATIVE ASSESSMENT FROM THE PROPERTY TAX LIMITS OF INITIATIVE MEASURE NO. 105; AMENDING SECTIONS 15-10-412, 76-15-515, 76-15-516, AND 76-15-527, MCA; AND PROVIDING AN EFFECTIVE DATE *2271*

574 *(House Bill No. 642; Raney)* AN ACT DIVERTING A PORTION OF THE PROCEEDS FROM THE LODGING FACILITY USE TAX TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR PARK MAINTENANCE; AMENDING SECTION 15-65-121, MCA; AND PROVIDING AN EFFECTIVE DATE *2276*

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576 *(House Bill No. 658; Schwinden)* AN ACT REVISING THE WHEAT AND BARLEY ASSESSMENT PROCEDURE TO REQUIRE COLLECTION FROM A GRAIN SELLER AT THE TIME OF FIRST SALE; AMENDING SECTIONS 80-11-206 AND 80-11-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . . . *2298*

577 *(House Bill No. 673; Menahan)* AN ACT REQUIRING THAT PROBATIONERS AND PAROLEES PAY A SUPERVISORY FEE; APPROPRIATING THE MONEY COLLECTED FROM THE FEE; PROVIDING THAT THE MONEY BE USED FOR EQUIPMENT AND TRAINING FOR PROBATION AND PAROLE OFFICERS; AND PROVIDING AN EFFECTIVE DATE *2300*

578 *(House Bill No. 679; Clark)* AN ACT REVISING THE LAW RELATING TO OFF-HIGHWAY VEHICLE USE; ALLOWING OFF-HIGHWAY VEHICLES TO CROSS PUBLIC ROADS UNDER CERTAIN CONDITIONS; ESTABLISHING A STANDARD OF RESPONSIBILITY FOR OFF-HIGHWAY VEHICLE OPERATORS; PROVIDING FOR OFF-HIGHWAY VEHICLE SAFETY TRAINING AFTER 1994; APPROPRIATING FEDERAL FUNDS FOR OFF-HIGHWAY VEHICLE SAFETY TRAINING; AND AMENDING SECTION 17-7-502, MCA *2301*

579 *(House Bill No. 685; Grady)* AN ACT GENERALLY REVISING CORRECTIONS AND HUMAN SERVICES LAWS TO IMPLEMENT BUDGET REDUCTIONS; ALLOWING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO USE CIGARETTE TAX REVENUE FOR VETERANS' NURSING HOMES; PROVIDING THAT A DEFENDANT WHO IS SENTENCED TO A COUNTY JAIL OR PRISON MAY BE COMMITTED TO THE DEPARTMENT FOR PLACEMENT IN AN APPROPRIATE INSTITUTION OR PROGRAM; PROVIDING FOR THE GRANTING OF GOOD TIME TO INMATES IN ORDER TO REGULATE INMATE NUMBERS; REVISING THE TIME PERIOD IN WHICH THE BOARD OF PARDONS CONSIDERS ELIGIBLE INMATES FOR PAROLE; REDUCING THE LEVEL OF SUPERVISION OF PROBATIONERS AND PAROLEES WHEN THE CASELOAD REACHES CERTAIN LEVELS; ALLOWING A CHARGE FOR BOARD, ROOM, AND ANCILLARY SERVICES PROVIDED TO INCARCERATED PERSONS; DISCONTINUING THE SWAN RIVER FOREST CAMP; AUTHORIZING THE OPERATION OF THE WOMEN'S CORRECTIONAL CENTER IN A TEMPORARY LOCATION; DISCONTINUING THE GALEN CAMPUS OF THE MONTANA STATE HOSPITAL; REVISING THE LOCATION AND FUNCTIONS OF THE CHEMICAL DEPENDENCY TREATMENT CENTER; DIRECTING THE COORDINATION OF RESOURCES TO ENSURE DELIVERY OF SERVICES TO CHILDREN WITH EMOTIONAL DISTURBANCES; PROVIDING EXPENDITURE FLEXIBILITY; ELIMINATING MOST CONDITIONS ATTACHED TO THE SALE OF THE MONTANA YOUTH TREATMENT CENTER; AMENDING SECTIONS 10-2-416, 46-18-201, 46-23-202, 46-23-1011, 46-23-1021, 52-5-111, 53-1-104, 53-1-202, 53-1-402, 53-21-202, 53-21-601, 53-21-603, 53-30-101,

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AND 53-30-105, MCA, AND SECTION 5, CHAPTER 14, SPECIAL LAWS OF JUNE 1986; REPEALING SECTIONS 10-2-412, 10-2-413, 50-17-104, 52-2-118, 52-5-104, AND 53-21-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2303*

580 *(House Bill No. 688; Grinde)* AN ACT PROVIDING THAT THE EXTENDED DEPTH AUGER METHOD OF MINING COAL IS A DISTINCT METHOD OF MINING FOR PURPOSES OF TAXATION; DEFINING THE EXTENDED DEPTH AUGER METHOD OF MINING FOR TAXATION PURPOSES; ESTABLISHING SEVERANCE TAX RATES FOR EXTENDED DEPTH AUGER MINING; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE *2317*

581 *(House Bill No. 689; Fisher)* AN ACT CREATING SPECIAL REVENUE ACCOUNTS FOR THE ADMINISTRATION OF INCOME TAX CHECKOFF PROGRAMS; ELIMINATING THE PUBLIC CAMPAIGN FUND; AMENDING SECTIONS 15-30-150, 15-30-152, 15-30-155, 15-30-158, AND 17-7-502, MCA; REPEALING SECTIONS 13-37-301, 13-37-302, 13-37-303, 13-37-304, 13-37-305, 13-37-306, 13-37-307, AND 13-37-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION PROVISION RELATING TO CERTAIN VOLUNTARY INCOME TAX CHECKOFFS *2320*

582 *(Senate Bill No. 15; Blaylock)* AN ACT REQUIRING MANDATORY GRIEVANCE PROCEDURES IN SCHOOL COLLECTIVE BARGAINING AGREEMENTS; PROVIDING FOR AN ELECTION OF REMEDIES; AMENDING SECTION 39-31-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES *2324*

583 *(Senate Bill No. 87; Crippen)* AN ACT PROVIDING SPECIFIC PROCEDURES FOR THE SPECIAL ELECTION ON SENATE BILL NO. 235; PROVIDING THAT THE PROVISIONS OF TITLE 13, CHAPTER 27, MCA, AND CERTAIN OTHER LAWS RELATING TO ELECTIONS DO NOT APPLY TO THE SPECIAL ELECTION; PROVIDING FOR THE PURCHASE OF PRINTING AND DISTRIBUTION SERVICES AND MATERIALS ASSOCIATED WITH THE PRINTING AND DISTRIBUTION OF A VOTER INFORMATION PAMPHLET AND BALLOTS FOR THE SPECIAL ELECTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2325*

584 *(Senate Bill No. 121; Franklin)* AN ACT AMENDING THE NURSING PRACTICE ACT; PROVIDING DEFINITIONS; AUTHORIZING REGISTERED PROFESSIONAL NURSES AND LICENSED PRACTICAL NURSES TO TAKE ORDERS FROM AN ADVANCED PRACTICE REGISTERED NURSE WHO HAS PRESCRIPTIVE AUTHORITY; AUTHORIZING THE BOARD OF NURSING TO ADOPT RULES FOR DELEGATION OF NURSING TASKS TO UNLICENSED PERSONS; CHANGING THE TITLE OF THE BOARD SECRETARY TO EXECUTIVE DIRECTOR; PROVIDING FOR TERMINATION OF LICENSES THAT HAVE NOT BEEN RENEWED FOR 3 YEARS; AND AMENDING SECTIONS 37-8-102, 37-8-103, 37-8-202, AND 37-8-204, MCA *2331*

585 *(Senate Bill No. 362; Bianchi)* AN ACT ESTABLISHING A 20-DAY LIMIT WITHIN WHICH A COURT IS REQUIRED TO HEAR A LANDLORD'S ACTION FOR POSSESSION; SETTING A 5-DAY LIMIT WITHIN WHICH THE COURT IS REQUIRED TO RULE ON AN ACTION FOR POSSESSION; AMENDING SECTION 70-24-427, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2336*

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586 *(Senate Bill No. 424; Blaylock)* AN ACT REQUIRING THE BOARD OF LAND COMMISSIONERS TO ATTAIN FULL MARKET VALUE FOR LEASES ON STATE SCHOOL TRUST LANDS; ELIMINATING THE RECREATIONAL USE LICENSE ADMINISTRATIVE SURCHARGE; REQUIRING THE VALUE OF IMPROVEMENTS TO BE BASED ON ACTUAL COSTS; REQUIRING THE BOARD OF LAND COMMISSIONERS TO COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT IN SETTING RATES AND FEES; ESTABLISHING AN ADVISORY COUNCIL TO ASSIST THE BOARD OF LAND COMMISSIONERS IN SETTING RATES AND FEES; AMENDING SECTIONS 77-1-208, 77-1-209, 77-1-802, 77-6-202, 77-6-205, 77-6-302, 77-6-305, 77-6-306, 77-6-502, 77-6-507, AND 77-6-508, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES *2336*

587 *(Senate Bill No. 438; Stang)* AN ACT REVISING THE TAXATION OF MIGRATORY PERSONAL PROPERTY BY PRORATING THE TAX TO THE TIME THAT THE PERSONAL PROPERTY IS LOCATED IN MONTANA; AMENDING SECTIONS 15-16-613 AND 15-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE *2342*

588 *(Senate Bill No. 11; Towe)* AN ACT REVISING THE INTEREST RATE ALLOWED BY AGREEMENT FOR CREDIT TRANSACTIONS; AMENDING SECTION 31-1-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2343*

589 *(Senate Bill No. 58; Swift)* AN ACT GENERALLY REVISING THE HUNTING AND FISHING LAWS OF MONTANA; CLARIFYING RESTRICTIONS ON HUNTING WITH SPECIFIED ARMS; REVISING PROVISIONS REGARDING RESIDENCY OF MINORS AND CERTAIN MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS; CLARIFYING OWNERSHIP OF TAGGED GAME; INCREASING CERTAIN PENALTIES; AMENDING SECTIONS 87-1-304, 87-2-102, 87-2-509, AND 87-3-143, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2344*

590 *(Senate Bill No. 118; Towe)* AN ACT CHANGING THE LICENSING CATEGORIES AND CONDITIONS FOR PERSONAL-CARE FACILITIES; ELIMINATING PERSONAL-CARE FACILITIES FROM CERTIFICATE OF NEED REQUIREMENTS; PROHIBITING SUPPLEMENTARY PAYMENTS FOR RESIDENTS OF CERTAIN PERSONAL-CARE FACILITIES; PROHIBITING MEDICAID PAYMENT TO PERSONAL-CARE FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-226, 50-5-227, 50-5-301, 52-1-104, AND 53-6-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE *2347*

591 *(Senate Bill No. 145; Waterman)* AN ACT DEFINING TRAUMATIC BRAIN INJURY; ESTABLISHING A TRAUMATIC BRAIN INJURY TRUST FUND; AND PROVIDING AN EFFECTIVE DATE *2359*

592 *(Senate Bill No. 374; Franklin)* AN ACT INCREASING THE TAX INCENTIVE FOR THE PRODUCTION OF ALCOHOL; PROVIDING FOR A PROPORTIONATE REDUCTION IN THE TAX INCENTIVE FOR ALCOHOL PRODUCED FROM OUT-OF-STATE AGRICULTURAL OR WOOD PRODUCTS; AMENDING SECTION 15-70-522, MCA; AND PROVIDING A TERMINATION DATE *2360*

593 *(Senate Bill No. 378; Grosfield)* AN ACT ELIMINATING CERTAIN DEDICATIONS OF REVENUE; PROVIDING FOR THE REVIEW AND FUTURE ELIMINATION OF SPECIAL REVENUE ACCOUNTS AND STATUTORY APPROPRIATIONS; PROVIDING THAT APPROPRIA-

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594 *(Senate Bill No. 379; Doherty)* AN ACT SIMPLIFYING TAX APPEAL PROCEDURES BEFORE THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 15-1-402, 15-1-406, 15-1-408, 15-2-301, 15-2-302, 15-2-303, 15-2-306, 15-7-102, AND 15-15-101, MCA; AND REPEALING SECTIONS 15-2-307, 15-2-308, 15-2-309, AND 15-2-310, MCA 2368

595 *(Senate Bill No. 401; McClernan)* AN ACT AMENDING THE WATER QUALITY LAWS; DEFINING "DEGRADATION" AND CERTAIN OTHER TERMS; TRANSFERRING AUTHORITY FROM THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO AUTHORIZE DEGRADATION OF STATE WATERS; ALLOWING APPEAL OF THE DEPARTMENT'S FINAL DECISION TO THE BOARD; REQUIRING THE BOARD TO ADOPT RULES REGARDING MIXING ZONES AND THE NONDEGRADATION POLICY; CLARIFYING THAT IT IS UNLAWFUL TO CAUSE DEGRADATION OF STATE WATERS WITHOUT AUTHORIZATION; ESTABLISHING FEES; AMENDING SECTIONS 75-5-103, 75-5-301, 75-5-303, AND 75-5-605, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE . . 2377

596 *(Senate Bill No. 430; Christiaens)* AN ACT GENERALLY REVISING THE LAWS RELATING TO INSURERS; PROVIDING REGULATION OF BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED INSURERS; PROVIDING CREDIT FOR REINSURANCE; REGULATING MANAGING GENERAL AGENTS; PROVIDING FOR INTERSTATE EXCHANGE OF INSURER REGULATORY INFORMATION; REGULATING REINSURANCE INTERMEDIARIES; REVISING THE LAWS REGULATING INSURANCE HOLDING COMPANIES, LIFE AND HEALTH AND CASUALTY AND PROPERTY INSURANCE GUARANTY ASSOCIATIONS, INSURER FINANCIAL EXAMINATIONS, RISK RETENTION GROUPS, AND INSURER SUPERVISION, REHABILITATION, AND LIQUIDATION; PROVIDING FOR AN ANNUAL ACCREDITATION FEE; AMENDING SECTIONS 33-1-401, 33-2-501, 33-2-532, 33-2-533, 33-2-701, 33-2-708, 33-2-1111, 33-2-1114, 33-2-1115, 33-2-1201, 33-2-1331, 33-2-1342, 33-2-1346, 33-10-105, 33-10-111, 33-10-114, 33-10-201, 33-10-202, 33-10-203, 33-10-210, 33-10-217, 33-10-218, 33-10-224, 33-10-227, 33-10-230, 33-11-103, 33-11-104, 33-11-105, 33-11-108, 33-11-109, AND 33-22-804, MCA; AND REPEALING SECTIONS 33-1-403, 33-1-412, 33-2-1205, AND 33-10-229, MCA 2383

597 *(House Bill No. 301; Wyatt)* AN ACT INCREASING THE MAXIMUM PENALTY FOR VIOLATION OF A MUNICIPAL OR LOCAL GOVERNMENT ORDINANCE RELATING TO LOCAL OR FEDERAL WASTEWATER PRETREATMENT STANDARDS FROM $500 TO $1,000; AND AMENDING SECTIONS 7-5-109 AND 7-5-4207, MCA 2442

598 *(House Bill No. 442; Knox)* AN ACT GENERALLY REVISING THE MONTANA METAL MINE RECLAMATION LAWS; PROVIDING A PROCESS FOR AMENDMENT OF OPERATING PERMITS; REVISING THE INITIAL REVIEW PERIOD FOR APPLICATIONS FOR OPERATING PERMITS; STRENGTHENING ENFORCEMENT AND BONDING MECHANISMS; AND AMENDING SECTIONS 82-4-305, 82-4-331, 82-4-335, 82-4-337, 82-4-338, AND 82-4-362, MCA 2443

599 *(House Bill No. 495; Elliott)* AN ACT AUTHORIZING CATERING ENDORSEMENTS TO BEER RETAIL LICENSES FOR ON-PREMISES

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600 *(Senate Bill No. 14; Swift)* AN ACT REVISING THE LAW REGARDING THE USE OF FIREARMS BY CHILDREN UNDER 14 YEARS OF AGE TO ALLOW THOSE CHILDREN TO USE A FIREARM WHEN ACCOMPANIED BY AN ADULT AUTHORIZED BY A PARENT OR GUARDIAN; AND AMENDING SECTION 45-8-344, MCA *2456*

601 *(Senate Bill No. 71; Towe)* AN ACT ALLOWING DEPARTMENT HEADS TO ELIMINATE POSITIONS WITHIN A DEPARTMENT; PROVIDING A FISCAL INCENTIVE TO THE DEPARTMENT HEAD TO REDUCE POSITIONS WITHIN A DEPARTMENT; AMENDING SECTION 2-15-112, MCA; AND PROVIDING AN EFFECTIVE DATE *2456*

602 *(Senate Bill No. 98; Rea)* AN ACT REVISING SEED DEALER PENALTIES; CREATING A SEED ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR DEPOSIT OF SEED FEE REVENUE; AMENDING SECTIONS 80-5-207 AND 80-5-208, MCA; AND PROVIDING AN EFFECTIVE DATE *2458*

603 *(Senate Bill No. 108; Gage)* AN ACT GENERALLY REVISING LAWS RELATING TO CRIMINAL JUSTICE INFORMATION; ALLOWING THE DEPARTMENT OF JUSTICE TO USE JUVENILES' FINGERPRINTS AND PHOTOGRAPHS FOR INVESTIGATIVE PURPOSES; ALLOWING THE DEPARTMENT TO ASSIGN AUDITS OF CRIMINAL HISTORY RECORD INFORMATION SYSTEMS FOR COMPLIANCE WITH THE LAW TO SUBAGENCIES THAT CONTROL CRIMINAL JUSTICE INFORMATION; ALLOWING THE DEPARTMENT TO CHARGE FOR COSTS ASSOCIATED WITH RECORDS REQUESTS; AND AMENDING SECTIONS 41-5-304, 44-5-105, AND 44-5-214, MCA *2459*

604 *(Senate Bill No. 252; Hertel)* AN ACT EXEMPTING A PROFESSIONAL LAND SURVEYOR OR OTHER QUALIFIED PERSON FROM THE CRIMINAL TRESPASS LAW WHEN ENTRY TO LAND IS FOR SURVEY PURPOSES; PROVIDING FOR NOTICE TO THE LANDOWNER OF A PENDING SURVEY; ESTABLISHING NOTICE CONDITIONS AND PROVISIONS FOR ENTRY TO THE LAND; CREATING A REBUTTABLE PRESUMPTION REGARDING A LANDOWNER'S LIABILITY TO A SURVEYOR ON LAND FOR SURVEYING PURPOSES; AND AMENDING SECTION 45-6-203, MCA *2461*

605 *(Senate Bill No. 257; Harp)* AN ACT INCREASING THE GASOLINE LICENSE TAX AND THE TAX ON DIESEL FUEL AND VOLATILE LIQUIDS BY 4 CENTS BEGINNING JULY 1, 1993, AND BY 3 CENTS BEGINNING JULY 1, 1994; PROVIDING AN INCREASED ALLOCATION OF FUEL TAXES TO CITIES AND TOWNS; AMENDING SECTIONS 15-70-101, 15-70-204, 15-70-321, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE *2463*

606 *(Senate Bill No. 285; Franklin)* AN ACT PROVIDING FOR UNIVERSAL HEALTH CARE ACCESS, HEALTH CARE PLANNING, AND COST CONTAINMENT; CREATING THE MONTANA HEALTH CARE AUTHORITY; PROVIDING FOR THE POWERS AND DUTIES OF THE AUTHORITY; REQUIRING A STATEWIDE UNIVERSAL HEALTH CARE ACCESS PLAN; REQUIRING A HEALTH CARE RESOURCE MANAGEMENT PLAN; PROVIDING FOR SIMPLIFICATION OF HEALTH CARE EXPENSES BILLING; REQUIRING DEVELOPMENT

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607 *(Senate Bill No. 311; Jergeson)* AN ACT DEFINING A DIVISION ORDER FOR THE DISTRIBUTION OF OIL OR GAS PROCEEDS; ESTABLISHING CERTAIN TERMS REQUIRED TO BE IN A DIVISION ORDER; AND PROVIDING THAT THE DIVISION ORDER MAY NOT ALTER OR AMEND THE TERMS OF THE UNDERLYING OIL OR GAS LEASE *2503*

608 *(Senate Bill No. 332; Weldon)* AN ACT REVISING THE URBAN TRANSPORTATION DISTRICT LAWS; ALLOWING FOR THE APPOINTMENT OF A TRANSPORTATION DISTRICT BOARD; ALLOWING LOCAL GOVERNING BODIES TO DETERMINE THE NUMBER OF BOARD MEMBERS, THE TERM OF OFFICE, THE SELECTION OF INITIAL MEMBERS, AND THE PROCEDURE FOR FILLING VACANCIES; AMENDING SECTIONS 7-14-212 AND 7-14-214, MCA; REPEALING SECTIONS 7-14-213, 7-14-215, 7-14-216, AND 7-14-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2503*

609 *(Senate Bill No. 342; Wilson)* AN ACT REVISING THE LITTLE DAVIS-BACON ACT TO PROVIDE PENALTIES FOR WAGE VIOLATIONS ON PUBLIC CONTRACTS; REVISING PROCEDURES FOR WAGE CLAIMS; AMENDING SECTIONS 18-2-401, 18-2-403, 18-2-407, 18-2-411, 18-2-423, AND 18-2-432, MCA; REPEALING SECTION 18-2-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE *2505*

610 *(Senate Bill No. 271; Jacobson)* AN ACT ESTABLISHING A PILOT PROGRAM FOR LOCAL CITIZEN REVIEW BOARDS FOR FOSTER CARE PLACEMENTS; AMENDING SECTIONS 41-3-205, 41-3-1115, AND 41-3-1122, MCA; AND PROVIDING AN EFFECTIVE DATE *2510*

611 *(Senate Bill No. 72; Devlin)* AN ACT AMENDING THE ATMOSPHERIC WATER WEATHER MODIFICATION LAW BY INCLUDING IN THE APPLICATION REVIEW PROCESS REQUIREMENTS FOR CERTAIN ENVIRONMENTAL INFORMATION AND A PUBLIC MEETING; REVISING THE PERMIT ISSUANCE PROCESS TO INCLUDE PAYMENT OF COSTS, CRITERIA FOR DETERMINING WHAT CONSTITUTES THE GENERAL WELFARE AND THE PUBLIC GOOD AND PUBLIC HEARING PROCEDURES; PROVIDING A STATEMENT OF POLICY; SUSPENDING ACTION BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION ON APPLICATIONS FOR WEATHER MODIFICATION ACTIVITY IF THE PRIMARY BENEFIT OF THE WEATHER MODIFICATION ACTIVITY IS OUTSIDE MONTANA; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES

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612 *(House Bill No. 121; Fagg)* AN ACT EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; REPEALING SECTION 85-15-501, MCA; AND PROVIDING AN APPLICABILITY DATE 2523

613 *(House Bill No. 6; Bardanouve)* AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS AND GRANTS UNDER THE WATER DEVELOPMENT PROGRAM AND THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM; AUTHORIZING LOANS FROM WATER DEVELOPMENT BOND PROCEEDS, RENEWABLE RESOURCE DEVELOPMENT BOND PROCEEDS, AND APPROPRIATE FUNDS FOR DEBT SERVICE; REAUTHORIZING GRANTS AND LOANS APPROVED BY THE 52ND LEGISLATURE; REALLOCATING CERTAIN RESOURCE INDEMNITY TRUST ACCOUNT INTEREST INCOME FOR WATER DEVELOPMENT PROGRAM GRANTS DURING THE BIENNIUM ENDING JUNE 30, 1995; APPROVING THE ISSUANCE OF COAL SEVERANCE TAX BONDS TO PROVIDE FUNDS FOR LOANS TO POLITICAL SUBDIVISIONS AND LOCAL GOVERNMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS; AUTHORIZING THE CREATION OF STATE DEBT; APPROPRIATING COAL SEVERANCE TAX INCOME FOR DEBT SERVICE; PLACING CONDITIONS UPON GRANTS AND LOANS; STATUTORILY APPROPRIATING FUNDS FROM THE RENEWABLE RESOUCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT TO THE ENVIRONMENTAL SCIENCE-WATER QUALITY INSTRUCTIONAL PROGRAMS AT NORTHERN MONTANA COLLEGE; AMENDING SECTIONS 15-38-202 AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES 2525

614 *(House Bill No. 4; Zook)* AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE MADE BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1993; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE TO FISCAL YEAR 1994; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2534

615 *(House Bill No. 70; S. Rice)* AN ACT ESTABLISHING WEIGHING DEVICE FEES; REQUIRING DEPOSIT OF THE FEES INTO A SPECIAL REVENUE ACCOUNT TO BE USED FOR ENFORCEMENT AND ADMINISTRATION OF LICENSING WEIGHING DEVICES; AMENDING SECTION 30-12-203, MCA; AND PROVIDING AN APPLICABILITY DATE 2539

616 *(House Bill No. 142; Anderson)* AN ACT INCREASING TO $500 THE AMOUNT REQUIRED TO BE INVOLVED IN VARIOUS CRIMES BEFORE PENALTIES FOR THOSE CRIMES ARE INCREASED; AND AMENDING SECTIONS 45-2-101, 45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-312, 45-6-316, 45-6-317, 45-6-325, AND 45-7-210, MCA 2540

617 *(House Bill No. 219; Gilbert)* AN ACT ALLOWING A TAX CREDIT FOR CONVERSION OF A MOTOR VEHICLE TO ALTERNATIVE FUEL; AND

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618 *(House Bill No. 453; Molnar)* AN ACT CREATING CIVIL PENALTIES TO BE ASSESSED BY THE DEPARTMENT OF LABOR AND INDUSTRY AGAINST PERSONS CONVICTED OF THEFT FOR WORKERS' COMPENSATION FRAUD; DIRECTING THAT ANY EXCESS MONEY COLLECTED FROM PERSONS CONVICTED OF WORKERS' COMPENSATION FRAUD BE USED TO SUPPORT THE INVESTIGATION AND PROSECUTION OF WORKERS' COMPENSATION FRAUD; AND AMENDING SECTIONS 39-71-316 AND 45-6-301, MCA *2555*

619 *(House Bill No. 622; Ewer)* AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING FOR SUSPENSION OF BENEFITS TO A WORKER WHO FAILS TO KEEP MEDICAL APPOINTMENTS; DESIGNATING LIABILITY FOR OCCUPATIONAL DISEASE BENEFITS IF THERE IS MORE THAN ONE INSURER; REVISING BENEFITS WHEN OCCUPATIONAL DISEASE IS AGGRAVATED BY NONCOMPENSABLE DISEASE OR INFIRMITY; CREATING TEMPORARY PARTIAL DISABILITY BENEFITS; REVISING ELIGIBILITY REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION, REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF UNPROFESSIONAL CONDUCT; PROHIBITING CERTAIN ACTIONS; PRECLUDING LIABILITY FOR REPORTING VIOLATIONS OF THE WORKERS' COMPENSATION LAW; ALLOWING AUGMENTATION OF TEMPORARY TOTAL DISABILITY BENEFITS WITH SICK LEAVE AND VACATION LEAVE; REQUIRING THE STATE FUND BOARD TO ADOPT AN ANNUAL BUSINESS PLAN; ALLOWING GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENT USING INFORMATION PROVIDED BY THE DEPARTMENT; REQUIRING INSURERS TO NOTIFY EMPLOYERS OF REOPENED CLAIMS; ALLOWING INSURERS TO SUSPEND BENEFITS TO WORKERS RECEIVING SOCIAL SECURITY DISABILITY BENEFITS; AMENDING SECTIONS 37-1-131, 37-3-322, 37-6-310, 37-10-311, 37-12-321, 37-14-321, 39-71-116, 39-71-123, 39-71-307, 39-71-316, 39-71-407, 39-71-601, 39-71-605, 39-71-606, 39-71-607, 39-71-701, 39-71-702, 39-71-736, 39-71-2101, 39-71-2315, AND 39-72-303, MCA; AND PROVIDING AN EFFECTIVE DATE *2558*

620 *(House Bill No. 431; Strizich)* AN ACT REVISING THE BENEFIT PAID TO THE SURVIVING SPOUSE OF CERTAIN MEMBERS OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; INCREASING EMPLOYER AND EMPLOYEE CONTRIBUTIONS TO FUND THE BENEFIT CHANGE; AMENDING SECTIONS 19-9-601, 19-9-703, 19-9-804, AND 19-9-911, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . *2579*

621 *(House Bill No. 530; Spring)* AN ACT ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ISSUE SPECIAL PERMITS FOR CERTAIN TRUCK-TRAILER-TRAILER VEHICLE COMBINATIONS THAT ARE NOT MORE THAN 95 FEET IN LENGTH; AMENDING SECTION 61-10-124, MCA; AND PROVIDING AN EFFECTIVE DATE *2581*

622 *(Senate Bill No. 354; Christiaens)* AN ACT CREATING A CONTINUING EDUCATION FOR INSURERS PROGRAM; PROVIDING THAT THE PROGRAM BE ADMINISTERED BY THE COMMISSIONER OF INSURANCE; GRANTING RULEMAKING AUTHORITY TO CONDUCT

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623 *(House Bill No. 2; Zook)* AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1995 . . . . *2591*

624 *(House Bill No. 5; Bergsagel)* AN ACT REVISING CERTAIN PROVISIONS RELATING TO CAPITAL PROJECTS; APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1995; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AUTHORIZING THE CREATION OF STATE DEBT BY THE ISSUANCE OF BONDS; AMENDING SECTION 53-30-101, MCA, SECTION 6, HOUSE BILL NO. 777, LAWS OF 1989; SECTION 1, CHAPTER 624, LAWS OF 1991; SECTION 12, CHAPTER 774, LAWS OF 1991; AND SECTION 3, CHAPTER 17, SPECIAL LAWS OF JULY 1992; REPEALING CHAPTER 4, SPECIAL LAWS OF JANUARY 1992; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2668*

625 *(House Bill No. 92; Tunby)* AN ACT AMENDING THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT; CLARIFYING THAT THE ACT INCLUDES AUTHORIZATION TO ASSESS AND COLLECT OR REFUND A TAX OR LICENSE OR PERMIT FEE; ESTABLISHING REQUIREMENTS FOR TAX ASSESSMENT AND COLLECTION UNDER A STATE-TRIBAL TAX AGREEMENT; REQUIRING A PUBLIC AGENCY TO HOLD A PUBLIC MEETING PRIOR TO ENTERING INTO AN AGREEMENT ON TAXATION WITH A TRIBAL GOVERNMENT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-70-234, 17-7-502, 18-11-103, AND 18-11-104, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE *2680*

626 *(House Bill No. 411; R. Johnson)* AN ACT GENERALLY REVISING THE PUBLIC GAMBLING AND AMUSEMENT GAME LAWS OF MONTANA; REVISING THE COMPENSATION FOR GAMING ADVISORY COUNCIL MEMBERS; REVISING THE DEFINITIONS OF BINGO, DISTRIBUTOR, LICENSE, MANUFACTURER, AND PROMOTIONAL GAME OF CHANCE; REQUIRING THE DEPARTMENT OF JUSTICE TO HAVE CLEAR AND CONVINCING EVIDENCE BEFORE ISSUING A TEMPORARY CEASE AND DESIST ORDER; STATING THE TYPES OF EVIDENCE TO BE PRESENTED DURING AN ADMINISTRATIVE PROCEEDING; DEFINING CONDITIONS UNDER WHICH AN ILLEGAL GAMBLING DEVICE MAY BE BROUGHT INTO THE STATE FOR EXPORT PURPOSES; PROVIDING PENALTIES FOR CREDIT GAMBLING AND UNDERAGE GAMBLING VIOLATIONS; REVISING SHAKE-A-DAY PROVISIONS; CLARIFYING PROVISIONS REGARDING THE GRANTING OF CERTAIN GAMBLING PERMITS TO PERSONS WITHOUT ON-PREMISES CONSUMPTION ALCOHOLIC BEVERAGES LICENSES; REVISING CARD GAME TOURNAMENT PROVISIONS; LIMITING THE PAYOUT ON CERTAIN PROMOTIONAL GAMES OF CHANCE; LIMITING SPORTS POOLS TO EVENTS INVOLVING NATURAL PERSONS; CREATING A DISTRIBUTOR'S LICENSE AND A ROUTE OPERATOR'S LICENSE; DEFINING ALLOWABLE COMPENSATION FOR ROUTE OPERATORS; ALLOWING THE SALE OF VIDEO GAMBLING MACHINES BY AN OPERATOR OR LIENHOLDER; REVISING CERTAIN PROVISIONS RELATING TO VIDEO GAMBLING MACHINES; EXPANDING COURT JURISDICTION OVER GAMBLING VIOLATIONS BY YOUTHS; REVISING AMUSEMENT GAME PROVISIONS; PROHIBITING CERTAIN PROMOTIONAL ACTIVITIES IN CONNECTION WITH THE

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628 *(Senate Bill No. 347; Harp)* AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW TO ATTAIN BETTER MEDICAL COST CONTAINMENT; REVISING AN INJURED WORKER'S FREEDOM OF CHOICE OF PHYSICIANS; AMENDING MEDICAL DEFINITIONS; DISTINGUISHING BETWEEN PRIMARY AND SECONDARY MEDICAL SERVICES; REVISING PROVISIONS REGARDING PAYMENT FOR PRESCRIPTION DRUGS; PROVIDING FOR MANAGED CARE AND A PREFERRED PROVIDERS ORGANIZATION; REQUIRING THE INJURED WORKER TO COMPLY WITH RECOMMENDED MEDICAL TREATMENT; REGULATING DOMICILIARY CARE; LIMITING PHYSICIAN SELF-REFERRAL; CREATING MEDICAL ADVISORY COMMITTEES; AMENDING SECTIONS 33-22-111, 39-71-116, 39-71-704, 39-71-727, AND 39-71-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . *2711*

629 *(Senate Bill No. 310; Rea)* AN ACT PROVIDING FOR THE CONDITIONAL REMISSION OF CERTAIN CLAIMS TO EXISTING RIGHTS TO THE USE OF WATER DETERMINED BY THE MONTANA SUPREME COURT TO HAVE BEEN FORFEITED PURSUANT TO SECTION 85-2-226, MCA; PROVIDING FOR THE FILING OF LATE CLAIMS IN THE GENERAL WATER RIGHTS ADJUDICATION; PROVIDING FOR STATEWIDE NOTICE OF THE RIGHT TO FILE LATE CLAIMS; PROVIDING FOR A DEADLINE FOR THE ACCEPTANCE OF CLAIMS IN REMISSION; PROVIDING FOR CONDITIONS UPON THE ADJUDICATION OF SUCH LATE CLAIMS; DIRECTING THE WATER POLICY COMMITTEE, IN COORDINATION WITH CERTAIN STATE AGENCIES, TO CONDUCT AN INTERIM STUDY REGARDING LATE CLAIM ISSUES; AMENDING SECTIONS 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, AND 85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE *2724*

630 *(House Bill No. 13; Benedict)* AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; CLARIFYING THE COMPENSABILITY OF MENTAL STRESS CLAIMS; REVISING THE STATE FUND'S BUDGET AND FUNDING PROCEDURES; EXEMPTING THE STATE FUND FROM THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT FOR PURPOSES OTHER THAN RATEMAKING; AUTHORIZING THE LEGISLATIVE AUDITOR TO REVIEW RATES AND EXAMINE THE STATE FUND EACH YEAR; PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN APPROPRIATION; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE DEPARTMENT; AMENDING SECTIONS 17-7-502,

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631 *(House Bill No. 335; Toole)* AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; PROVIDING FOR ADDITIONAL FEES; REQUIRING NOTICE TO THE CHILD SUPPORT ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY; EXTENDING SERVICES TO CHILDREN OVER AGE 18; ALLOWING CHILD SUPPORT PAYMENTS TO FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO DISTRIBUTE INCOME-WITHHOLDING PAYMENTS BETWEEN MULTIPLE OBLIGEES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF LAW; CONFORMING INCOME-WITHHOLDING PERIODS TO OBLIGOR PAY PERIODS; AMENDING SECTIONS 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224, 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255, 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA *2745*

632 *(House Bill No. 525; J. Rice)* AN ACT ESTABLISHING THE JUDICIAL UNIFICATION AND FINANCE COMMISSION; PROVIDING FOR APPOINTMENTS TO THE COMMISSION; DIRECTING THE COMMISSION TO CONDUCT A STUDY OF THE FINANCING AND ORGANIZATION OF THE MONTANA JUDICIARY; APPROPRIATING FUNDS FOR OPERATION OF THE COMMISSION; PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE; AND PROVIDING FOR CONTINGENT VOIDNESS *2773*

633 *(House Bill No. 667; Fagg)* AN ACT EQUALIZING THE STUDENT AND TAXPAYER EQUITY FOR MONTANA PUBLIC K-12 EDUCATION BY RESTRUCTURING THE FUNDING AND BUDGET MECHANISMS FOR SCHOOL DISTRICT GENERAL FUND BUDGETS; CALCULATING A MAXIMUM GENERAL FUND BUDGET FOR EACH DISTRICT BASED ON A BASIC ENTITLEMENT AND A TOTAL PER-ANB ENTITLEMENT; ALLOWING A DISTRICT UP TO 3 YEARS TO BUDGET 80 PERCENT OF THE MAXIMUM GENERAL FUND BUDGET AMOUNT FOR THE DISTRICT, DESIGNATED AS THE BASE AMOUNT FOR SCHOOL EQUITY (BASE) BUDGET FOR THE DISTRICT; PROVIDING THAT 40 PERCENT OF THE BASIC ENTITLEMENT AND 40 PERCENT OF THE TOTAL PER-ANB ENTITLEMENT FOR A DISTRICT BE FUNDED THROUGH DIRECT STATE AID AND THAT 40 PERCENT OF THE BASIC ENTITLEMENT AND 40 PERCENT OF THE TOTAL PER-ANB ENTITLEMENT FOR A DISTRICT BE FUNDED THROUGH LOCAL REVENUE SOURCES AND GUARANTEED TAX BASE AID IF THE DISTRICT IS ELIGIBLE; REQUIRING VOTER APPROVAL TO EXCEED CERTAIN GENERAL FUND BUDGET GROWTH INCREMENTS UP TO THE BASE BUDGET AMOUNT FOR A DISTRICT IN THE 5 SCHOOL FISCAL YEARS FOLLOWING IMPLEMENTATION;

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634 *(House Bill No. 671; Gilbert)* AN ACT GENERALLY REVISING INDIVIDUAL INCOME TAX LAWS AND AMENDING CORPORATE LICENSE AND INCOME TAX LAWS; PROVIDING A SINGLE INCOME TAX RATE; REPLACING ITEMIZED INCOME TAX DEDUCTIONS WITH STANDARD DEDUCTIONS AND INCREASING THE EXEMPTION AMOUNT; CHANGING THE METHOD OF INDEXING THE STANDARD DEDUCTION AND EXEMPTION AMOUNTS; PROVIDING FOR A ONE-TIME TAX CREDIT RESULTING FROM GAIN FROM THE SALE OF A BUSINESS HELD FOR 15 OR MORE YEARS; INCREASING THE RATE OF THE CORPORATE LICENSE OR INCOME TAX FOR CORPORATIONS WITH TAXABLE INCOME OVER $500,000; INCREASING THE MINIMUM CORPORATE TAX TO $100; INCREASING THE SMALL BUSINESS CORPORATION MINIMUM FEE TO $25; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-117, 15-30-122, 15-30-126, 15-30-131, 15-30-137, 15-30-142, 15-30-323, 15-31-121, 15-31-131, 15-31-202, 15-31-204, AND 15-32-303, MCA; REPEALING SECTIONS 15-30-121, 15-30-156, 15-30-157, 15-30-159, 15-30-160, AND 15-30-199, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE *2840*

635 *(House Bill No. 692; Wanzenried)* AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE UNITED STATES NATIONAL PARK SERVICE AND THE STATE OF MONTANA; ESTABLISHING A STATUTORY APPROPRIATION; AND AMENDING SECTION 17-7-502, MCA *2857*

636 *(House Bill No. 693; Stovall)* AN ACT INCREASING THE MEMBERSHIP OF THE COMMITTEE ON INDIAN AFFAIRS; AMENDING SECTION 5-19-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE *2904*

637 *(House Bill No. 504; Benedict)* AN ACT CREATING THE WORKERS' COMPENSATION OLD FUND LIABILITY TAX BY INCREASING THE EMPLOYER PAYROLL TAX AND EXPANDING THE TAX BASE TO INCLUDE EMPLOYEES AND OTHERS RECEIVING COMPENSATION IN MONTANA; DIRECTING THAT THE TAX PROCEEDS BE USED TO ELIMINATE THE STATE FUND'S OLD FUND UNFUNDED LIABILITY; PROVIDING APPROPRIATIONS; REVISING THE INTEREST RATE OF LOANS FROM THE TAX USED TO FINANCE THE OLD FUND UNFUNDED LIABILITY; AMENDING SECTIONS 15-30-207, 39-71-406, 39-71-2351, 39-71-2354, 39-71-2501, 39-71-2502, 39-71-2503, AND 39-71-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A RETROACTIVE APPLICABILITY DATE *2904*

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638 *(House Bill No. 562; J. Rice)* AN ACT EXPANDING THE SCOPE OF THE CRIME OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT POSSESSION OF CERTAIN MATERIAL IS A CRIME; AND AMENDING SECTION 45-5-625, MCA *2913*

639 *(House Bill No. 567; Foster)* AN ACT ESTABLISHING ADDITIONAL REQUIREMENTS FOR AN AIR QUALITY PERMIT FOR COMMERCIAL MEDICAL WASTE AND COMMERCIAL HAZARDOUS WASTE INCINERATORS; REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES; COORDINATING THE PERMITTING PROCESS FOR AIR QUALITY AND SOLID AND HAZARDOUS WASTE PERMITS; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA FOR THE DENIAL OR ALTERATION OF A PERMIT; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . . . *2915*

640 *(House Bill No. 198; Peterson)* AN ACT ESTABLISHING STATE EMPLOYEE COMPENSATION PLANS AND BENEFIT LEVELS; PROVIDING PAY SCHEDULES FOR FISCAL YEARS 1994 AND 1995; APPROPRIATING MONEY TO IMPLEMENT THE SCHEDULES; REMOVING RESTRICTIONS ON RECEIVING PAY DUE TO THE LACK OF A COLLECTIVE BARGAINING AGREEMENT; PROVIDING LIMITED SEVERANCE PAY TO STATE EMPLOYEES TERMINATED UNDER CERTAIN CONDITIONS; PROVIDING A LIMITATION ON THE CHOICE OF BENEFITS; AMENDING SECTIONS 2-6-110, 2-18-301, 2-18-303, 2-18-305, 2-18-312, 2-18-313, 2-18-314, 2-18-315, 2-18-622, AND 2-18-703, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE *2925*

641 *(Senate Bill No. 196; Devlin)* AN ACT EXEMPTING NONCOMMERCIAL FARM AND RESIDENTIAL UNDERGROUND STORAGE TANKS THAT ARE 1,100 GALLONS OR LESS IN CAPACITY FROM THE CLOSURE REQUIREMENTS OF THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT; AMENDING SECTIONS 75-11-209 AND 75-11-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE *2944*

642 *(House Bill No. 645; Schye)* AN ACT ALLOWING THE BOARD OF AERONAUTICS TO PROVIDE LOANS TO LOCAL GOVERNMENTS AND STATE AGENCIES FOR AERONAUTICAL PURPOSES; ALLOWING GRANTS TO BE MADE TO MUNICIPALITIES FOR AIRPORT DEVELOPMENT AND IMPROVEMENT PROGRAMS; PROVIDING NAVIGATIONAL AIDS, SAFETY IMPROVEMENTS, WEATHER REPORTING SERVICES, AND OTHER AERONAUTICAL SERVICES FOR AIRPORTS AND LANDING FIELDS AND FOR THE STATE'S AIRWAYS; INCREASING THE TAX ON AVIATION FUEL BY 2 CENTS A GALLON FOR LOANS AND GRANTS; PROVIDING THE TAX IS REDUCED BY 1 CENT A GALLON WHEN DEPOSITS INTO THE SPECIAL AERONAUTICAL LOAN ACCOUNT REACH $1 MILLION; PROVIDING FOR REFUNDS AND CREDITS UNDER CERTAIN CONDITIONS FOR AVIATION FUEL TAXES PAID; CREATING ACCOUNTS IN WHICH TO DEPOSIT THE PROCEEDS OF THE AVIATION FUEL TAX; AMENDING SECTIONS 15-70-201, 15-70-204, 15-70-205, 15-70-221, 15-70-225, 15-70-231, 67-1-301, AND 67-1-303, MCA; AND PROVIDING EFFECTIVE DATES AND A CONTINGENT TERMINATION DATE *2945*

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15 *(Christiaens)* A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF ALTERNATIVE METHODS FOR ENFORCING THE STATE HUMAN RIGHTS LAWS IN MONTANA; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 54TH LEGISLATURE *2979*

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CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** (1) The following amounts are appropriated from the general fund for fiscal years 1993, 1994, and 1995 for the operation of the 53rd legislature and costs of preparing for the 54th legislature:

House of Representatives	$2,508,652
Senate	$1,782,666
Legislative Council	$ 714,262
Legislative Auditor	$ 20,650

(2) The appropriation to the legislative auditor is for extraordinary costs anticipated to provide staff support for select committees in the house of representatives.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved January 14, 1993.

CHAPTER NO. 2

[HB 60]

AN ACT CLARIFYING THE REQUIREMENT THAT THE DEPARTMENT OF ADMINISTRATION APPROVE THE PURCHASE OF MAIL EQUIPMENT IN THE CAPITOL AREA; AMENDING SECTION 2-17-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-302, MCA, is amended to read:

"**2-17-302. Communication systems.** (1) The department of administration shall:

(a) provide communication services to all agencies of state government. The state communications system ~~shall~~ *must* be capable of passing voice, video, data, written information, and other forms of communication to and from distant points.

(b) exercise general supervision over all existing communications systems for all agencies of state government;

(c) plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government, *including mail equipment for state agencies within a 10-mile radius of the capitol area.* In approving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies.

(d) approve standards and procedures for selection, acquisition, and operation of communications equipment;

(e) ~~insure~~ *ensure* that all communications equipment is properly maintained. The department is authorized to establish a centralized maintenance program for all state communications equipment and to contract the equipment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered.

(f) provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(g) provide a means whereby political subdivisions of the state may utilize the state communications system, upon ~~such~~ terms and under ~~such~~ conditions as the department may establish;

(h) accept federal funds granted by congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(i) foster the development of new and innovative communications systems and techniques within the state, including but not limited to satellite communications and high-speed, high-density data transfer. To carry out the purposes of this section, the department may contract with qualified private organizations, foundations, or individuals if it is in the state's best interest.

(j) pay for and allocate to state agencies, as part of services rendered, the cost of any performance audit of the state communications system performed by or at the direction of the legislative auditor.

(2) The department may provide assistance to political subdivisions or nonprofit organizations, upon ~~such~~ terms that the department may establish, relative to state and interstate communications systems and techniques.

(3) Adequate rules for the use of any communications equipment and facilities ~~now in use or hereafter made available~~ must be adopted by the:

(a) department for executive branch agencies;

(b) supreme court for judicial branch agencies; and

(c) legislature by joint rule for members of the legislature and legislative branch agencies."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved January 25, 1993.

CHAPTER NO. 3

[SB 42]

AN ACT CLARIFYING SERVICE OF PROCESS PROVISIONS RELATING TO PERSONAL INJURY AND PROPERTY ACTIONS AGAINST THE STATE; AND AMENDING SECTION 2-9-313, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-313, MCA, is amended to read:

"**2-9-313. Service of process on state.** In all actions against the state *arising under this chapter*, the state ~~shall~~ *must* be named the defendant~~,~~ and the summons and complaint ~~shall~~ *must* be served on the director of the department of administration in addition to service required by Rule 4D(2)(h), M.R.Civ.P. *The state shall serve an answer within 40 days after service of the summons and complaint.*"

Approved January 25, 1993.

CHAPTER NO. 4

[SB 2]

AN ACT ESTABLISHING THE MONTANA HISTORICAL SOCIETY ACQUISITIONS TRUST; PROVIDING THAT THE INTEREST EARNINGS OF THE TRUST MAY BE SPENT BY THE MONTANA HISTORICAL SOCIETY FOR THE PURPOSE OF ACQUIRING SOCIETY LIBRARY, MUSEUM, ARCHIVE, AND PHOTOARCHIVE ITEMS OR COLLECTIONS AND OTHER HISTORICAL RECORDS; EXEMPTING ACQUISITIONS TRUST REVENUE FROM THE REQUIREMENT THAT NONGENERAL FUND MONEY BE EXPENDED FIRST; AMENDING SECTIONS 17-2-108 AND 22-3-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Montana Historical Society fulfills a unique and vital role in the preservation and presentation of historical Montana records through the acquisition and maintenance of items and collections of public interest; and

WHEREAS, timely acquisitions are vital to the Montana Historical Society's ability to maintain the viability of collections and items for research and exhibit; and

WHEREAS, it is to the benefit of the Montana Historical Society's role and in the interest of all Montanans that the Society have a readily available source of funds to purchase important historical records, items, and collections as they become available.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Acquisitions trust.** There is an account in the fiduciary fund category nonexpendable trust fund type to be known as the Montana historical society acquisitions trust, to be used exclusively for the acquisition of items or collections as provided in [section 2].

Section 2. **Use of acquisitions trust funds — principal nonexpendable — investment of principal — reversion of unspent revenue.** (1) The principal of the acquisitions trust established in [section 1] is intended to be a permanent, nonexpendable trust subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) Unless otherwise provided by the donor, donations of $500 or more received pursuant to 22-3-107(9) and revenue earned by the Montana historical

society from sales provided for by 22-3-107(6) must be placed in the acquisitions trust.

(3) Interest earned on the principal of the acquisitions trust may be used only for the purpose of acquiring society library, museum, archive, and photoarchive items or collections.

(4) Revenue that is not expended on appropriate acquisitions authorized in subsection (3) and that remains at the end of each fiscal year reverts to the principal of the acquisitions trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the society from the acquisitions trust.

Section 3. Section 22-3-107, MCA, is amended to read:

"**22-3-107. Authority of board.** The powers and duties of the trustees are as follows:

(1) to elect annually from among their number a president, a ~~vice-president~~ *vice president*, and a secretary;

(2) to adopt bylaws for their own government and to make rules, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people;

(3) to appoint a director, fix ~~his~~ *the director's* salary, and prescribe ~~his~~ *the director's* duties and responsibilities;

(4) to create ~~such~~ classes of memberships in the society as they ~~deem~~ *consider* desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for ~~such~~ memberships;

(5) to sell or exchange publications and other museum or art objects and use the money arising from ~~such~~ sales for the operation of the society and for the acquisition of historical materials and objects of art;

(6) to sell or exchange surplus or duplicate books, surplus museum or art objects or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from ~~such~~ *the* sales exclusively for acquisitions of library, art, and museum artifacts;

(7) to see that the collections and properties of the society are maintained in good order and repair;

(8) to report to the governor and, as provided in 5-11-210, the legislature biennially. The report ~~shall~~ *must* include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) to accept, receive, and administer in the name of the society any gifts, donations, properties, securities, bequests, and legacies that may be made to the society. ~~Moneys~~ *Money in the amount of less than $500* received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, ~~shall~~ *must* be

deposited in the state treasury and used for the general operation of the society. *Unless otherwise provided by donor, donations, gifts, bequests, or legacies in the amount of $500 or more must be deposited in the acquisitions trust established in [section 1].*

(10) to collect, assemble, preserve, and display, ~~where~~ *when* appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history of Montana in particular and generally of the Pacific Northwest, Northern Rocky Mountain, and Northern Great Plains regions and of the United States of America when pertinent;

(11) to procure from pioneers, early settlers, and others narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west, and all other related documents of Montana's history, development, and society;

(12) to gather contemporary information, specimens, and all other materials ~~which~~ *that* exhibit faithfully the distinctive historical and contemporary characteristics of the area, with particular attention to Indian, military, and pioneer artifacts and implements;

(13) to collect and preserve such natural history objects as fossils, plants, minerals, and animals;

(14) to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research;

(15) to promote the study of Montana history by lectures and publications;

(16) to publish a roadside history of Montana, with maps, photographs, and text that will enable tourists, citizens, and students to understand the history of the countryside seen from the state's main roads;

(17) to generally foster and encourage the fine arts and cultural activities in Montana;

(18) to receive for and on behalf of the state, by donation or otherwise, art objects of any kind and description and to exhibit and circulate ~~such~~ *the* objects in Montana and elsewhere;

(19) to microfilm papers or documents in danger of disappearance or injury; and

(20) to coordinate the administration of the historic records network established in 22-3-211."

Section 4. Section 17-2-108, MCA, is amended to read:

"**17-2-108. Expenditure of nongeneral fund money first.** (1) ~~An~~ *Except for the exemption applicable to the Montana historical society in [section 2(5)], an* office or entity of the executive, legislative, or judicial branch of state government shall apply expenditures against appropriated nongeneral fund money whenever possible before using general fund appropriations.

(2) The approving authority, as defined in 17-7-102, shall authorize the decrease of the general fund appropriation of an agency by the amount of money received from federal sources in excess of the appropriation in an appropriation act unless the decrease is contrary to federal law, federal rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If directed by an appropriation act, the approving authority shall decrease the general fund appropriation of an agency by the amount of money received from nonfederal sources in excess of the appropriation unless the decrease is contrary to state law, state rule, or a contract or unless the approving authority certifies that the services to be funded by the additional money are significantly different than those for which the agency received the general fund appropriation. If the general fund appropriation of an agency is decreased pursuant to this section, the appropriation for the fund in which the money is received is increased in the amount of the general fund decrease."

Section 5. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 22, chapter 3, part 1, and the provisions of Title 22, chapter 3, part 1, apply to [sections 1 and 2].

Section 6. **Effective date.** [This act] is effective July 1, 1993.

Approved January 26, 1993.

CHAPTER NO. 5

[HB 36]

AN ACT MAKING SEPARATE FELONY OFFENSES THE KNOWING FAILURE TO ESTABLISH A LIVESTOCK MARKETING CUSTODIAL ACCOUNT AND THE IMPROPER USE OF A LIVESTOCK MARKETING CUSTODIAL ACCOUNT; AND AMENDING SECTION 81-8-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-8-216, MCA, is amended to read:

"**81-8-216. Penalties.** (1) A person who knowingly violates any provision of 81-8-214, 81-8-215, 81-8-251 through 81-8-256, and 81-8-258 through 81-8-263 or rules adopted by the department under 81-8-231 is guilty of a misdemeanor and upon conviction shall be fined not less than $100 or more than $600, imprisoned in the county jail not less than 30 days or more than 6 months, or both. A person convicted of a subsequent violation of 81-8-214, 81-8-215, 81-8-251 through 81-8-256, and 81-8-258 through 81-8-263 or rules adopted to implement those sections shall be fined not less than $200 or more than $1,000, imprisoned in the county jail for not less than 3 months or more than 6 months, or both, and the department may cancel ~~his~~ *the person's* certificate.

(2) Of all fines assessed and collected under this section, except those assessed and collected in a justice's court, 50% ~~shall~~ *must* be paid into the state treasury and credited to the special revenue fund for the use of the department and 50% ~~shall~~ *must* be paid into the general revenue fund of the county in which the conviction occurred.

(3) A person ~~who~~ *is, upon conviction, guilty of a felony if the person* knowingly fails*:*

(a) to establish ~~and properly use~~ a custodial account resulting in a failure to account for or to remit money belonging to others under this chapter*; or*

(b) to properly use a custodial account resulting in a failure to account for or to remit money belonging to others under this chapter ~~is, upon conviction, guilty of a felony~~."

Approved January 28, 1993.

CHAPTER NO. 6

[HB 54]

AN ACT ELIMINATING THE REQUIREMENT THAT A TOWN, A CITY, OR A COUNTY NOTIFY THE BOARD OF INVESTMENTS WHEN BONDS ARE TO BE SOLD; AMENDING SECTIONS 7-7-2302, 7-7-4302, 7-12-2172, AND 7-12-4204, MCA; AND REPEALING SECTIONS 7-7-2253 AND 7-7-4253, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2302, MCA, is amended to read:

"**7-7-2302. Applicability of certain other bond provisions.** The provisions of 7-7-2203 through 7-7-2207, 7-7-2209 through 7-7-2211, 7-7-2222, 7-7-2255 through 7-7-2270, and 7-7-2272 through 7-7-2274 apply to refunding bonds issued under this part; however, the board of county commissioners may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-2251, *7-7-2252, and* ~~through~~ 7-7-2254."

Section 2. Section 7-7-4302, MCA, is amended to read:

"**7-7-4302. Applicability of certain other bond provisions.** The provisions of 7-7-4201 through 7-7-4206, 7-7-4208 through 7-7-4210, 7-7-4255 through 7-7-4270, and 7-7-4272 through 7-7-4274 apply to refunding bonds issued under this part; however, the city or town council may at its option sell bonds issued under this part at a private negotiated sale or at a public sale conducted pursuant to the provisions of 7-7-4251, *7-7-4252, and* ~~through~~ 7-7-4254."

Section 3. Section 7-12-2172, MCA, is amended to read:

"**7-12-2172. Procedure to issue bonds and warrants.** (1) The board of county commissioners shall sell bonds or warrants issued under the provisions of 7-12-2169 and 7-12-2171 through 7-12-2174, in an amount sufficient to pay that part of the total cost and expense of the improvements which is to be assessed against the benefited property within the district, to the highest and best bidder for cash, at a price, including interest to date of delivery, not less than that prescribed by the board in the resolution calling for the sale of the bonds or warrants. The board may fix the minimum price for the bonds or warrants in an amount less than the face value of the bonds or warrants if it determines that the sale is in the best interests of the district and the county.

(2) The bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana, or an agency, instrumentality, corporation, or department thereof.

(3) In all other cases, the provisions of 7-7-4251, *7-7-4252, and* ~~through~~ 7-7-4254 which relate to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as they are applicable and not in conflict with the provisions of this section and 7-12-2173, shall apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling bonds or warrants."

Section 4. Section 7-12-4204, MCA, is amended to read:

"**7-12-4204. Procedure to issue bonds and warrants.** (1) The city or town council shall sell bonds or warrants issued under the provisions of 7-12-4201, in an amount sufficient to pay that part of the total cost and expense of the improvements ~~which~~ *that* is to be assessed against benefited property within the district, to the highest and best bidder ~~therefor~~ for cash at a price, including interest ~~thereon~~ to date of delivery, not less than that prescribed by the city council in the resolution calling for the sale of the bonds or warrants. The city council may fix the minimum price for the bonds or warrants in an amount less than ~~the~~ face value ~~thereof~~ if it determines that ~~such~~ *the* sale is in the best interests of the district and the city.

(2) The bonds or warrants may be sold at a private negotiated sale to the United States or the state of Montana~~,~~ or *to* an agency, instrumentality, corporation, or department ~~thereof~~ *of the state.*

(3) In all other cases, the provisions of 7-7-4251, *7-7-4252, and* ~~through~~ 7-7-4254 with regard to the notice of sale, publication of notice, and manner and method of selling bonds by cities and towns, insofar as the same are applicable ~~thereto~~ and not in conflict with the provisions of this section and 7-12-4205, ~~shall~~ apply to, govern, and control the form of notice of sale, publication of notice, and manner and method of selling ~~such~~ *the* bonds or warrants."

Section 5. **Repealer.** Sections 7-7-2253 and 7-7-4253, MCA, are repealed.

Approved January 28, 1993.

CHAPTER NO. 7

[HB 20]

AN ACT ABOLISHING THE CAPITOL BUILDING AND PLANNING COMMITTEE AND REASSIGNING ITS FUNCTIONS; PROVIDING THAT THE MONTANA HISTORICAL SOCIETY SHALL PROTECT AND PRESERVE PERMANENT ARTWORK IN THE CAPITOL BUILDING; REQUIRING THE LEGISLATIVE COUNCIL TO CONSULT WITH THE HISTORICAL SOCIETY ON THE PLACEMENT OF ARTWORK IN THE CAPITOL BUILDING; AMENDING SECTIONS 2-17-101, 2-17-109, 5-17-102, 5-17-103, AND 5-11-210, MCA; AND REPEALING SECTIONS 5-17-101 AND 5-17-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-101, MCA, is amended to read:

"**2-17-101. Allocation of space.** (1) The department of administration shall determine the space required by state agencies other than the university system and shall allocate space in buildings owned or leased by the state, based on each agency's need. To efficiently and effectively allocate space, the department periodically shall identify the amount, location, and nature of space used by each agency.

(2) An agency requiring additional space shall notify the department. The department, in consultation with the agency, shall determine the amount and nature of the space needed and locate space within a building owned or leased by the state to meet the agency's requirements. If no space is available in a building owned or leased by the state, the department shall locate space to be leased in an appropriate building or recommend alternatives to leasing, such as remodeling or exchanging space with another agency. A state agency may not lease, rent, or purchase property for quarters without prior approval of the department.

(3) (a) The location of the chambers for the house of representatives ~~shall~~ *must* be determined in the sole discretion of the house of representatives. The location of the chambers of the senate ~~shall~~ *must* be determined in the sole discretion of the senate.

(b) The department of administration, with the advice of the ~~capitol building and planning committee~~ *legislative council*, shall allocate other space for the use of the legislature, including but not limited to space for committee rooms and legislative offices.

(4) For state agencies located in a city other than Helena, the department of administration shall consolidate the offices of these agencies in a single, central location within the city whenever ~~such~~ *the* consolidation would result in a cost savings to the state while permitting sufficient space and facilities for the agencies. The department may purchase, lease, or acquire, by exchange or otherwise, land and buildings in the city to achieve consolidation. State retail liquor stores, liquor retail agencies, and offices of the law enforcement services division and motor vehicle division of the department of justice are exempted from consolidation."

Section 2. Section 2-17-109, MCA, is amended to read:

"**2-17-109. Remodeling and renovation — senate chambers and former supreme court chambers to be preserved.** ~~(1) Notwithstanding the provisions of Title 5, chapter 17, part 1, the department of administration shall proceed with the plans for the remodeling and renovation of the state capitol for which moneys were appropriated by the 47th legislature and reappropriated by the 48th legislature.~~

~~(2) In proceeding with such plans, the department of administration shall consult with the capitol building and planning committee provided for in 5-17-101; however, such plans and the implementation of such plans need not be reported to the 49th legislature before implementation.~~

~~(3) The department of administration, in the implementation of such plans, shall keep and maintain the senate chambers in its present location.~~

~~(4)~~*(1)* If future senate bodies ~~should~~ determine that the location of the senate chambers ~~is to~~ *should* be moved, the department of administration shall keep and maintain the physical structure and location of the present senate chambers as a single room ~~which shall~~ *that must* be used for legislative purposes. ~~Such~~ *The* room ~~shall~~ *may* not be divided in any manner, and the artwork and height of the ceiling ~~shall~~ *must* be maintained and preserved.

~~(5)~~*(2)* The department of administration shall keep and maintain the physical structure and location of the supreme court chambers, which were occupied by the Montana supreme court until the new justice building was completed and dedicated in 1983, as a single room ~~which shall~~ *that must* be used for legislative committee purposes. ~~Such~~ *The* room ~~shall~~ *may* not be divided in any manner, and the artwork and height of the ceiling ~~shall~~ *must* be maintained and preserved."

Section 3. Section 5-17-102, MCA, is amended to read:

"5-17-102. Function of ~~committee~~ *department of administration* — capitol area master plan — *advice of legislative council.* (1) The ~~function of the committee is to~~ *department of administration shall* establish and maintain a master plan for the orderly development of state buildings in the immediate area of the capital city. The master plan ~~shall~~ *must* be developed and maintained, with consideration given to the following factors:

(a) the needs of the state relative to the location and design of buildings to be constructed, purchase of land, parking facilities, traffic management, and landscaping;

(b) the ordinances, plans, requirements, and proposed improvements of the city of Helena and Lewis and Clark County, based without limitation upon zoning regulations, population trends, and plans for rapid transit development;

(c) any other factors that bear upon the orderly, integrated, and cooperative development of the state, the city of Helena, Lewis and Clark County, and ~~of~~ state property in the immediate area of the capital city.

(2) The ~~committee~~ *legislative council* shall consult with and advise the department of administration concerning the assignment of space in the capitol ~~complex and the actual placement of busts, statues, memorials, or art displays of a permanent nature within public areas of the capitol complex. No such item may be permanently displayed unless authorized by the legislature~~.

(3) The legislative council shall consult with and advise the Montana historical society on the placement of busts, statues, memorials, or art displays of a permanent nature within public areas of the capitol building. An item may not be permanently displayed unless approved by the legislature.

(4) The Montana historical society shall protect and preserve the permanent artwork in the capitol building and request funding for periodic inspection, maintenance, and repair of the artwork from the trust fund established in 15-35-108 for protection of works of art in the state capitol and other cultural and aesthetic projects.

~~(3)~~*(5)* The ~~committee~~ *legislative council* shall serve as a long-range building committee to recommend to the legislature and the department of administration construction and remodeling priorities for the capitol ~~complex~~."

Section 4. Section 5-17-103, MCA, is amended to read:

"**5-17-103. Report to legislature.** The ~~committee shall~~ *legislative council may* prepare a written report of its activities and recommendations *related to its duties under 5-17-102(2)* ~~and present the report to the legislature as provided in 5-11-210~~ for the purpose of assisting the legislature in determining ~~if such~~ *whether the* recommendations should be implemented. ~~To prepare its report and recommendations, the committee may receive assistance from the legislative council.~~"

Section 5. Section 5-11-210, MCA, is amended to read:

"**5-11-210. Clearinghouse for reports to legislature.** (1) For the purposes of this section, "report" means:

(a) a document required to be prepared for the legislature as required in any of the sections listed in subsection (10); and

(b) unless otherwise provided by law, any other report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the executive director of the legislative council:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed one page;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies;

(e) an estimated cost for each copy of the report; and

(f) the date on which the entity will deliver the final, published copies of the report to the legislature.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the legislative council or the executive director shall, in writing, direct the reporting entity to provide a specific number of copies. The number of copies required is at the sole discretion of the legislative council. The legislative council or the executive director may require the reporting entity to mail the copies of the report.

(4) The legislative council may require that the report be submitted in an electronic format useable on the legislature's current computer hardware, in a

microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative council.

(6) The executive director of the legislative council shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b), available from the legislative council. The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director or the legislative council shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative council may keep as many copies of a report as ~~he considers~~ *are* necessary, and ~~copies of the report may be discarded at his discretion~~ *discard the rest.*

(10) (a) A report to the legislature includes a report required to be made by a board, bureau, commission, committee, council, department, division, fund, authority, or officer of the state or a local government in 1-11-204, 2-4-411, 2-7-104, 2-8-112, 2-8-203, 2-8-207, 2-8-208, 2-15-2021, 2-18-209, 2-18-811, 2-18-1103, 3-1-702, 3-1-1126, 5-5-216, 5-13-304, ~~5-17-103,~~ 5-18-203, 5-19-108, 10-4-102, 15-1-205, 17-4-107, 17-5-1650, 18-7-303, 19-4-201, 20-9-346, 20-25-236, 20-25-301, 22-3-107, 23-7-203, 33-22-1513, 37-1-106, 39-6-101, 39-51-407, 44-2-304, 44-13-103, 46-23-316, 53-2-1107, 53-6-110, 53-20-104, 53-21-104, 53-24-204, 53-24-210, 53-30-133, 69-1-404, 72-16-202, 75-1-203, 75-1-1101, 75-7-304, 75-10-533, 75-10-704, 76-11-203, 76-12-109, 80-7-713, 80-12-402, 82-11-161, 85-1-621, 85-2-105, 87-2-724, 87-5-123, 90-3-203, or 90-4-111.

(b) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201."

Section 6. **Repealer.** Sections 5-17-101 and 5-17-104, MCA, are repealed.

Approved January 29, 1993.

CHAPTER NO. 8

[HB 37]

AN ACT INCREASING THE PENALTY FOR ALLOWING AN ANIMAL TO UNLAWFULLY RUN AT LARGE; AND AMENDING SECTION 81-4-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-202, MCA, is amended to read:

"**81-4-202. Penalties.** (1) Any person violating 81-4-201 ~~shall be deemed~~ *is* guilty of a misdemeanor~~,~~ and upon conviction ~~thereof~~ shall be fined ~~in the sum of $10 for the first offense and in the sum of $20 for each subsequent offense~~ *not more than $500* and ~~shall be~~ *is* liable ~~in damage~~ *for damages* to any party injured ~~thereby~~ *by the violation,* ~~to be recovered~~ in any court having competent jurisdiction.

(2) All fines collected under the provisions of this section, except those collected in a justice's court, ~~shall~~ *must* be paid into the county treasury for the use and benefit of the public schools."

Approved January 29, 1993.

CHAPTER NO. 9

[HB 55]

AN ACT RESTORING TO A RETIRED MEMBER OF THE TEACHERS' RETIREMENT SYSTEM THE MEMBER'S FULL NORMAL FORM OF RETIREMENT ALLOWANCE IF THE BENEFICIARY DESIGNATED AT THE TIME OF RETIREMENT FOR CERTAIN OPTIONAL RETIREMENT ALLOWANCES PRECEDES THE MEMBER IN DEATH; AND AMENDING SECTION 19-4-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-702, MCA, is amended to read:

"**19-4-702. Optional allowances.** (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in part 8 of this chapter and 19-4-902. If a ~~beneficiary~~ *member* dies within 30 days after retirement, ~~his~~ *the member's* election to receive an optional allowance is void and ~~his~~ *the member's* death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's retirement or disability allowance at the time of ~~his~~ *the member's* retirement and provides an allowance payable to ~~him~~ *the member* throughout ~~his~~ *the member's* lifetime and, upon ~~his~~ *the member's* death, an allowance payable to the person that ~~he~~ *the member* nominated by written designation, duly acknowledged and filed with the retirement board at the time of ~~his~~ *the member's* retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout ~~his~~ *the member's* lifetime and, upon ~~his~~ *the member's* death, continue throughout the lifetime of ~~his~~ *the member's* designated beneficiary.

(b) Option B—the optional allowance will be paid to the member throughout ~~his~~ *the member's* lifetime, and upon ~~his~~ *the member's* death, one-half of the optional allowance will be continued throughout the lifetime of ~~his~~ *the member's* designated beneficiary.

(c) Option C—the optional allowance will be paid to the member throughout ~~his~~ *the member's* lifetime, and upon ~~his~~ *the member's* death, two-thirds of the optional allowance will be continued throughout the lifetime of ~~his~~ *the member's* designated beneficiary.

(d) Option D~~—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, one-half of the optional allowance will be continued throughout the lifetime of the survivor.~~

~~(e) Option E—the optional allowance will be paid to the member while both the member and his designated beneficiary are living, and upon the death of either, two-thirds of the optional allowance will be continued throughout the lifetime of the survivor.~~

~~(f) Option F—~~some other benefit will be paid either to the member or ~~his~~ *the member's* surviving designated beneficiary in accordance with provisions approved by the retirement board.

(3) (a) Upon written request to the retirement board, a retired member who is receiving an optional retirement allowance may designate a different beneficiary, select a different option, or convert ~~his~~ *the member's* optional retirement allowance to a regular retirement or disability allowance if:

(i) the original beneficiary has died; or

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(4) Effective on the first of the month following receipt of notification of the death of a person nominated as the designated beneficiary under subsection (2), any optional retirement allowance that is effective after October 1, 1993, will revert to the full normal form of retirement allowance available at the time of retirement. The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement."

Approved January 29, 1993.

CHAPTER NO. 10

[SB 1]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CLARIFY ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 53RD LEGISLATURE; AMENDING SECTIONS 2-1-212, 2-89-202, 2-89-301, 2-89-302, 3-1-501, 3-2-704, 3-5-602, 3-12-106, 5-17-202, 7-4-2503, 7-4-2504, 7-6-4135, 7-12-2175, 7-12-4207, 7-14-102, 7-14-2524, 10-2-412, 10-2-416, 10-4-212, 13-37-226, 15-1-201, 15-1-202, 15-1-205, 15-24-101, 15-24-102, 15-30-101, 15-32-201, 15-36-112, 17-6-102, 17-6-104, 17-7-304, 19-1-102, 19-1-304, 19-1-401, 19-1-402, 19-1-503, 19-1-823, 19-12-202, 20-9-213, 20-10-146, 23-2-716, 23-2-717, 23-2-718, 25-34-102, 25-35-502, 25-35-503, 27-1-717, 27-25-102, 27-25-203, 27-26-102, 27-26-206, 27-27-102, 30-3-415, 32-2-406, 33-2-827, 33-11-105, 35-2-906, 37-17-304, 37-27-103, 37-61-202, 39-51-406, 41-5-306, 46-11-701, 46-18-101, 46-18-201, 46-18-225, 46-18-254, 46-23-201, 53-3-308, 53-19-305, 53-20-147, 53-21-147, 61-1-314, 61-4-120, 61-5-117, 75-10-512, 75-10-603, 80-8-102, 81-22-101, 82-3-205, 85-9-604, 85-9-629, AND 87-1-504, MCA; REPEALING SECTIONS 2-15-3204, 2-15-3205, 2-89-207, 10-2-411, 10-2-413, 10-2-414, 10-2-415, AND 30-6-112, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-1-212, MCA, is amended to read:

"**2-1-212. Acceptance of concurrent jurisdiction over veterans ~~administration~~ center.** The state of Montana hereby accepts the cession of concurrent jurisdiction with the United States over the real property comprising the veterans ~~administration~~ center, Fort Harrison, Montana, as ceded by Public Law 91-45~~;~~, 83 Stat. 48, which was approved July 19, 1969, and made effective upon acceptance of the cession by the state of Montana."

Section 2. Section 2-89-202, MCA, is amended to read:

"**2-89-202. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Centennial acre" means one or more separate parcels of land of about ~~1~~ *one* acre located in Montana that are acquired by donation from a private source or designated land owned by the state. If there is more than one centennial acre, each separate parcel is to be designated ~~by the office~~ as a particular centennial acre, such as "the agricultural centennial acre" or "the mountain centennial acre".

(2) "Department" means the department of fish, wildlife, and parks.

~~(3) "Office" means the Montana statehood centennial office as provided for in 2-15-389 (now terminated).~~"

Section 3. Section 2-89-301, MCA, is amended to read:

"**2-89-301.** *(Temporary)* **Regular issue centennial license plates — design of regular or commemorative plates.** ~~(1)~~ The department of justice, in issuing license plates under the provisions of 61-3-321, shall provide for the issuance of regular license plates carrying a design recognizing the centennial of Montana's 1889 admission to statehood.

~~(2) The design of the license plates issued under the provisions of 2-89-302 or this section must be developed in consultation with the Montana statehood centennial office established in 2-15-389 (now terminated).~~ *(Terminates July 1, 1996—sec. 4, Ch. 654, L. 1989.)* "

Section 4. Section 2-89-302, MCA, is amended to read:

"**2-89-302.** *(Temporary)* **Commemorative centennial license plates.** (1) Notwithstanding the 4-year period provided for in 61-3-332(2), the department of justice may issue commemorative centennial license plates for a different period ~~if requested by the Montana statehood centennial office,~~ at prices to be ~~agreed upon~~ *determined* by the department ~~and the office~~ as provided in 2-89-303.

(2) Commemorative license plates may be:

(a) collectors' license plates, intended to be collectors' items only, distinctively marked or colored. ~~Such~~ *The* plates may be designated as not valid for the purpose of licensing motor vehicles within the state~~; or~~.

(b) special or limited duration license plates valid for licensing motor vehicles in the state and carrying the same general centennial design as regularly issued license plates provided for in 2-89-301, except that they may differ from ~~such~~ regular license plates by:

(i) color;

(ii) use of a distinctive series of registration numbers or special prefixes or suffixes for the registration numbers; and

(iii) by other details not distracting from legibility or recognition of the license plate.

(3) (a) ~~For all licenses sold before December 1, 1989,~~ *The* proceeds from the sale of commemorative license plates~~, after payment of the agreed price to the department, must be used for centennial activities of the office as provided in part 1 (now terminated) of this chapter. The proceeds for sales occurring after November 30, 1989,~~ must be deposited in the general fund.

(b) A county shall assess an additional fee of $3 for each set of commemorative centennial license plates issued in the county to defray the costs incurred by the county treasurer. The county treasurer shall collect the fee and deposit the money in the county general fund.

(c) The issuance of commemorative license plates must be made at no direct cost to the state.

(4) Commemorative license plates that are valid for licensing a motor vehicle must carry the assigned county number, as established in 61-3-332, either within the registration numbers or by means of an affixed nonremovable sticker bearing the appropriate county designation and used in accordance with instructions by the department. *(Terminates July 1, 1996—sec. 4, Ch. 654, L. 1989.)* "

Section 5. Section 3-1-501, MCA, is amended to read:

"**3-1-501. What acts or omissions are contempts.** (1) The following acts or omissions in respect to a court of justice or proceedings ~~therein~~ *in a court of justice* are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as such without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of ~~such~~ *the* court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

(i) any other unlawful interference with the process or proceedings of a court;

(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

(k) when summoned as a juror in a court, neglecting to attend or serve as ~~such~~ *a juror* or improperly conversing with a party to an action to be tried at ~~such~~ *the* court or with any other person in relation to the merits of ~~such~~ *the* action or receiving a communication from a party or other person in respect to it without immediately disclosing the same to the court;

(l) disobedience by ~~an inferior~~ *a lower* tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after ~~such~~ *the* action or special proceeding is removed from the jurisdiction of ~~such inferior~~ *the lower* tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of ~~such~~ *the* officer."

Section 6. Section 3-2-704, MCA, is amended to read:

"**3-2-704. Local rules.** ~~Any~~ *A* district court ~~and the supreme court~~ may adopt rules of court governing its practice so long as ~~such~~ *the* rules are not in conflict with the rules promulgated by the supreme court of the state of Montana in accordance with this part."

Section 7. Section 3-5-602, MCA, is amended to read:

"**3-5-602. Salary and expenses — apportionment.** (1) Each reporter is entitled to receive a base annual salary of not less than $23,000 or more than $30,000 and no other compensation except as provided in 3-5-604. The salary ~~shall~~ *must* be set by the judge for whom the reporter works. The salary is payable in monthly installments out of the general funds of the counties comprising the district for which the reporter is appointed and out of an appropriation made to the ~~department of commerce~~ *supreme court administrator* as provided in subsection (2).

(2) The ~~department of commerce~~ *supreme court administrator* shall determine the total number of civil and criminal actions commenced in the preceding year in the district court or courts in the judicial district for which a reporter is appointed. The state shall pay its portion of the reporter's salary based on the proportion of the total number of criminal actions commenced in the district court or courts in the district and the amount appropriated for that purpose. Each county shall pay its portion of the remainder of the salary based on its proportion of the total number of civil and criminal actions commenced in the district courts in the district. The judge or judges of the district shall, on January 1 of each year or as soon thereafter as possible, apportion the amount of the salary to be paid by each county in ~~his or their~~ *the* district on the basis prescribed in this subsection. The portion of the salary payable by a county is a district court expense within the meaning of 7-6-2351, 7-6-2352, and 7-6-2511.

(3) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees provided for in subsection (1), ~~his~~ actual and necessary travel expenses, as defined and provided in 2-18-501 through 2-18-503, when ~~he goes~~ on official business to a county of ~~his~~ *the reporter's* judicial district other than the county in which ~~he~~ *the reporter* resides~~, from the time he leaves his place of residence until he returns thereto~~. The expenses ~~shall~~ *must* be apportioned and *are* payable in the same way as the salary."

Section 8. Section 3-12-106, MCA, is amended to read:

"**3-12-106. Jurisdiction — removal from district court.** (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when:

(a) ~~such~~ *the* action arises out of a contract, express or implied;

(b) the amount of the claim, exclusive of costs, does not exceed ~~$2,500~~ *$3,000*; and

(c) the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and the total value of money claimed or property sought does not exceed ~~$2,500~~ *$3,000.*

(3) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~$2,500~~ *$3,000.* The small claims court shall hear ~~any~~ *the* action so removed from the district court."

Section 9. Section 5-17-202, MCA, is amended to read:

"**5-17-202. Capitol restoration commission — composition — allocation.** (1) There is a capitol restoration commission consisting of:

(a) the governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and state auditor, who are ex officio members of the commission. Each ex officio member may appoint up to two members from the public sector or private sector who shall serve for 4 years.

(b) the director of the Montana historical society and the state architect, who shall serve on the ~~committee~~ *commission* and assist the ~~committee~~ *commission* with technical support.

(2) The governor is the ~~president~~ *presiding officer,* and in ~~his~~ *the governor's* absence, the secretary of state shall preside. ~~, and the~~ *The* director of the department of administration is the secretary of the commission. In the absence of either the ~~president~~ *presiding officer* or the secretary, an officer pro tempore may be elected from the ex officio members.

(3) (a) The meetings of the commission are held at the call of the ~~president~~ *presiding officer.*

(b) If an ex officio member is unable to attend a meeting of the commission, ~~he~~ *the member* may designate another individual to attend ~~and represent him~~.

(4) The commission is allocated to the department of administration for administrative purposes only as prescribed in 2-15-121."

Section 10. Section 7-4-2503, MCA, is amended to read:

"**7-4-2503. Salary schedule for certain county officers.** (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, and county sheriff; the county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812; and the county auditor in all counties where the office is authorized, for the fiscal year beginning July 1, 1991, and each year thereafter must be established by the county governing body at no less than 80% of the annual base salary of:

(i) $25,000 for the counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction thereof included in the county's population as determined by the 1990 federal decennial census; or

(ii) $18,000 for counties of the sixth and seventh class added to the population increment of $10 per 100 persons or major fraction thereof in the county's population as determined by the 1990 federal decennial census.

(b) The annual base established by the county governing body in subsection (1) must be uniform for all county officers referred to in subsection (1).

(2) (a) An elected county superintendent of schools shall receive, in addition to the salary based upon subsection (1), the sum of $400 per year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 per year.

(b) The county sheriff shall receive, in addition to the salary based upon subsection (1), the sum of $2,000 per year.

(c) The county sheriff shall receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney ~~shall~~ *must* be a full-time official under 7-4-2704, and ~~his~~ *the* salary for the fiscal year beginning July 1, 1991, ~~shall be~~ *is* $50,000 per year. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the salary of the county attorney for the fiscal year beginning July 1, 1991, ~~shall be~~ *is* the same as that established for full-time county attorneys in subsection (3)(a).

(c) Beginning ~~on~~ July 1, 1991, and on July 1 of each succeeding year, each county attorney ~~shall be~~ *is* entitled to an increase in salary calculated by adding to ~~his~~ *the* annual salary on July 1, 1991, ~~an increment of 100% of~~ *the percentage change in* the ~~last~~ previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for the fiscal year beginning July 1, 1983, and for each subsequent fiscal year ~~shall~~ *must* be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), any cost-of-living increment that would have been received for ~~such~~ *the* fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of ~~his~~ employment as deputy county attorney. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of ~~his~~ employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless longevity increases are restored pursuant to 7-4-2504(2), the years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases.

(4) For each 10th year after the fiscal year beginning July 1, 1981, the latest federal decennial census statistics ~~shall be~~ *are* the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year ~~shall be~~ *is* based on the ~~last~~ *most current* calendar year's ~~annual~~ estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 11. Section 7-4-2504, MCA, is amended to read:

"**7-4-2504. Salaries to be fixed by resolution — cost-of-living increments.** (1) The county governing body shall by resolution on or before July 1, 1992, and on or before July 1 of each year thereafter adjust and uniformly fix the salaries of the county treasurer, county clerk, county assessor, county school superintendent, county sheriff, and the clerk of the district court; the county auditor (if there is one); and the county surveyor (if ~~he~~ *the surveyor* receives a salary). Except as provided in subsection (3), the salaries fixed may be no less than 80% of the annual base salary provided for in 7-4-2503(1) plus a cost-of-living increment based on the ~~last~~ previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The county governing body may, however, for all or the remainder of each fiscal year, in conjunction with setting salaries for the same action on the salaries of justices of the peace (if applicable), the county governing body, county attorney, and coroner, set the salary at the prior fiscal year level if that level is lower than the level required by this subsection. The cost-of-living increment for the fiscal year beginning July 1, 1992, and for each subsequent fiscal year ~~shall~~ *must* be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. In such *a* case, the cost-of-living increment that would have been received for ~~such~~ *the* fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(2) The county governing body may, in any subsequent fiscal year, restore for 1 or more years the annual cost-of-living increments withheld pursuant to subsection (1). If cost-of-living increments are restored, the longevity increases provided for sheriffs in 7-4-2503, for deputy county attorneys in 7-4-2503(3)(d)(i), and for undersheriffs and deputy sheriffs in 7-4-2510 must also be restored for the years for which the cost-of-living increment was restored.

(3) If the application of 7-4-2503 does not qualify a county official for a salary increase, ~~his~~ *the* salary base for the fiscal year beginning July 1, 1991, must be the fiscal year 1990-91 salary plus 100% of the last previous calendar year's consumer price index for all urban consumers, as set forth in subsection (1).

(4) The county governing body shall by resolution, prior to July 1 of each year, establish the salary of the coroner and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in subsection (1), set the salary at the prior fiscal year level. The salary must be in effect upon the first day of each ensuing fiscal year."

Section 12. Section 7-6-4135, MCA, is amended to read:

"**7-6-4135. Investment of money in capital improvement program fund.** The money held in the capital improvement program fund ~~shall~~ *must*, whenever possible, be invested in savings or time deposits in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation~~, federal savings and loan insurance corporation,~~ or *by the* national credit union administration or *invested* in direct obligations of the United States government and ~~shall~~ *must* be credited ~~back~~ to the fund plus interest earned."

Section 13. Section 7-12-2175, MCA, is amended to read:

"**7-12-2175. Investment of interest and sinking fund money.** (1) The governing body of a county in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation~~, federal savings and loan insurance corporation,~~ or *by the* national credit union administration or *invested* in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on ~~such~~ deposits or investments ~~shall~~ *must* be credited to the sinking fund from which the money was withdrawn."

Section 14. Section 7-12-4207, MCA, is amended to read:

"**7-12-4207. Investment of interest and sinking fund money.** (1) The governing body of a city in which a special improvement district is located may invest interest and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation~~, federal savings and loan insurance corporation,~~ or *by the* national credit union administration or *invested* in direct obligations of the United States government payable within 180 days from the time of investment.

(2) All interest collected on ~~such~~ deposits or investments ~~shall~~ *must* be credited to the sinking fund from which the money was withdrawn."

Section 15. Section 7-14-102, MCA, is amended to read:

"**7-14-102. Allocation of state funds for public transportation.** (1) (a) The department of transportation shall allocate each year one-half of the funds appropriated for the purposes of this section among the cities and urban transportation districts of the state ~~which~~ *that* operate or contract for the operation of general public transportation systems.

(b) (i) A city or urban transportation district is eligible for an allocation based upon the ratio of its local financial support for public transportation to the total local financial support for all general public transportation systems in the state. Local financial support ~~shall~~ *must* be determined by dividing the city's or district's expenditure of local ~~revenues~~ *revenue* for public transportation operations during the fiscal year by the mill value of the city or urban transportation district. Each applicant city and urban transportation district shall compute its expenditure of local ~~revenues~~ *revenue* for public transportation operations for a fiscal year immediately following the end of ~~such~~ *the fiscal* year and shall apply allocations received against that deficit.

(ii) A city or urban transportation district may not receive more than 50% of any year's expenditure of local ~~revenues~~ *revenue* for public transportation operations as an allocation under this section.

(2) One-half of the funds appropriated for the purposes of this section ~~shall~~ *must* be paid by the department of transportation to the counties of the state in the manner provided in 15-70-101(1)~~(a)~~*(b)*. Money distributed to counties under this section ~~shall~~ *must* be used by the counties for highway or other transportation purposes.

(3) The department of transportation may ~~make~~ *adopt* rules for the keeping of accounts for and otherwise implementing this section."

Section 16. Section 7-14-2524, MCA, is amended to read:

"**7-14-2524. Limitation on amount of bonds issued — excess void.** (1) Except as otherwise provided ~~hereafter and~~ in 7-7-2203, ~~and~~ 7-7-2204, *and this section,* a county may not issue bonds ~~which~~ *that,* with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed 11.25% of the total of the taxable value of the property ~~therein~~ *in the county,* plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%. The taxable property and the amount of interim production and new production taxes levied must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(2) A county may issue bonds ~~which~~ *that,* with all outstanding bonds and warrants except county high school bonds, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of ~~such~~ *the* property, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided

in 15-23-612 *multiplied by 60%,* plus the value of any other production occurring after December 31, 1988, multiplied by 60% when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways ~~which~~ *that* have been destroyed or damaged by an act of God~~;~~ *or by a* disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, ~~shall~~ *may* not exceed 22.5% of the total of the taxable value of the property within the county, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 *multiplied by 60%,* plus the value of any other production occurring after December 31, 1988, multiplied by 60%, as ascertained by the last preceding general assessment."

Section 17. Section 10-2-412, MCA, is amended to read:

"**10-2-412. State veterans' home in eastern Montana established.** A state home for veterans is established in eastern Montana ~~at a site to be determined by the site selection committee as provided in 10-2-413~~."

Section 18. Section 10-2-416, MCA, is amended to read:

"**10-2-416. Pledge to continue operation and maintenance.** Pursuant to 38 U.S.C. 641 and 5035(a)(6), the state shall appropriate from the general fund to the department of corrections and human services financial support necessary to provide for continued operation and maintenance of the ~~project upon completion~~ *state home for veterans in eastern Montana.*"

Section 19. Section 10-4-212, MCA, is amended to read:

"**10-4-212. Provider considered a taxpayer under provisions for fee.** Unless the context requires otherwise, the provisions of Title 15 referring to the audit and examination of reports and returns, determination of deficiency assessments, claims for refunds, penalties, interest, jeopardy assessments, warrants, conferences, appeals to the department of revenue, appeals to the state tax appeal board, and procedures relating thereto apply to ~~10-4-201 through 10-4-205 and 10-4-211 the same~~ *this part* as if the fee were a tax imposed upon or measured by net income. ~~All such~~ *The* provisions apply to the subscriber liable for the fee and to the provider required to collect the fee. ~~As to any~~ *Any* amount collected and required to be remitted to the department of revenue~~, the fee~~ is considered a tax upon the provider required to collect it, and that provider is considered a taxpayer."

Section 20. Section 13-37-226, MCA, is amended to read:

"**13-37-226. Time for filing reports.** (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days next preceding the date on which an election is held and within 24 hours after receiving a contribution of $500 or more if received between the 10th day before and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue subject to a referendum is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, *the* public service commission, or *a* district court judge, and political committees ~~which~~ *that* are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the 10th day next preceding the date on which an election is held and within 24 hours after receiving a contribution of $100 or more if received between the 15th day before and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files ~~his or its~~ *a* closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees ~~which~~ *that* are specifically organized to support or oppose a particular local issue shall ~~be required to~~ file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee ~~which~~ *that* is not specifically organized to support or oppose a particular candidate or ballot issue and ~~which~~ *that* receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the 10th day next preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a closing report at the close of each calendar year, on a date to be prescribed by the commissioner.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section ~~shall~~ *must* be complete as of the fifth day before the date of filing as specified in 13-37-225(2) and ~~subsections (1) through (6) of~~ this section."

Section 21. Section 15-1-201, MCA, is amended to read:

"**15-1-201. Administration of revenue laws.** (1) (a) The department of revenue shall have and exercise general supervision over the administration of the assessment and tax laws of the state{, except Title 15, chapter 70,} and over its agents and any officers of municipal corporations having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law. ~~and~~ *The department* may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) The department of revenue shall adopt rules specifying which types of property within the several classes are considered "comparable property" as described in 15-1-101.

(c) The department shall also adopt rules specifying the methodology to be used in conducting sales assessment ratio studies and in determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information about the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and ~~such~~ other information as may be needful and helpful in the work of the department in ~~such~~ *a* form ~~and upon such blanks as~~ *prescribed*

by the department ~~shall prescribe~~. It ~~shall be~~ *is* the duty of all public officers ~~so called upon~~ to fill out properly and return promptly to the department all ~~blanks so transmitted~~ *forms* and ~~in every way~~ aid the department in its work. The department shall examine the records of all municipal corporations for ~~such~~ purposes ~~as are~~ considered needful or helpful."

Section 22. Section 15-1-202, MCA, is amended to read:

"**15-1-202. Enforcement of revenue laws.** (1) The department of revenue may direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents for failure or neglect to comply with the provisions of the statutes[, except Title 15, chapter 70,] governing the revenue of the state or municipal corporations. The department shall cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct, neglect of duty, or failure of an assessor to comply with the certification or continuing education requirements of 15-8-106.

(2) The department may require county attorneys to assist in the commencement and prosecution of actions and proceedings in their respective counties for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws or for failure of an assessor to comply with the certification or continuing education requirements of 15-8-106.

(3) Nothing in this section affects the authority of any other person, public officer, or public body to pursue any other legal process for the removal from office of an assessor who forfeits office for failure to comply with certification and continuing education requirements."

Section 23. Section 15-1-205, MCA, is amended to read:

"**15-1-205. Biennial report — contents.** (1) The department shall transmit to the governor 20 days before the meeting of the legislature and, as provided in 5-11-210, submit to the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value, in tabulated form, with recommendations for improvements in the system of taxation, together with alternative measures as may be formulated for the consideration of the legislature.

(2) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department or its agent is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(3) The data described in subsection (2), if reported, must be related to the income and age of the taxpayer whenever ~~such~~ *the* information is available.

(4) (a) When reporting the data described in subsection (2)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(5) In reporting the data described in subsection (2), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(6) The department ~~must~~ *shall* identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(7) The department may include a report, *prepared by the department of transportation,* showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures."

Section 24. Section 15-24-101, MCA, is amended to read:

"**15-24-101. Assessment of proportionally registered interstate motor vehicle fleets — tax payment required for registration.** (1) The department of revenue shall assess, for the purpose of personal property taxes, the taxable vehicles in interstate motor vehicle fleets proportionally registered under the provisions of 61-3-711 through 61-3-733, and the assessment must be apportioned on the ratio of total miles traveled to in-state miles traveled formula as prescribed by 61-3-721. Interstate motor vehicle fleets are assessable for taxation purposes upon application for proportional registration and are assessed to the persons who own or claim *the fleet* or in whose possession or control the fleet is at the time of the application.

(2) With respect to any fleet contained in an original application ~~which~~ *that* has a situs for purpose of property taxation in Montana by the terms of this part or any other provision of the laws of Montana, the taxes on taxable vehicles are apportioned as provided in 15-24-303.

(3) With respect to any fleet contained in a renewal application, the taxable vehicles are assessed and taxed for a full year.

(4) Automobiles and trucks having a rated capacity of ~~three-quarters of a~~ *1* ton or less that are part of an interstate motor vehicle fleet are subject to

property tax. If the fleet is proportionally registered, the tax is apportioned in the same fashion as the registration fee under 61-3-721.

(5) Vehicles contained in a fleet for which current taxes, fees, or both have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of taxes, ~~or~~ fees, or both for the current registration year. The payment of personal property taxes, fees, or both~~,~~ is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet."

Section 25. Section 15-24-102, MCA, is amended to read:

"**15-24-102. Valuation of interstate fleets — determination of aggregate tax due.** The department of revenue shall assess the taxable vehicles of any interstate motor vehicle fleet making application for proportional registration as follows:

(1) The purchase price of the taxable vehicles depreciated by a schedule as prescribed by the department ~~shall determine~~ *determines* the depreciated value.

(2) The depreciated value multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, ~~shall be~~ *is* the ~~assessed~~ *market* value.

(3) The sum of the ~~assessed~~ *market* value of all taxable vehicles included in the fleet multiplied by ~~16% shall be~~ *9% is* the taxable value for the entire fleet.

(4) To determine the amount of tax due, the taxable value of the entire fleet ~~shall~~ *must* be multiplied by the statewide average county mill levy plus state levies as ~~hereinafter~~ provided *in 15-24-103.*"

Section 26. Section 15-30-101, MCA, is amended to read:

"**15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends ~~as herein~~

defined. ~~"Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.~~

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and *its* possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June~~,~~ 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, *acting* in whatever capacity ~~acting~~, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms *"paid or accrued" and* "paid or incurred" ~~and "paid or accrued" shall~~ *must* be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts ~~after cessation of regular employment~~ received from fully matured, privately purchased annuity contracts *after cessation of regular employment.*

(14) "Purposely" is as defined in 45-2-101.

(15) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" ~~shall~~ *must* be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(16) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and *who* has not established a residence elsewhere.

(17) "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(17)~~*(18)* "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(18)~~*(19)* "Taxable year" *or "tax year"* means the taxpayer's taxable year for federal income tax purposes.

~~(19)~~*(20)* "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Section 27. Section 15-32-201, MCA, is amended to read:

"**15-32-201. Amount of credit — to whom available.** (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in 15-32-102, in ~~such~~ *the* taxpayer's principal dwelling prior to January 1, 1993, or who acquires title to a dwelling prior to January 1, 1993, that is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this part has never been claimed~~,~~ is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of ~~such~~ *the* system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 1/2% of the next $3,000 of the cost of ~~such~~ *the* system, including installation costs, less grants received, against the income tax liability imposed against ~~such~~ *the* taxpayer pursuant to chapter 30.

(2) A resident individual taxpayer who completes installation of an energy system using a low emission wood or biomass combustion device, as defined in 15-32-102~~(5)(a)~~*(6)(a)*, in the taxpayer's principal dwelling prior to January 1,

1996, is entitled to claim a tax credit in an amount equal to 20% of the first $1,000 and 10% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30.

(3) A resident individual taxpayer who completes installation of an energy system that uses a low emission wood or biomass combustion device, as defined in 15-32-102~~(5)(b)~~*(6)(b)*, in the taxpayer's principal dwelling prior to January 1, 1996, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of the system, including the installation costs, against the income tax liability imposed against the taxpayer pursuant to Title 15, chapter 30."

Section 28. Section 15-36-112, MCA, is amended to read:

"**15-36-112. Disposition of oil and gas state and local government severance taxes — calculation of unit value for local government severance tax.** (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each taxing unit.

(2) For purposes of the distribution of local government severance taxes collected under this chapter, the department shall determine the unit value of oil and gas for each taxing unit as follows:

(a) The unit value for petroleum and other mineral or crude oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that taxing unit during 1988, excluding new and interim production.

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding new and interim production.

(3) The state and local government severance taxes collected under this chapter are allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4)~~;~~.

(b) The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) Except as provided in subsection (6), the county treasurer shall distribute the money received under subsection (4) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that no distribution may be made to a municipal taxing unit.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of local government severance tax money that would have gone to a taxing unit, as provided in subsection (5), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the {local government severance} taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the {local government severance} taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the {local government severance} taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district."

Section 29. Section 17-6-102, MCA, is amended to read:

"**17-6-102. Insurance on deposits.** (1) ~~No such deposits~~ *Deposits* in excess of the amount insured by the federal deposit insurance corporation~~,~~ ~~federal savings and loan insurance corporation,~~ or *the* national credit union administration ~~shall~~ *may not* be made unless the bank, building and loan association, savings and loan association, or credit union first delivers to the state treasurer or deposits in trust with some solvent bank, ~~as hereinafter provided,~~ as security therefor, bonds or other obligations of the kinds listed in 17-6-103, having a market value equal to at least 50% of the amount of ~~such~~ *the* deposits in excess of the amount ~~so~~ insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustee's receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, ~~his~~ successors in office, and the state of Montana and the form of receipt and the trustee have been approved by the board of investments.

(2) Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The *substituted* collateral ~~so substituted shall~~ *must* conform to 17-6-103 and have a market value at least sufficient for compliance with subsection (1) ~~above~~. If the *substituted* securities ~~so substituted~~ are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository financial institution a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository financial institution."

Section 30. Section 17-6-104, MCA, is amended to read:

"**17-6-104. Interest on deposits — conformity with federal law.** (1) The board of investments may require the payment of ~~quarter~~ *quarterly* annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and loan associations, savings and loan associations, credit unions, and the board of investments.~~, which~~ *The* rate ~~shall~~ *must* be fixed semiannually during the months of July and January of each year.

(2) The interest requirements on deposits of public funds made under the laws of the state of Montana or otherwise by county or city treasurers or town clerks may not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system, federal home loan bank system, or the federal deposit insurance corporation, ~~federal savings and loan insurance corporation,~~ national credit union administration, or any other fiscal agency of the United States of which the banks, building and loan associations, savings and loan associations, or credit unions of this state may be members or debtors."

Section 31. Section 17-7-304, MCA, is amended to read:

"**17-7-304.** *(Temporary)* **Disposal of unexpended appropriations.** (1) All money appropriated for any specific purpose except ~~those~~ *that* appropriated for the university system units listed in subsection (2) ~~shall~~ *must*, after the expiration of the time for which appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108 and subsection (3) of this section, all money appropriated for the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices in Butte, and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated. *(Terminates June 30, 1996—sec. 23, Ch. 787, L. 1991; sec. 5, Ch. 5, Sp. L. July 1992.)*

17-7-304. *(Effective July 1, 1996)* **Disposal of unexpended appropriations.** All ~~moneys~~ *money* appropriated for any specific purpose ~~except those appropriated for the university system units listed in subsection (2) shall,~~ *must*, after the expiration of the time for which ~~so~~ appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made."

Section 32. Section 19-1-102, MCA, is amended to read:

"**19-1-102. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision ~~thereof~~ *of the state*.

(2) (a) The term "employment" means any service performed by an employee in the employ of the state or any political subdivision ~~thereof~~ *of the state* for ~~such~~ *the* employer, except:

(i) service ~~which~~ *that* in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or

(ii) service ~~which~~ *that* under the Social Security Act may not be included in an agreement between the state and the secretary of health~~, education, and welfare~~ *and human services* entered into under this chapter.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service ~~which~~ *that* under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the governor issues, with respect to ~~such~~ *the* service, a certificate to the secretary of health~~, education, and welfare~~ *and human services* pursuant to 19-1-304.

(3) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as ~~such~~ *the* codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of ~~such~~ *the* Code of 1939 and section 3101 of ~~such~~ *the* Code of 1954 and as ~~such~~ *the* codes may from time to time be amended.

(4) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations ~~thereof~~, but only if the instrumentality is a juristic entity ~~which~~ *that* is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, such as but not limited to school districts~~,~~ *and* housing authorities~~, etc~~.

(5) The term "secretary of health~~, education, and welfare~~ *and human services*" means the secretary of the United States department of health~~, education, and welfare~~ *and human services*; includes any individual to whom the secretary of health~~, education, and welfare~~ *and human services* has delegated any ~~of his~~ functions under the Social Security Act with respect to coverage under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any ~~such~~ function.

(6) The term "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant ~~thereto~~ *to the act*, as ~~such~~ *the* act has been and may ~~from time to time~~ be amended.

(7) The term "state agency" means the public employees' retirement board of the public employees' retirement system of the state of Montana.

(8) The term "wages" means all remuneration for employment ~~as defined herein~~, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration ~~which~~ *that*, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act."

Section 33. Section 19-1-304, MCA, is amended to read:

"**19-1-304. Certification by governor.** Upon receiving *satisfactory* evidence ~~satisfactory to him~~ that with respect to ~~any such~~ *a* referendum the conditions specified in section 218(d)(3) of the Social Security Act have been met, the governor shall ~~so~~ certify *the results of the referendum* to the secretary of health~~, education, and welfare~~ *and human services.*"

Section 34. Section 19-1-401, MCA, is amended to read:

"**19-1-401. Authority for federal-state agreement.** The state agency, with the approval of the governor, ~~is hereby authorized to~~ *may* enter, on behalf of the state, into an agreement with the secretary of health~~, education, and welfare~~ *and human services*, consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old age and survivors' insurance system to employees of the state or any political subdivision ~~thereof~~ *of the state* with respect to services specified in ~~such~~ *the* agreement ~~which~~ *that* constitute "employment", as defined in 19-1-102."

Section 35. Section 19-1-402, MCA, is amended to read:

"**19-1-402. Contents of federal-state agreement.** ~~Such~~ *The* agreement *authorized by 19-1-401* may contain ~~such~~ provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the state agency and secretary of health~~, education, and welfare~~ *and human services* shall agree upon, but, except as may be otherwise required or permitted by or under the Social Security Act as to the services to be covered, ~~such~~ *the* agreement ~~shall~~ *must* provide in effect that:

(1) benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though ~~such~~ *the* services constituted employment within the meaning of Title II of the Social Security Act;

(2) the state will pay to the secretary of the treasury of the United States, at ~~such~~ *a* time or times as may be prescribed under the Social Security Act, contributions with respect to wages~~, as defined in 19-1-102,~~ equal to the sum of the taxes ~~which~~ *that* would be imposed by the Federal Insurance Contributions Act if the services covered by the agreement constituted employment within the meaning of that act;

(3) ~~such~~ *the* agreement ~~shall~~ *must* be effective with respect to services in employment covered by the agreement performed after a date specified ~~therein~~ *in the agreement*, but ~~in no event~~ may ~~it~~ *not* be effective with respect to ~~any such~~ services performed prior to the first day of the calendar year in which ~~such~~ *the* agreement is entered into or in which the modification of the agreement making it applicable to ~~such~~ services is entered into, except that ~~such~~ *the* effective date

may be made retroactive to the extent permitted by section 218(f) of the Social Security Act~~, as defined herein~~;

(4) all services ~~which~~ *that* constitute employment ~~as defined in 19-1-102~~ and are performed in the employ of the state by employees of the state ~~shall~~ *must* be covered by the agreement; and

(5) all services ~~which~~ *that* constitute employment ~~as defined in 19-1-102~~, are performed in the employ of a political subdivision of the state, and are covered by a plan ~~which~~ *that* is in conformity with the terms of the agreement and has been approved by the state agency under part 5 ~~shall~~ *must* be covered by the agreement."

Section 36. Section 19-1-503, MCA, is amended to read:

"**19-1-503. Required provisions of plan.** ~~No~~ *A* plan may *not* be approved unless:

(1) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 19-1-401 and 19-1-402;

(2) it provides that all services ~~which~~ *that* constitute employment ~~as defined in 19-1-102~~ and *that* are performed in the employ of the political subdivisions by employees ~~thereof~~ *of the political subdivisions* will be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable;

(3) it specifies the sources from which the funds necessary to make the payments required by 19-1-704 and 19-1-706 are expected to be derived and contains reasonable assurance that the sources will be adequate ~~for such purpose~~ *to make the payments*;

(4) it provides for ~~such~~ methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(5) it provides that the political subdivision will make ~~such~~ reports, in ~~such~~ *a* form and containing ~~such~~ information, as the state agency may ~~from time to time~~ require and will comply with ~~such~~ *the* provisions ~~as~~ *that* the state agency or the secretary of health~~, education, and welfare~~ *and human services* ~~may from time to time find~~ *finds* necessary to assure the correctness and verification of ~~such~~ *the* reports;

(6) it authorizes the state agency, in its discretion, to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in the plan~~, such~~. *The* termination *is* to take effect at the expiration of ~~such~~ *any* notice and on ~~such~~ conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act."

Section 37. Section 19-1-823, MCA, is amended to read:

"**19-1-823. Certification by governor.** If the majority of votes cast in the referendum indicates that the majority of voters desire it, the governor shall certify to the secretary of health~~, education, and welfare~~ *and human services* that the conditions set forth in section 218 of the Social Security Act have been complied with in respect to the retirement system voting in the referendum."

Section 38. Section 19-12-202, MCA, is amended to read:

"**19-12-202. Reports of board.** (1) The board shall, not later than November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan~~, with such~~. *The report may include* suggestions or recommendations ~~as it may consider~~ *that the board considers* of value for public information.

(2) Copies of ~~all such~~ *the* reports ~~shall~~ *must* be made available by the board to the chief or other representative of any volunteer fire company or companies ~~which may at any time~~ *that* request them.

~~(3) By January 10, 1993, the board shall provide to the 53rd legislature a report on the funding available in the volunteer firefighters' fund for benefits provided under the Volunteer Firefighters' Compensation Act. The legislature shall review the sufficiency of the fund to provide the current level of benefits and may eliminate, modify, or continue the benefit levels provided in 19-12-404.~~"

Section 39. Section 20-9-213, MCA, is amended to read:

"**20-9-213. Duties of trustees.** The trustees of each district ~~shall~~ have the sole power and authority to transact all fiscal business and execute all contracts in the name of the district. No person other than the trustees acting as a governing board may expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants to be issued for the payment of lawful obligations;

(3) issue warrants on any budgeted fund in anticipation of budgeted ~~revenues~~ *revenue*, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government; in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC~~, FSLIC,~~ or NCUA located in the state; or in a repurchase agreement, as authorized in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done

in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6.

(5) cause the district to record ~~every~~ *each* transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 1, the financial activities of each fund maintained by the district during the last completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited, as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district."

Section 40. Section 20-10-146, MCA, is amended to read:

"**20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount; and

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund. The county transportation fund operating reserve may not be more than 35% of the final county transportation fund budget for the ensuing school fiscal year and must be used for the purpose of paying transportation fund warrants under the county transportation fund budget.

(v) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vi) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) ~~notwithstanding the provisions of subsection (3),~~ subtracting the money available as determined in subsection (2)(b) to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the second Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 41. Section 23-2-716, MCA, is amended to read:

"**23-2-716. Penalty and interest for delinquency — waiver.** (1) Assessments due under this chapter are delinquent if not paid on or before December 31. The department of ~~revenue~~ *commerce* shall add to the amount of each delinquent assessment a penalty of 10% of the amount of the assessment plus interest at the rate of 1% per month or fraction of a month, computed on the total amount of assessment. Interest is computed from the date the assessment was due to the date of payment.

(2) The 10% penalty may be waived by the department of ~~revenue~~ *commerce* if reasonable cause is established for the failure or neglect to file the return required by 23-2-715 or to pay the assessment due to the department of ~~revenue~~ *commerce*."

Section 42. Section 23-2-717, MCA, is amended to read:

"**23-2-717. Credit for overpayment — interest on overpayment.** (1) If the department of ~~revenue~~ *commerce* determines that the amount of the assessment, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any assessment, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is ~~charged on deficiency assessments~~ provided in ~~23-2-715(2)~~ *23-2-716(2)* from the due date of the return or from the date of overpayment, whichever is later, to the date the department of ~~revenue~~ *commerce* approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department of ~~revenue~~ *commerce* for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable."

Section 43. Section 23-2-718, MCA, is amended to read:

"**23-2-718. Statute of limitations.** (1) Except as provided in subsection (3), a deficiency may not be assessed or collected with respect to the year for which a statement of gross receipts is filed unless the notice of the proposed additional assessment is mailed within 5 years from the date the statement of gross receipts was filed. For purposes of this section, a statement of gross receipts filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment, consents in writing to an extended time, the assessment may be made at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a statement of gross receipts is filed after 5 years from the last day prescribed for filing the statement of gross receipts or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim or the department of ~~revenue~~ *commerce* determines the existence of the overpayment and approves the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department of ~~revenue~~ *commerce* may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if no claim is filed is automatically extended.

(3) If a statement of gross receipts is required to be filed and the taxpayer fails to file the statement of gross receipts, the tax may be assessed or an action to collect the tax may be brought at any time. If a statement of gross receipts is required to be filed and the taxpayer files a fraudulent statement of gross receipts, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department of ~~revenue~~ *commerce.*"

Section 44. Section 25-34-102, MCA, is amended to read:

"**25-34-102. Jurisdiction — joinder — interpleader.** (1) The small claims court has original jurisdiction in all actions for the recovery of money or specific personal property when ~~such~~ *the* action arises out of a contract, express or implied, the amount of the claim, exclusive of costs, does not exceed ~~$2,500~~ *$3,000,* and the defendant can be served within the county or counties for which the small claims court has been created.

(2) More than one claim may be joined if all claims joined would separately meet the requirements for jurisdiction in the small claims court and *if* the total value of money claimed or property sought does not exceed ~~$2,500~~ *$3,000.*

(3) The small claims court has jurisdiction over an interpleader under 25-34-106 in which the amount claimed does not exceed ~~$2,500~~ *$3,000.*"

Section 45. Section 25-35-502, MCA, is amended to read:

"**25-35-502. Jurisdiction.** (1) The small claims court has jurisdiction over all actions for the recovery of money or specific personal property when the amount claimed does not exceed ~~$2,500~~ *$3,000,* exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) The small claims court has jurisdiction over an interpleader under 25-35-508 in which the amount claimed does not exceed ~~$2,500~~ *$3,000.*"

Section 46. Section 25-35-503, MCA, is amended to read:

"**25-35-503. Removal from district court.** A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed ~~$2,500~~ *$3,000.* The small claims court shall hear any action so removed from the district court."

Section 47. Section 27-1-717, MCA, is amended to read:

"**27-1-717. Issuing a bad check or stopping payment — civil liability.** (1) A person who issues a check, draft, or an order for the payment of money is liable for damages in a civil action, as provided in subsection (2), to the person to whom the check, draft, or order is issued if the check, draft, or order is:

(a) dishonored for lack of funds or credit or because the issuer has no account with the drawee; or

(b) issued in partial or complete fulfillment of a valid and legally binding obligation and the issuer stops payment with the intent to fraudulently defeat a possessory lien or otherwise defraud the payee of the check.

(2) The amount of damages awarded pursuant to subsection (1) ~~shall~~ *must* be an amount equal to the greater of $100 or three times the amount for which

the check, draft, or order was issued. However, damages may not exceed the value of the check, draft, or order by more than $500.

(3) The remedy provided by this section is available only if:

(a) the person to whom the check, draft, or order was issued has made written demand, mailed to the ~~last known~~ *last-known* address or the address shown on the check, to the drawer for payment of the amount of ~~such~~ *the* check, draft, or order not less than 10 days before commencing the action; and

(b) the issuer has failed to tender an amount of money equal to the amount demanded prior to the commencement of the action.

(4) The remedy provided by this section:

(a) may be pursued notwithstanding the provisions of 27-1-312;

(b) may be pursued whether or not a criminal penalty is sought under 45-6-316 or any other statute providing a criminal penalty; and

(c) does not affect the obligation of the drawer provided for in ~~30-3-422~~ *30-3-423* to pay the amount of the draft. However, in case of any inconsistency with the provisions of Title 30, chapter 3, the provisions of this section apply."

Section 48. Section 27-25-102, MCA, is amended to read:

"**27-25-102. When and by whom granted.** A writ of review may be granted by:

(1) the supreme court and any justice of the supreme court, in proceedings for contempt in the district court; or

(2) the supreme court or the district court or any judge ~~thereof~~ *of those courts*, when ~~an inferior~~ *a lower* tribunal, board, or officer exercising judicial functions has exceeded the jurisdiction of ~~such~~ *the* tribunal, board, or officer and there is no appeal or, in the judgment of the court, any plain, speedy, and adequate remedy."

Section 49. Section 27-25-203, MCA, is amended to read:

"**27-25-203. Stay of proceedings.** If a stay of proceedings ~~be~~ *is* not intended, the words requiring the stay must be omitted from the writ. These words may be inserted or omitted, in the sound discretion of the court or judge~~;~~ ~~but~~. *However,* if *the words are* omitted, the power of the ~~inferior~~ *lower* tribunal, board, or officer is not suspended ~~or~~ *and* the proceedings *are not* stayed."

Section 50. Section 27-26-102, MCA, is amended to read:

"**27-26-102. When and by whom issued.** (1) ~~It~~ *A writ of mandamus* may be issued by the supreme court or the district court or any judge of the district court to any ~~inferior~~ *lower* tribunal, corporation, board, or person to compel the performance of an act ~~which~~ *that* the law specially enjoins as a duty resulting from an office, trust, or station or to compel the admission of a party to the use and enjoyment of a right or office to which ~~he~~ *the party* is entitled and from which ~~he~~ *the party* is unlawfully precluded by ~~such inferior~~ *the lower* tribunal, corporation, board, or person.

(2) The writ must be issued in all cases ~~where~~ *in which* there is not a plain, speedy, and adequate remedy in the ordinary course of law."

Section 51. Section 27-26-206, MCA, is amended to read:

"**27-26-206. Enforcement of writ — penalty.** When a peremptory mandate has been issued and directed to any ~~inferior~~ *lower* tribunal, corporation, board, or person, if it appear to the court or judge that any member of ~~such~~ *the* tribunal, corporation, ~~or~~ board, or person upon whom the writ has been personally served has, without just excuse, refused or neglected to obey the ~~same~~ *writ*, the court may, upon motion, impose a fine not exceeding $1,000. In case of persistence in a refusal of obedience, the court may order the party to be imprisoned until the writ is obeyed and may make any orders necessary and proper for the complete enforcement of the writ."

Section 52. Section 27-27-102, MCA, is amended to read:

"**27-27-102. Issuance of writ.** ~~The same~~ *A writ of prohibition* may be issued by the supreme court or the district court or any district judge to any ~~inferior~~ *lower* tribunal or to a corporation, board, or person in all cases ~~where~~ *in which* there is not a plain, speedy, and adequate remedy in the ordinary course of law. ~~It~~ *The writ* is issued upon *an* affidavit on the application of the person beneficially interested."

Section 53. Section 30-3-415, MCA, is amended to read:

"**30-3-415. Instruments signed for accommodation.** (1) If an instrument is issued for value given for the benefit of a party to the instrument ("accommodated party") and another ~~part~~ *party* to the instrument ("accommodation party") signs the instrument for the purpose of incurring liability on the instrument without being a direct beneficiary of the value given for the instrument, the instrument is signed by the accommodation party "for accommodation".

(2) An accommodation party may sign the instrument as maker, drawer, acceptor, or indorser and, subject to subsection (4), is obliged to pay the instrument in the capacity in which the accommodation party signs. The obligation of an accommodation party may be enforced notwithstanding any statute of frauds and regardless of whether the accommodation party receives consideration for the accommodation.

(3) A person signing an instrument is presumed to be an accommodation party and there is notice that the instrument is signed for accommodation if the signature is an anomalous indorsement or is accompanied by words indicating that the signer is acting as surety or guarantor with respect to the obligation of another party to the instrument. Except as provided in 30-3-607, the obligation of an accommodation party to pay the instrument is not affected by the fact that the person enforcing the obligation had notice when the instrument was taken by that person that the accommodation party signed the instrument for accommodation.

(4) If the signature of a party to an instrument is accompanied by words indicating unambiguously that the party is guaranteeing collection rather than payment of the obligation of another party to the instrument, the signer is

obliged to pay the amount due on the instrument to a person entitled to enforce the instrument only if:

(a) execution of judgment against the other party has been returned unsatisfied;

(b) the other party is insolvent or in an insolvency proceeding;

(c) the other party cannot be served with process; or

(d) it is otherwise apparent that payment cannot be obtained from the party whose obligation is guaranteed.

(5) An accommodation party that pays the instrument is entitled to reimbursement from the accommodated party and is entitled to enforce the instrument against the accommodated party. An accommodated party that pays the instrument has no right of recourse against, and is not entitled to contribution from, an accommodation party."

Section 54. Section 32-2-406, MCA, is amended to read:

"**32-2-406. Investments.** (1) A building and loan association may invest the money of the association in:

(a) the bonds and securities of the United States, bonds and other obligations guaranteed as to interest and principal by the United States, and the stocks, bonds, debentures, and other securities and obligations of any federal home loan bank created under the laws of the United States, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(b) the bonds and warrants of any state and of any county, city, or school district of the state of Montana;

(c) the obligations of the federal ~~savings and loan~~ *deposit* insurance corporation lawfully issued pursuant to Title IV of the National Housing Act;

(d) improved real estate that has been sold under contract, including suburban homes or farm lands but not including mining property. However, the total amount remaining invested in real estate, excluding real estate otherwise acquired, may not exceed 15% of its assets. The amount invested in real estate may not exceed 85% of the price stipulated in the contract of sale or 85% of the value of the property purchased, whichever is the lesser.

(e) other bonds, securities, and investments, not to exceed 10% of the association assets.

(2) Not over 10% of the assets of an association may be invested in home office buildings, furniture, and fixtures. Other real property acquired in any manner or for any purpose may not be held for more than 5 years, except by permission of the department.

(3) Notwithstanding other provisions of the law, it is lawful for a building and loan association or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in debentures issued by the federal housing administrator and in obligations of national mortgage associations."

Section 55. Section 33-2-827, MCA, is amended to read:

"**33-2-827. Savings and loan.** To the extent that ~~such~~ an account is insured by the federal ~~savings and loan~~ *deposit* insurance corporation, an insurer may invest in share or savings accounts of savings and loan and building and loan associations."

Section 56. Section 33-11-105, MCA, is amended to read:

"**33-11-105. Compulsory associations.** (1) A risk retention group may not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any ~~such~~ *guaranty* fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations, mandatory liability pools, and similar mechanisms ~~as provided by Title 33, chapter 8 (now terminated)~~."

Section 57. Section 35-2-906, MCA, is amended to read:

"**35-2-906. Corporate records.** (1) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by 35-2-433(4).

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the names and addresses of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office or a location from which the records may be recovered within 2 business days:

(a) its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) its bylaws or restated bylaws and all amendments to them currently in effect;

(c) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(d) the minutes of all meetings of members and the records of all actions approved by the members for the past 3 years;

(e) the financial statements available to ~~shareholders~~ *members* for the past 3 years under 35-2-911;

(f) a list of the names and business or home addresses of its current directors and officers; and

(g) its most recent annual report delivered to the secretary of state under 35-2-904."

Section 58. Section 37-17-304, MCA, is amended to read:

"**37-17-304. Admission of licensees from other states.** A license without *written* examination may be issued to a psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter or to a psychologist who is a diplomate in good standing of the American board of professional psychology."

Section 59. Section 37-27-103, MCA, is amended to read:

"**37-27-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Apprentice" means a person who is working under the supervision of a licensed direct-entry midwife and is seeking licensure as a direct-entry midwife under this chapter.

(2) "Board" means the alternative health care board established in 2-15-1840.

(3) "Continuous care" means care provided for one person from the initial history-taking interview through monthly prenatal, intrapartum, and postpartum periods.

(4) ~~"Department" means the department of commerce provided for in 2-15-1801.~~

~~(5)~~ "Direct-entry midwife" means a person who advises, attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period.

~~(6)~~*(5)* "Licensee" means a person authorized by this chapter to practice direct-entry midwifery.

~~(7)~~*(6)* "Postpartum period" means the period up to 6 weeks following birth.

~~(8)~~*(7)* "Practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period."

Section 60. Section 37-61-202, MCA, is amended to read:

"**37-61-202. Who may be admitted as attorney.** Any citizen or person~~, resident of this state,~~ who has bona fide declared ~~his or her~~ *the* intention to become a citizen in the manner required by law, *who is* of good moral character, and who possesses the necessary qualifications of learning and ability is entitled to admission as attorney and counselor in all the courts of this state."

Section 61. Section 39-51-406, MCA, is amended to read:

"**39-51-406. Unemployment insurance administration account.** (1) There is ~~hereby created~~ an account in the federal special revenue fund to be known as the unemployment insurance administration account. All ~~moneys which are~~ *money that is* deposited, appropriated, or paid into this account ~~are hereby~~ *is* appropriated and made available to the department. All ~~moneys~~ *money* in the account ~~shall~~ *must* be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of ~~such~~ other legislation ~~as shall be~~ specifically delegated *by the legislature* to the department for administration ~~by the legislature~~.

(2) All ~~moneys~~ *money* received and deposited in ~~said~~ *the* account ~~for administration expense~~ from the United States or any agency ~~thereof~~ *of the United States* pursuant to section 302, Title III, of the Social Security Act ~~shall~~ *must* be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account ~~shall consist~~ *consists* of:

(a) all ~~moneys~~ *money* received from the United States or any agency ~~thereof~~ *of the United States* pursuant to section 302, Title III, of the Social Security Act, as amended;

(b) all ~~moneys~~ *money* appropriated by the state from the general fund for the purpose of administering this chapter; and

(c) all ~~moneys~~ *money*, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency ~~thereof~~ *of the United States*;

(ii) this state or any agency ~~thereof~~ *of the state*;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

(v) any other source for administrative expense and purpose.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 ~~shall~~ *must* remain part of the unemployment insurance fund and ~~shall~~ *must* be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All ~~moneys~~ *money* in this account ~~shall~~ *must* be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. ~~Any~~ *The* balance in this account

~~shall~~ *may* not lapse at any time but ~~shall~~ *must* be continuously available to the department for ~~the~~ expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of ~~his~~ *the treasurer's* duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for ~~such~~ *the* bond ~~and the premiums for the bond given by the treasurer for the unemployment insurance fund under 39-51-402 shall~~ *must* be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code ~~shall be taken to mean~~ *means* the unemployment insurance administration account in the federal special revenue fund."

Section 62. Section 41-5-306, MCA, is amended to read:

"**41-5-306. Place of shelter care or detention.** (1) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a youth in need of supervision may be placed only:

(a) in a licensed youth foster home as defined in 41-3-1102;

(b) in a facility operated by a licensed child welfare agency;

(c) in a licensed youth group home as defined in 41-3-1102; or

(d) under home arrest, either in ~~his~~ *the youth's* own home or in one of the facilities described in subsections (1)(a) through (1)(c), as provided in Title 46, chapter 18, part 10.

(2) A youth alleged to be a youth in need of care may be placed only in the facilities listed in subsection (1) and may not be placed in a jail or other facility intended or used for the confinement of adults accused or convicted of criminal offenses.

(3) After a probable cause hearing provided for in 41-5-303, a youth alleged to be a delinquent youth may be placed only in:

(a) the facilities described in subsection (1);

(b) under home arrest as provided in subsection (1);

(c) a short-term detention ~~facility~~ *center*; or

(d) a youth detention facility."

Section 63. Section 46-11-701, MCA, is amended to read:

"**46-11-701. Pretrial proceedings — exclusion of public and sealing of records.** (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means.

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the trial or earlier if consistent with trial fairness.

(5) When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant's right to a fair trial, the document or portion of the document must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness.

~~(6) An affidavit filed in support of a motion for leave to file a charge or warrant must be sealed unless the judge determines that disclosure of the information in the affidavit is required to protect the health, safety, or welfare of the public.~~"

Section 64. Section 46-18-101, MCA, is amended to read:

"**46-18-101. Correctional policy.** (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for ~~his~~ *the individual's* actions. Corrections laws and programs must be implemented to impress upon each individual ~~his~~ *the* responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime ~~shall~~ be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of the offender;

(iii) the circumstances under which the crime was committed;

(iv) the criminal history of the offender; and

(v) consideration of alternatives to imprisonment of the offender in the state prison or ~~a~~ *the* women's correctional ~~facility~~ *center.*

(b) Dangerous offenders who habitually violate the law and victimize the public ~~shall~~ *must* be removed from society and correctively treated in custody for long terms, as needed. Other offenders ~~shall~~ *must* be dealt with by probation, suspended sentence, community corrections, community service, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders ~~shall~~ *must* include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

(4) It is also the policy of the state that alternatives to imprisonment, such as community corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate in other activities that will reduce recidivism and enable offenders to become productive members of society."

Section 65. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony

on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or ~~a~~ *the* women's correctional ~~facility~~ *center*, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 66. Section 46-18-225, MCA, is amended to read:

"**46-18-225. Criteria for sentencing nonviolent felony offenders.** Prior to sentencing a nonviolent felony offender to a term of imprisonment in the state prison or ~~a~~ *the* women's correctional ~~facility~~ *center*, the court shall take into account whether:

(1) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in the state prison or ~~a~~ *the* women's correctional ~~facility~~ *center*;

(2) the needs of the offender can be better served in the community or in a facility or program other than the state prison or ~~a~~ *the* women's correctional ~~facility~~ *center*;

(3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(4) the offender acted under strong provocation;

(5) the offender has made restitution or will make restitution to the victim of ~~his~~ *the offender's* criminal conduct;

(6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(8) the character and attitude of the offender indicate that ~~he~~ *the offender* is likely to commit another crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on the offender or ~~his~~ *the offender's* family."

Section 67. Section 46-18-254, MCA, is amended to read:

"**46-18-254. Release of sexual offender — duties of court and department.** A sexual offender must be informed in writing at the time of sentencing of ~~his~~ *the* duty to register under 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which ~~he~~ *the offender* is sentenced. The department *of corrections and human services* shall obtain the address where the person expects to reside upon release or discharge or suspension of ~~his~~ *the person's* sentence. The department *of corrections and human services* shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside."

Section 68. Section 46-23-201, MCA, is amended to read:

"**46-23-201. Prisoners eligible for nonmedical parole.** (1) Subject to the restrictions contained in subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's ~~correction~~ *correctional* center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A ~~convict~~ *prisoner* serving a time sentence may not be paroled under this section until ~~he~~ *the prisoner* has served at least one-half of ~~his~~ *the prisoner's* full term, less the good time allowance provided for in 53-30-105~~; except~~. *Except* as provided in subsection (3), a ~~convict~~ *prisoner* designated as a nondangerous offender under 46-18-404 may be paroled after ~~he~~ *the prisoner* has served one-quarter of ~~his~~ *the prisoner's* full term, less the good time allowance provided for in 53-30-105. Any ~~offender~~ *prisoner* serving a time sentence may be paroled after ~~he~~ *the prisoner* has served~~, upon his term of sentence,~~ 17 ½ years *of the sentence.*

(3) A ~~convict~~ *prisoner* serving a time sentence under 45-9-109 may not be paroled until ~~he~~ *the prisoner* has served at least one-half of ~~his~~ *the* full term, less the good time allowance provided for in 53-30-105.

(4) A ~~convict~~ *prisoner* serving a life sentence may not be paroled under this section until ~~he~~ *the prisoner* has served 30 years, less the good time allowance provided for in 53-30-105.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that ~~he~~ *the prisoner* is able and willing to fulfill the obligations of a law-abiding citizen.

(6) Whenever the department of corrections and human services certifies to the board that the population at either the male or female correctional facility has exceeded its designed capacity for 30 consecutive days, the board shall consider the respective male or female ~~inmates~~ *prisoners* under the jurisdiction of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) through (4).

(7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration ~~at Montana state prison~~, the provisions of subsection (6) do not apply."

Section 69. Section 53-3-308, MCA, is amended to read:

"**53-3-308. Responsibility for general relief.** (1) The county boards of public welfare and the department, in accordance with this chapter and other relevant statutes, are responsible for the provision of general relief as follows:

(a) Counties without state-assumed welfare services shall provide general relief consistent with their duties as specified in Title 53, chapter 2, ~~parts~~ *part* 3 ~~and 7~~, and this chapter.

(b) In counties with state-assumed welfare services, general relief must be provided by the department and must be consistent with its duties as specified in Title 53, chapter 2, part 8, and this chapter.

(2) In counties without state-assumed welfare services, general relief must be paid from the county poor fund as authorized in 53-2-321 through 53-2-323.

(3) In counties with state-assumed welfare services, general relief must be paid from and may not exceed money available through:

(a) a general appropriation for such purpose;

(b) county mill levies as provided for in 53-2-813; and

(c) federal or other assistance."

Section 70. Section 53-19-305, MCA, is amended to read:

"**53-19-305. Power and duties.** The committee shall oversee administration of the program provided for in ~~53-29-306~~ *53-19-306*. In fulfilling this duty, the committee shall:

(1) establish policies and procedures governing administration of the program;

(2) analyze and approve a budget for administration of services under the program;

(3) monitor the expenditure of funds for the program;

(4) provide for administration of eligibility and the delivery of services for the program as provided for in 53-19-306 through 53-19-309; and

(5) perform any other duties necessary to properly oversee administration of the program."

Section 71. Section 53-20-147, MCA, is amended to read:

"**53-20-147. Right not to be subjected to experimental research.** (1) Residents of a residential facility ~~shall~~ have a right not to be subjected to experimental research without the express and informed consent of the resident, if the resident is able to give ~~such~~ consent, and of ~~his~~ *the resident's* parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel.

(2) ~~Such~~ *The* proposed research ~~shall first~~ *must* have been reviewed and approved by the mental disabilities board of visitors before ~~such~~ consent ~~shall~~ *may* be sought. Prior to ~~such~~ approval, the board shall determine that ~~such~~ *the* research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health~~, education, and welfare~~ *and human services* for projects supported by that agency."

Section 72. Section 53-21-147, MCA, is amended to read:

"**53-21-147. Right not to be subjected to experimental research.** (1) Patients ~~shall~~ have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give ~~such~~ consent, and of ~~his~~ *the patient's* guardian, if any, and the friend of respondent appointed by the court after opportunities for consultation with independent specialists and with legal counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility, the department, or the research project ~~shall~~ *must* be appointed prior to the involvement of the patient in any experimental research. At least 10 days prior to the commencement of ~~such~~ experimental research, the facility shall send notice of intent to involve the patient in experimental research to the patient, ~~his~~ *the patient's* next of kin, if known, ~~his~~ *the patient's* legal guardian, if any, the attorney who most recently represented ~~him~~ *the patient*, and the friend of respondent appointed by the court.

(2) ~~Such~~ *The* proposed research ~~shall first~~ *must* have been reviewed and approved by the mental disabilities board of visitors before ~~such~~ consent ~~shall~~ *may* be sought. Prior to ~~such~~ approval, the board shall determine that ~~such~~ *the* research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health~~, education, and welfare~~ *and human services* for projects supported by that agency.

(3) A patient has the right to appropriate protection before participating in an experimental treatment, including the right to a reasonable explanation of the procedure to be followed, expected benefits, relative advantages, and the potential risks and discomforts of any experimental treatment. A patient has the right to revoke at any time consent to an experimental treatment."

Section 73. Section 61-1-314, MCA, is amended to read:

"**61-1-314. Dealer.** (1) "Dealer" means:

(a) a person, firm, association, or corporation ~~which~~ *that*, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, or acting as a broker of either new or used motor vehicles, or both, and who qualifies for issuance of a dealer's license under 61-4-101 through 61-4-105; or

(b) an owner of real property who allows more than three new or used motor vehicles not titled in the property owner's or the seller's name to be offered for sale on the property during 1 calendar year unless the property is leased to a motor vehicle dealer licensed under 61-4-101 and the vehicles offered for sale are bona fide units of the licensed dealer's inventory.

(2) The term "dealer" does not include the following:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(b) employees of the persons included in subsection (2)(a) when engaged in the specific performance of their duties as employees; or

(c) public officers while performing or in the operation of their duties.

~~(3) A dealer dealing in used motor vehicles only shall purchase a Montana store license.~~"

Section 74. Section 61-4-120, MCA, is amended to read:

"61-4-120. **Application for auto auction license — general regulations.** (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the ~~Montana highway patrol~~ *department* or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises (street address, city, county, and state) where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative thereof, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of $25,000 and must be conditioned that the applicant shall conduct ~~his~~ business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually. A person who suffers loss or damage due to the unlawful conduct of an auto auction licensed under this section may proceed in the same manner as provided for licensed dealers and wholesalers in 61-4-101(3)(b).

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department shall issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed by the department and must contain the name, address, and license number of the purchaser, date of sale, name, address, license number, *and* authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more than $10 for the issuance of each permit to offset the cost of the ~~permits~~ *permit*. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on the rear of the vehicle. Auto auctions may appoint designated persons, partner-

ships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing ~~of~~ similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together with the name and address of the seller, the purchaser, and the alleged owner or other person from whom the motor vehicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the identification number or engine number, if any;

(ii) other numbers or identification marks on the motor vehicle; and

(iii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate, at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between *the* transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number; name, address, and signature of *the* transferor; name, license number, and signature of *the* transferee; and the date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer data base or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgement for the buyer under the provisions of 61-3-206."

Section 75. Section 61-5-117, MCA, is amended to read:

"**61-5-117. Rulemaking authority.** The department ~~of justice~~ may adopt rules to implement the issuance and enforcement of classified commercial vehicle operator's endorsements ~~and hazardous materials endorsements~~."

Section 76. Section 75-10-512, MCA, is amended to read:

"**75-10-512. Records required of facilities.** (1) ~~Every~~ *Each* motor vehicle wrecking facility shall maintain books or files in which are kept a record and description of every junk vehicle obtained by it, together with the name and address of the person from whom the vehicle was purchased.

(2) This record ~~shall~~ *must* also contain:

(a) the certificate of ownership, sheriff's certificate of sale, notarized bill of sale from the former owner or person selling the vehicle, release of ownership or interest in the motor vehicle, or sheriff's release;

(b) the name of the state where the vehicle was last registered;

(c) the make of the vehicle;

(d) the *vehicle identification number as defined in 61-3-210 or the* motor *number,* ~~or~~ identification number, or serial number;

(e) the date purchased;

(f) the disposition of the vehicle.

(3) An authorized representative of the department of justice who presents ~~his~~ credentials may also inspect, have access to, and copy records required under this section."

Section 77. Section 75-10-603, MCA, is amended to read:

"**75-10-603. Cooperative agreement — authority of department.** (1) In order to assist in implementation of CERCLA, the department may:

(a) participate in the determination of appropriate remedial action to deal with the release or threatened release within Montana of:

(i) any contaminant presenting an imminent and substantial danger to public health or welfare; or

(ii) any hazardous substance;

(b) in the event of the release or threatened release of any of the substances described in subsection (1)(a), negotiate the terms of a cooperative agreement with the federal government containing mutual commitments of each party to remedial action, including the elements required by subsection (2) ~~of this section~~.

(2) A cooperative agreement ~~must~~ *may* contain the following assurances:

(a) the state of Montana will assure the future maintenance of the removal and remedial actions agreed upon for the expected life of ~~such~~ *the* actions;

(b) a hazardous waste disposal facility is available to the state of Montana ~~which~~ *that* meets the specifications of the president and complies with the requirements of subtitle C of the federal Solid Waste Disposal Act for necessary offsite storage, destruction, treatment, or secure disposition of the hazardous substances; and

(c) the state of Montana will pay or assure payment of a share of the costs of the remedial action, including all future maintenance."

Section 78. Section 80-8-102, MCA, is amended to read:

"**80-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Active ingredient" means:

(a) in the case of a pesticide, other than a plant regulator, defoliant, or desiccant, an ingredient ~~which~~ *that* will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) in the case of a plant regulator, an ingredient ~~which~~ *that* acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) in the case of a defoliant, an ingredient ~~which~~ *that* will cause the leaves or foliage to drop from a plant;

(d) in the case of a desiccant, an ingredient ~~which~~ *that* will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, ~~or~~ if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Beneficial insects" means those insects ~~which~~ *that*, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(6) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(7) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

(8) "Crop" means a food intended for human or animal consumption or a fiber product.

(9) "Dealer" means a person who sells, wholesales, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide except those pesticides ~~which~~ *that* are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(10) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(11) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(12) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests ~~but~~. *The term does* not *include* equipment used for the application of pesticides.

(13) "Environment" means the soil, air, water, plants, and animals.

(14) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(15) "Farm applicator" means a person applying pesticides to ~~his~~ *the person's* own crops or land.

(16) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts), *such* as~~, for example,~~ rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living ~~man~~ *humans* or other animals.

(17) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(18) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(19) "Inert ingredient" means an ingredient ~~which~~ *that* is not an active ingredient.

(20) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (20)(a) ~~of this section~~ applies if the preparation is highly toxic to man, determined as provided in 80-8-105; and if the pesticide contains arsenic in any form, the ingredient statement ~~shall~~ *must* also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(21) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of arthropods whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(22) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(23) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device or to its immediate container and any outside container or wrapper of any retail package of the pesticide or device.

(24) "Labeling" means all labels and other written, printed, or graphic matter:

(a) upon the pesticide or device or any of its containers or wrappers;

(b) accompanying the pesticide or device at any time;

(c) to which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency; departments of agriculture, interior, or health~~, education, and welfare~~ *and human services*; state experiment stations; state agricultural colleges; or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(25) "Misbranded" applies:

(a) to a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients ~~which~~ *that* is false or misleading;

(b) to a pesticide if:

(i) it is an imitation of or is offered for sale under the name of another pesticide;

(ii) its labeling bears any reference to registration under this chapter;

(iii) the labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) the label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living ~~man~~ *humans* or undue hazard to the environment;

(v) the label of the retail package ~~which~~ *that* is presented or displayed under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) any word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) in the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living ~~men~~ *humans* or other vertebrate animals or vegetation, except weeds, to which it is applied or to the person applying the pesticide;

(viii) in the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to ~~man~~ *humans* or other vertebrate animals or vegetation to which it is applied or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(26) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(27) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle and inhabiting soil, water, animals, plants, or plant parts.

(28) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons, whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(29) "Pest" includes any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except *a* virus on or in living ~~man~~ *humans* or other ~~animal~~ *animals*, ~~which~~ *that* is normally considered a pest or ~~which~~ *that* the department declares a pest.

(30) "Pesticide" means any:

(a) substance or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living ~~man~~ *humans* or other animals, that may infect or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or ~~which~~ *that* the department declares a pest;

(b) substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

(c) other substances intended for that use named by the department by a rule adopted by it.

(31) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants ~~but~~. *The term* does not include substances to the extent

that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(32) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this chapter.

(34) "Restricted-use pesticide" means any pesticide, including highly toxic pesticides, ~~which~~ *that* the department has found and determined, subsequent to a hearing, to be injurious, when used in accordance with registration, label, directions, and cautions, to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means any person who sells, offers or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn, and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Waste pesticide" means a pesticide:

(a) that may not be used legally because the environmental protection agency or the department has canceled or suspended the pesticide's registration or has taken other administrative action to prohibit use of the pesticide;

(b) that will not be used for reasons including but not limited to product damage, toxicity, or obsolescence; or

(c) that cannot be disposed of in a legal or economically feasible manner.

(37) "Weed" means any plant or part of the plant ~~which~~ *that* grows where not wanted."

Section 79. Section 81-22-101, MCA, is amended to read:

"**81-22-101. Definitions.** For the purpose of this chapter, the following definitions are adopted:

(1) "Agent" means a person who is authorized by another person to act for ~~him~~ *that other person* in dealing with a third person.

(2) "Butter" is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass ~~which~~ *that* also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(3) "Cheese" is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the water-free substance not less than 50% of milk fat and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) "Cheese factory" means a place where cheese, including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese, either cultured or directly acidified, is made for commercial purposes.

(5) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(6) "Code of Federal Regulations" refers especially but is not limited to Title 21, which contains the definitions and standards of identity for products as established by the food and drug administration, United States department of health~~, education, and welfare~~ *and human services.*

(7) "Cream" means the milk fat ~~which~~ *that* rises to the surface when milk is allowed to stand or ~~which~~ *that* is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(8) "Creamery" means a place where butter is made for commercial purposes.

(9) "Culture" means the harmless lactic acid fermenting bacteria ~~which~~ *that* are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and ~~other~~ similar products.

(10) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(11) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 2, chapter 15, part 31.

(12) "Direct acidification", "directly acidified", and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(13) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

(14) "French ice cream", "French custard ice cream", "cooked ice cream", "ice custard", "parfaits", and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(15) "Frozen dessert plant" means a place where products named in subsections (27)(a)(iii) through (27)(a)(ix) ~~of this section~~ are made for commercial purposes.

(16) "Fruit ice cream" ~~shall~~ *must* conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than 9% of milk fat.

(17) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(18) "Ice" or "ice sherbet" is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring or added stabilizer composed of wholesome edible material, and must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid. It may *not* contain ~~no~~ milk solids.

(19) "Ice cream" is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, or clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. ~~No~~ *A* frozen milk or milk product may *not* be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

(20) An "ice cream factory" is a place where ice cream mix is frozen into ice cream for commercial purposes.

(21) (a) "Ice cream mix" is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(b) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsection (27)(a)(iii) through (27)(a)(v) and (27)(a)(vii) through (27)(a)(xii) are made.

(22) An "ice cream mix factory" is a place where ice cream mix is made.

(23) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(24) "Manufactured dairy product" means an item enumerated in subsection (27) or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality. For purposes of reporting production and licensing, "manufactured dairy product" includes but is not limited to:

(a) ice cream or its mix;

(b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;

(c) sherbets of all kinds or their mixes;

(d) animal or vegetable fat frozen desserts or their mixes;

(e) frozen confections or their mixes when made in a manufactured dairy products plant;

(f) water ices or their mixes;

(g) frozen dessert sandwiches, bars, cones, and similar novelties;

(h) frozen dessert made of nondairy origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;

(i) ice milk or its mix;

(j) cheese of all kinds, including cottage cheese, cheese curd, cheese dressing, and cream cheese, either cultured or directly acidified;

(k) sour cream when cultured or directly acidified;

(l) eggnog, low-fat eggnog, eggnog-flavored milk, and similar flavored products;

(m) buttermilk, cultured or from churned butter or directly acidified;

(n) butter;

(o) yogurt, low-fat yogurt, or flavored yogurt, either cultured or directly acidified or frozen.

(25) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or ~~which~~ *that* manufactures those products listed in subsection (27). If only products of semblance or imitation of dairy products are made, the plant is not considered ~~as~~ a manufactured dairy products plant.

(26) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as ~~tuberculosis-free~~ *tuberculosis-free* by the United States department of agriculture or in the process of being accredited, when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

(27) (a) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

(i) butter;

(ii) cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese, which are either cultured or directly acidified, and cheese dressings;

(iii) ice cream or its mix;

(iv) frozen dessert or its mix;

(v) sherbets of all kinds or their mixes;

(vi) frozen ice cream bars, sandwiches, cones, and similar novelties;

(vii) frozen desserts or products made in the semblance or imitation of frozen dessert;

(viii) frozen confections or their mixes;

(ix) water ices or their mixes;

(x) ice milk or its mix;

(xi) French ice cream, French custard, or their mixes;

(xii) frozen custard or its mix and frozen yogurt;

(xiii) yogurt, flavored yogurt, and low-fat yogurt;

(xiv) sour cream, either cultured or directly acidified;

(xv) cream cheese, either cultured or directly acidified;

(xvi) buttermilk, either cultured, from churned butter, or directly acidified;

(xvii) eggnog, low-fat eggnog, eggnog-flavored milk, whipped cream, flavored toppings, and similar flavored products;

(xviii) dry or powdered milk; and

(xix) condensed milk products.

(b) The items specified in subsection (27)(a) ~~of this section shall~~ *must* conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products ~~shall~~ *must* be in accordance with the Montana Food, Drug, and Cosmetic Act.

(28) "Milk or cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(29) "Milk sherbet" is the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than 35/100 of 1% of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than 4% by weight of solids.

(30) "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in Title 50, chapter 31.

(31) "Official test" means test procedures outlined in the sources referred to under 81-22-301 concerning samples, methods, and rules of evidence.

(32) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F and holding it continuously at or above this temperature for at least 30 minutes or to at least 161 degrees F and holding it continuously at or above this temperature for at least 15 seconds in equipment ~~which~~ *that* is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners ~~shall~~ *must* be heated to at least 155 degrees F and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process ~~which~~ *that* has been recognized by the United States public health service to be equally effective and ~~which~~ *that* is approved by the department.

(33) "Person" means an individual, firm, partnership, corporation, cooperative, or other business unit or trade device.

(34) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(35) "Raw milk" or "raw milk products" means milk or milk products ~~which~~ *that* have not been treated by a process of pasteurization.

(36) "Renovated butter" or "processed butter" is the product made by melting and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than 80% of milk fat.

(37) "Safe temperature" means 45 degrees F or less~~,~~ unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(38) "Skimmed milk cheese" is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.

(39) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(40) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients."

Section 80. Section 82-3-205, MCA, is amended to read:

"**82-3-205. Penalty.** *(1)* ~~Every~~ *Each* person, firm, or corporation violating any of the provisions of this part ~~shall be deemed~~ *is* guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $500 or by imprisonment in the county jail for not more than 90 days or by both ~~such~~ fine and imprisonment.

(2) Any person, firm, or corporation convicted of a second violation of any of the provisions of this part ~~shall~~ *must* be punished as ~~above~~ provided *in subsection (1)*, ~~and the license of any retail coal dealer shall, thereby, be automatically revoked,~~ and it ~~shall be~~ *is* unlawful for ~~any~~ *the* person, firm, or corporation ~~so convicted~~ to engage ~~thereafter~~ in ~~said retail~~ business, either directly or indirectly, for a period of 6 months ~~next~~ after ~~such~~ *the* second conviction."

Section 81. Section 85-9-604, MCA, is amended to read:

"**85-9-604. Collection and investment of assessments.** (1) The treasurer of each county in which the district is located shall collect special assessments at the same time and in the same way as county taxes.

(2) If the district is located in more than one county, all assessments collected ~~shall~~ *must* be deposited with the treasurer of the county in which the assessments were collected.

(3) The directors shall direct the county treasurer to invest any surplus district funds in saving or time deposits in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation~~, federal savings and loan insurance corporation,~~ or *the* national credit union administration or *to invest* in direct obligations of the United States government payable within 180 days from the time of investment. All interest collected on the deposits or investments ~~shall~~ *must* be credited to the fund from which the money was withdrawn. However, 5% of the interest ~~shall~~ *must* be deposited in the general fund of the county."

Section 82. Section 85-9-629, MCA, is amended to read:

"**85-9-629. Disposition and investment of sale proceeds.** (1) Proceeds from the sales of bonds ~~shall~~ *must* be deposited with the county in which the largest portion of the taxable valuation of real property of the district is located.

(2) The county treasurer shall place the proceeds of the bond sale to the credit of the district. The proceeds ~~shall~~ *must* be paid by the county treasurer on written order of the directors. Proceeds ~~shall~~ *may* only be spent for the purposes for which the bonds were issued.

(3) The directors shall instruct the county treasurer to deposit any part of the proceeds ~~which~~ *that* is not immediately needed for the purpose for which the bonds were issued in a saving or time deposit in a state or national bank, savings and loan association, or credit union insured by the federal deposit insurance corporation~~, federal savings and loan insurance corporation,~~ or *the* national credit union administration or to invest in direct obligations of the United States government. The obligations ~~shall~~ *must* be payable within not to exceed 180 days from the time of deposit or investment."

Section 83. Section 87-1-504, MCA, is amended to read:

"**87-1-504. Protection of private property — duty of wardens.** ~~(1)~~ It ~~shall be~~ *is* the duty of wardens (state conservation officers) to enforce the provisions of 45-6-101, 45-6-203, 75-10-212(2), 77-1-801, 77-1-806, and rules adopted under 77-1-804 on private and state lands being used for ~~the recrea-~~

~~tional purposes of~~ hunting and fishing and to act as ex officio firewardens as provided by 77-5-104.

~~(2) As used in this section, "recreational purposes" means recreational purposes as defined in 70-16-301.~~"

Section 84. **Code commissioner instruction.** The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 53rd legislature.

Section 85. **Repealer.** Sections 2-15-3204, 2-15-3205, 2-89-207, 10-2-411, 10-2-413, 10-2-414, 10-2-415, and 30-6-112, MCA, are repealed.

Section 86. **Effective date.** [Section 31] is effective June 30, 1996.

Approved January 29, 1993.

CHAPTER NO. 11

[HB 45]

AN ACT PROVIDING FOR STAGGERED TERMS FOR BOARD OF ATHLETICS MEMBERS; ALLOWING BOARD OFFICERS TO BE ELECTED ONCE A YEAR RATHER THAN BEFORE APRIL 1 OF EACH YEAR; AND AMENDING SECTIONS 2-15-1882 AND 23-3-401, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1882, MCA, is amended to read:

"**2-15-1882. Board of athletics.** (1) There is a board of athletics.

(2) The board consists of three members appointed by the governor with the consent of the senate.

(3) ~~Each member~~ *Members* shall serve ~~for a term of~~ *staggered* ~~3 years~~ *3-year terms,* and ~~no~~ *a* member ~~shall~~ *may not* serve ~~for~~ more than four consecutive terms.

(4) The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 23-3-401, MCA, is amended to read:

"**23-3-401. Board organization — compensation — meetings — department to keep records.** (1) ~~Before April 1 of each year, the~~ *The* board shall ~~meet to~~ *annually* elect ~~one of its number chairman and may elect such~~ officers as it considers necessary. Two of the members of the board constitute a quorum to do business, and~~,~~ except as provided in 23-3-402, the concurrence of at least two members is necessary to take board action.

(2) The members of the board are entitled to compensation and expenses as provided in 37-1-133.

(3) The department shall keep a record of the board's proceedings, which are public records subject to public inspection."

Section 3. **Transition.** In order to establish staggered terms, the governor shall, after the expiration of the terms of the present members of the board of athletics on April 25, 1995, appoint one member to a 1-year term, one member to a 2-year term, and one member to a 3-year term.

Approved January 29, 1993.

CHAPTER NO. 12

[HB 74]

AN ACT AMENDING THE MONTANA TIMESHARE ACT BY REQUIRING THAT APPLICATIONS FOR REGISTRATION OF A TIMESHARE INCLUDE AN AUDITED FINANCIAL STATEMENT; AMENDING SECTION 37-53-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-53-202, MCA, is amended to read:

"**37-53-202. Application for registration.** An application for registration of a timeshare offering must be in a form developed by the board in conjunction with input from the timeshare industry. The application must be signed by the applicant and accompanied by the registration fee. Except as provided in 37-53-204, the application must contain:

(1) *audited* financial statements showing the financial condition of the developer and any affiliate, including:

(a) a balance sheet dated within 4 months before the filing of the application for registration; and

(b) statements of income, shareholders' equity, and material changes in financial position as of the end of the prior fiscal year and for any period between the end of the prior fiscal year and the date of the last balance sheet;

(2) a projected budget for the timeshare project for 2 years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) a description of the background of the developer for the previous 10 years, including information about the business experience of the developer and any relevant criminal convictions, civil lawsuits, or administrative actions related to any offering during that period;

(4) a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(5) a statement disclosing when and where the developer or an affiliate has previously sold timeshares;

(6) a statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(7) copies of all timeshare instruments;

(8) a copy of the disclosure document provided for in 37-53-303, signed by the applicant;

(9) an irrevocable consent to service of process signed by the applicant; and

(10) any other information that the board may by rule require in the protection of the public interest or necessary to describe the risks involved."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved January 29, 1993.

CHAPTER NO. 13

[SB 24]

AN ACT CLARIFYING THAT PAYMENT OF PREMIUMS TOWARD GROUP INSURANCE FOR EMPLOYEES AND THEIR DEPENDENTS IS NOT MARITAL STATUS DISCRIMINATION UNDER THE MONTANA HUMAN RIGHTS LAWS; AMENDING SECTIONS 2-18-702, 2-18-703, 49-2-303, 49-2-309, 49-2-403, AND 49-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-702, MCA, is amended to read:

"**2-18-702. Group insurance for public employees and officers.** (1) All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, and/or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. *The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.*

(2) State employees and elected officials, as defined in 2-18-701, may participate in ~~such~~ state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force ~~shall~~ *must* be paid by the insured officers and employees, and the auditor shall deduct the premiums from the salary or wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue ~~his~~ *a* warrant ~~therefor~~ *for the premiums* to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services ~~shall~~ *must* be construed as group insurance and the dues payable under ~~such~~ *the* plans ~~shall~~ *must* be construed as premiums ~~therefor~~ *for group insurance.*

(5) If the board of trustees of a school district implements a self-insured group health plan or *if* the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

Section 2. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits ~~shall be~~ *is* $170 per month for the fiscal year ending June 30, 1992, and $190 per month for the fiscal year ending June 30, 1993, and for each fiscal year thereafter. When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 3. Section 49-2-303, MCA, is amended to read:

"**49-2-303. Discrimination in employment.** (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar ~~him~~ *a person* from employment, or to discriminate against ~~him~~ *a person* in compensation or in a term, condition, or privilege of employment because of ~~his~~ race, creed, religion, color, or national origin or because of ~~his~~ age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of ~~his~~ age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application ~~which~~ *that* expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications ~~shall~~ *must* be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be construed to be a violation of this section.

(5) It is not a violation of the prohibition against marital status discrimination in this section for an employer or labor organization to provide greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents."

Section 4. Section 49-2-309, MCA, is amended to read:

"**49-2-309. Discrimination in insurance and retirement plans.** (1) It is an unlawful discriminatory practice for ~~any~~ *a* financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

(2) This section does not apply to any insurance policy, plan, *or* coverage~~,~~ or *to* any pension or retirement plan, program, or coverage in effect prior to October 1, 1985.

(3) It is not a violation of the prohibition against marital status discrimination in this section for an employer to provide greater or additional contributions

to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents."

Section 5. Section 49-2-403, MCA, is amended to read:

"**49-2-403. Specific limits on justification.** (1) Except as permitted in 49-2-303(3) ~~and (4)~~ *through (5)* and 49-3-201(5), sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Section 6. Section 49-3-103, MCA, is amended to read:

"**49-3-103. Permitted distinctions.** (1) Nothing in this chapter prohibits any public ~~or private~~ employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual; ~~or~~

(c) from discharging or otherwise disciplining an individual for good cause~~.~~*; or*

(d) from providing greater or additional contributions to a bona fide group insurance plan for employees with dependents than to those employees without dependents or with fewer dependents.

(2) The application of an employment preference as provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39, chapter 29 or 30, by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter."

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved February 1, 1993.

CHAPTER NO. 14

[SB 66]

AN ACT CLARIFYING THE OFFENSES THAT THE LEGISLATIVE AUDITOR MAY REPORT TO THE ATTORNEY GENERAL; AND AMENDING SECTION 5-13-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-13-310, MCA, is amended to read:

"**5-13-310. Prosecution — discipline of professionals.** (1) The attorney general shall conduct on behalf of the state all prosecutions for public offenses ~~disclosed by an audit of~~ *involving* a state agency ~~performed~~ *that are reported to the attorney general* by the legislative auditor.

(2) If the attorney general ~~shall decline such~~ *declines the* prosecution or ~~shall fail~~ *fails* to commence action on a public offense within a reasonable time, the county attorney of the appropriate county shall conduct on behalf of the state ~~such~~ *the* prosecution.

(3) In ~~any~~ *an* action taken by the attorney general or ~~any~~ *a* county attorney under this section, ~~wherein any~~ *in which a* professional person in the state of Montana is charged or may have engaged in unethical conduct, all records or certified copies of ~~such~~ *the* records, including investigative materials, ~~shall~~ *must* be turned over to the appropriate disciplinary authority ~~of his or her~~ *for the* profession immediately upon completion of the action."

Approved February 2, 1993.

CHAPTER NO. 15

[HB 80]

AN ACT ALLOWING A COUNTY TO DISTRIBUTE REVENUE FROM THE LEASE OF COUNTY PROPERTY TO THE COUNTY FUNDS BASED ON THE TAX LEVY FOR THE CURRENT YEAR; AND AMENDING SECTION 7-8-2232, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2232, MCA, is amended to read:

"**7-8-2232. Distribution of lease revenue.** All revenue derived from leases authorized by 7-8-2231, except as otherwise provided, ~~shall~~ *must* be paid into the county treasury. ~~On January 10 and July 10 in each year~~ *Upon receipt of funds,* the county treasurers shall distribute ~~such~~ *the* revenue *as collected* to the several county and trust and agency funds on the basis of the tax levy for the ~~preceding~~ *current* ~~calendar~~ year."

Approved February 4, 1993.

CHAPTER NO. 16

[HB 28]

AN ACT ELIMINATING THE REQUIREMENT THAT A SANITARIAN LICENSEE SUBMIT TO AN ORAL INTERVIEW OR EXAMINATION; AND AMENDING SECTION 37-40-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-40-302, MCA, is amended to read:

"**37-40-302. Application — examination — certificate.** (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college and must pass a written examination ~~and an oral interview~~ given at a time and place set by the board. The board shall establish procedures for examination and determination of passing scores by rule.

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee.

(4) Holders of current certificates ~~shall be~~ *are* entitled to append to their name the initials "R.S."."

Approved February 5, 1993.

CHAPTER NO. 17

[HB 77]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF JUSTICE FOR THE FISCAL YEAR ENDING JUNE 30, 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $1,159,200 from the general fund to the department of justice, legal services division, for the fiscal year ending June 30, 1993.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 5, 1993.

CHAPTER NO. 18

[SB 21]

AN ACT CLARIFYING THE MONTANA CONSUMER LOAN ACT; AND AMENDING SECTION 32-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-103, MCA, is amended to read:

"**32-5-103. Engaging in business of making loans restricted.** (1) ~~No~~ *Except as provided in subsection (5), a* person ~~shall~~ *may not* engage in the business of making loans or advances of money on credit in any amount and contract for, charge, or receive directly or indirectly on or in connection with any ~~such~~ loan or advance any charges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this chapter. A person engaged in business as a licensed pawnbroker may not become a licensee under this chapter, nor ~~shall~~ *do* any of the provisions of this chapter apply to any ~~such~~ exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) ~~shall~~ apply to any person who seeks to evade its applications by any device, subterfuge, or pretense ~~whatsoever~~.

(4) Any *act by a licensee in the making of a* contract ~~of loan in the making~~ or *in the* collection of *a loan made under the contract* ~~which any act shall have been done which violates~~ *that violates the provisions of this chapter* ~~subsection (1) of this section shall be~~ *is* void~~, and the~~. *The* ~~lender shall have~~ *licensee has* no right to collect, receive, or retain any principal, interest, or charges ~~whatsoever~~.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter."

Approved February 8, 1993.

CHAPTER NO. 19

[SB 76]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"**17-5-205. Application.** The application of the Bond Validating Act, Title 17, chapter 5, part 2, ~~as hereby amended,~~ is extended to bonds issued and proceedings taken prior to ~~March 26, 1991~~ *[the effective date of this act]*."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 8, 1993.

CHAPTER NO. 20

[SB 101]

AN ACT CLARIFYING THE FORM IN WHICH INDIVIDUAL INCOME TAX DATA IS PROVIDED TO THE LEGISLATIVE FISCAL ANALYST; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY PROVIDE INDIVIDUAL INCOME TAX DATA TO THE OFFICE OF BUDGET AND PROGRAM PLANNING; REQUIRING THAT THE INDIVIDUAL INCOME TAX DATA PROVIDED TO THE OFFICE OF BUDGET AND PROGRAM PLANNING BE THE SAME AS THE DATA PROVIDED TO THE LEGISLATIVE FISCAL ANALYST; AND AMENDING SECTIONS 5-12-303, 15-30-303, AND 17-7-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-12-303, MCA, is amended to read:

"**5-12-303. Fiscal analysis information from state agencies.** (1) The legislative fiscal analyst has the authority to investigate and examine the costs and revenues of state government activities and may examine and obtain copies of the records, books, and files of any state agency, including confidential records.

(2) When confidential records and information are obtained from a state agency, the legislative fiscal analyst and staff must be subject to the same penalties for unauthorized disclosure of ~~such~~ *the* confidential records and information provided for under the laws administered by the state agency. The legislative fiscal analyst shall develop policies to prevent the unauthorized disclosure of confidential records and information obtained from state agencies.

(3) The legislative fiscal analyst may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by ~~a masking method that conceals the identity of the taxpayer~~ *removing names, addresses, occupations, social security numbers, and taxpayer identification numbers.* The ~~masking method~~ *department of revenue* may not ~~destroy the statistical integrity of the individual income tax records~~ *alter the data in any other way.* The ~~masking method, including how~~ data is ~~masked, must be disclosed to the legislative fiscal analyst~~ *subject to the same restrictions on disclosure as are individual income tax returns.*

(4) The budget director shall furnish the legislative fiscal analyst with copies of all budget requests, at the time of submission to the budget director as provided by law~~,~~ and, if requested, all underlying and supporting documentation.

(5) In the year preceding each legislative session, the budget director shall furnish the legislative fiscal analyst on a confidential basis:

(a) by December 1, a copy of the documents ~~which~~ *that* reflect the anticipated receipts and other means of financing the budget for each fiscal year of the ensuing biennium;

(b) by December 1, a preliminary budget ~~which shall~~ *that must* meet the statutory requirements for submission of the budget to the legislature;

(c) by December 3, a paper copy and an electronic copy of the documents that reflect expenditures to the second level, as provided in 17-1-102(3), by funding source and detailed by accounting entity; and

(d) by December 15, all amendments to the preliminary budget.

(6) Within 1 day after the legislative finance committee presents its budget analysis to the legislature, the budget director and the legislative fiscal analyst shall exchange expenditure and disbursement recommendations by second-level expenditure detail and by funding sources detailed by accounting entity. This information must be filed in the respective offices and be made available to the legislature and the public.

(7) This section does not authorize publication or public disclosure of information if the law prohibits ~~such~~ publication or disclosure."

Section 2. Section 15-30-303, MCA, is amended to read:

"**15-30-303. Confidentiality of tax records.** (1) Except *as provided in subsections (6) and (7) or* in accordance with *a* proper judicial order or as otherwise provided by law, it is unlawful ~~for the department or any deputy, assistant, agent, clerk, or other officer or employee~~ to divulge or make known in any manner*:*

(a) the amount of income or any particulars set forth or disclosed in any *individual* report or *individual* return required under this chapter or any other information secured in the administration of this chapter~~.~~*; or*

(b) ~~It is also unlawful to divulge or make known in any manner~~ any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) *(a)* The officers charged with the custody of ~~such~~ reports and returns ~~shall~~ *may* not be required to produce ~~any of~~ them or evidence of anything contained in them in ~~any~~ *an* action or proceeding in ~~any~~ *a* court, except in ~~any~~ *an* action or proceeding*:*

(i) to which the department is a party under the provisions of this chapter or any other taxing act*;* or

(ii) on behalf of ~~any~~ *a* party to any action or proceedings under the provisions of this chapter or ~~such~~ other ~~act~~ *taxes* when the reports or facts shown ~~thereby~~ *by the reports* are directly involved in ~~such~~ *the* action or proceedings~~,~~*.*

(b) ~~in either of which events the~~ *The* court may require the production of and may admit in evidence ~~so~~ *only as* much of ~~said~~ *the* reports or of the facts shown ~~thereby~~ *by the reports* as are pertinent to the action or proceedings ~~and no more~~.

(3) ~~Nothing herein shall be construed to~~ *This section does not* prohibit:

(a) the delivery to a taxpayer or ~~his~~ *the taxpayer's* duly authorized representative of a certified copy of any return or report filed in connection with ~~his~~ *the taxpayer's* tax;

(b) the publication of statistics ~~so~~ classified ~~as~~ to prevent the identification of particular reports or returns and the items ~~thereof~~ *of particular reports or returns*; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who ~~shall bring~~ *brings an* action to set aside or review the tax based ~~thereon~~ *on the report or return* or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 and 15-30-322.

(4) Reports and returns ~~shall~~ *must* be preserved for 3 years and ~~thereafter~~ *may be preserved* until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) of this section ~~shall be punished~~ *is punishable* by a fine not exceeding $1,000 or by imprisonment in the county jail *for a term* not exceeding 1 year, or both~~, at the discretion of the court, and if~~. *If* the offender ~~be~~ *is* an officer or employee of the state, ~~he shall~~ *the offender must* be dismissed from office and ~~be incapable of holding~~ *may not hold* any public office in this state for a period of 1 year ~~thereafter~~ *after dismissal.*

(6) ~~Notwithstanding the provisions of this section, the~~ *The* department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either ~~such~~ officer to inspect the return of income of any individual or may furnish to ~~such~~ *the* officer or ~~his~~ *an* authorized representative an abstract of the return of income of any individual or supply ~~him~~ *the officer* with information concerning ~~any~~ *an* item of income contained in ~~any~~ *a* return or disclosed by the report of ~~any~~ *an* investigation of the income or return of income of ~~any~~ *an* individual, but ~~such~~ permission ~~shall~~ *may* be granted or ~~such~~ information furnished ~~to such officer or his representative~~ only if the statutes of the United States or of ~~such~~ *the* other state~~, as the case may be,~~ grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(7) ~~Further, notwithstanding any of the provisions of this section, the~~ *The* department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses; ~~and~~

(d) to the board of regents information required under 20-26-1111*; and*

(e) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The infor-

mation provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst."

Section 3. Section 17-7-111, MCA, is amended to read:

"**17-7-111. Agency program budgets — form distribution and contents.** (1) In the preparation of a state budget, the budget director shall, not later than July 1 in the year preceding the convening of the legislature, distribute to all state offices and departments, including the judicial branch and the legislative branch, the proper forms necessary for the preparation of budget estimates. These forms ~~shall~~ *must* be prescribed by the budget director to procure the information required by subsection (2).

(2) The agency budget requests, when completed by the budget office, must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary for current level expenditures and for each modification request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget ~~in such manner as to show,~~ *showing* a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained ~~therein~~ *in the summary* by fund and, ~~where~~ *when* applicable, organizational unit.

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;

(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented ~~shall~~ *must* include the following:

(i) a statement of agency goals and objectives and a statement of goals and objectives for each program of the agency. ~~Such~~ *The* goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives. The goals and objectives must contain a list of duties prioritized by the department director to reflect the director's opinion concerning the importance of the duties assigned to the agency by law. Any discretionary programs established by the agency that are not required by law must also be enumerated.

(ii) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; and

(iii) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category; *and*

(e) ~~any~~ other information the budget director feels is necessary for the preparation of a budget.

(3) The budget director ~~must also~~ *shall* prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation ~~shall~~ *must* be presented by department, institution, agency, or branch by funding source, with a description of each proposed project; and

(b) the proposed pay plan schedule for all executive branch employees, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(4) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (4). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(5) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns."

Approved February 8, 1993.

CHAPTER NO. 21

[SB 114]

AN ACT CLARIFYING THE TIME WITHIN WHICH A TAXPAYER MAY BRING A DECLARATORY JUDGMENT ACTION; AND AMENDING SECTION 15-1-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-406, MCA, is amended to read:

"**15-1-406. Alternative remedy — declaratory judgment.** (1) An aggrieved taxpayer may, in lieu of proceeding under 15-1-402 or 15-1-211, bring a declaratory judgment action in the district court seeking a declaration that a tax levied by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the ~~imposition~~ *date the notice* of the tax *due was sent to the taxpayer*. The court shall consolidate all actions brought under subsection (1) ~~which~~ *that* challenge the same tax levy. The decision of the court ~~shall apply~~ *applies* to all similarly situated taxpayers except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid when due as a condition of continuing the action."

Approved February 8, 1993.

CHAPTER NO. 22

[HB 85]

AN ACT AUTHORIZING THE CONSTRUCTION OF AN HONORS COLLEGE PROGRAM BUILDING AT THE UNIVERSITY OF MONTANA WITH PRIVATE FUNDS; EXEMPTING THE CONSTRUCTION PROJECT FROM CERTAIN STATE PROCUREMENT OF SERVICES LAWS; AMENDING SECTIONS 18-2-112 AND 18-8-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Honors college program building.** The university of Montana may construct an honors college program building costing up to $2 million to be financed with private funds. The department of administration shall administer the construction project.

Section 2. Section 18-2-112, MCA, is amended to read:

"**18-2-112. Appointment of architects and consulting engineers.** *(1)* ~~The~~ *Except as provided in subsection (2), the* department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana~~,~~ *or* its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency ~~where~~ *for which* the work is to be done. ~~Such~~ *The* appointment ~~shall be~~ *is* subject to the approval of the state board of examiners. The department need not appoint an architect or consulting engineer for repair or maintenance projects.

(2) The department of administration shall appoint the architect nominated by the university of Montana for the honors college program building authorized in [section 1]."

Section 3. Section 18-8-212, MCA, is amended to read:

"**18-8-212. Exception.** (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed $5,000 may contract for those professional services by direct negotiation. *The procurement of architectural, engineering, and land surveying services for the honors college program building authorized in [section 1] is exempt from the provisions of this part.*

(2) ~~No~~ *An* agency may *not* separate service contracts or split or break projects for the purpose of circumventing the provisions of this part."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Section 5. **Termination.** [Sections 2 and 3] terminate July 1, 1995.

Approved February 8, 1993.

CHAPTER NO. 23

[HB 34]

AN ACT ALLOWING HOME-VISIT COSMETOLOGY FOR HANDICAPPED OR HOMEBOUND CUSTOMERS; AND AMENDING SECTION 37-31-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-31-301, MCA, is amended to read:

"**37-31-301. Prohibited acts.** (1) Without an appropriate license issued under this chapter, it ~~shall be~~ *is* unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology or school of manicuring;

(c) manage or operate a cosmetology shop, manicuring shop, booth, or beauty parlor;

(d) teach in a school of cosmetology or school of manicuring;

(e) practice manicuring for compensation;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for any person who owns, manages, or controls a cosmetology shop to employ or use an unlicensed person as a cosmetologist or manicurist;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed establishment as provided in this chapter, except when a licensed operator is requested*:*

(i) by a customer to go to a place other than a licensed establishment and is sent to ~~such~~ *the* customer from a licensed establishment*; or*

(ii) by a handicapped or homebound customer to go to the customer's place of residence;

(d) for any person who owns, manages, or controls a manicuring shop to employ or use an unlicensed person as a manicurist;

(e) to operate a manicuring school without complying with 37-31-311; *or*

(f) to violate any of the provisions of this chapter."

Approved February 9, 1993.

CHAPTER NO. 24

[HB 56]

AN ACT REVISING PERFORMANCE BOND REQUIREMENTS FOR LOTTERY CONTRACTS; AMENDING SECTION 23-7-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-7-211, MCA, is amended to read:

"23-7-211. Powers and duties of director. (1) The director shall:

(a) administer the operation of the state lottery in accordance with this chapter and the rules and other directives of the commission;

(b) appoint an assistant director for security and employ and direct personnel necessary to the operation of the state lottery;

(c) license lottery ticket or chance sales agents and suspend or revoke licenses pursuant to this chapter and commission rules; and

(d) maintain, with the assistant director for security, the security of the state lottery.

(2) *(a)* With the concurrence of the commission or pursuant to commission rules, the director may enter into contracts for materials, equipment, and supplies to be used in the operation of the state lottery, for the design and installation of games, for consultant services, and for promotion of the lottery. All contracts must be made in accordance with state law. ~~No~~ *A* contract is *not*

legal or enforceable that provides for the management of the state lottery or for the entire operation of its games by any private person or firm.

(b) When a contract is awarded, a performance bond satisfactory to *and in an amount determined by* the commission and executed by a surety company authorized to do business in this state or otherwise secured in a manner satisfactory to the commission~~, in an amount equal to the price of the contract,~~ must be delivered to the commission. *The requirements for this bond must be at least as stringent as those stated in 18-4-312(4).*"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 9, 1993.

CHAPTER NO. 25

[HB 59]

AN ACT GIVING THE STATE LOTTERY COMMISSION DISCRETION TO SET TIME PERIOD AND INSTALLMENT AMOUNTS FOR PAYMENT OF LOTTERY PRIZES IN EXCESS OF $100,000; AND AMENDING SECTION 23-7-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-7-311, MCA, is amended to read:

"**23-7-311. Drawings for and payment of prizes — unclaimed prizes.** (1) All drawings must be held in public. The selection of winning tickets may not be performed by an employee of the lottery or by a member of the commission. All drawings must be witnessed by a professional staff employee of the legislative auditor's office, and all lottery drawing equipment used in public drawings to select winning prizes or participants for prizes must be examined by the director's staff and a professional staff employee of the legislative auditor's office prior to and after each public drawing.

(2) The commission may provide for the immediate payment of prizes by the ticket or chance sales agent who sold the winning ticket or chance whenever the amount of the prize is less than an amount set by commission rule. Payment may not be made directly by a machine or device or by a computer terminal.

(3) *(a)* ~~Prizes~~ *Except as provided in subsection (3)(b), prizes* over $100,000 may in the discretion of the commission be paid either in one lump sum or in equal yearly installments without interest over a period of not more than 20 years~~, except that each installment payment must be at least $20,000~~ *and in yearly installment payments of not less than $20,000.*

(b) If the commission enters into an agreement under the provisions of 23-7-202(8) to participate in a game for prizes of over $100,000 that requires payment periods of more than 20 years or yearly installment payments of less than $20,000 as a condition of participation, the commission may adopt the installment payment amounts and time periods necessary to comply with the conditions of the game.

(4) Prizes not claimed within 6 months are forfeited and must be paid into the state lottery fund. No interest is due on a prize when a claim is delayed but made within 6 months.

(5) The right to a prize is not assignable, but prizes may be paid to a deceased winner's estate or to a person designated by judicial order."

Approved February 9, 1993.

CHAPTER NO. 26

[HB 63]

AN ACT ELIMINATING THE REQUIREMENT FOR A COUNTY PERMIT AND CERTAIN INFORMATION REQUIREMENTS FOR A RAFFLE CONDUCTED BY A RELIGIOUS CORPORATION SOLE OR A NONPROFIT ORGANIZATION; AND AMENDING SECTION 23-5-413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-413, MCA, is amended to read:

"**23-5-413. Raffle prizes — permits — ~~exception~~ *exceptions*.** (1) (a) Except as provided in ~~subsection~~ *subsections* (1)(b) *and (1)(c)*, a permit must be issued by the board of county commissioners for each raffle conducted within its jurisdiction. The permit must be issued before the raffle may be conducted. ~~The board of county commissioners may not charge a permit fee or an investigative fee for a raffle conducted by a religious corporation sole or a nonprofit organization if the organization presents sufficient documentation of its nonprofit status.~~

(b) If tickets for a raffle are to be sold in more than one county, a permit must be obtained only in the county where the winners of the raffle are to be determined.

(c) If a raffle is to be conducted by a religious corporation sole or a nonprofit organization, as defined in 23-5-112, a county permit is not required.

(2) Except for a religious corporation sole or a nonprofit organization, a person or organization conducting a raffle shall own all prizes to be awarded as part of the raffle before the sale of any tickets.

(3) A person who has conducted a raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle.

(4) The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state.

(5) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization, other than a religious corporation sole or a nonprofit organization, may not exceed $5,000. The prize may be in the form of cash, other intangible personal property, tangible personal property, or real property. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.

(6) (a) ~~In addition to complying with the requirements of subsections (1) through (5), a religious corporation sole or a nonprofit organization as defined in 23-5-112 shall provide the following information to the board of county commissioners when applying for a raffle permit:~~

~~(i) the cost and number of raffle tickets to be sold;~~

~~(ii) the charitable purposes the proceeds of the raffle are intended to benefit; and~~

~~(iii) the proposed prizes and their value.~~ *A religious corporation sole or a nonprofit organization shall comply with the requirements in subsections (3) and (4)*

(b) The proceeds from the sale of tickets for a raffle conducted by a religious corporation sole or a nonprofit organization may be used only for charitable purposes or to pay for prizes. Proceeds may not be used for the administrative cost of conducting the raffle.

(c) The value of a prize awarded for an individual ticket for a raffle conducted by a religious corporation sole or a nonprofit organization may equal or exceed $5,000 if the prize is in the form of tangible personal property. If the value of the prize is less than $5,000, the prize may be in the form of cash, other intangible personal property, tangible personal property, or real property."

Approved February 9, 1993.

CHAPTER NO. 27

[HB 117]

AN ACT CLARIFYING THAT AN INVESTIGATION OF AN ALLEGED ABUSE OF A RESIDENT IN A STATE INSTITUTION FOR THE DEVELOPMENTALLY DISABLED MUST BE INITIATED WITHIN 24 HOURS OF THE REPORT OF THE INCIDENT AND THE RESULTS MUST BE REPORTED TO THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; AND AMENDING SECTION 53-20-163, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-163, MCA, is amended to read:

"**53-20-163. Abuse of residents prohibited.** (1) Every residential facility shall prohibit mistreatment, neglect, or abuse in any form of any resident. Alleged violations must be reported immediately to the superintendent of the facility, and there must be a written record that:

(a) each alleged violation has been thoroughly investigated and findings stated; *and*

(b) the ~~results of the preliminary~~ investigation ~~are reported to the superintendent of the facility~~ *into the alleged violation was initiated* within 24 hours of the report of the incident *and the results were reported to the director of the department of corrections and human services.*

(2) The reports must also be made to the mental disabilities board of visitors monthly. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members."

Approved February 10, 1993.

CHAPTER NO. 28

[SB 8]

AN ACT ALLOWING COUNTY COMMISSIONERS OF FOURTH-CLASS COUNTIES TO SERVE ON A PART-TIME BASIS; AMENDING SECTION 7-4-2107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2107, MCA, is amended to read:

"**7-4-2107. Compensation of county commissioners.** (1) ~~Each~~ *Except as provided in subsection (3), each* member of the board of county commissioners in counties of the first, second, third, and fourth class shall receive an annual salary equal to the annual salary established in 7-4-2503 for the clerk and recorder plus $2,000~~, but~~. *However,* the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection.

(2) Each member of the board in all other counties may receive an annual salary equal to the annual salary established in 7-4-2503(1)(a)(ii) for the clerk and recorder or a salary at a per-day rate determined by using the salary established in 7-4-2503(1)(a)(ii) for the clerk and recorder~~, but~~. *However,* the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level if that level is lower than the level required by this subsection. The salary ~~as~~ determined by the board ~~shall~~ *must* apply uniformly to all board members.

(3) Each member of the board of fourth-class counties may receive a salary at a per-day rate determined by using the salary established in subsection (1). If a per-day rate is used, then all board members must be paid on that basis.

~~(3)~~*(4)* This section does not apply to counties that have adopted a charter form of government."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 10, 1993.

CHAPTER NO. 29

[SB 34]

AN ACT CREATING AN INTERAGENCY COORDINATING COUNCIL FOR STATE PREVENTION PROGRAMS AND SERVICES FOR CHILDREN AND

FAMILIES IN MONTANA; DESIGNATING THE MEMBERSHIP AND DUTIES OF THE COORDINATING COUNCIL; REQUIRING COOPERATION WITH ANY STANDING OR INTERIM LEGISLATIVE COMMITTEE THAT IS ASSIGNED TO STUDY PREVENTION PROGRAMS OR OTHER STATE PROGRAMS AND POLICIES RELATED TO CHILDREN AND FAMILIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Interagency coordinating council for state prevention programs.** (1) There is an interagency coordinating council for state prevention programs consisting of the following 10 members:

(a) the director of the department of family services provided for in 2-15-2401;

(b) the director of the department of health and environmental sciences provided for in 2-15-2101;

(c) the director of the department of corrections and human services provided for in 2-15-2301;

(d) the attorney general provided for in 2-15-501;

(e) the director of the department of social and rehabilitation services provided for in 2-15-2201;

(f) the superintendent of public instruction provided for in 2-15-701;

(g) the presiding officer of the Montana children's trust fund board;

(h) two persons appointed by the governor who have experiences related to the private or nonprofit provision of prevention programs and services; and

(i) the administrator of the board of crime control provided for in 2-15-2006.

(2) The coordinating council shall perform the following duties:

(a) develop through interagency planning efforts a comprehensive and coordinated prevention program delivery system that will strengthen the healthy development, well-being, and safety of children, families, individuals, and communities;

(b) develop appropriate interagency prevention programs and services that address the problems of at-risk children and families and that can be provided in a flexible manner to meet the needs of those children and families;

(c) study various financing options for prevention programs and services;

(d) ensure that a balanced and comprehensive range of prevention services is available to children and families with specific or multiagency needs; and

(e) assist in development of cooperative partnerships among state agencies and community-based public and private providers of prevention programs.

(3) The coordinating council shall cooperate with and report to any standing or interim legislative committee that is assigned to study the policies and

funding for prevention programs or other state programs and policies related to children and families.

(4) The coordinating council must be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122.

(5) The coordinating council is attached for administrative purposes only to the governor's office, which may assist in providing staff and budgetary, administrative, and clerical services to the council as the council or its presiding officer requests.

(6) Staffing and other resources may be provided to the coordinating council only from state and nonstate resources donated to the council and from direct appropriations by each legislature.

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved February 10, 1993.

CHAPTER NO. 30

[SB 57]

AN ACT REQUIRING GAME FARM ANIMALS TO BE IDENTIFIED BY A RECORDED MARK; INCLUDING NONCARNIVOROUS GAME FARM ANIMALS IN THE DEFINITION OF LIVESTOCK FOR THE PURPOSE OF BRAND INSPECTION; AND AMENDING SECTIONS 81-3-102, 81-3-104, AND 81-3-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-3-102, MCA, is amended to read:

"**81-3-102. Recording of brands required — *game farm animals to be marked* — limit.** (1) It is unlawful for a person to artificially brand, mark, or cause to be artificially branded or marked any domestic animal or livestock running at large on the public domain or open range or that may run or stray at large or on the public domain or open range, unless the artificial brand or mark has been recorded or rerecorded with the department in the name of the person within the period of 10 years immediately preceding the branding or marking.

(2) Game farm animals, as defined in 87-4-406, exclusive of carnivores and omnivores, must be identified by use of a recorded whole herd mark or brand in compliance with the requirements of Title 87, chapter 4, and this chapter.

~~(2)~~*(3)* No more than five brands may be recorded or rerecorded by one person."

Section 2. Section 81-3-104, MCA, is amended to read:

"**81-3-104. Designation of years for rerecording brands.** (1) Until a system is developed under subsection (2), each 10th year after 1921 is the year for rerecording artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock. Subject to the provisions of ~~81-3-102(2)~~ *81-3-102(3)*, the department shall, on the application of a person or the transferee of the person made in a year that is a year for rerecording marks and brands, rerecord a mark or brand that at the time of the application stands of record in the department in the name of the person. A mark or brand that was not originally recorded or rerecorded in the name of the person during the rerecording year last preceding the date when the application is filed or originally recorded in the name of the person or ~~his~~ *the person's* predecessor or predecessors in interest between the time of the application and the rerecording year last preceding the application is not of record in the department.

(2) The department shall develop a system for the staggered recording and rerecording of marks and brands."

Section 3. Section 81-3-201, MCA, is amended to read:

"**81-3-201. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector who does not receive a salary or compensation from the department.

(2) "Feedlot" means a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

(3) "Livestock" means ~~any~~ *a* bovine animal, horse, mule, or ass, regardless of its age or sex, and includes llama, bison, sheep, ~~and~~ elk, *and game farm animals, as defined in 87-4-406, exclusive of carnivores and omnivores.*

(4) "Person" means an individual, partnership, corporation, association, firm, or ~~any~~ entity not enumerated capable of owning or controlling livestock.

(5) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector."

Approved February 10, 1993.

CHAPTER NO. 31

[SB 83]

AN ACT CLARIFYING THAT A PERSON MUST BE LICENSED IN ORDER TO BE REFERRED FOR EMPLOYMENT IN ELECTRICAL WORK; PROVIDING FOR RENEWAL OF LICENSING FOR ELECTRICAL WORK; SPECIFYING THAT A VIOLATION OF THE ELECTRICAL LAW IS A CONTINUING VIOLATION; AND AMENDING SECTIONS 37-68-301, 37-68-307, 37-68-310, 37-68-311, 37-68-312, AND 37-68-322, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-68-301, MCA, is amended to read:

"**37-68-301. License required to engage in electrical work.** *(1)* A person may not engage in or work at the business, trade, or calling of electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until ~~he~~ *the person* has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

(2) A private or public employment agency or labor union, or an employee thereof, who refers persons for employment by others may not refer a person for employment by others to perform the work of an electrical contractor, residential electrician, journeyman electrician, or master electrician in this state unless the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician."

Section 2. Section 37-68-307, MCA, is amended to read:

"**37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration.** (1) To ~~insure~~ *ensure* impartiality, the examination for either the master's or journeyman's license ~~shall~~ *must* be by numbers drawn by lot. A paper may not be marked with the name of an applicant, but ~~shall~~ *must* be anonymously graded by the department. The examination passing grade is 75%.

(2) If it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license ~~which~~ *that* authorizes ~~him~~ *the licensee* to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.

(3) Each original license expires on ~~the~~ *a* July 15 ~~which~~ *that* is ~~at least 1 year but~~ not more than ~~2~~ *3* years subsequent to the date of issuance, *at the discretion of the board.*"

Section 3. Section 37-68-310, MCA, is amended to read:

"**37-68-310. ~~Annual~~ *License* renewal *every three years.*** Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board, ~~shall~~ *must* be renewed for a period of ~~1 year~~ *3 years* by the department on application for renewal made to the department prior to July 15 of the year in which the prior license expired and on the payment of ~~an annual~~ *a* renewal fee. If application for renewal is not made prior to July 15, an additional fee prescribed by the board ~~shall~~ *must* be paid ~~on account~~ *because* of the delinquency in renewal. All applications for renewal must be made prior to August 15 of ~~that~~ *the* year *in which the prior license expired,* otherwise the license is forfeited and the applicant is required to pass the examination and pay the fees required of applicants for original licenses."

Section 4. Section 37-68-311, MCA, is amended to read:

"**37-68-311. Examination fee — ~~annual~~ *license* fee — specific exemption for apprentices.** (1) Master electricians ~~who are not electrical contractors~~ and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by this current shall make application for a license to the department. The application ~~shall~~ *must* be on a form furnished by the department and *must be* accompanied by an examination fee set by the board. The forms ~~shall~~ *must* state the applicant's full name~~, his~~ *and* address, the extent of ~~his~~ *work* experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, ~~he~~ *the applicant* shall pay to the department ~~an annual~~ *a* license fee set by the board for a master electrician's license or for a journeyman or a residential electrician's license, and upon receipt of the fee the department shall issue the proper license to the applicant.

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school ~~shall~~ *must* be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement."

Section 5. Section 37-68-312, MCA, is amended to read:

"**37-68-312. Electrical contractor's license — application — issuance — fees — renewal.** Each electrical contractor shall, before July 1 of ~~each~~ *the* year *in which the prior license expired,* file with the department an application in writing for each firm operated by ~~him~~ *the electrical contractor* in this state to obtain a license. A license may not be issued until the applicant meets the requirements and has paid to the department a license fee set by the board for each firm operated by ~~him~~ *the electrical contractor.* Licenses ~~shall~~ *must* bear the date of issue. ~~and expire~~ *Each original license expires* on *the* July 1 ~~following~~ *that is subsequent to* the date of ~~issue~~ *issuance, as determined by the board.* An electrical contractor licensed under this chapter is entitled to have ~~his~~ *a* license renewed for the ensuing ~~year~~ *3-year period* by payment to the department of the license fee before the date of expiration of the license *and by meeting the requirements set by the board.*"

Section 6. Section 37-68-322, MCA, is amended to read:

"**37-68-322. Penalty.** (1) Any person or corporation violating any provision of this chapter shall upon conviction ~~thereof~~ *of a violation*:

(a) if a person, be punished by a fine not more than $500, ~~or~~ by imprisonment for a term not to exceed 6 months, ~~or~~ by revocation of ~~his~~ *the* license, or by ~~such~~ *any combination of the* fine, imprisonment, and revocation, in the discretion of the court; and

(b) if a corporation, be punished by a fine of not more than $1,000.

(2) Any officer or agent of a corporation or member or agent of a partnership or association who ~~shall~~ personally ~~participate~~ *participates* in or ~~be~~ *is an* accessory to any violation of this chapter by ~~such~~ *the* partnership, association, *or* corporation shall be subject to the penalties ~~herein~~ prescribed for individuals.

(3) A violation of this chapter is a continuing violation, and the statute of limitations is tolled until the violation ceases. The county attorney shall, upon request of the board, prosecute any violation of the licensing requirements of this chapter."

Approved February 10, 1993.

CHAPTER NO. 32

[SB 110]

AN ACT ESTABLISHING A FEE PAID FOR TEMPORARY REGISTRATION FOR PROPORTIONALLY REGISTERED VEHICLES; AMENDING SECTION 61-3-722, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-722, MCA, is amended to read:

"**61-3-722. Registration and identification of proportionally registered vehicles — effect of ~~such~~ registration.** (1) The department shall register ~~the vehicles so described~~ *each proportionally registered vehicle* and issue a license plate or plates, ~~or~~ a distinctive sticker, or other suitable identification device~~,~~ for each vehicle described in the application upon payment of the appropriate fees and property taxes, as provided by law, for the application and for the *license plates,* stickers, or devices issued. A fee of $2 ~~shall~~ *must* be paid for each license plate, sticker, or device issued for each proportionally registered vehicle. *A fee of $5 must be paid for each vehicle receiving temporary registration as authorized by section 704 of the international registration plan of the American association of motor vehicle administrators, adopted April 1988.* A registration card ~~shall~~ *must* be issued for each proportionally registered vehicle. The registration card ~~shall~~ *must,* in addition to other information required by chapter 3, ~~bear upon its face~~ *show* the number of the license, sticker, or other device issued for the proportionally registered vehicle and ~~shall~~ *must* be carried in the vehicle at all times.

(2) Fleet vehicles ~~so~~ registered and identified ~~shall be deemed~~ *as fleet vehicles are considered* fully licensed and registered in this state for any type of movement or operation, except that, in those instances in which a grant of authority is required for intrastate movement or operation, the vehicle may not be operated in intrastate commerce in this state unless the owner has been granted intrastate authority by the public service commission and unless the vehicle is being operated in conformity with that authority."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved February 10, 1993.

CHAPTER NO. 33

[SB 126]

AN ACT LIMITING THE TIME PERIOD IN WHICH A REQUEST FOR A REFUND OR CREDIT CAN BE MADE FOR SPECIAL FUEL TAXES OR FOR A TEMPORARY PERMIT FEE; AMENDING SECTION 15-70-329, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-329, MCA, is amended to read:

"**15-70-329. Procedures for credits — *limitation on requests.*** (1) ~~Should~~ *If* a licensed special fuel user or licensed special fuel dealer ~~desire~~ *wants* to receive *a* refund of special fuel taxes or of the temporary permit fee, the user or dealer shall make a signed and written request to the department requesting those amounts then due. Any amount determined to be creditable by the department under 15-70-328 ~~shall~~ *must* first be credited on any amounts then due and payable from the special fuel dealer or special fuel user to whom the refund is due, and the department shall then certify the balance to the credit of the dealer or user. A warrant ~~shall~~ *must* be drawn upon the state treasurer for the amount of ~~such~~ *the* claim, and ~~same shall~~ *the claim must* be paid in the same manner as other claims against the state are paid.

(2) In case ~~any~~ *a* special fuel user or special fuel dealer fails or neglects to file a request for refund of special fuel taxes within 12 months from the date ~~his~~ *the user's or dealer's* special fuel license became canceled, the department ~~shall be~~ *is* under no obligation to make a refund.

(3) A request for refund or credit under this section must be made within 3 years from the date of the payment for which a refund or credit is claimed."

Section 2. **Applicability.** [This act] applies to special fuel taxes and temporary permit fees paid on or after October 1, 1993.

Approved February 10, 1993.

CHAPTER NO. 34

[SB 127]

AN ACT ALLOWING THE DEPARTMENT OF TRANSPORTATION TO REQUIRE A PETROLEUM DEALER WHO IS NOT LICENSED BY THE DEPARTMENT UNDER TITLE 15, CHAPTER 70 OR 71, MCA, TO FILE QUARTERLY REPORTS ON FUEL RECEIVED AND SOLD DURING THE QUARTER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Report by unlicensed petroleum dealer — definition — penalty.** (1) The department of transportation may require a petroleum dealer who is not licensed by the department under Title 15, chapter 70 or 71, to file, within 30 days of the end of a quarter, on a form prescribed by the department a report of the amount of fuel received and sold during the quarter. The report must also contain other information as required by the department.

(2) As used in this section, "petroleum dealer" means a dealer who:

(a) is directly or indirectly engaged in delivering or distributing gasoline, aviation gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) to a consumer in this state; or

(b) offers or advertises to sell, refine, manufacture, or store gasoline, aviation gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) in this state.

(3) A petroleum dealer who fails to file the report required by subsection (1) shall be fined $50 for the first offense, $75 for the second offense, and $100 for the third and each subsequent offense.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 1, and the provisions of Title 15, chapter 70, part 1, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved February 10, 1993.

CHAPTER NO. 35

[SB 43]

AN ACT REMOVING THE SUNSET PROVISION OF THE PHYSICIAN, NURSE, PHYSICAL THERAPIST, OCCUPATIONAL THERAPIST, CHIROPRACTOR, DENTIST, AND HOSPITAL LIEN ACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 4, Chapter 469, Laws of 1991, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 11, 1993.

CHAPTER NO. 36

[HB 88]

AN ACT REMOVING THE MINIMUM BID REQUIREMENT AT A SHERIFF'S SALE OF PERSONAL PROPERTY; PROVIDING FOR THE DISTRIBUTION OF MONEY COLLECTED FROM THE SALE; ALLOWING COUNTY COMMISSION TO CANCEL ANY PERSONAL PROPERTY TAXES, INCLUDING INTEREST, PENALTY, COSTS, AND CHARGES THAT REMAIN UNSATISFIED AFTER SALE OF THE PERSONAL PROPERTY; AND AMENDING SECTION 15-17-911, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-17-911, MCA, is amended to read:

"**15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property.** (1) The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to one method does not bar the right to resort to any other method. Any of the methods provided may be used until the full amount of the tax is collected.

(2) The provisions of 15-16-113 and this section apply to a seizure and sale under subsection (1).

(3) A sale under subsection (1) must be at public auction. ~~The minimum bid for any property offered for sale must be of a sufficient amount to pay the delinquent taxes, including penalties, interest, and costs.~~

(4) For seizing and selling personal property, the treasurer shall charge $25, plus the mileage allowance provided by law to the sheriff, plus reasonable expenses for seizing, handling, keeping, or caring for any property ~~so~~ seized. The charge and other costs may be charged only when property is actually seized and offered for sale or sold.

(5) On payment of the price bid for any property sold as provided in this section, delivery of the property, with a bill of sale, vests the title of the property in the purchaser.

(6) (a) ~~All money collected from the sale of property in liquidation of the delinquency, including delinquent taxes, penalties, and interest but not costs, must be credited by the treasurer to the appropriate funds.~~ *After sale of the property, the proceeds of the sale must be used first to reimburse the county for all costs and charges incurred in seizing the property and conducting the sale. Any excess, up to the total amount of the taxes owed, must be distributed proportionally to the funds that would have received the taxes if they had been paid before becoming delinquent. Any remaining excess, up to the amount of the penalty and interest owed, must then be distributed proportionally to the fund that would have received the penalty and interest if they had been paid in full.*

(b) Any money collected in excess of the delinquent tax, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the person does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the person has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the person has no claim to it ~~thereafter~~.

(7) Any property seized for the purpose of liquidating a delinquency by a tax sale that remains unsold following a sale may be left at the place of sale at the risk of the owner.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

(9) The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed had been seized and sold. If the taxes are canceled, one copy of the order of cancellation must be filed with the county clerk and one copy with the county treasurer."

Approved February 12, 1993.

CHAPTER NO. 37

[SB 7]

AN ACT PROVIDING THAT ORGANIZATIONS THAT PROVIDE COMMUNITY SUPPORT SERVICES TO PERSONS WITH SEVERE AND DISABLING MENTAL ILLNESSES MAY BE REPRESENTED ON THE REGIONAL MENTAL HEALTH CORPORATION BOARDS; AND AMENDING SECTION 53-21-204, MCA.

WHEREAS, it is the intent of the state to provide services for the severely mentally ill in the least restrictive environment possible; and

WHEREAS, community organizations that provide such things as food, housing, and clothing must be organized and carefully coordinated to support clients who are discharged from the Montana State Hospital; and

WHEREAS, the regional mental health corporation boards develop plans and budget proposals to provide and support mental health services within the mental health region.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-204, MCA, is amended to read:

"**53-21-204. Mental health corporations.** (1) Mental health regions ~~shall~~ *must* be established in the state mental health plan and ~~shall~~ *must* conform to the mental health regions as established in the state mental health construction plan promulgated by the board of health and environmental sciences under the federal Community Mental Health Centers Act.

(2) The mental health regions ~~shall establish themselves~~ *must be established* under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations ~~shall~~ *may* not be considered agencies of the department or the state of Montana; however, they may retain and enter into retirement programs as established under Title 19, chapter 3, The Public Employees' Retirement System Act.

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board ~~must include three~~ *consists of three* members-at-large who must be chosen according to the corporate bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following ~~three~~ *four* groups:

(i) parents of children with emotional disturbances;

(ii) advocates of mental health services for the elderly; ~~or~~

(iii) health care professionals*; or*

(iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

(4) Nothing in this section prohibits a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board ~~shall~~ *must* be established under guidelines adopted by the bylaws of the corporation. All appointments to the board ~~shall~~ *must* be for terms of 2 years, and the department ~~shall~~ *must* be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of ~~moneys~~ *money* and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, ~~tax moneys~~ *taxes,* gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part ~~shall~~ *must* be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members ~~shall~~ *must* be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it ~~shall~~ *must* be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health

services within the region ~~shall~~ *must* be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on ~~such~~ *that* property.

(9) The regional board of mental health with the approval of the department shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with subsection (6)(d)."

Approved February 12, 1993.

CHAPTER NO. 38

[SB 45]

AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF CREMATORIUMS, CREMATORY OPERATORS, AND CREMATORY TECHNICIANS; RENAMING THE BOARD OF MORTICIANS AS THE BOARD OF FUNERAL SERVICE; PROVIDING FOR A CREMATORY EMPLOYEE MEMBER OF THE BOARD; PROVIDING FOR FEES, INSPECTION, AND STANDARDS; PROVIDING FOR RECORDKEEPING; PROVIDING FOR CREMATION PROCEDURES; PROVIDING FOR DISPOSITION OF CREMATED REMAINS; PROVIDING FOR LIMITATION OF LIABILITY; PROVIDING FOR PRENEED CREMATION ARRANGEMENTS; GRANTING RULEMAKING AUTHORITY; REPEALING CREMATORY REGULATION UNDER THE MAUSOLEUM AND COLUMBARIUM AUTHORITIES CHAPTER; AMENDING SECTIONS 2-15-1853, 35-21-102, 35-21-103, 35-21-204, 35-21-207, 35-21-208, 35-21-214, 35-21-216, 35-21-217, 35-21-302, 35-21-303, 35-21-304, 35-21-417, AND 37-19-101, MCA; REPEALING SECTIONS 35-21-504, 35-21-505, AND 35-21-709, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 4 through 10] grant rulemaking authority to the board of funeral service to implement provisions of this bill. It is the intent of the legislature that the board, at a minimum, adopt rules:

(1) establishing license application procedures, license fees, criteria for minimum requirements for license eligibility, and requirements for license renewal;

(2) developing procedures for the issuance, renewal, suspension, and revocation of licenses; and

(3) creating disciplinary standards for licensees, establishing investigatory procedures for processing complaints, and adopting ethical standards for licensed crematory operators.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The legislature finds that because the practice of crematory operation affects the lives of the people of this state and because some

Montanans may exercise their right to choose cremation for themselves or a loved one, it is the purpose of [sections 1 and 4 through 10] to:

(1) provide standards for the licensing and regulation of crematoriums in order to protect the public health, safety, and welfare; and

(2) ensure the qualified and professional practice of crematory operation.

Section 2. Section 2-15-1853, MCA, is amended to read:

"**2-15-1853. Board of ~~morticians~~ *funeral service*.** (1) There is a board of ~~morticians~~ *funeral service.*

(2) The board consists of five members appointed by the governor with the consent of the senate. ~~Four~~ *Three* members ~~shall~~ *must* be licensed morticians. One member ~~shall~~ *must* be a representative of the public who is not engaged in the practice of mortuary science or funeral directing. *One member must be a licensed crematory operator or crematory technician or a mortician who is engaged in a crematory operation.*

(3) Board members shall serve staggered 5-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 3. Section 37-19-101, MCA, is amended to read:

"**37-19-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Authorizing agent" means a person legally entitled to order the cremation of human remains. An authorizing agent is, in order of preference:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

~~(1)~~*(2)* "Board" means the board of ~~morticians~~ *funeral service* provided for in 2-15-1853.

(3) "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

(4) "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

(5) "Cremation" means the technical process, using heat, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation.

(6) "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for the cremation of human remains.

(7) "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustible materials suitable for cremation;

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

(8) "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

(9) "Crematory operator" means the person in charge of the licensed crematory facility.

(10) "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

~~(2)~~*(11)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(3)~~*(12)* "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

~~(4)~~*(13)* "Funeral directing" includes:

(a) supervising funerals, including the making of preneed or at-need contractual arrangements for funerals;

(b) preparing dead bodies for burial, other than by embalming;

(c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(d) ~~the holding out~~ *representing* to the public that one is a funeral director ~~or undertaker~~.

(14) "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

(15) "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

~~(5)~~*(16)* ~~A "mortician" is~~ *"Mortician" means* a person licensed under this chapter to practice mortuary science.

~~(6)~~*(17)* ~~A "mortuary" is~~ *"Mortuary" means* a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents ~~himself as~~ *that the person is* engaged in the profession of mortuary science or funeral directing.

~~(7)~~*(18)* "Mortuary science" ~~is~~ *means* the profession or practice of funeral directing and embalming.

(19) "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

(20) "Urn" means a receptacle designed to permanently encase the cremated remains."

Section 4. **Licenses required — display of licenses — renewal — penalty for late renewal.** (1) A person doing business in this state or a cemetery, mortuary, corporation, partnership, joint venture, voluntary organization, or other entity that erects, maintains, or provides the necessary appliances and facilities for the cremation of human remains and that conducts cremations must be licensed by the board, beginning July 1, 1993. The license must be displayed in a conspicuous place in the crematory facility.

(2) A crematory license expires on June 30 of each year and may be renewed upon payment of a fee set by the board, which includes the cost of annual inspection. If a crematory facility is attached to a licensed mortuary, only one inspection fee may be charged for inspection of both a mortuary facility under 37-19-403 and a crematory facility.

(3) The board may set a penalty fee for late renewal of a license.

(4) A person in charge of a licensed crematory facility must be licensed as a crematory operator by the board. A person employed by a licensed crematory facility must be licensed as a crematory technician by the board. The license must be displayed in a conspicuous place in the crematory facility.

(5) Crematory operator and crematory technician licenses expire on June 30 of each year and may be renewed upon payment of a fee set by the board. On-the-job training must be provided to a crematory technician at the time of employment.

Section 5. **Application — power of board to set standards — inspection — fees.** (1) Application for a crematory, crematory operator, or crematory technician license must be on forms prescribed by the board and must include the name of the applicant, name of the crematory facility, location of the crematory facility and its mailing address, and any further information the board requires. To be eligible for licensure:

(a) as a crematory facility, an application must include a description of the type of structure and equipment to be used in the operation of the crematory facility;

(b) as a crematory operator, an applicant must be at least 18 years of age, must be a high school graduate or have an equivalent degree, and must be of good moral character.

(2) The application must be accompanied by an application fee set by the board.

(3) The board must be notified of any change of ownership of a crematory within 30 days of the change.

(4) A license to operate a crematory in Montana may be issued only upon inspection of the crematory facility and upon a finding of compliance with standards for operation set by the board.

(5) A temporary permit may be issued to operate a crematory facility, as prescribed by board rule, that is effective until the initial inspection is completed to the board's satisfaction.

(6) A crematory facility may be inspected by a board member or the board's designated representative during business hours.

(7) The board shall adopt rules governing the cremation of human remains, the transportation of human remains, sanitation, equipment, fire protection, building construction, and recordkeeping.

(8) A crematory facility shall comply with all local building codes, environmental standards, and applicable state and local regulations.

(9) A new crematory facility shall pay an initial inspection fee, set by the board, that must accompany the application.

Section 6. **Cremation authorization required — identification.** (1) Except as otherwise provided in this chapter, a crematory may not cremate human remains until it has received a cremation authorization.

(2) A crematory may not accept unidentified human remains.

(3) Appropriate identification must be placed upon the exterior of the cremation container upon receipt of the human remains.

Section 7. **Cremation procedures — cremation containers.** (1) Human remains may not be cremated except in a licensed crematory.

(2) Human remains may not be cremated within 24 hours after the time of death.

(3) A body may not be cremated with a pacemaker or other potentially hazardous implant, as defined by the board, including any toxic or explosive-type sealed implants, in place. The authorizing agent is responsible for disclosing the existence of any pacemakers or other hazardous implants.

(4) A crematory shall hold human remains, prior to their cremation, under the following conditions:

(a) In the event the crematory is unable to perform cremation upon receipt of the human remains, it shall place the human remains in a holding facility.

(b) If the human remains are not embalmed, they may not be held longer than 48 hours after the time of death outside of a refrigerated facility.

(5) Human remains delivered to a crematory may not be removed from the cremation container, and the cremation container must be cremated with the human remains.

(6) Unauthorized persons may not be permitted in the retort area while any human remains are awaiting cremation, being cremated, or being removed from the cremation chamber.

(7) The unauthorized, simultaneous cremation of human remains of more than one person within the same cremation chamber is prohibited unless the crematory has received express written authorization from all appropriate authorizing agents for the human remains to be cremated simultaneously. A written authorization exempts the crematory from liability for commingling of the product of the cremation process provided the authorization is complied with.

(8) The identification of the human remains, as indicated on the cremation container, must be verified by the crematory operator or crematory technician immediately prior to the cremation container being placed within the cremation chamber. The identification must be removed from the cremation container and be placed near the cremation chamber control panel where it must remain until the cremation process is complete.

(9) Upon completion of the cremation process, all recoverable residue must be removed from the cremation chamber. All residue of the cremation process must be separated from material other than bone fragments, which must be processed so as to reduce the bone fragments to unidentifiable particles.

(10) Cremated remains, with proper identification, must be packed and placed in a temporary container or urn ordered by the authorizing agent.

(11) If the cremated remains will not fit within the dimensions of the temporary container or urn, the remainder of the cremated remains must be returned to the authorizing agent in a separate container.

(12) If the cremated remains are to be shipped, the temporary container or designated receptacle ordered by the authorizing agent must be packed securely in a suitable, sturdy, pressure resistant, and properly sealed container.

(13) Cremated remains may be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

Section 8. **Disposition of cremated remains.** (1) The person arranging the cremation shall require the authorizing agent to provide a signed statement that specifies the ultimate disposition of the cremated remains, if known.

(2) The authorizing agent is responsible for specifying the disposition of the cremated remains. If, after a period of 90 days from the date of cremation, the authorizing agent has not specified the ultimate disposition or claimed the cremated remains, the crematory or person in possession of the cremated remains is responsible for disposition of the cremated remains and may then dispose of the cremated remains in any manner permitted by law. A record of the disposition must be made and kept by the crematory operator. This subsection applies to all cremated remains in the possession of a crematory or other party.

(3) Except with the express written consent of the authorizing agent, a person may not:

(a) dispose of or scatter cremated remains in a manner or in a location that commingles the cremated remains with those of another person. The provisions of this subsection (3) do not apply to the scattering of cremated remains from individual containers over public waterways or by air or to the scattering of cremated remains in an area located in a dedicated cemetery and used exclusively for that purpose.

(b) place cremated remains of more than one person in the same closed container.

(4) Cremated remains must be delivered to the individual specified by the authorizing agent on the cremation authorization form.

(5) A representative of the crematory and the individual receiving the cremated remains shall sign a receipt indicating the name of the deceased and the date, time, and place of the delivery. The crematory shall retain a copy of the receipt, and the original must be given to the authorizing agent. After this delivery, the cremated remains may be transported, in this state, without a permit and disposed of in accordance with this chapter.

Section 9. **Limitation of liability.** (1) A person signing a cremation authorization form shall warrant the truthfulness of any facts set forth in the form, including the identity of the deceased whose remains are to be cremated and the signer's authority to order cremation.

(2) A crematory, crematory operator, or crematory technician who properly cremates human remains, refuses to accept a body or perform a cremation, or refuses to release cremated remains due to an unresolved dispute is presumed to have acted properly and without negligence if the actions were performed in accordance with Title 37, chapter 19.

Section 10. **Preneed cremation authorizations.** (1) Preneed cremation authorizations may be made with a cemetery, funeral establishment, crematory, or any other party. Preneed authorizations must specify the ultimate disposition of the cremated remains, be signed by the authorizing agent, and meet other requirements established by board rule.

(2) A crematory operator or crematory technician shall comply with the terms of the preneed authorization in releasing or disposing of the cremated remains at the time of death.

(3) Upon payment for cremation and disposition, a crematory, crematory operator, or crematory technician in possession of a cremation authorization form and the deceased's human remains is not liable for the actual cremation and the disposition of the cremated remains if the terms of the preneed authorization have been complied with.

Section 11. Section 35-21-102, MCA, is amended to read:

"**35-21-102. Definitions.** For the purposes of this chapter, certain words used ~~herein shall~~ *in this chapter* have the following meanings:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure ~~containing~~ *that contains* niches for permanent inurnment of cremated remains, *as defined in 37-19-101,* in a place used or intended to be used and dedicated for interment purposes.

~~(2) "Cremated remains" means human remains after cremation in a crematory.~~

~~(3) "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory.~~

~~(4) "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains.~~

~~(5)~~*(2)* "Crypt" or "vault" means a space in a mausoleum of sufficient size used or intended to be used to entomb ~~the~~ uncremated human remains.

~~(6)~~*(3)* "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

~~(7)~~*(4)* "Entombment" means the placement of human remains in a crypt or vault.

~~(8)~~*(5)* "Human remains" or "remains" ~~means the body of a deceased person and includes the body in any stage of decomposition and cremated remains~~ *has the meaning as defined in 37-19-101.*

~~(9)~~*(6)* "Interment" means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment purposes.

~~(10)~~*(7)* "Interment space" means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.

~~(11)~~*(8)* "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

~~(12)~~*(9)* "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.

~~(13)~~*(10)* "Mausoleum business", "columbarium business", and "mausoleum-columbarium business or purposes" are used interchangeably and mean any ~~and all~~ business and purposes requisite to, necessary for, or incident to establishing, maintaining, operating, improving, or conducting a mausoleum, columbarium, or mausoleum-columbarium~~,~~*;* interring human remains ~~therein,~~*;* and the care, preservation, and embellishment of ~~such~~ *the* property.

~~(14)~~*(11)* "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

~~(15)~~*(12)* "Mausoleum-columbarium authority" means any corporation, whether for profit or not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment purposes by entombment or inurnment but ~~shall~~ *does* not refer to any corporation for profit or not for profit or any association, corporation sole, or other person owning or controlling cemetery lands or property, including mausoleums ~~and/or~~ *or* columbariums where interment is also made by ground burial.

~~(16)~~*(13)* "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

~~(17)~~*(14)* "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. ~~Such~~ *The* terms include and apply to one or more ~~than one~~ adjoining crypts or vaults or one or more ~~than one~~ adjoining niches.

~~(18)~~*(15)* "Plot owner", ~~or~~ "owner", or "proprietor" means any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

~~(19)~~*(16)* "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

~~(20)~~*(17)* "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used or intended to be used for inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes. ~~Wherever~~ *Whenever* the context ~~shall permit~~ *permits,* "urn garden" ~~shall be deemed to be~~ *is* included in "columbarium"."

Section 12. Section 35-21-103, MCA, is amended to read:

"**35-21-103. Exemptions and limitations on applicability of chapter.** (1) The provisions of this chapter relating to private mausoleums and columbariums do not apply to any of the following:

(a) any religious corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination, or any cemetery, mausoleum, or columbarium organized, controlled, and operated by any of them;

(b) any county, town, or city cemetery, mausoleum, or columbarium*;*

(c) any crematory, crematory operator, or crematory technician licensed under Title 37, chapter 19.

(2) ~~No~~ *A* condition, ~~or~~ section, or provision of this chapter ~~shall or~~ may *not* be ~~so~~ construed or interpreted ~~as~~ to apply to any act or in any way pertain to or affect any Montana mausoleum corporation in existence on July 1, 1949, operating under Montana charter dated prior to the year 1920.

(3) The provisions of this chapter do not affect the corporate existence or rights or powers of any cemetery corporation organized under any law of the state of Montana in which a mausoleum, columbarium, or crematory or combination thereof ~~shall be~~ *is* situated, maintained, or operated in conjunction with a cemetery for the burial of dead human remains by ground interment. This chapter and all its provisions ~~shall be~~ *are* applicable to ~~and only to~~ mausoleums ~~and/or~~ *or* columbariums owned, operated, or controlled by a mausoleum-columbarium authority organized and governed as ~~herein~~ provided *in this chapter* and owning, controlling, or operating lands, buildings, *or* structures~~, etc.,~~ solely for the entombment and inurnment of human remains."

Section 13. Section 35-21-204, MCA, is amended to read:

"**35-21-204. Power to establish and operate mausoleum~~,~~ *or* columbarium~~, or crematory~~.** ~~Any~~ *A* private corporation organized under the laws of the state of Montana and authorized by its articles ~~so to do~~ may establish, maintain, manage, improve, or operate a mausoleum, columbarium, ~~or crematory~~ or ~~any combination thereof~~ *mausoleum-columbarium* and conduct any ~~or all~~ of the businesses of a mausoleum-columbarium ~~and crematory~~ either for or without profit to its members or stockholders."

Section 14. Section 35-21-207, MCA, is amended to read:

"**35-21-207. Rulemaking power.** A mausoleum-columbarium authority may ~~make,~~ adopt~~, amend, add to, revise, or modify~~ and enforce rules for the use, care, control, management, restriction, and protection of all or any part of its mausoleum~~,~~ *or* columbarium~~, or crematory~~ and for the other purposes specified in 35-21-208 ~~to~~ *through* 35-21-216~~, inclusive~~."

Section 15. Section 35-21-208, MCA, is amended to read:

"**35-21-208. Power to limit use of property.** ~~It~~ *A mausoleum-columbarium authority* may restrict and limit the use of all property within its mausoleum~~,~~ *or* columbarium~~, or crematory~~."

Section 16. Section 35-21-214, MCA, is amended to read:

"**35-21-214. Rules for other purposes.** ~~It~~ *A mausoleum-columbarium authority* may make and enforce rules for all other purposes ~~deemed~~ *considered* necessary by the mausoleum-columbarium authority for the proper conduct of the business of the mausoleum~~,~~ *or* columbarium~~, or crematory~~, for the transfer of any plot or the right of interment, and *for* the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum~~,~~ *or* columbarium~~, or crematory~~ is conducted."

Section 17. Section 35-21-216, MCA, is amended to read:

"**35-21-216. Person in charge has authority of peace officer.** The sexton, superintendent, or other person in charge of a mausoleum-columbarium and ~~such~~ *any* other person ~~as~~ *designated by* the mausoleum-columbarium authority ~~designates has~~ *have* the authority of a peace officer for the purpose of maintaining order~~,~~ *and* enforcing the rules of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county within the mausoleum-columbarium over which ~~he~~ *the person* has charge and within ~~such~~ *the* radius ~~as may be~~ necessary to protect the mausoleum-columbarium ~~or crematory~~ property."

Section 18. Section 35-21-217, MCA, is amended to read:

"**35-21-217. Power to acquire property.** Mausoleum-columbarium authorities may take by purchase, donation, or devise property consisting of lands, mausoleums, ~~crematories,~~ and columbariums within which the interment of the dead may be authorized by law."

Section 19. Section 35-21-302, MCA, is amended to read:

"**35-21-302. Liability of person signing authorization for interment ~~or cremation.~~** ~~Any~~ *A* person signing ~~any~~ *an* authorization for the interment ~~or cremation~~ of ~~any~~ remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred ~~or cremated~~, and ~~his~~ *the* authority to order interments ~~or cremation.~~ ~~He~~ *The person signing an authorization* is personally liable for all damage occasioned by or resulting from *a* breach of ~~such~~ *the* warranty."

Section 20. Section 35-21-303, MCA, is amended to read:

"**35-21-303. Authorization exempts mausoleum-columbarium from liability.** The mausoleum-columbarium authority may inter ~~or cremate~~ any remains upon the receipt of a written authorization of a person ~~representing himself to be a~~ *who represents that the* person ~~who~~ has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring ~~or cremating~~ pursuant to ~~such~~ *the* authorization unless it has actual notice that ~~such~~ *the* representation is untrue."

Section 21. Section 35-21-304, MCA, is amended to read:

"**35-21-304. Limitation on actions against mausoleum-columbarium — funeral directors, ~~and~~ morticians, *and crematory authority* exempt from liability.** ~~No~~ *An* action ~~shall~~ *may not* lie against any mausoleum-columbarium authority relating to the remains of any person ~~which~~ *that* have been left in its possession for a period of 2 years unless a written contract has been entered into with the mausoleum-columbarium authority for their care or unless permanent interment has been made. ~~Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No~~ *A* licensed mortician, ~~or~~ funeral director, *crematory authority, crematory operator, or crematory technician* ~~shall be~~ *is not* liable ~~in damages~~ for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana."

Section 22. Section 35-21-417, MCA, is amended to read:

"**35-21-417. Commission or rebate for causing disposition of body in ~~crematory,~~ mausoleum~~,~~ or columbarium — misdemeanor.** ~~Every~~ *A* person who pays, ~~or~~ causes to be paid, or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in 35-21-416, any commission, ~~or~~ bonus, ~~or~~ rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any ~~crematory,~~ mausoleum~~,~~ or columbarium is guilty of a misdemeanor, and each violation ~~shall constitute~~ *constitutes* a separate offense."

Section 23. **Repealer.** Sections 35-21-504, 35-21-505, and 35-21-709, MCA, are repealed.

Section 24. **Codification instruction.** [Sections 1 and 4 through 10] are intended to be codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to [sections 1 and 4 through 10].

Section 25. **Effective date.** [This act] is effective on passage and approval.

Approved February 10, 1993.

CHAPTER NO. 39

[HB 8]

AN ACT CLARIFYING THE TAXATION OF INTERSTATE MOTOR VEHICLE FLEETS; EXEMPTING INTERSTATE MOTOR VEHICLE FLEETS FROM STATE, COUNTY, AND LOCAL MILL LEVIES; AMENDING SECTIONS 15-24-101 AND 15-24-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-101, MCA, is amended to read:

"**15-24-101. Assessment of proportionally registered interstate motor vehicle fleets — tax payment required for registration.** (1) The department of revenue shall assess, for the purpose of personal property taxes, the taxable vehicles in interstate motor vehicle fleets proportionally registered under the provisions of 61-3-711 through 61-3-733, and the assessment must be apportioned on the ratio of total miles traveled to in-state miles traveled ~~formula~~ as prescribed by 61-3-721. Interstate motor vehicle fleets are assessable for taxation purposes upon application for proportional registration and are assessed to the persons who own or claim *the fleet* or in whose possession or control the fleet is at the time of the application.

(2) With respect to any fleet contained in an original application ~~which~~ *that* has a situs for *the* purpose of property taxation in Montana by the terms of this part or any other provision of the laws of Montana, the taxes on taxable vehicles are apportioned as provided in 15-24-303.

(3) With respect to any fleet contained in a renewal application, the taxable vehicles are assessed and taxed for a full year.

(4) Automobiles and trucks having a rated capacity of ~~three-quarters of a~~ *1* ton or less that are part of an interstate motor vehicle fleet are subject to property tax. If the fleet is proportionally registered, the tax is apportioned in the same fashion as the registration fee under 61-3-721.

(5) Vehicles contained in a fleet for which current taxes~~,~~ *or* fees, or both, have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of taxes~~,~~ or fees, or both, for the current registration year. The payment of personal property taxes~~,~~ *or* fees, or both, is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet."

Section 2. Section 15-24-102, MCA, is amended to read:

"**15-24-102. Valuation of interstate fleets — determination of aggregate tax due — *exemption from mill levies.*** The department of revenue shall assess the taxable vehicles of any interstate motor vehicle fleet making application for proportional registration, as follows:

(1) The purchase price of the taxable vehicles depreciated by a schedule as prescribed by the department ~~shall determine~~ *determines* the depreciated value.

(2) The depreciated value multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, ~~shall be~~ *is* the ~~assessed~~ *market* value.

(3) The sum of the ~~assessed~~ *market* value of all taxable vehicles included in the fleet multiplied by ~~16% shall be~~ *9% is* the taxable value for the entire fleet *as provided in 15-6-138.*

(4) To determine the amount of tax due, the taxable value of the entire fleet ~~shall~~ *must* be multiplied by the statewide average county mill levy plus state levies as ~~hereinafter~~ provided *in 15-24-103.*

(5) To determine the tax due under this chapter, state levies applicable to interstate motor vehicle fleets include but are not limited to levies imposed under 15-10-101, 15-10-106, 20-9-331, 20-9-333, 20-9-360, and 53-2-813.

(6) All taxes and fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in 15-24-105."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved February 16, 1993.

CHAPTER NO. 40

[HB 47]

AN ACT TRANSFERRING COAL TAX OVERSIGHT DUTIES TO THE REVENUE OVERSIGHT COMMITTEE; AMENDING SECTIONS 5-11-210 AND 5-18-107, MCA; REPEALING SECTIONS 5-18-201, 5-18-202, AND 5-18-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-210, MCA, is amended to read:

"**5-11-210. Clearinghouse for reports to legislature.** (1) For the purposes of this section, "report" means:

(a) a document required to be prepared for the legislature as required in any of the sections listed in subsection (10); and

(b) unless otherwise provided by law, any other report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the executive director of the legislative council:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed one page;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies;

(e) an estimated cost for each copy of the report; and

(f) the date on which the entity will deliver the final, published copies of the report to the legislature.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the legislative council or the executive director shall, in writing, direct the reporting entity to provide a specific number of copies. The number of copies required is at the sole discretion of the legislative council. The legislative council or the executive director may require the reporting entity to mail the copies of the report.

(4) The legislative council may require that the report be submitted in an electronic format useable on the legislature's current computer hardware, in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative council.

(6) The executive director of the legislative council shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b), available from the legislative council. The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director or the legislative council shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection

(3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative council may keep as many copies of a report as ~~he considers~~ *considered* necessary, and copies of the report may be discarded at ~~his~~ *the executive director's* discretion.

(10) (a) A report to the legislature includes a report required to be made by a board, bureau, commission, committee, council, department, division, fund, authority, or officer of the state or a local government in 1-11-204, 2-4-411, 2-7-104, 2-8-112, 2-8-203, 2-8-207, 2-8-208, 2-15-2021, 2-18-209, 2-18-811, 2-18-1103, 3-1-702, 3-1-1126, 5-5-216, 5-13-304, 5-17-103, ~~5-18-203,~~ 5-19-108, 10-4-102, 15-1-205, 17-4-107, 17-5-1650, 18-7-303, 19-4-201, 20-9-346, 20-25-236, 20-25-301, 22-3-107, 23-7-203, 33-22-1513, 37-1-106, 39-6-101, 39-51-407, 44-2-304, 44-13-103, 46-23-316, 53-2-1107, 53-6-110, 53-20-104, 53-21-104, 53-24-204, 53-24-210, 53-30-133, 69-1-404, 72-16-202, 75-1-203, 75-1-1101, 75-7-304, 75-10-533, 75-10-704, 76-11-203, 76-12-109, 80-7-713, 80-12-402, 82-11-161, 85-1-621, 85-2-105, 87-2-724, 87-5-123, 90-3-203, or 90-4-111.

(b) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201."

Section 2. Section 5-18-107, MCA, is amended to read:

"**5-18-107. Powers and duties of ~~the~~ committee — duty to review revenue rules — legislative oversight of ~~the~~ department of revenue — committee reports — revenue estimating and use of estimates — *coal tax oversight*.** (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

(a) request and obtain the department's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department;

(c) submit oral or written testimony at a rulemaking hearing;

(d) require the department to appear before the committee and respond to the committee's recommendations for the adoption, amendment, or rejection of a rule;

(e) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(f) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412;

(g) institute, intervene in, or otherwise participate in proceedings involving the legality of a rule under the Montana Administrative Procedure Act in the state and federal courts and administrative agencies;

(h) review the incidence and conduct of the department's administrative proceedings;

(i) require the department to publish the full or partial text of any pertinent material adopted by reference under 2-4-307;

(j) by an affirmative vote of at least six members of the committee, contract for the preparation of an economic impact statement or require the department to prepare an economic impact statement, following the provisions of 2-4-405;

(k) petition the department to promulgate, amend, or repeal a rule. Within 60 days after submission of a petition, the department shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(l) make written objection to a proposed rule of the department for lack of substantial compliance with 2-4-302 through 2-4-305. The provisions of 2-4-406 govern the objection procedure, the department's response, and the procedure for and effect of publication of the objection in the Montana Administrative Register and the Administrative Rules of Montana.

(m) petition the department for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the department. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue ~~such~~ a ruling is subject to judicial review in the same manner as decisions or orders in contested cases under the Montana Administrative Procedure Act.

(n) petition for judicial review of the sufficiency of the reasons for the department's finding of imminent peril to the public health, safety, or welfare, cited in support of an emergency or temporary rule proposed by the department under 2-4-303; and

(o) require the department to conduct the biennial review of its rules as required in 2-4-314 and report its findings to the committee.

(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of the department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue.

(5) (a) The committee shall have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under

consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenues or costs, including the preparation of fiscal notes.

(c) The committee may request the assistance of the staffs of the legislative council, the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.

(6) The committee may:

(a) review the programs financed by coal severance tax funds;

(b) consider any matters relating to coal taxation; and

(c) prepare for the legislature a report, as provided in 5-11-210, on potential uses of the coal tax trust fund to develop a stable, strong, and diversified Montana economy that meets the needs of present and future generations of Montanans while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution."

Section 3. **Repealer.** Sections 5-18-201, 5-18-202, and 5-18-203, MCA, are repealed.

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved February 16, 1993.

CHAPTER NO. 41

[HB 108]

AN ACT REVISING PROVISIONS CONCERNING A RURAL COOPERATIVE BOARD OF TRUSTEES; AND AMENDING SECTION 35-18-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-311, MCA, is amended to read:

"35-18-311. Board of trustees — number — qualifications — removal — compensation — husband and wife. (1) The business and affairs of a cooperative ~~shall~~ *must* be managed by a board of not less than five trustees, each of whom ~~shall~~ *must* be a member of the cooperative or of another cooperative ~~which shall be~~ *that is* a member ~~thereof~~ *of the cooperative.* The bylaws ~~shall~~ *must* prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of successors to trustees who ~~shall~~ resign, die, or *are* otherwise ~~be~~ incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees*:*

(a) ~~shall~~ *may* not receive any salaries for their services as trustees, *except trustees may receive the same insurance coverage provided to cooperative employees;* and~~,~~

(b) except in emergencies, ~~shall~~ *may* not be employed by the cooperative in any capacity involving compensation.

(3) The bylaws may~~, however,~~ provide that the board of trustees may establish a fixed sum, including expenses of attendance, if any, to be allowed for:

(a) attendance at each meeting of the board of trustees or any committee ~~thereof~~ *of the board of trustees*; or

(b) representing the cooperative at any meeting or on any business whenever ~~such~~ representation has been approved by the board.

~~(3)~~*(4)* If a husband and wife hold joint membership in a cooperative, either one but not both may be elected a trustee.

(5) The policies of the cooperative may provide that benefits provided to employees may be extended to trustees."

Approved February 17, 1993.

CHAPTER NO. 42

[HB 109]

AN ACT ALLOWING COUNTY COMMISSIONERS DISCRETION IN DEVELOPING COUNTY ROADS; AND AMENDING SECTIONS 7-14-2701, 7-14-2704, AND 7-14-2710, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2701, MCA, is amended to read:

"**7-14-2701. Development of county roads.** (1) Upon proper petition, as provided for in 7-14-2702, the board ~~shall~~ *may* cause county roads to be laid out, opened, constructed, and improved.

(2) As used in this part, unless the context requires otherwise, "board" means the board of county commissioners."

Section 2. Section 7-14-2704, MCA, is amended to read:

"**7-14-2704. Resolution of public interest.** (1) Upon receipt of the petition, the board ~~shall~~ *may* pass a resolution that the public interest demands the laying out, opening, constructing, or improving of the road or part ~~thereof~~ *of the road* described in the resolution.

(2) The description ~~shall~~ *may* not include ~~any~~ *a* portion of ~~any~~ *a* road within the boundaries of ~~any~~ *a* city or incorporated town."

Section 3. Section 7-14-2710, MCA, is amended to read:

"**7-14-2710. Creation of local improvement district.** (1) If the whole amount of damages, costs, and expenses ~~shall~~ *does* not exceed 135% of the total taxable value of the parcels of land in the district as determined from the last annual assessment roll of the county, the board ~~shall~~ *may* make and enter upon the report an order that the road be made.

(2) That order ~~shall create~~ *creates* the local improvement district, to be known and designated as "local improvement district No. .... in ..... County, Montana".

(3) Copies of the report ~~shall~~ *must* be kept in the offices of the board and road superintendent."

Approved February 17, 1993.

CHAPTER NO. 43

[SB 90]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION TO PROVIDE FOR INVESTMENT OF PUBLIC PENSION ASSETS; ENACTING A PROVISION REQUIRING THAT ALL EXISTING AND FUTURE ASSETS OF PUBLIC PENSION TRUST FUNDS MUST BE PROTECTED AND EXCLUSIVELY ADMINISTERED BY THE GOVERNING BOARDS IN AN ACTUARIALLY SOUND MANNER AND THAT ALL ASSETS ARE HELD IN TRUST FOR THE EXCLUSIVE PURPOSE OF EFFICIENTLY AND PROMPTLY PROVIDING BENEFITS AND SERVICES TO CURRENT AND FUTURE PUBLIC EMPLOYEE RETIREES AND THEIR BENEFICIARIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII, section 13, of The Constitution of the State of Montana is amended to read:

"**Section 13. Investment of public funds *and public retirement system assets*.** (1) The legislature shall provide for a unified investment program for public funds *and public retirement system assets* and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except ~~for monies contributed to retirement funds~~ *as provided in subsection (3)*, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock."

Section 2. Article VIII of The Constitution of the State of Montana is amended by adding a new section 15 that reads:

Section 15. Public retirement system assets. (1) Public retirement systems shall be funded on an actuarially sound basis. Public retirement system assets, including income and actuarially required contributions, shall not be encumbered, diverted, reduced, or terminated and shall be held in trust to provide benefits to participants and their beneficiaries and to defray administrative expenses.

(2) The governing boards of public retirement systems shall administer the system, including actuarial determinations, as fiduciaries of system participants and their beneficiaries.

Section 3. **Effective date.** If approved by the electorate, the amendments in sections 1 and 2 are effective January 1, 1995.

Section 4. **Submission to electorate.** The amendments set forth in sections 1 and 2 shall be submitted to the qualified electors of Montana at the general election to be held in November 1994 by printing on the ballot the full title of this act and the following:

☐ FOR protection of public pension funds and beneficiaries.

☐ AGAINST protection of public pension funds and beneficiaries.

CHAPTER NO. 44

[SB 135]

AN ACT CHANGING THE LAW RELATING TO THE TRAFFIC-CONTROL SIGNAL LEGEND; AND AMENDING SECTION 61-8-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-207, MCA, is amended to read:

"61-8-207. Traffic-control signal legend. Whenever traffic is controlled by traffic-control signals exhibiting the words "Go", "Caution", or "Stop" or exhibiting different colored lights successively one at a time or with arrows, the following colors only must be used and the terms and lights must indicate and apply to drivers of vehicles and pedestrians as follows:

(1) green alone or "Go":

(a) Vehicular traffic facing the signal may proceed straight through or turn left or right unless a sign at the place prohibits either turn. But vehicular traffic, including vehicles turning right or left, must yield the right-of-way to other vehicles and to pedestrians lawfully within the intersection or an adjacent crosswalk at the time the signal is exhibited.

(b) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

(2) yellow alone or "Caution" when shown following the green or "Go" signal:

(a) Vehicular traffic facing the signal is warned that the red or "Stop" signal will be exhibited immediately thereafter and vehicular traffic may not enter ~~or be crossing~~ the intersection when the red or "Stop" signal is exhibited.

(b) Pedestrians facing the signals are advised that there is insufficient time to cross the roadway, and a pedestrian then starting to cross shall yield the right-of-way to all vehicles.

(3) red alone or "Stop":

(a) Vehicular traffic facing the signal must stop before entering the crosswalk on the near side of the intersection or, if none, then before entering the intersection and must remain standing until green or "Go" is shown alone, until a right turn can safely be made, or until a left turn can safely be made from the far left lane if the turn is made from a one-way street onto another one-way street going left. In making the turn, vehicular traffic must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection. If a traffic sign legend indicating that no right turn on red or no left turn on red may be made after a stop is posted at the intersection, the movement cannot be made until green or "Go" is shown alone.

(b) A pedestrian facing a signal may not enter the roadway unless ~~he~~ *the pedestrian* can do so safely and without interfering with any vehicular traffic.

(4) red with a green arrow:

(a) Vehicular traffic facing a signal may cautiously enter the intersection only to make the movement indicated by the arrow but must yield the right-of-way to pedestrians lawfully within the crosswalk and to other traffic lawfully using the intersection.

(b) A pedestrian facing a signal may not enter the roadway unless ~~he~~ *the pedestrian* can do so safely and without interfering with vehicular traffic.

(5) traffic-control signal at a place other than an intersection:

(a) In the event an official traffic-control signal is erected and maintained at a place other than an intersection, the provisions of this section are applicable except as to those provisions that by their very nature can have no application.

(b) Any stop required must be made at a sign or marking on the pavement indicating where the stop must be made, but in the absence of any sign or marking, the stop must be made at the signal."

Approved February 17, 1993.

CHAPTER NO. 45

[HB 116]

AN ACT ALLOWING THE TRUSTEES OF A SECOND-CLASS ELEMENTARY SCHOOL DISTRICT TO INCREASE THE NUMBER OF TRUSTEE POSITIONS FROM FIVE TO SEVEN; PROVIDING A METHOD FOR DECREASING THE NUMBER OF TRUSTEE POSITIONS FROM SEVEN TO FIVE; AND AMENDING SECTION 20-3-341, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-341, MCA, is amended to read:

"20-3-341. Number of trustee positions in elementary districts — transition. The number of trustee positions in each elementary district shall vary according to the district's classification, as established by 20-6-201:

(1) There must be seven trustee positions in a first-class elementary district.

(2) There must be five trustee positions in a second-class elementary district*; however, upon a majority vote of the board of trustees, the number may be increased to seven trustee positions at the next trustee election, provided that notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may reduce the number of trustee positions from seven to five upon receiving a petition for that purpose from at least 10 qualified electors of the district.*

(3) There must be three trustee positions in a third-class elementary district; however, upon a majority vote of the board of trustees, the number may be increased to five trustee positions at the next trustee election, provided that notice of the action of the board of trustees is published by the clerk of the district in a newspaper of general circulation in the county prior to January 1 of the year of the trustee election. The board of trustees may reduce the number of trustee positions from five to three upon receiving a petition for that purpose from at least 10 qualified electors of the district.

(4) *(a) If the number of trustee positions in a second-class elementary district is decreased from seven to five in accordance with the provisions of subsection (2), one position is eliminated at the time of the first subsequent school election and one position is eliminated at the next school election.*

(b) If the number of trustee positions in a third-class elementary district is decreased from five to three in accordance with the provisions of subsection (3), one position is eliminated at the time of the first subsequent school election when two trustee positions would have been filled and one position is eliminated at the next school election when two trustee positions would have been filled."

Approved February 18, 1993.

CHAPTER NO. 46

[HB 130]

AN ACT REVISING INVESTMENT PROVISIONS THAT RELATE TO THE BOARD OF INVESTMENTS; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-6-201 AND 17-7-502, MCA; AND REPEALING SECTION 17-6-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds ~~shall~~ *must* be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge ~~his~~ *the* duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return~~;~~ unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge ~~his~~ *the* duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) *(a)* Retirement funds may be invested in common stocks of any corporation provided that ~~no~~ *an* investment may *not* be made at any time ~~which~~ *that* would cause the book value of ~~such~~ *the* investments in any retirement fund to exceed 50% of the book value of ~~such~~ *the* fund or would cause the stock of one corporation to exceed 2% of the book value of ~~such~~ *the* retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) ~~Nothing contained in this~~ *This* section ~~prevents~~ *does not prevent* ~~the~~ investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies ~~which~~ *that* demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the sole authority to invest state funds. ~~No other~~ *Another* agency may *not* invest ~~such~~ state funds, *unless otherwise provided by law*. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to ~~such~~ *the* fund and a record of the participation of each treasury fund account ~~therein~~ *in the investment fund*.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received ~~therefor~~ *for the property*;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased~~.~~*;*

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund ~~shall~~ *must* be deducted from the income ~~therefrom~~ *from the fund*.

(8) (a) The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection (8)(b), the cost to an agency of providing services to a program funded through an account in the state special revenue fund, as defined in 17-2-102, must be deducted by the board from the account's investment earnings according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.

(b) ~~No~~ *A* deduction for program costs, as provided in subsection (8)(a), may *not* be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202."

Section 2. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; *17-6-201;* 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 3. **Repealer.** Section 17-6-310, MCA, is repealed.

Approved February 18, 1993.

CHAPTER NO. 47

[HB 147]

AN ACT ESTABLISHING THE CHIROPRACTIC ANNUAL ASSESSMENT LATE CHARGE FEE AT $25; AND AMENDING SECTION 27-12-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-12-206, MCA, is amended to read:

"**27-12-206. Funding.** (1) There is an account in the state special revenue fund. Money from the assessments levied under this section must be deposited in the account. The money in the account is statutorily appropriated, as provided in 17-7-502, to the director to be used to administer this chapter.

(2) For each fiscal year, beginning July 1, an annual assessment is levied on all chiropractic physicians. The amount of the assessment must be annually set by the director and equally assessed against all chiropractic physicians. A fund surplus at the end of a fiscal year, not required for the administration of this chapter, must be retained by the director and used to finance the administration of this chapter during the next fiscal year, in which event the director shall reduce the next annual assessment to an amount estimated to be necessary for the proper administration of this chapter during that fiscal year.

(3) The annual assessment must be paid on or before the date the chiropractic physician's annual renewal fee under 37-12-307 is due. An unpaid assessment bears a late charge fee ~~equal to the judgment rate of interest~~ *of $25*. The late charge fee is part of the annual assessment. The director has the same powers and duties in connection with the collection of and failure to pay the annual assessment as the department of commerce has under 37-12-307 with a chiropractic physician's annual license fee."

Approved February 18, 1993.

CHAPTER NO. 48

[SB 10]

AN ACT ALLOWING A COUNTY, UNDER CERTAIN CIRCUMSTANCES, TO LEVY A SINGLE TAX TO FUND COUNTY FAIR ACTIVITIES, COUNTY PARKS, AND CERTAIN CULTURAL, SOCIAL, AND RECREATIONAL FACILITIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Single tax for county fair activities, county parks, and certain cultural, social, and recreational facilities — restriction.** (1) Except as provided in subsection (2), the county commissioners of a county who have levied taxes pursuant to both 7-16-2102 and 7-21-3410 before January 1, 1993, may combine the two taxes into a single tax that may not exceed 3 ½ mills on each dollar of the taxable valuation for any 1 year for the purpose of maintaining, operating, and equipping county fair activities, county parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination thereof. The money collected may be distributed among the activities and facilities as determined by the county commissioners.

(2) (a) The board of county commissioners shall submit the question of imposing or continuing the imposition of the single tax provided for in subsection (1) to the electors of the county at the next general election if a petition requesting a vote on the single tax, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question must be submitted substantially as follows:

☐ FOR imposition (or continued imposition) of a property tax, not to exceed 3 ½ mills, for county fair activities, county parks, and county-owned cultural, social, and recreational facilities.

☐ AGAINST imposition (or continued imposition) of a property tax, not to exceed 3 ½ mills, for county fair activities, county parks, and county-owned cultural, social, and recreational facilities.

(c) The board of county commissioners shall levy the tax for the 2 subsequent fiscal years if the imposition or continued imposition of the single tax is approved by a majority of the electors voting on the question.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 16, part 21, and the provisions of Title 7, chapter 16, part 21, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved February 18, 1993.

CHAPTER NO. 49

[SB 17]

AN ACT ALLOWING THE COMPANION OF A LICENSED DISABLED HUNTER TO PURSUE, HUNT, TAKE, SHOOT, OR KILL A GAME ANIMAL WOUNDED BY THE DISABLED HUNTER WHEN THE DISABLED HUNTER IS UNABLE TO PURSUE AND KILL THE WOUNDED GAME ANIMAL; AMENDING SECTIONS 87-2-103 AND 87-2-803, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-103, MCA, is amended to read:

"**87-2-103. License required.** *(1)* ~~It~~ *Except as provided in subsection (2), it* is unlawful for ~~any~~ *a* person to:

~~(1)~~*(a)* pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, any game bird, or any fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, or possess within this state any game animal, game bird, fur-bearing animal, game fish, or parts thereof, except as herein provided or as provided by the department; or

~~(2)~~*(b)* pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish, except at the places and during the periods and in the manner herein defined or as defined by the department; or

~~(3)~~*(c)* pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts thereof without first having obtained a proper license or permit from the department to do so; or

~~(4)~~*(d)* trap or snare or attempt to trap or snare predatory animals or nongame wildlife without a license, as prescribed in 87-2-603, if that person is not a resident as defined in 87-2-102.

(2) The provisions of this section do not require a person who accompanies a licensed disabled hunter, as authorized under 87-2-803(4), to be licensed in order to pursue, hunt, take, shoot, or kill or attempt to pursue, hunt, take, shoot, or kill a game animal that has been wounded by a disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal; however, the person must meet the qualifications for a license in the person's state of residence."

Section 2. Section 87-2-803, MCA, is amended to read:

"**87-2-803. Disabled persons.** (1) Disabled persons are entitled to fish and to hunt game birds with only a conservation license if they are residents of Montana not residing in an institution and are certified as disabled as prescribed by departmental rule.

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years old or older and who is under 62 years of age.

(3) ~~Such~~ *A resident or nonresident* disabled ~~persons shall~~ *person who is certified as disabled by the department and who is not residing in an institution may* carry a permit on a form prescribed by the department. A disabled person issued a permit under this subsection is entitled to have the department stamp ~~such a~~ *the* permit with "Permission to Hunt From a Vehicle" if the person establishes to the satisfaction of the department that ~~he~~ *the person* is permanently physically handicapped and nonambulatory or ~~his~~ *that the person's* mobility is substantially impaired.

(4) A disabled person carrying a permit as required in subsection (3), upon which is stamped "Permission to Hunt From a Vehicle", may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle parked on ~~such~~ *a* shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or may hunt by shooting a firearm from within a self-propelled or drawn vehicle parked in an area, not a public highway, where hunting is permitted. Nothing in this subsection allows ~~such~~ *a* disabled person to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A disabled person who hunts as authorized in this subsection must have a companion to assist in immediately dressing any killed game animal. *The companion may also assist the disabled hunter by pursuing, hunting, taking, shooting, or killing a game animal that has been wounded by the disabled hunter when the disabled hunter is unable to pursue and kill the wounded game animal.* Any vehicle from which a disabled person is hunting must be conspicuously marked with an orange-colored international symbol of the handicapped on the front, rear, and each side of ~~such~~ *the* vehicle.

(5) A resident of Montana who is certified by the department as a blind individual, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish with hook and line or rod, as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved February 18, 1993.

CHAPTER NO. 50

[SB 28]

AN ACT REQUIRING THAT SCHOOL BOARD TRUSTEES HOLD MEETINGS IN SCHOOL BUILDINGS OR IN A PUBLICLY OWNED BUILDING LOCATED WITHIN THE DISTRICT; AMENDING SECTION 20-3-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-322, MCA, is amended to read:

"**20-3-322. Meetings and quorum.** (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a preliminary budget meeting, as prescribed by 20-9-113; and

(c) in first-class elementary districts, not less than one regular meeting per month; or

(d) in any other district, regular meetings during the months of April, July, October, and January.

(2) The trustees of the district shall adopt a policy setting the day and time for the minimum number of regular school meetings prescribed in subsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustees wish to establish. Except for an unforeseen emergency, meetings must be conducted in school buildings or ~~on other property belonging to~~ *in a publicly owned building located within* the district.

(3) Special meetings of the trustees may be called by the ~~chairman~~ *presiding officer* or any two members of the trustees by giving each member a 48-hour written notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency.

(4) Business may not be transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' membership. All trustee meetings must be public meetings, as prescribed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of ~~subsections (2) and~~ *subsection* (3), "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 18, 1993.

CHAPTER NO. 51

[SB 30]

AN ACT REVISING THE SYSTEM OF ASSESSMENT ON WHEAT AND BARLEY TO REQUIRE COLLECTION OF THE ASSESSMENT ON WHEAT OR BARLEY PLEDGED TO THE COMMODITY CREDIT CORPORATION AT THE TIME OF PURCHASE, NOT AT THE TIME A LEASE OR LOAN IS MADE UNDER THE PROGRAM; AMENDING SECTION 80-11-206, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-206, MCA, is amended to read:

"**80-11-206. Maximum annual assessment on wheat and barley grown.** (1) There is ~~hereby levied~~ an annual assessment of not more than 10 mills per bushel ~~upon~~ *on* all wheat grown and not more than 15 mills per hundredweight on all barley grown in the state of Montana and sold through commercial channels. The assessment is ~~hereby~~ levied and imposed on each grower of wheat or barley in the state of Montana:

(a) in the case of sale of wheat or barley, at the time of any sale of wheat or barley by a grower, and ~~shall~~ *must* be collected by the first purchaser of the wheat or barley from the grower at the time of each settlement for wheat or barley purchased; ~~or~~

(b) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program *other than the commodity credit corporation,* the assessment ~~shall~~ *must* be collected by deducting the amount ~~thereof~~ *of the assessment* from the proceeds of ~~such~~ *the* loan at the time the loan is made by the agency or person making the loan~~.~~*; or*

(c) in the case of wheat or barley pledged under the federal commodity credit corporation, the assessment must be collected at the time of purchase, not at the time a lease or loan is made under the program.

(2) The assessment levied under the provisions of this part ~~shall~~ *must* be deducted and collected as provided by this part, whether ~~such~~ *the* wheat or barley is stored in this or any other state. The assessment ~~shall attach~~ *attaches* to each transaction, but no grower ~~shall be~~ *is* subject to assessment more than once irrespective of the number of times ~~it shall be~~ *the assessment is* the subject of a sale, pledge, mortgage, or other transaction, the assessment being imposed and attaching on the initial sale, pledge, mortgage, or other transaction in which

the wheat or barley grower parts with title to the wheat or barley, or creates some interest therein in a pledgee, mortgagee, or other person."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved February 18, 1993.

CHAPTER NO. 52

[SB 36]

AN ACT GENERALLY REVISING THE LAWS TO REFLECT THE LOSS OF A CONGRESSIONAL DISTRICT; PROVIDING DISTRICTS FOR THE APPOINTMENT OF MEMBERS OF THE DISTRICTING AND APPORTIONMENT COMMISSION, THE BOARD OF PUBLIC EDUCATION, THE BOARD OF REGENTS, THE COAL BOARD, AND THE HARD-ROCK MINING IMPACT BOARD; ELIMINATING GEOGRAPHICAL REPRESENTATION REQUIREMENTS FOR CERTAIN BOARDS; REVISING THE PETITION REQUIREMENTS FOR NOMINATING A PRESIDENTIAL CANDIDATE; AMENDING SECTIONS 2-15-1508, 2-15-1802, 2-15-1803, 2-15-1821, 2-15-1822, 2-15-1867, 2-15-3102, 3-1-1101, 5-1-102, AND 13-10-404, MCA; REPEALING SECTION 13-10-102, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1508, MCA, is amended to read:

"**2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy.** (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than ~~four~~ *two* may be from one ~~congressional~~ district *provided for in 5-1-102.*

(b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board ~~shall be~~ *are* 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and ~~such~~ *the* appointment ~~shall~~ *must* preserve the balance required by subsections *(1)*(a) and *(1)*(b) ~~above~~.

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before ~~he~~ *the person* may serve as a member of either board.

(3) One seat of the appointed members on the board of regents ~~shall be~~ *is* reserved for membership by a student appointed by the governor. The student ~~shall~~ *must* be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member ~~shall be~~ *is* determined by the governor *and must be* for not less than 1

year and not more than 4 years. The provisions of subsections (1)(a) and (1)(b) ~~of this section shall~~ *do* not apply to the student member and ~~shall~~ *may* not affect the balance of the remaining appointive membership on the board of regents."

Section 2. Section 2-15-1802, MCA, is amended to read:

"**2-15-1802. Board of milk control — membership — allocation — quasi-judicial.** (1) There is a board of milk control.

(2) The board consists of five members. A member may not be connected in any way with the production, processing, distribution, or wholesale or retail sale of milk or dairy products. A member may not have held an elective or appointive public office during the 2 years immediately preceding ~~his~~ appointment, and a member may not hold a public office, either elective or appointive, during ~~his~~ *a* term on the board. Not more than three members may be of the same political party ~~or residents of the same congressional district~~.

(3) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124."

Section 3. Section 2-15-1803, MCA, is amended to read:

"**2-15-1803. State banking board — composition — allocation.** (1) There is a state banking board.

(2) The board is composed of seven members, including the director of commerce, or ~~his~~ *the director's* designee, who is the ~~chairman~~ *presiding officer* of the board. The remaining six members of the board ~~shall~~ *must* be appointed with consideration given *to* banks of small, medium, and large size and to geographical distribution. ~~At least one banker member and one public member shall be appointed from each congressional district of the state.~~ Two of the six members ~~shall~~ *must* be active officers in state banks of Montana, one ~~shall~~ *must* be an active officer of a national bank doing business in Montana, and three ~~shall~~ *must* be members of the public, none of whom ~~shall~~ *may* be an officer, director, or shareholder of any state or national bank.

(3) The members ~~shall be~~ *are* appointed by the governor, with the consent of the senate, for terms of 3 years. Vacancies ~~shall~~ *must* be filled by appointment for the unexpired term. No member other than the director of commerce may serve more than two consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121."

Section 4. Section 2-15-1821, MCA, is amended to read:

"**2-15-1821. Coal board — allocation — composition.** (1) There is a coal board composed of seven members.

(2) The coal board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

(3) The governor shall appoint a seven-member coal board, as provided under 2-15-124.

(4) (a) The members of the coal board are selected as follows:

(i) two from the impact areas; ~~and~~

(ii) two with expertise in education*; and*

(iii) at least one but not more than two from each district provided for in 5-1-102.

(b) The governor shall further, in making these appointments, consider people from these fields:

(i) business;

(ii) engineering;

(iii) public administration; and

(iv) planning.

~~(5) No more than four members may be residents of the same congressional district.~~"

Section 5. Section 2-15-1822, MCA, is amended to read:

"**2-15-1822. Hard-rock mining impact board.** (1) There is a hard-rock mining impact board.

(2) The hard-rock mining impact board is a five-member board.

(3) The hard-rock mining impact board shall include among its members:

(a) three persons who, when appointed to the board, reside in an area impacted or expected to be impacted by large-scale mineral development;

(b) ~~no more than three persons from the same congressional district;~~ *at least one person from each district provided for in 5-1-102;*

(c) a representative of the hard-rock mining industry;

(d) a representative of a major financial institution in Montana;

(e) a person who, when appointed to the board, is an elected school district trustee;

(f) a person who, when appointed to the board, is an elected county commissioner;

(g) a member of the public-at-large.

(4) The hard-rock mining impact board is a quasi-judicial board subject to the provisions of 2-15-124 except that one of the members need not be an attorney licensed to practice law in this state, and the board shall elect a ~~chairman~~ *presiding officer* from among its members."

Section 6. Section 2-15-1867, MCA, is amended to read:

"**2-15-1867. Board of realty regulation.** (1) There is a board of realty regulation.

(2) The board consists of five members appointed by the governor with the consent of the senate. Three members ~~shall~~ *must* be licensed real estate brokers or ~~salesmen~~ *salespeople* who are actively engaged in the real estate business as a broker or ~~salesman~~ *salesperson* in this state. Two members ~~shall~~ *must* be representatives of the public who are not state government officers or employees and who are not engaged in business as a real estate broker or ~~salesman~~ *salesperson*. The members ~~shall~~ *must* be~~:~~

~~(a)~~ residents of this state~~; and~~

~~(b) appointed so not more than three members are from the same congressional district~~.

(3) Not more than three members, including the ~~chairman~~ *presiding officer*, may be from the same political party.

(4) The members shall serve staggered terms of 4 years. A member may not serve more than two terms or any portion ~~thereof~~ *of two terms*.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 7. Section 2-15-3102, MCA, is amended to read:

"**2-15-3102. Board of livestock — composition.** (1) There is a board of livestock.

(2) The board consists of seven members appointed by the governor with the consent of the senate. Each member ~~shall~~ *must* be a resident of the state and an active livestock producer. A member ~~shall~~ *must* be appointed upon the recommendation of the related industry and ~~shall~~ *must* have the following qualifications:

(a) ~~two~~ *four* are cattle producers~~, one from each congressional district within the state~~;

(b) ~~two are cattle producers at large;~~

~~(c)~~ one is a dairy producer representing the dairy and poultry industry;

~~(d)~~*(c)* one is a swine producer; and

~~(e)~~*(d)* one is a sheep producer.

(3) An appointee is vested with all the powers and duties of ~~his~~ office before being confirmed by the senate, as are directors in 2-15-111(2).

(4) The governor shall designate the ~~chairman~~ *presiding officer* of the board.

(5) A member shall serve for a term of 6 years.

(6) Members of the board ~~shall~~ *must* be reimbursed and compensated as are members of quasi-judicial boards in 2-15-124(7)."

Section 8. Section 3-1-1101, MCA, is amended to read:

"**3-1-1101. Creation and composition of commission.** There is created a judicial standards commission consisting of five members as follows:

(1) two district court judges from different judicial districts, elected by the district judges under an elective procedure initiated by and conducted by the supreme court, and ~~the two so elected~~ *their election must be* certified ~~as to such election~~ by the chief justice of the supreme court, which for the purpose ~~of the language~~ of this part ~~shall be~~ *is* considered as an appointment;

(2) one attorney who has practiced law in this state for at least 10 years, appointed by the supreme court;

(3) two citizens ~~from different congressional districts~~ who are not attorneys or judges of any court, active or retired, appointed by the governor."

Section 9. Section 5-1-102, MCA, is amended to read:

"**5-1-102. Composition of commission.** *(1)* The majority and minority leaders of each house shall each designate one commissioner. ~~Two commissioners~~ *A commissioner* must be ~~residents of the western congressional district and two commissioners must be residents of the eastern congressional~~ *appointed from each* district *listed in subsection (2)*. The majority leader in ~~each house~~ *the senate* ~~shall have~~ *has* first choice of the ~~congressional~~ district from which ~~he~~ *the majority leader* will select a commissioner, *and the majority leader of the house has second choice*. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as ~~chairman~~ *the presiding officer* of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select ~~him~~ *the fifth member.*

(2) The commission districts are the following counties:

(a) District 1: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli;

(b) District 2: Lewis and Clark, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park;

(c) District 3: Glacier, Toole, Liberty, Hill, Blaine, Phillips, Valley, Daniels, Sheridan, Roosevelt, Richland, McCone, Garfield, Petroleum, Fergus, Judith Basin, Cascade, Chouteau, Teton, and Pondera; and

(d) District 4: Wheatland, Golden Valley, Musselshell, Treasure, Rosebud, Custer, Prairie, Dawson, Wibaux, Fallon, Carter, Powder River, Big Horn, Yellowstone, Carbon, Stillwater, and Sweet Grass."

Section 10. Section 13-10-404, MCA, is amended to read:

"**13-10-404. Nomination petition.** Before a presidential candidate may qualify for placement on the ballot, ~~he~~ *the candidate* must be nominated on petitions with the verified signatures of at least ~~1,000~~ *2,000* qualified electors ~~from each congressional district~~. The secretary of state is empowered to prescribe the form and content of the petition."

Section 11. **Repealer.** Section 13-10-102, MCA, is repealed.

Section 12. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. **Applicability.** [This act] applies to appointments made after [the effective date of this act].

Section 14. **Effective date.** [This act] is effective July 1, 1993.

Approved February 18, 1993.

CHAPTER NO. 53

[SB 97]

AN ACT AMENDING THE CANAL PRIVATIZATION PROGRAM TO INCLUDE THE LEWISTOWN DITCH; AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-211, MCA, is amended to read:

"**85-1-211. Management of property — water contracts.** (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things ~~which~~ *that* in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under ~~such~~ general rules and upon ~~such~~ terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds ~~which~~ *that* will be sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs ~~thereto~~ *to the works*, and ~~which~~ *that* will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of those rates, prices, or charges as established by ~~any~~ *a* contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of ~~any~~ property or facilities ~~shall~~ *must* provide that, in the event of a failure or default in the payment of ~~moneys~~ *money* specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations ~~thereunder~~ *under the contract*. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit ~~any~~ *a* remedy provided by the contract or by law for the recovery of ~~moneys~~ *money* due or ~~which~~ *that* may become due under the contract.

(5) Subject to the approval of the board under 85-1-202, the department may sell, transfer to water user associations, abandon, or otherwise dispose of any rights-of-way, easements, properties, or interests or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom without regard to other laws providing for the disposition of state property. Prior to the department's sale, transfer, or other disposition, a determination ~~shall~~ *must* be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value ~~shall~~ *must* consider all liens, encumbrances, and other limitations on the project properties or interests.

(6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal projects to be disposed of include the:

(i) Columbus canal;

(ii) Delphia-Melstone canals;

(iii) Hysham pumping canals;

(iv) Lewistown ditch;

~~(iv)~~*(v)* Livingston ditch;

~~(v)~~*(vi)* Florence canal;

~~(vi)~~*(vii)* Paradise canal;

~~(vii)~~*(viii)* Park Branch canal;

~~(viii)~~*(ix)* Sidney pumping canals;

~~(ix)~~*(x)* South Side canal;

~~(x)~~*(xi)* Vigilante canal; and

~~(xi)~~*(xii)* West Bench canal.

(b) The department may dispose of a canal project by sale, transfer to a water users' association, abandonment, or other legal conveyance. If there is an existing water users' association on the canal project, the provisions of 85-6-109(5) must be complied with in the disposal of the canal project. The department shall give preference to existing water users' associations operating and maintaining the canal project.

(c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995, the water users of the canal project are responsible for the department's administrative costs and the actual costs of operation and maintenance of the canal project.

(7) An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not

limited to entry to make an inspection the department considers necessary of the canal project, entry to salvage or remove project property, and entry to make physical alterations to canal project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is responsible for actual damages done to property."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 18, 1993.

CHAPTER NO. 54

[SB 141]

AN ACT CLARIFYING THE TAX EXEMPTION FOR PROPERTY OWNED BY THE FEDERAL GOVERNMENT; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) *except as provided in 15-24-1203,* the property of:

(i) the United States, ~~the state, counties, cities, towns, school districts, except, if~~ *unless* congress passes legislation that allows the state to tax property owned by *the federal government or* an agency created by congress ~~to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives)~~;

(ii) the state, counties, cities, towns, and school districts;

~~(ii)~~*(iii)* irrigation districts organized under the laws of Montana and not operating for profit;

~~(iii)~~*(iv)* municipal corporations; and

~~(iv)~~*(v)* public libraries;

(b) buildings, with land they occupy and *their* furnishings ~~therein~~, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) ~~provided the tools are owned by the taxpayer,~~ the first $15,000 or less of market value of tools *owned by the taxpayer* that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105; and

(u) beginning January 1, 1994, timber as defined in 15-44-102.

(2) (a) The term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

Approved February 18, 1993.

CHAPTER NO. 55

[SB 151]

AN ACT MAKING PERMANENT THE EXEMPTION FROM PROPERTY TAXATION OF CERTAIN PROPERTY USED EXCLUSIVELY IN THE PRODUCTION OF MOTION PICTURES OR TELEVISION COMMERCIALS; REPEALING SECTION 11, CHAPTER 525, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 11, Chapter 525, Laws of 1989, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 18, 1993.

CHAPTER NO. 56

[SB 88]

AN ACT CLARIFYING THAT THE MONTANA STATE PRISON DAIRY MAY BE A LICENSEE OF THE DEPARTMENT OF COMMERCE; AMENDING SECTION 81-23-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-23-101, MCA, is amended to read:

"**81-23-101. Definitions.** (1) Unless the context requires otherwise, in this chapter, the following definitions apply:

(a) "Board" means the board of milk control provided for in 2-15-1802.

(b) "Class I milk" includes all bottled or packaged milk, low fat, buttermilk, chocolate milk, whipping cream, commercial cream, half-and-half, skim milk, fortified skim milk, skim milk flavored drinks, and any other fluid milk not specifically classified in this chapter, whether raw, pasteurized, homogenized, sterile, or aseptic.

(c) "Class II milk" includes milk used in the manufacture of ice cream and ice cream mix, ice milk, sherbet, eggnog, cultured sour cream, cottage cheese, condensed milk, and powdered skim for human consumption.

(d) "Class III milk" includes milk used in the manufacture of butter, cheddar cheese, process cheese, livestock feed, powdered skim other than for human consumption, and skim milk dumped.

(e) "Consumer" means a person or an agency, other than a dealer, who purchases milk for consumption or use.

(f) "Dealer" means a producer, distributor, producer-distributor, jobber, or independent contractor.

(g) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(h) "Distributor" means a person purchasing milk from any source, either in bulk or in packages, and distributing it for consumption in this state. The term includes what are commonly known as jobbers and independent contractors. The term, however, excludes a person purchasing milk from a dealer licensed under this chapter, for resale over the counter at retail or for consumption on the premises.

(i) "Jobber prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a jobber or independent contractor.

(j) "Licensee" means a person who holds a license from the department.

(k) "Market" means an area of the state designated by the department as a natural marketing area.

(l) "Milk" means the lacteal secretion of a dairy animal or animals, including those secretions when raw and when cooled, pasteurized, standardized, homogenized, recombined, concentrated fresh, or otherwise processed and all of which is designated as grade A by a duly constituted health authority and also includes those secretions which are in any manner rendered sterile or aseptic, notwithstanding whether they are regulated by any health authority of this or any other state or nation.

(m) "Person" means ~~a person~~ *an individual,* firm, corporation, or cooperative association *or the dairy operated by the department of corrections and human services at the Montana state prison.*

(n) "Producer" means a person who produces milk for consumption in this state, selling it to a distributor.

(o) "Producer prices" means those prices at which milk owned by a producer is sold in bulk to a distributor.

(p) "Producer-distributor" means a person both producing and distributing milk for consumption in this state.

(q) "Retail prices" means those prices at which milk owned by a retailer is sold, in bulk or in packages, over the counter at retail or for consumption on the premises.

(r) "Retailer" means a person selling milk in bulk or in packages over the counter at retail or for consumption on the premises and includes but is not limited to retail stores of all types, restaurants, boardinghouses, fraternities, sororities, confectionaries, public and private schools, including colleges and universities, and both public and private institutions and instrumentalities of all types and description.

(s) "Wholesale prices" means those prices at which milk owned by a distributor is sold, in bulk or in packages, to a retailer.

(2) The department may assign new milk products, not expressly included in one of the classes defined in this section, to the class which in its discretion it determines to be proper."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 19, 1993.

CHAPTER NO. 57

[HB 41]

AN ACT MAKING PERMANENT THE LAW PROHIBITING THE DEPARTMENT OF TRANSPORTATION AND LOCAL AUTHORITIES FROM RESTRICTING THE TRANSPORT OF SEED POTATOES ON A PUBLIC HIGHWAY UNDER CERTAIN CONDITIONS AND MAKING PERMANENT THE LAW REQUIRING A PERMIT; AMENDING SECTION 61-10-128, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

The legislature in 1991 temporarily prohibited the department of transportation from subjecting seed potato haulers to weight and speed restrictions under certain conditions and with a permit requirement. It is the intent of the legislature to now make that prohibition permanent under the same conditions and permit requirements as were contained in the 1991 temporary law. The legislature expects that with the passage of time, roads will be upgraded and that equipment used by the potato haulers will be upgraded in a fashion that will eliminate the wear and tear on roads that makes special weight and speed restrictions necessary. For the time being, the legislature recognizes the necessity of exempting seed potato haulers from special restrictions under certain conditions. The legislature intends to allow the exemption with the understanding that in the future, the people involved in the seed potato industry will continue to work on upgrading their equipment so that eventually the equipment will not require exemptions from special speed and weight limits and that as equipment is replaced, the new equipment will meet regular limits, without special exemptions, that will protect the state's highways.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-128, MCA, is amended to read:

"**61-10-128.** *(Temporary)* **When authorities may restrict right to use roadway.** (1) Neither the department nor a local authority may alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of transportation by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of transportation or the authority which enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles~~,~~ or impose limitations on their weight on designated highways, subject to the provisions of subsection (3). These prohibitions and limitations shall be designated by appropriate signs placed on the highways.

(3) Neither the department nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable seed potatoes that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight;

(b) a permit has been issued under 61-10-107(3), regardless of the vehicle's gross weight, specifying the route from point of loading to the nearest non-restricted road; and

(c) the driver has in his possession a federal-state inspection certificate issued for the load.

(4) A permit issued under subsection (3) may be revoked for violating any condition of the permit. *(Terminates June 30, 1993—sec. 2, Ch. 476, L. 1991.)*

61-10-128. *(Effective July 1, 1993)* **When authorities may restrict right to use roadway.** (1) A local authority may not alter the limitations provided in 61-10-101 through 61-10-110 or substitute other limitations or requirements, except as provided in this section.

(2) The department of transportation by order, or a local road authority by ordinance or resolution, may prohibit the operation of or impose restrictions on the weight and speed of a vehicle traveling on a public highway under its respective jurisdiction and for which it is responsible for maintenance whenever the highway will be seriously damaged or destroyed by deterioration, rain, snow, or other climatic conditions, unless the use of vehicles on the highway is prohibited or the permissible vehicle weights and speed are reduced. The department of transportation or the authority ~~which~~ *that* enacts the ordinance or resolution shall erect signs designating the department's order or the authority's ordinance or resolution at each end of that portion of the highway affected, and the order or ordinance or resolution is not effective until the signs are erected. The department *of transportation*, or the authority by ordinance or resolution, may prohibit the operation of trucks or other commercial vehicles~~,~~ or impose limitations on their weight on designated highways, *subject to the*

provisions of subsection (3). These prohibitions and limitations ~~shall~~ *must* be designated by appropriate signs placed on the highways.

(3) Neither the department of transportation nor a local authority may prohibit the operation of or impose a restriction on the weight of a vehicle loaded with perishable seed potatoes that is traveling on a public highway if:

(a) the vehicle is being operated within its legal licensed gross vehicle weight;

(b) a permit has been issued under 61-10-107(3), regardless of the vehicle's gross weight, specifying the route from point of loading to the nearest non-restricted road; and

(c) the driver possesses a federal-state inspection certificate issued for the load.

(4) A permit referred to in subsection (3) may be revoked for violating any condition of the permit."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved February 19, 1993.

CHAPTER NO. 58

[HB 101]

AN ACT AUTHORIZING THE CONTINUED USE OF COMMEMORATIVE CENTENNIAL LICENSE PLATES AFTER JUNE 30, 1996; AND AUTHORIZING THE DEPARTMENT OF JUSTICE TO CONTINUE TO REPLACE COMMEMORATIVE CENTENNIAL LICENSE PLATES AFTER JUNE 30, 1996, FOR PERSONS OWNING COMMEMORATIVE CENTENNIAL PLATES ON OR BEFORE THAT DATE AS LONG AS REPLACEMENT STOCK CURRENTLY OWNED BY THE DEPARTMENT IS AVAILABLE AND USABLE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Commemorative centennial license plates — continued use and replacement authorized.** (1) A person who owns and displays commemorative centennial license plates issued under Title 2, chapter 89, part 3, on a motor vehicle on or before June 30, 1996, may continue to display the commemorative centennial plates on the vehicle after that date as long as the plates remain legible or as long as replacement plates are available from the department, whichever is later.

(2) The department shall authorize the continued display of commemorative centennial license plates after June 30, 1996, as provided for in subsection (1), and shall replace commemorative centennial license plates for persons who owned and displayed the plates on or before June 30, 1996, as long as replacement stock owned by the department on October 1, 1993, remains available and usable.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 1].

Approved February 19, 1993.

CHAPTER NO. 59

[HB 103]

AN ACT CLARIFYING THAT ONLY FINAL DECISIONS OF THE DEPARTMENT OF REVENUE ARE APPEALABLE TO THE STATE TAX APPEAL BOARD; AMENDING SECTION 15-2-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2-302, MCA, is amended to read:

"**15-2-302. Direct appeal from department decision to state tax appeal board — hearing.** (1) A person may appeal to the state tax appeal board ~~any action~~ *a final decision* of the department of revenue involving:

(a) property centrally assessed under chapter 23 of this title;

(b) classification of property as new industrial property;

(c) any other tax (other than the property tax) imposed under this title; or

(d) any other matter in which ~~such~~ appeal is provided by law.

(2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the ~~department action~~ *department's final decision*. The complaint ~~shall~~ *must* set forth the grounds for relief and nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(3) The department shall file with the board an answer within 30 days following filing of a complaint and at ~~such~~ *that* time mail a copy to the complainant. The answer ~~shall~~ *must* set forth the department's response to each ground for and type of relief demanded in the complaint.

(4) The board shall ~~thereafter hear the parties~~ *conduct the appeal* in accordance with the contested case provisions of the Montana Administrative Procedure Act."

Section 2. **Applicability.** [This act] applies to final decisions made on or after [the effective date of this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved February 19, 1993.

CHAPTER NO. 60

[HB 119]

AN ACT CLARIFYING BEER AND WINE TAX ALLOCATION; PROVIDING FOR ANNUAL ADJUSTMENTS TO CENSUS DATA; AMENDING SEC-

TIONS 16-1-410 AND 16-1-411, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-410, MCA, is amended to read:

"**16-1-410.** *(Temporary)* **Tax revenue allocation.** *(1)* Subject to 16-1-422, all revenue received from taxes on beer under 16-1-406 and 16-1-408 over and above $1.50 per barrel of 31 gallons ~~shall~~ *must* be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the ~~state treasurer~~ *department* who shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census *as adjusted by the most recent population estimates published by the U.S. bureau of the census.* For cities and towns incorporated after the latest official federal census, the census ~~shall~~ *must* be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town ~~shall~~ *must* be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section ~~shall~~ *must* be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(2) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year.

16-1-410. *(Effective on receipt of taxes or fees for September 1993)* **Tax revenue allocation.** *(1)* All revenue received from taxes on beer under 16-1-406 and 16-1-408 over and above $1.50 per barrel of 31 gallons ~~shall~~ *must* be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the ~~state treasurer~~ *department* who shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census *as adjusted by the most recent population estimates published by the U.S. bureau of the census.* For cities and towns incorporated after the latest official federal census, the census ~~shall~~ *must* be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town ~~shall~~ *must* be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section ~~shall~~ *must* be expended for state purposes, such as law enforcement, maintenance of the transportation system, and public health.

(2) The department may adjust population estimates only on the July 1 following the date of publication of the estimates by the U.S. bureau of the census. The adjusted distribution formula must remain in effect for the entire fiscal year."

Section 2. Section 16-1-411, MCA, is amended to read:

"**16-1-411.** *(Temporary)* **Tax on wine.** (1) A tax of 27 cents per liter is ~~hereby levied and~~ imposed on table wine imported by ~~any~~ *a* table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor ~~shall~~ *must* be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department ~~shall~~ *must* be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) ~~shall~~ *must* be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The taxes computed and paid in accordance with 16-1-423, 16-2-301, and this section ~~shall be~~ *are* the only taxes imposed by the state or any of its subdivisions, including cities and towns.

(5) The proceeds of the surtax imposed by 16-1-423 must be deposited in the state general fund.

(6) For purposes of this section "based on population" means:

(a) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-410(2); and

(b) for cities, the distribution described in 16-1-410.

16-1-411. *(Effective on receipt of taxes or fees for September 1993)* **Tax on wine.** (1) A tax of 27 cents per liter is ~~hereby levied and~~ imposed on table wine imported by ~~any~~ *a* table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor ~~shall~~ *must* be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department ~~shall~~ *must* be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) ~~shall~~ *must* be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section ~~shall be~~ *is* the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section "based on population" means:

(a) for counties, the direct proportion that the population of each county bears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-410(2); and

(b) for cities, the distribution described in 16-1-410."

Section 3. **Applicability.** [This act] applies to all beer and wine tax revenue recorded on or after July 1, 1993, regardless of when the tax obligation accrued.

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved February 19, 1993.

CHAPTER NO. 61

[HB 120]

AN ACT CLARIFYING THE PERMISSIBLE PURPOSES OF RURAL ELECTRIC AND TELEPHONE COOPERATIVES; AND AMENDING SECTIONS 35-18-105 AND 35-18-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-105, MCA, is amended to read:

"**35-18-105. Permissible purposes for incorporation.** Cooperative nonprofit membership corporations may be organized under this chapter ~~for the following purposes~~:

(1) for the purpose of supplying electric energy and promoting and extending the use ~~thereof~~ *of electric energy* in rural areas, as provided in this chapter;

(2) for the purposes of making generally available adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of ~~such~~ additional facilities as are required to assure the availability of ~~such~~ service to the widest practicable number of users ~~thereof~~ *of telephone service, cable television service, or broadband facilities; and*

(3) for purposes allowable under federal authorization, including rural economic development activites."

Section 2. Section 35-18-106, MCA, is amended to read:

"**35-18-106. Powers of cooperatives.** A cooperative ~~shall have~~ *has* power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock ~~therein~~ *in other cooperatives or corporations*;

(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and ~~any and~~ all kinds or classes of real or personal property ~~whatsoever~~, which ~~shall be deemed~~ *may be considered* necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of

or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness ~~therefor~~ and secure the payment ~~thereof~~ *of indebtedness* by mortgage, pledge, deed of trust, or any other encumbrance upon ~~any or~~ all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of ~~such~~ *the* thoroughfares and lands as are imposed by the respective authorities having jurisdiction ~~thereof~~ *of them* upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise ~~any or~~ all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist ~~such~~ *those* persons in wiring their premises and installing ~~therein~~ *in their premises* electrical and plumbing fixtures, appliances, apparatus, and equipment of ~~any and~~ all kinds and character and, in connection ~~therewith~~ *with electrical and plumbing fixtures,* purchase, acquire, lease, sell, distribute, install, and repair ~~such~~ *the* electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and ~~any and~~ all types of security ~~therefor~~ *for electrical and plumbing fixtures*;

(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist ~~such~~ *those* persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish ~~such~~ additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of users ~~thereof~~ *of telephone service*;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist ~~such~~ *those* persons in wiring their premises for telephone service and installing ~~therein~~ *in their premises* telephone fixtures, appliances, apparatus, and equipment of ~~any and~~ all kinds and character and, in connection ~~therewith~~ *with telephone fixtures*, purchase, acquire, lease, sell, distribute, install, and repair ~~such~~ *the* telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and ~~any and~~ all types of security ~~therefor~~ *for telephone fixtures*;

(14) do and perform ~~any and~~ all other acts and things and have and exercise ~~any and~~ all other powers ~~which~~ *that* may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized *or authorized under federal law*."

Approved February 19, 1993.

CHAPTER NO. 62

[HB 163]

AN ACT ALLOWING THE MONTANA MINT COMMITTEE TO ESTABLISH AN INTEGRATED PEST MANAGEMENT PROGRAM BY RULE RATHER THAN BY STATUTE; REDUCING THE MINIMUM MINT OIL ASSESSMENT; AMENDING SECTIONS 80-11-403 AND 80-11-412, MCA; REPEALING SECTION 80-11-411, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-403, MCA, is amended to read:

"**80-11-403. Powers of the committee.** The committee may:

(1) provide for the administration and enforcement of this part;

(2) enter into contracts, in the name of the committee, to:

(a) improve the quality of mint;

(b) develop and improve control measures for diseases and pests that attack mint;

(c) improve mint growing culture;

(d) disseminate appropriate information among mint growers and dealers of the state; and

(e) carry out the purposes of this part;

(3) authorize the purchase of office equipment and supplies and incur other reasonable and necessary expenses and obligations required to carry out this part;

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) adopt rules and orders for the exercise of its power and the performance of its duties in accordance with the Montana Administrative Procedure Act;

(6) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States, engaged in work or activities similar to the work and activities of the committee and enter into contracts with those organizations or agencies for conducting joint campaigns of research, education, disease control, product protection, and reciprocal enforcement of objectives;

(7) accept grants, donations, and gifts from any source for expenditure for any purpose consistent with this part and spend the proceeds in compliance with the conditions of the grants, donations, and gifts; and

(8) establish *by rule* an integrated pest management program, complete with field scouting services~~, as provided in 80-11-411~~. *The purpose of the program is to identify, as early as possible, any potentially damaging diseases, weeds, or pests that could inhibit the long-term health of the Montana mint industry.*"

Section 2. Section 80-11-412, MCA, is amended to read:

"**80-11-412. Assessment on mint oil.** (1) There is levied on all mint oil produced in this state and sold through normal commercial channels an assessment of not less than ~~10~~ *5* cents or more than 15 cents a pound. The assessment is levied on each grower in the following manner:

(a) in the case of the sale of mint oil, the assessment must be collected by the first purchaser from the grower at the time of each settlement for mint oil purchased; or

(b) in the case of a pledge or mortgage of mint oil as security for a loan, the assessment must be collected by deducting the amount of the assessment from the proceeds of the loan at the time the loan is made by the agency or person making the loan.

(2) The assessment must be deducted and collected whether the mint oil is stored in this state or any other state. The assessment is imposed on the initial sale, pledge, mortgage, or other transaction in which a grower parts with title to the mint oil or creates an interest in the mint oil in a pledgee, mortgagee, or other person, but a grower is not subject to assessment more than once regardless of the number of times the oil is subject to a sale, pledge, mortgage, or other transaction.

(3) The committee shall by rule set the amount of the assessment annually in accordance with subsection (1)."

Section 3. **Repealer.** Section 80-11-411, MCA, is repealed.

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved February 19, 1993.

CHAPTER NO. 63

[HB 194]

AN ACT REMOVING THE TERMINATION DATE ON THE PROVISIONS EXPANDING THE DEFINITION OF TRAFFIC EDUCATION TO INCLUDE INSTRUCTION IN BICYCLE, PEDESTRIAN, AND SCHOOL BUS TRAFFIC LAWS AND REQUIRING INSTRUCTION DESIGNED TO INCREASE PUBLIC AWARENESS OF MOTOR VEHICLE, PEDESTRIAN, AND SCHOOL BUS SAFETY WITH REGARD TO PROTECTING SCHOOL-AGE CHILDREN; REPEALING SECTION 2, CHAPTER 428, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 2, Chapter 428, Laws of 1991, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 19, 1993.

CHAPTER NO. 64

[HB 224]

AN ACT PROVIDING THAT THE RESIGNATION OF A TRUSTEE OF A SCHOOL DISTRICT MUST BE SUBMITTED TO THE CLERK OF THE SCHOOL DISTRICT; AND AMENDING SECTION 2-16-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-16-502, MCA, is amended to read:

"**2-16-502. Resignations.** (1) Resignations must be in writing and made as follows:

(a) by the governor and lieutenant governor, to the legislature if it is in session and, if not, then to the secretary of state;

(b) by all officers commissioned by the governor, to the governor;

(c) by senators and members of the house of representatives, if the legislature is not in session, to the secretary of state and, if it is in session, to the presiding officer of the branch to which the member belongs, who must immediately transmit the same to the secretary of state;

(d) by all county and township officers not commissioned by the governor, to the clerk of the board of commissioners of their respective counties;

(e) by all other appointed officers, to the body or officer that appointed them;

(f) by all trustees of school districts, to the clerk of the respective school district provided for in 20-3-325;

(g) in all cases not otherwise provided for, by filing the resignation in the office of the secretary of state.

(2) A resignation is effective 72 hours after its submission in the manner provided for in subsection (1) unless the resignation is withdrawn during that 72-hour period by the resigner through written notification of withdrawal made in the same manner as provided in subsection (1) for resignations."

Approved February 19, 1993.

CHAPTER NO. 65

[HB 165]

AN ACT DEFINING ADDITIONAL TERMS REGARDING LIQUEFIED PETROLEUM PRODUCTS; SPECIFYING UNLAWFUL ACTS; PROVIDING A PENALTY; PROVIDING FOR OWNER IDENTIFICATION ON LIQUEFIED PETROLEUM PRODUCT CONTAINERS; AND AMENDING SECTION 82-15-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-15-101, MCA, is amended to read:

"**82-15-101. Definitions.** As used in this part, the following definitions apply:

(1) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons or mixtures ~~thereof~~ *of hydrocarbons*: propane, propylene, butanes (normal butane or isobutane), and butylenes but excluding prepackaged liquefied petroleum products.

(4) "Liquefied petroleum product" means a product composed predominately of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, butanes (normal butane or isobutane), and butylenes.

(5) "Liquefied petroleum product container" means an American society of mechanical engineers-approved container that can hold 110 gallons or more of a liquefied petroleum product.

~~(4)~~*(6)* "Mislabeled" means a package label or dispensing device of a product ~~which~~ *that* bears any statement, design, or device regarding the ~~same~~ *product* or regarding ingredients or substances ~~therein~~ *in the product* or regarding the properties, quality, or kind of ~~such~~ products~~, which~~ *that* is false or misleading in any manner.

(7) "Owner" means a person:

(a) who is listed with the American society of mechanical engineers or with the manufacturer as owner by the serial number of the liquefied petroleum product container;

(b) who holds a written bill of sale or other instrument under which title to a liquefied petroleum product container was transferred; or

(c) who holds a paid invoice showing purchase of and payment for a liquefied petroleum product container.

~~(5)~~*(8)* "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

~~(6)~~*(9)* "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection (3).

~~(7)~~*(10)* "Sell" and "sale" includes barter and exchange."

Section 2. **Refilling of liquefied petroleum product containers — unlawful acts.** Only the owner or a person authorized by the owner may:

(1) fill or refill a liquefied petroleum product container;

(2) deface, erase, obliterate, cover up, remove, conceal, or change the name or other identification of the owner or the information on the manufacturer's specification plate; or

(3) place the name of a person other than the owner on the liquefied petroleum product container.

Section 3. **Violation — penalty.** A person who violates [section 2] is guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed $500 or by imprisonment in the county jail for a term not exceeding 120 days, or both.

Section 4. **Owner identification.** The owner of a liquefied petroleum product container shall place the name, initials, or trademark of the owner on the dome near the filling apparatus of each container.

Section 5. **Codification instruction.** [Sections 2 through 4] are intended to be codified as an integral part of Title 82, chapter 15, part 1, and the provisions of Title 82, chapter 15, part 1, apply to [sections 2 through 4].

Approved February 22, 1993.

CHAPTER NO. 66

[HB 182]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CENTRAL CREDIT UNIONS; CHANGING THE TERMINOLOGY FROM "CENTRAL" TO "CORPORATE" CREDIT UNION; REVISING MEMBERSHIP REQUIRE-

MENTS; REGULATING CONFLICTS OF INTEREST; SUBJECTING THE RIGHTS AND POWERS OF A CORPORATE CREDIT UNION TO REGULATION BY THE DEPARTMENT OF COMMERCE; CREATING CAPITAL SHARE ACCOUNTS FOR CORPORATE CREDIT UNION MEMBERS; REGULATING INVESTMENT IN FIXED ASSETS; REGULATING THE RATIO OF RISK-BASED CAPITAL RESERVES TO RISK-WEIGHTED ASSETS; PROVIDING FOR AN ANNUAL AUDIT; REQUIRING WRITTEN AGREEMENTS WHEN SHARING SERVICES, FACILITIES, PERSONNEL, OR EQUIPMENT; AMENDING SECTIONS 32-3-801, 32-3-802, 32-3-803, AND 32-3-804, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it delegates rulemaking authority to the department of commerce. A "corporate" credit union is one that serves other credit unions. Other credit unions become members of the corporate credit union. The member credit unions may borrow from the corporate credit union if necessary and may invest excess funds with it. The corporate credit union may also provide to its members other financial services, such as correspondent check collection and automated funds transfer services.

The national credit union administration has adopted extensive new regulations applicable to federally chartered corporate credit unions, and it has also effectively made the regulations applicable to state-chartered corporate credit unions by prohibiting federally insured credit unions from investing in a corporate credit union that is not in compliance with the new regulations. All credit unions in Montana are federally insured. Therefore, in adopting rules pursuant to this bill, the department shall substantially conform with Title 12, part 704, Code of Federal Regulations.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3-801, MCA, is amended to read:

"**32-3-801. Organization.** ~~Any central~~ *A corporate* credit union may be organized and operated under this chapter and *is* subject to all ~~such~~ provisions not inconsistent with this chapter. ~~Such~~ *The* credit union shall use the term ~~"central"~~ *"corporate"* in its official name."

Section 2. Section 32-3-802, MCA, is amended to read:

"**32-3-802.** ~~**Membership**~~ ***Purpose — membership.*** *(1) A corporate credit union must be operated primarily for the purpose of serving other credit unions.*

(2) Membership in ~~such central~~ *a corporate* credit union ~~may~~ *must* include~~, but not be limited to:~~

~~(1)~~ credit unions organized and operating under this chapter or under any other credit union law~~;~~.

(3) Membership may also include:

~~(2)~~*(a)* officers, directors, committee members, and employees of ~~such~~ credit unions~~; officials and employees of any association of credit unions; and employees of federal or state government agencies responsible for the supervision of credit unions in this state~~; *or*

~~(3)~~*(b)* organizations and associations of those persons or organizations enumerated in subsections ~~(1) and~~ (2) *and (3)(a)*~~;~~.

~~(4) employees of an employer with insufficient numbers to form or conduct the affairs of a separate credit union;~~

~~(5) persons in the field of membership of liquidated credit unions or of credit unions which have entered into or are about to enter into voluntary or involuntary liquidation proceedings; or~~

~~(6) members of the immediate families of all members qualified above.~~

(4) The membership of a corporate credit union may not include more than seven natural persons as described in subsection (3)(a)."

Section 3. Section 32-3-803, MCA, is amended to read:

"**32-3-803. Voting representative —** ***conflict of interest.*** *(1)* Each credit union ~~becoming~~ *that is* a member of ~~such central~~ *a corporate* credit union may designate one person to be its voting representative in the ~~central~~ *corporate* credit union~~,~~. ~~which~~ *The* person ~~shall~~ *must* be designated by the board of directors of the member credit union. ~~Such~~ *The* voting representative ~~shall~~ *must* be eligible to hold office in the ~~central~~ *corporate* credit union as if ~~such~~ *the* person were ~~himself~~ a member of the ~~central~~ *corporate* credit union.

(2) (a) A director, committee member, officer, agent, or employee may not in any manner participate in the deliberation or determination of any question affecting that person's personal pecuniary interest.

(b) A director, officer, agent, or employee may not in any manner participate in the determination of any matter material in amount, as defined by rule by the department, affecting the pecuniary interest of any corporation, partnership, or association, other than the corporate credit union, in which that person has a direct or indirect interest, except for matters involving payment of dividends to the membership.

(3) The department shall adopt rules implementing this section in substantial conformance with Title 12, part 704, Code of Federal Regulations."

Section 4. Section 32-3-804, MCA, is amended to read:

"**32-3-804. Additional rights and powers —** ***department rules.*** (1) ~~A central~~ *Except as limited by this part and rules adopted pursuant to this part, a corporate* credit union ~~shall have~~ *has* all of the rights and powers of any other credit union organized under this chapter and the additional rights and powers specified in this ~~section, notwithstanding any limitations or restrictions found elsewhere in this chapter~~ *part.*

(2) A ~~central~~ *corporate* credit union may, *as permitted by rules of the department,* make loans to other credit unions~~, purchase shares of other credit unions, and obtain or acquire the assets and liabilities of any credit union operating in this state which enters into liquidation~~ *and provide correspondent services and other financial services to other credit unions.*

(3) A ~~central~~ *corporate* credit union may, *as permitted by rules of the department,* invest in and grant loans to associations of credit unions, central

funds of credit unions, or organizations chartered to provide service to credit unions.

(4) A ~~central~~ *corporate* credit union may, *as permitted by rules of the department,* borrow and accept money from any source and issue notes or debentures.

(5) A corporate credit union may, as permitted by rules of the department, make reasonable and prudent investments.

(6) The department shall adopt rules governing corporate credit union loans, borrowing, investments, strategic planning, funds management, capital goals, and services. The rules must be in substantial conformance with Title 12, part 704, Code of Federal Regulations.

(7) A corporate credit union may issue membership capital share deposit accounts as provided in [section 5].

~~(5)~~*(8)* A ~~central~~ *corporate* credit union with corporate shareholdings equal to or in excess of 95% of its total assets may, by vote of its board of directors~~:~~,

~~(a)~~ elect exemption of insurance on share accounts under the provisions of Title II of the Federal Credit Union Act~~;~~

~~(b) borrow from any source an amount not in excess of three times its total assets after deduction of the notes payable account; however, with prior written approval of the director of the department of commerce, the credit union may exceed such limitation; and~~

~~(c) make loans to any member in an aggregate amount not in excess of 20% of the central credit union's total assets~~."

Section 5. **Membership capital share deposits.** (1) A corporate credit union may issue membership capital share deposit or MCSD accounts to members.

(2) (a) For purposes of this section, "membership capital share deposit" or "MCSD account" means a share, deposit, or other account that:

(i) is established, at a minimum, as a 12-month notice account;

(ii) is limited to members;

(iii) is not subject to share insurance coverage by the national credit union share insurance fund or other deposit insurers; and

(iv) in the event of liquidation of the corporate credit union, is payable only after satisfaction of all liabilities of the liquidation estate, including uninsured obligations to shareholders and the national credit union share insurance fund.

(b) An MCSD account is not repayable until notice is given by the account holder credit union that the account holder credit union intends to withdraw MCSD account funds from the corporate credit union, except in the case of a credit union that is placed into liquidation, is purchased and assumed, or is merged.

(3) An MCSD account may not be used to pledge borrowings.

(4) Corporate credit unions that issue MCSD accounts shall disclose at least annually to their members the terms and conditions under which the accounts are issued.

Section 6. **Fixed assets — department rules.** (1) A corporate credit union may not invest in fixed assets if the aggregate of those investments would exceed 15% of capital, unless the credit union receives prior written approval from the department and the national credit union administration board.

(2) The department shall adopt rules for the administration of subsection (1) and for governing ownership of fixed assets by a corporate credit union. The rules must be in substantial conformance with Title 12, part 704, Code of Federal Regulations.

Section 7. **Corporate reserves — department rules.** (1) A corporate credit union shall maintain a minimum ratio of risk-based capital reserves to risk-weighted assets according to rules adopted by the department in substantial conformance with Title 12, part 704, Code of Federal Regulations.

(2) The department shall adopt rules for the administration of subsection (1).

Section 8. **Annual audit.** (1) The supervisory committee of a corporate credit union shall require an annual opinion audit to be made by an independent, licensed certified public accountant and shall submit the audit report to the board of directors. A summary of the audit report must be submitted to the membership at the next annual meeting.

(2) The auditor's workpapers must be made available for review by state and federal regulatory examiners during any examination conducted by the examiners.

(3) A copy of the audit report and reportable conditions letter, otherwise known as the management letter, must be submitted to the department and the national credit union administration within 30 days after receipt by the board of directors.

Section 9. **Contracts and written agreements.** Services, facilities, personnel, or equipment shared with any party must be supported by a written contract or agreement that specifies the duties and responsibilities of each party and that fully supports and documents the allocation of service fees and expenses.

Section 10. **Codification instruction.** [Sections 5 through 9] are intended to be codified as an integral part of Title 32, chapter 3, part 8, and the provisions of Title 32, chapter 3, part 8, apply to [sections 5 through 9].

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved February 22, 1993.

CHAPTER NO. 67

[SB 6]

AN ACT CLARIFYING THE ROLE AND MISSION OF THE MONTANA STATE HOSPITAL; AND AMENDING SECTION 53-21-601, MCA.

WHEREAS, the 52nd Legislature created a study committee to determine the role of the Montana State Hospital at Warm Springs and Galen; and

WHEREAS, the Committee on the Montana State Hospital unanimously recommends that the state support a comprehensive system of care for the mentally ill that emphasizes treatment in the least restrictive environment within a continuum of publicly and privately provided services; and

WHEREAS, the Committee on the Montana State Hospital further recommends that the role of the Montana State Hospital at Warm Springs be to provide intensive inpatient psychiatric care and treatment for persons with severe mental illness, with the goal of returning these patients to the community when feasible.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-601, MCA, is amended to read:

"**53-21-601. Location and primary function of hospital.** (1) The agency providing comprehensive health care services at Galen and Warm Springs, Montana, is the Montana state hospital and as its primary function provides:

(a) care and treatment of mentally ill persons;

(b) diagnosis, care, evaluation, treatment, referral, and rehabilitation of persons afflicted with chemical dependency;

(c) care and treatment of institutional residents or clients of the department's community and residential programs who require acute hospital care or nursing care;

(d) treatment of tuberculosis and silicosis (commonly called miner's consumption);

(e) detoxification of those persons who seek relief from the disabling effects of alcohol and other chemical substances; and

(f) contingent upon space and funds, the treatment of pulmonary diseases and other medical or organic disorders.

(2) The campus facility at Warm Springs, Montana, is the component designated as the mental health facility, as defined in 53-21-102, of the department of corrections and human services for the care and treatment of mentally ill persons.

(a) The role of the Warm Springs facility is to provide intensive inpatient psychiatric services as one component in a comprehensive continuum of publicly and privately provided programs that emphasize treatment in the least restrictive environment.

(b) The mission of the Warm Springs facility is to stabilize persons with severe mental illness and to return them to the community as soon as possible if adequate community-based support services are available.

(3) The designated campus facilities at Galen, Montana, are the components designated as the department's residential treatment facilities for those persons suffering from chemical dependency.

(4) The campus facility at Galen, Montana, licensed to provide acute hospital and intermediate nursing care, is the facility component designated for the care and treatment of the medical and organic disorders described in this section."

Approved February 22, 1993.

CHAPTER NO. 68

[SB 61]

AN ACT CLARIFYING THE CURRICULA AT STATE YOUTH CORRECTIONAL FACILITIES; AND AMENDING SECTION 52-5-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-5-106, MCA, is amended to read:

"**52-5-106. Curricula at facilities.** The academic and vocational curricula in facilities containing academic and vocational training ~~shall~~ *must* include ~~such~~ academic and vocational subjects ~~as are taught in the public schools of the state and shall~~ *that* conform to the *Montana school accreditation* standards set by the board of public education."

Approved February 22, 1993.

CHAPTER NO. 69

[SB 85]

AN ACT RECLASSIFYING THE STATE HAIL INSURANCE PROGRAM EXPENDABLE TRUST FUND AS AN ENTERPRISE FUND FOR ACCOUNTING PURPOSES; STATUTORILY APPROPRIATING PROGRAM FUNDS TO THE BOARD OF HAIL INSURANCE AND GRANTING AUTHORITY FOR THE BOARD TO EXPEND THE FUNDS FOR PROGRAM PURPOSES; AMENDING SECTIONS 17-7-502, 80-2-222, 80-2-228, AND 80-2-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-2-222, MCA, is amended to read:

"**80-2-222. Board to establish amount of levy — disposition of funds.** (1) The board of hail insurance may, when it considers it advisable, establish as many districts as it considers advisable and may maintain maximum rates in various parts of the state, which rates ~~shall~~ *must* be commensurate with the risk incurred as nearly as it can determine from past experiences or from any records available.

(2) Notice of the various rates established for any year ~~shall~~ *must* be plainly printed on the application for hail insurance, and the rates for the year ~~shall~~ *must* be determined and levied by the board of hail insurance for each of the various districts as established, in such proportions as will in its judgment be fair and equitable.

(3) The board of hail insurance has authority to accept and expend all funds received by it, including amounts repaid as principal and interest on investments. The funds are statutorily appropriated, as provided in 17-7-502, to the board of hail insurance for the purposes of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

~~(3)~~*(4)* In making the levy provided in this section and 80-2-223, the board of hail insurance shall provide for:

(a) the payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year ~~which~~ *that* are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants, and losses as ~~the same shall be~~ settled and adjusted by the board, including the losses sustained in any prior year or years under the hail insurance law that have not been paid.

~~(4)~~*(5)* If at the end of any hail insurance season the board determines ~~and finds~~ that more funds are accumulating from the current year's levies than were estimated when the levy was made and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the board may, at its discretion, refund the excess to the farmers insured for the year, on a pro rata or percentage basis.

~~(5)~~*(6)* The board of hail insurance may direct the board of investments to invest funds from the ~~expendable trust~~ *enterprise* fund pursuant to the provisions of the unified investment program for state funds. The income from ~~such~~ *the* investments ~~shall~~ *must* be credited to the board of hail insurance account in the ~~expendable trust~~ *enterprise* fund."

Section 2. Section 80-2-228, MCA, is amended to read:

"**80-2-228. Reserve fund.** (1) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it may not increase the levy enough in any year so that ~~such~~ *the* addition to the reserve will exceed 5% of the maximum risk written for that year.

(2) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation shall include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount ~~shall be~~ *is* the maximum permissible reserve fund for the next year.

(3) The reserve ~~shall~~ *must* be deposited in an ~~expendable-trust~~ *enterprise* fund.

(4) The board may not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration, exceeds the amount of the estimate made by the board for the current year pursuant to 80-2-221."

Section 3. Section 80-2-232, MCA, is amended to read:

"**80-2-232. State treasurer's duty — warrants — transfers to county and state general fund.** (1) The state treasurer shall receive all ~~moneys~~ *money* paid ~~to him~~ under this part and shall place ~~same~~ *the money in trust for the hail insurance program* to the credit of the ~~expendable-trust~~ *enterprise* fund. All ~~moneys~~ *money* collected by the board ~~shall~~ *must* be deposited in the ~~expendable-trust~~ *enterprise* fund, and all losses ~~shall~~ *must* be paid from that fund. All other costs are administrative expenses and ~~shall~~ *must* be paid from the board's ~~expendable-trust~~ *enterprise* fund. If registered warrants ~~be~~ *are* presented and there ~~be~~ *is* no money to pay the ~~same~~ *warrants*, ~~such~~ *the* warrants ~~shall~~ *must* be registered and ~~thereafter~~ bear interest at the rate of 4% per annum until called for payment by the state treasurer.

(2) Upon warrants drawn by order of the board, the state treasurer shall pay out of the board's ~~expendable-trust~~ *enterprise* fund to the county treasurer of each county where state hail insurance coverage is in force 2% of the gross annual levies made and collected in ~~such~~ *that* county under this part for the use of the county as the board of county commissioners may determine.

(3) Upon authorization from the board of hail insurance, the state treasurer shall transfer out of the board's ~~expendable-trust~~ *enterprise* fund to the general fund of the state of Montana 1.5% of the gross annual levies made and collected in the state of Montana."

Section 4. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504;

19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; *80-2-222;* 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved February 22, 1993.

CHAPTER NO. 70

[SB 185]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ISSUE TEMPORARY PERMITS TO ALLOW EXCESS WEIGHT LOADS TO BE REMOVED TO A DESIGNATED FACILITY BEFORE AN EXCESS WEIGHT LOAD IS REDUCED; INCREASING CERTAIN FINES FOR VIOLATION OF WEIGHT LIMITS; AND AMENDING SECTIONS 61-10-141, 61-10-144, AND 61-10-145, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-141, MCA, is amended to read:

"**61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds.** (1) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-110, except recreational vehicles as defined in 61-1-132, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload ~~immediately~~ *at a designated facility* that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-110. *If the excess weight does not exceed 10,000 pounds, an excess weight permit may be issued in accordance with 61-10-121. The permit authorizes the driver of the* *excess weight load to proceed to a designated facility where the load can be safely reduced to legal limits.*

(2) Commodities and material unloaded as required by this section ~~shall~~ *must* be cared for ~~and removed from the highway right-of-way~~ by the owner or operator of the vehicle at the risk of that owner or operator. ~~The removal shall be within a reasonable time designated by the person who has compelled the unloading.~~ *Commodities or material unloaded as required by this section may not be left on the highway right-of-way.*

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under 8,000 pounds G.V.W. and recreational vehicles as defined in 61-1-132 (that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer), to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of the joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of transportation shall cooperate to assure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the gross vehicle weight functions of the department of transportation. Each employee designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles utilized by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of ~~such~~ *commercial motor* vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of transportation has:

(a) the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203; and

(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120 that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was obtained."

Section 2. Section 61-10-144, MCA, is amended to read:

"**61-10-144. Violation of standards — tolerance.** (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-110.

(2) However, the operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by more than 5%, or 7% if the vehicle or combination of vehicles is transporting livestock, and if the weight carried by any axle or combination of axles does not exceed the allowable axle weight limitations by more than 5%, or 7% if the vehicle or combination of vehicles is transporting livestock. In the event the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than 5%, or 7% if the vehicle or combination of vehicles is transporting livestock, the department may issue a single trip permit for the fee of $10 for allowing ~~said~~ *the* vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of 5%, or 7% if the vehicle or combination of vehicles is transporting livestock, are subject to the fines provided in 61-10-145, and all loads in excess of 5% of the total gross or axle weight limitations, or 7% if the vehicle or combination of vehicles is transporting livestock~~,~~*:*

(a) ~~must~~ *may* be *required to be* adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing*; or*

(b) may be issued a permit as authorized by 61-10-141.

(3) An operator of a vehicle or combination of vehicles subject to the provisions of 61-10-107(4) may move over a highway, except any highway ~~which~~ *that* is part of the federal-aid interstate system, within a 50-mile radius of the harvested field to the point of first unloading without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% per axle, but the maximum load per inch of tire width may not exceed 670 pounds. The vehicle or combination of vehicles may not exceed 40 miles per hour. ~~No~~ *A* single trip permit as required in subsection (2) ~~shall be~~ *is not* applicable to ~~such~~ *the* vehicle or combination of vehicles. When ~~such~~ *a* vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed ~~shall apply~~ *applies* to that portion of the load above the legal limit."

Section 3. Section 61-10-145, MCA, is amended to read:

"**61-10-145. Penalties.** (1) A person, firm, or corporation convicted of violating 61-10-101 through 61-10-110 shall be punished by a fine of not less than $30 or more than $100. A person, firm, or corporation convicted of operating a motor vehicle upon the public highways of this state with weight upon a wheel, axle, or group of axles greater than the maximum permitted by 61-10-101 through 61-10-110 shall be fined, in addition to other penalties provided by law for the offense, the following amounts:

(a) $30 for any excess weight up to and including 2,000 pounds;

(b) ~~$50~~ *$75* for any excess weight more than 2,000 pounds and less than 4,001 pounds;

(c) ~~$70~~ *$125* for any excess weight more than 4,000 pounds and less than 6,001 pounds;

(d) ~~$100~~ *$175* for any excess weight more than 6,000 pounds and less than 8,001 pounds;

(e) ~~$160~~ *$250* for any excess weight more than 8,000 pounds and less than 10,001 pounds;

(f) ~~$220~~ *$275* for any excess weight more than 10,000 pounds and less than 12,001 pounds;

(g) $300 for any excess weight more than 12,000 pounds and less than 14,001 pounds;

(h) $400 for any excess weight more than 14,000 pounds and less than 16,001 pounds;

(i) $500 for any excess weight more than 16,000 pounds and less than 18,001 pounds;

(j) $600 for any excess weight more than 18,000 pounds and less than 20,001 pounds;

(k) $1,000 for any excess weight more than 20,000 pounds and less than 25,001 pounds;

(l) $2,000 for any excess weight more than 25,000 pounds.

(2) If a motor vehicle is equipped with a retractable axle that is not fully extended and carrying its proportionate share of the load while the motor vehicle is operated upon the highways of this state, the weight penalties in subsection (1) apply to all weight over the legal maximum allowed by the fixed axles regardless of whether the axle is extended at the time of weighing. In addition to the penalties in subsection (1), the owner or operator shall be fined $100 for failure to have the retractable axle fully extended while the gross weight of the vehicle exceeds the legal maximum allowed by the fixed axles.

(3) A complaint filed and a summons or notice to appear issued pertaining to a violation of the gross weight regulations in 61-10-101 through 61-10-110 must specify the amount of the ~~overweight~~ *excess weight* that the defendant is alleged to have had upon the vehicle or combination of vehicles.

(4) The penalties in subsection (1) do not apply to an operator who fails to secure a special permit as provided for in 61-10-107(3) if the vehicle or combination of vehicles is not overweight with ~~such a~~ *that* permit. The failure to obtain the special permit is punishable under 61-10-146 and under this section as provided in 61-10-146, and the operator is required to purchase the permit. If the vehicle or combination of vehicles exceeds the weight limitations allowed by special permit and the operator fails to obtain a permit under 61-10-107(3), the penalties of subsection (1) apply to the weight exceeding 80,000 pounds.

(5) It is a misdemeanor, punishable as provided in 46-18-212, for a person, firm, or corporation to violate any of the provisions of 61-10-123, 61-10-141, or 61-10-142."

Approved February 22, 1993.

CHAPTER NO. 71

[SB 12]

AN ACT MAKING SEXUALLY TRANSMITTED DISEASE TESTING OF A PERSON CONVICTED OF A SEXUAL OFFENSE MANDATORY AT THE REQUEST OF THE VICTIM; REVISING THE LIST OF SEXUALLY TRANSMITTED DISEASES FOR WHICH A PERSON CONVICTED OF A SEXUAL OFFENSE MAY BE TESTED BY INCLUDING HUMAN IMMUNODEFICIENCY VIRUS (HIV) AND DELETING ACQUIRED IMMUNODEFICIENCY SYNDROME (AIDS); INCLUDING CERTAIN JUVENILES IN THE MANDATORY TESTING PROVISIONS; AMENDING SECTIONS 46-18-256 AND 50-18-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

It is the intent of the legislature to amend 46-18-256 and 50-18-101 in order to comply with federal requirements of the Crime Control Act of 1990 that requires states to enact laws related to human immunodeficiency virus (HIV) testing of certain convicted offenders or be subject to reduced federal funding.

Upon the request of the victim or the victim's representatives, testing and the test results must be made available for the victim's information. Testing information may or may not reveal exposure to the HIV virus. If exposed, the victim can seek medical treatment and take steps to protect others from the further spread of the epidemic.

This bill is intended to be a benefit to public health and safety by attempting to control and limit the potential spread and impact of disease. It is not intended to add additional sanctions or penalties for conviction of sexual abuse offenses or to make criminals of the victims of disease.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-256, MCA, is amended to read:

"46-18-256. Sexually transmitted disease testing — test procedure. (1) ~~A~~ *Following entry of judgment, a* person convicted of a sexual offense, as defined in 46-23-502, ~~may, following entry of judgment,~~ *must, at the request of the victim of the sexual offense or the parent or guardian of the victim, if the victim* *is a minor,* be administered ~~a~~ standard ~~test~~ *testing according to currently accepted protocol, using guidelines established by the centers for disease control, U.S. department of health and human services,* to ~~determine whether the person suffers from a~~ *detect in the person the presence of antibodies indicative of the presence of human immunodeficiency virus (HIV) or other* sexually transmitted ~~disease~~ *diseases,* as defined in 50-18-101.

(2) Arrangements for the test required by subsection (1) must be made by the county attorney of the county in which the person was convicted. The test must be conducted by a health care provider, as defined in 50-16-504.

(3) The county attorney of the county in which the person was convicted shall release the information concerning the test results to:

(a) the convicted person; and

(b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor.

(4) At the request of the victim of a sexual offense or the parent or guardian of the victim if the victim is a minor, the victim must be provided counseling regarding HIV disease, HIV testing (in accordance with applicable law), and referral for appropriate health care and support services.

(5) For purposes of this section, "convicted" includes an adjudication, under the provisions of 41-5-521, finding a youth to be a delinquent youth or a youth in need of supervision.

~~(4)~~*(6)* The provisions of the AIDS Prevention Act, *Title 50, chapter 16, part 10,* do not apply to this section."

Section 2. Section 50-18-101, MCA, is amended to read:

"**50-18-101. Sexually transmitted diseases defined.** ~~Acquired immunodeficiency syndrome (AIDS)~~ *Human immunodeficiency virus (HIV),* syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health."

Section 3. **Retroactive applicability.** [Section 1] applies retroactively, within the meaning of 1-2-109, to persons convicted prior to [the effective date of this act] who are, at the time a test is sought, in jail, prison, or other incarceration; on probation or parole; or otherwise still under state supervision for a sexual offense defined in 46-23-502.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved February 23, 1993.

CHAPTER NO. 72

[SB 99]

AN ACT REVISING THE LEGISLATIVE INTERN ACT OF 1974 TO REQUIRE THAT A LEGISLATIVE INTERN HAVE AT LEAST ONE COURSE OF GOVERNMENT; AND AMENDING SECTION 5-6-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-6-106, MCA, is amended to read:

"**5-6-106. Intern qualifications.** (1) The legislative interns must have the following qualifications:

(a) at least one ~~quarter~~ *course* of ~~"state government"~~ *"government"* or its equivalent as a course of study at an institution of higher learning;

(b) attainment of at least the level of a junior at an institution of higher learning; and

(c) the necessary degree of scholastic achievement, leadership, and involvement in community affairs.

(2) Preference ~~shall~~ *must* be given to Montana high school graduates."

Approved February 23, 1993.

CHAPTER NO. 73

[HB 39]

AN ACT CLARIFYING THE ELECTION REQUIREMENT FOR MUNICIPAL WATER AND SEWER REVENUE BONDS; AND AMENDING SECTION 7-7-4222, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-4222, MCA, is amended to read:

"**7-7-4222. Election required for bond issue relating to water and sewer systems.** ~~No money must be borrowed on bonds~~ *Bonds backed by the full faith and credit of the city or town and* issued for the construction, purchase, or securing of a water plant, water system, water supply, sewage treatment and disposal plant, or sewer system *may not be issued* until the proposition has been submitted to a vote and the majority vote cast in favor thereof."

Approved February 23, 1993.

CHAPTER NO. 74

[HB 86]

AN ACT CLARIFYING DETERMINATION OF RESIDENCY FOR CANDIDATES TO THE LEGISLATURE; REQUIRING PERSONS FILING FOR NOMINATION TO THE LEGISLATURE TO INDICATE A RESIDENCE; REQUIRING CANDIDATES FOR THE LEGISLATURE TO NOTIFY THE SECRETARY OF STATE AFTER CHANGING RESIDENCE; DIRECTING

THE SECRETARY OF STATE TO NOTIFY A LEGISLATIVE CANDIDATE WHO IS NO LONGER ELIGIBLE TO SEEK ELECTION BECAUSE OF A CHANGE IN RESIDENCE; AND AMENDING SECTIONS 13-1-112, 13-10-201, 13-10-208, AND 13-12-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-112, MCA, is amended to read:

"**13-1-112. Rules for determining residence.** For registration ~~or~~, voting, *or seeking election to the legislature,* the residence of any individual ~~shall~~ *must* be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where ~~his~~ *the individual's* habitation is fixed and to which, whenever ~~he~~ *the individual* is absent, ~~he~~ *the individual* has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any public prison; or solely as a result of residing on a military reservation.

(3) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state. An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) An individual does not lose ~~his~~ residence if ~~he~~ *the individual* goes into another state or other district of this state for temporary purposes with the intention of returning, unless ~~he~~ *the individual* exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if ~~he~~ *the individual* comes in for temporary purposes without the intention of making that county ~~his~~ *the individual's* home.

(6) If an individual moves to another state with the intention of making it ~~his~~ *the individual's* residence, ~~he~~ *the individual* loses ~~his~~ residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where ~~his~~ *the individual's* family resides with the intention of remaining is a resident of the place where ~~he~~ *the individual* resides.

(8) A change of residence ~~can~~ *may* be made only by the act of removal joined with intent to remain in another place."

Section 2. Section 13-10-201, MCA, is amended to read:

"**13-10-201. Declaration for nomination.** (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination ~~shall~~ *must* be filed in the office of:

(a) the secretary of state for a congressional office, state or district office to be voted for in more than one county, member of the legislature, or judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to be voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination ~~shall~~ *must* be acknowledged by an officer empowered to acknowledge signatures if sent by mail or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by ~~his~~ *the elector's* party.

(5) *(a)* The declaration for nomination ~~shall~~ *must* be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate shall, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination ~~shall~~ *must* be filed no sooner than 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election."

Section 3. Section 13-10-208, MCA, is amended to read:

"**13-10-208. Certificate of primary ballot — printing ballot.** (1) Not more than 75 days and not less than 67 days before the date of the primary election, the secretary of state shall certify to the election administrators the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official records of ~~his~~ *the secretary of state's* office in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(2) Not more than 67 days and not less than 62 days before the date of the primary election, the election administrator shall certify the names and designations of candidates, except as provided in 13-37-126, and any ballot issues as shown in the official record of ~~his~~ *the election administrator's* office and have the official ballots printed in the manner provided in 13-10-209 and chapter 12, part 2, of this title.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

Section 4. Section 13-12-201, MCA, is amended to read:

"**13-12-201. Secretary of state to certify ballot.** (1) Seventy-five days or more before an election, except as provided in 13-10-208, the secretary of state shall certify to the election administrators the name and party or other designation of each candidate entitled to appear on the ballot and *the* ballot issues as shown in the official records of ~~his~~ *the secretary of state's* office, which must include the notification specified in 13-37-126.

(2) The election administrator shall certify the name and party or other designation of each candidate entitled to appear on the ballot and *the* ballot issues as shown in the official records of ~~his~~ *the election administrator's* office, which must include the notification specified in 13-37-126, and shall have the official ballots printed.

(3) If a candidate for the legislature is no longer eligible under Article V, section 4, of the Montana constitution to seek the office for which the candidate has filed because the candidate has changed residence, the secretary of state shall notify the candidate that the candidate is required to withdraw as provided in 13-10-325."

Approved February 23, 1993.

CHAPTER NO. 75

[HB 179]

AN ACT CREATING A COMMITTEE TO DESIGN A STATE MEMORIAL COMMEMORATING THE SURVIVORS OF THE ATTACK ON PEARL HARBOR; DEFINING THE PURPOSE, MEMBERSHIP, AND DUTIES OF THE COMMITTEE; PROVIDING THAT THE COMMITTEE MAY INCORPORATE AS A NONPROFIT ORGANIZATION; AND ESTABLISHING A SPECIAL REVENUE ACCOUNT FOR FUNDS RAISED TO PAY FOR THE MEMORIAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Committee" means the Pearl Harbor memorial committee established in [section 2].

(2) "Memorial" means the state Pearl Harbor memorial to commemorate survivors of the December 7, 1941, attack on Pearl Harbor, Hawaii.

Section 2. **Pearl Harbor memorial committee — purpose — membership — duties — approval by capitol building and planning committee.** (1) There is a Pearl Harbor memorial committee. The committee shall develop a memorial to be placed at the state capitol to commemorate survivors of the December 7, 1941, attack on Pearl Harbor.

(2) The committee consists of at least four members appointed by the governor. Committee members shall serve until the memorial is completed and shall select a presiding officer and other officers as necessary. Committee members shall serve on a voluntary, uncompensated basis.

(3) The committee shall:

(a) design a memorial to commemorate survivors of the December 7, 1941, attack on Pearl Harbor;

(b) recommend the placement of the memorial within the capitol complex; and

(c) raise the funds to pay for the memorial.

(4) The design and placement of the memorial must be approved by the capitol building and planning committee provided for in 5-17-101.

Section 3. **Authority to incorporate as nonprofit organization — account established.** (1) For the purposes of raising money for the memorial, the committee may incorporate as a nonprofit organization subject to the provisions of Title 35.

(2) An account is established in the state special revenue fund, as provided in 17-2-102, into which all money raised by the committee must be deposited. The money deposited in the account may be used only for the purposes of designing and erecting the memorial.

Section 4. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 5, chapter 17, and the provisions of Title 5, chapter 17, apply to [sections 1 through 3].

Section 5. **Coordination instruction.** If House Bill No. 20 is passed and approved and if it abolishes the capitol building and planning committee, then the reference to "the capitol building and planning committee" in [section 2(4) of this act] is changed to "the department of administration, in consultation with the Montana historical society".

Approved February 23, 1993.

CHAPTER NO. 76

[HB 99]

AN ACT REVISING THE LAWS RELATING TO THE DATA PROCESSING RESPONSIBILITIES FOR THE STATE; AND AMENDING SECTIONS 2-17-501 AND 2-17-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-501, MCA, is amended to read:

"**2-17-501. Responsibilities of director of department of administration for data processing.** (1) Except as provided in subsection (2), the director of the department of administration, *in cooperation with state agencies,* shall:

(a) establish policies and a statewide plan~~, in cooperation with state agencies,~~ for the operation and development of data processing for state government;

(b) review and approve agency specifications and procurement methods for the acquisition of data processing equipment ~~to insure network compatibility and conformity with the statewide data processing plan~~;

(c) review and approve agency specifications and procurement methods for the acquisition of software to ensure network compatibility and conformity with the statewide data processing plan;

~~(c)~~*(d)* review and approve all contracts for private sector data processing services to ~~insure~~ *ensure* conformance with the statewide data processing plan *and statewide data network*; and

~~(d)~~*(e)* operate and maintain a central computer center and a ~~data processing equipment pool~~ *statewide data network* for the use of all state agencies and political subdivisions.

(2) (a) ~~The responsibilities of the director under subsection (1) do not apply to the office of the superintendent of public instruction, and that office is exempt from the requirements of subsection (1) unless a proposed activity of that office related to data processing affects the operation of the central computer center and data processing equipment pool. If the office of the superintendent of public instruction determines that such an impact may occur, it shall notify the director, and the proposed activity shall be subject to the requirements of subsection (1)(b).~~

~~(b)~~ The responsibilities of the director under ~~subsection~~ *subsections* (1)(b) *through (1)(d)* do not apply to the Montana university system~~, and the~~ *or to the office of the superintendent of public instruction. The* university system ~~is~~ *and the office of the superintendent of public instruction are* exempt from the requirements of ~~subsection~~ *subsections* (1)(b) *through (1)(d)* unless a *data processing activity* proposed *by the* university system ~~activity related to data processing impacts~~ *or the office of the superintendent of public instruction affects* the operation of the central computer center ~~and data processing equipment pool~~ *or the statewide data network.* If the university system *or the office of the superintendent of public instruction* determines that ~~such an impact may occur, the system~~ *the central computer center or the statewide data network will be affected by the proposed activity, the agency* shall notify the director~~,~~ and the proposed activity is subject to the requirements of ~~subsection~~ *subsections* (1)(b) *through (1)(d).*

(b) For purposes of subsection (2)(a), a data processing activity affects the operation of the central computer center or the statewide data network if it adds to the processing workload, capacity, or support service requirements of the central computer center or the statewide data network.

(3) When reviewing data processing activities submitted by the university system or the office of the superintendent of public instruction under subsections (1)(b) through (1)(d), the department shall consider and make reasonable allowances for the unique educational needs and characteristics of the university system and the office of the superintendent of public instruction to communicate and share data with units of the university system and with school districts.

(4) As used in subsections (1) and (2), the following definitions apply:

(a) "Central computer center" means any:

(i) shared or sharable computer system and facilities provided by the department for use by government agencies; or

(ii) computer operations and software development support services provided by the department.

(b) "Statewide data network" means any telecommunications facility, circuits, equipment, or software administered by the department for the transmission of data from one computer to another by government agencies."

Section 2. Section 2-17-502, MCA, is amended to read:

"**2-17-502. State ~~data processing~~ *information technology* advisory council.** (1) The department of administration shall create a state ~~data processing~~ *information technology* advisory council under 2-15-122.

(2) The members of the advisory council ~~shall~~ *must* be selected from a diverse group in order to adequately represent the interests of state agencies, including the university system.

(3) In addition to the advisory functions assigned by the department, the information technology advisory council shall review statewide information and data processing policies, make recommendations regarding the application of new information processing technology in state government, and advise the department on long-term strategic planning for the use of information processing technology in state government."

Approved February 24, 1993.

CHAPTER NO. 77

[HB 137]

AN ACT ABOLISHING THE REQUIREMENT THAT THE DEPARTMENT OF JUSTICE COMPILE, PUBLISH, AND BIENNIALLY UPDATE FIRE PROTECTION LAWS, DISTRIBUTE THEM TO SHERIFFS AND FIRE DEPARTMENTS, AND MAKE THEM AVAILABLE TO THE PUBLIC; AND REPEALING SECTION 2-15-2011, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 2-15-2011, MCA, is repealed.

Approved February 24, 1993.

CHAPTER NO. 78

[HB 159]

AN ACT REVISING THE DEFINITION OF "VETERAN" FOR THE PURPOSES OF THE VETERANS' PUBLIC EMPLOYMENT PREFERENCE TO CONFORM WITH THE FEDERAL DEFINITION SO THAT A VETERAN INCLUDES A PERSON IN A RESERVE COMPONENT OF THE ARMED FORCES CALLED TO ACTIVE DUTY FOR CAMPAIGNS SUCH AS OPERATION DESERT SHIELD AND OPERATION DESERT STORM; AMENDING

SECTION 39-29-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-29-101, MCA, is amended to read:

"**39-29-101. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

(2) "Armed forces" means the United States:

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs.

(3) "Disabled veteran" means a person:

(a) whether or not ~~he~~ *the person* is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the department of veterans affairs or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who ~~lost his life~~ *died* under honorable conditions while serving in the armed forces if:

(i) ~~her husband~~ *the mother's spouse* is totally and permanently disabled; or

(ii) ~~she~~ *the mother* is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) ~~her husband~~ *the mother's spouse* is totally and permanently disabled; or

(ii) ~~she~~ *the mother* is the widow of the father of the veteran and has not remarried.

(5) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position or a similar permanent, temporary, or

seasonal position with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system or a vocational-technical center;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that result in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who*:*

(a) was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training*; or*

(b) as a member of a reserve component under an order of active duty pursuant to 10 U.S.C. 672(a), (d), or (g), 10 U.S.C. 673, or 10 U.S.C. 673b served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved February 24, 1993.

CHAPTER NO. 79

[HB 209]

AN ACT CLARIFYING THE JUNK VEHICLE EXEMPTION FROM THE SINGLE MOVEMENT PERMIT FEE; AND AMENDING SECTION 61-4-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-310, MCA, is amended to read:

"**61-4-310. Single movement permit — fee — limitation — county treasurer to issue.** (1) A vehicle, subject to license under this title, may be moved unladen upon the highways of this state from a point within the state to a point of destination. The county treasurer at the point of the origin of the movement shall issue a special permit ~~therefor~~ *for the vehicle* in lieu of fees required under 61-3-321 and part 2 of chapter 10 of this title, upon application presented to ~~him~~ *the county treasurer* in ~~such~~ *a* form ~~as shall be~~ provided by the department, ~~and~~ upon exhibiting to ~~said~~ *the* county treasurer proof of ownership and evidence that the personal property taxes on ~~such~~ *the* vehicle, if any are due ~~thereon~~, have been paid, and upon payment ~~therefor~~ of a fee of $5. ~~Such~~ *The* permit ~~shall~~ *must* not be in lieu of fees and permits required under 61-4-301 and 61-4-302.

(2) ~~Such~~ *The* permit ~~shall~~ *must* be for the transit of the vehicle only, and the vehicle ~~shall~~ *may* not at the time of ~~such~~ *the* transit be used for the transportation of any persons, except the driver, or property ~~whatsoever~~ for compensation or otherwise~~,~~ and ~~shall~~ *must* be for one transit only between the points of origin and destination as set forth in the application and shown on the permit.

(3) A junk vehicle ~~as defined in part 5, chapter 10, Title 75,~~ being driven or towed to ~~an auto~~ *a motor vehicle* wrecking *facility or a motor vehicle* graveyard for disposal is exempt from the provisions of this section. *The definitions in 75-10-501 apply to this subsection."*

Approved February 24, 1993.

CHAPTER NO. 80

[HB 160]

AN ACT REQUIRING THE PAYMENT OF PROPERTY TAXES BY ANY DEPARTMENT OR AGENCY OF THE UNITED STATES WHEN THE DEPARTMENT OR AGENCY ACQUIRES INTEREST IN THE PROPERTY THROUGH FORECLOSURE; ALLOWING A COURT TO DIRECT THE PAYMENT OF PROPERTY TAXES AT THE TIME OF FORECLOSURE; AMENDING SECTIONS 15-6-201, 15-24-1103, AND 71-1-222, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States~~, the state, counties, cities, towns, school districts~~, except~~,~~*:*

(A) if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives); *or*

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

~~(ii)~~*(iii)* irrigation districts organized under the laws of Montana and not operating for profit;

~~(iii)~~*(iv)* municipal corporations; and

~~(iv)~~*(v)* public libraries;

(b) buildings, with land they occupy and furnishings therein, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) provided the tools are owned by the taxpayer, the first $15,000 or less of market value of tools that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105; and

(u) beginning January 1, 1994, timber as defined in 15-44-102.

(2) (a) The term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. Section 15-24-1103, MCA, is amended to read:

"**15-24-1103. Federal property held under lease.** When the property is held under lease, other interest, or estate therein *that is* less than the fee, except under contract of sale, the property ~~shall~~ *must* be assessed and taxed ~~as~~ for the value, as defined in Title 15, chapter 6, part 1, of ~~such~~ *the* leasehold, interest, or estate in the property. ~~and the~~ *The* lien for the tax ~~shall~~ *must* attach to and be enforced against only the leasehold, interest, or estate in the property. *Whenever the interest in the property is acquired through foreclosure, the lessor is liable for property taxes.* When the United States authorizes the taxation of the property for the full assessed value of the fee ~~thereof~~, the property ~~shall~~ *must* be assessed for full assessed value as defined in 15-8-111."

Section 3. Section 71-1-222, MCA, is amended to read:

"**71-1-222. Proceedings in foreclosure suits.** (1) There is ~~but~~ *only* one action for the recovery of debt or the enforcement of any right secured by mortgage upon real estate, ~~which~~ *and that* action must be in accordance with the provisions of this part. In ~~such~~ *the* action, the court may, by its judgment, direct:

(a) a sale of the encumbered property (or ~~so~~ *as* much ~~thereof~~ *of the property* as may be necessary);

(b) the application of the proceeds of the sale, *including the payment of property taxes due at the time of foreclosure*; and

(c) the payment of the costs of the court, the expenses of the sale, and the amount due the plaintiff.

(2) If it appears from the sheriff's return that the proceeds are insufficient and a balance still remains due, judgment can then be docketed for ~~such~~ *the* balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of ~~such~~ *the* judgment debtor, as in other cases on which execution may be issued.

(3) ~~No~~ *A* person holding a conveyance from or under the mortgagor of the property mortgaged or having a lien ~~thereon~~ *on the property*, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, *does not* need *to* be made a party to ~~such~~ *the* action. The judgment ~~therein rendered~~ and the proceedings ~~therein had~~ are as conclusive against the party holding ~~such~~ *the* unrecorded conveyance or lien as if ~~he~~ *the holding party* had been made a party to the action."

Section 4. **Effective date — applicability.** [This act] is effective on passage and approval and applies to any foreclosures occurring after [the effective date of this act].

Approved February 25, 1993.

CHAPTER NO. 81

[HB 161]

AN ACT REVISING THE LAW REGARDING THE LICENSURE OF REAL ESTATE APPRAISERS TO PROVIDE THAT ALL LICENSES AND CERTIFICATES EXPIRE ON THE SAME DATE ANNUALLY; ALLOWING FOR LATE RENEWAL UP TO 1 YEAR AFTER EXPIRATION OF A LICENSE OR CERTIFICATE; ELIMINATING THE AGRICULTURE/RURAL LANDS CERTIFICATION; REMOVING THE REQUIREMENT THAT CERTIFICATION EXAMINATIONS BE HELD IN HELENA; PLACING CONTINUING EDUCATION REQUIREMENTS ON A 3-YEAR SCHEDULE; PROVIDING THAT MODIFICATIONS OF STANDARDS BY THE APPRAISAL FOUNDATION ARE AUTOMATICALLY EFFECTIVE UNLESS A HEARING IS CONSIDERED NECESSARY; PROVIDING A TRANSITION PERIOD FOR RENEWAL OF LICENSES AND CERTIFICATES AND PRORATION OF FEES; AMENDING SECTIONS 37-54-210, 37-54-211, 37-54-303, 37-54-304, 37-54-310, 37-54-311, AND 37-54-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-54-210, MCA, is amended to read:

"37-54-210. License renewal — continuing education requirements. (1) A real estate appraiser's license expires ~~3 years from~~ *on March 31 following* the date of issuance *or renewal and is invalid thereafter.*

(2) A licensee may renew ~~his~~ *a* license, other than a temporary permit issued under 37-54-406, by filing an application with the board on a form approved by the board, paying a renewal fee prescribed by the board, and meeting all requirements of this section.

(3) In renewing a license, the board shall assure that the licensee has a working knowledge of:

(a) current real estate appraisal theories; and

(b) practices and techniques that will enable the licensee to provide competent independent appraisal service under the authority of ~~his~~ *the* license.

(4) An application for renewal must include evidence satisfactory to the board that within the 3-year period immediately ~~preceding the application for renewal~~ *following the date of issuance of the license and within each 3-year period thereafter,* the licensee has completed at least 45 classroom hours of instruction in courses or seminars approved by the board, at least 15 hours of which must be related to standards of professional appraisal practice. *Continuing education hours must be credited to the 3-year period during which the instruction occurred and may not be carried over to a subsequent 3-year period.*"

Section 2. Section 37-54-211, MCA, is amended to read:

"37-54-211. Late renewal of license. (1) A ~~licensee who does not renew a~~ license *that is not renewed* within ~~3 years from the date of issuance may renew it, within 2 years from the date the license expires,~~ *1 year of the most recent renewal date automatically terminates. A licensee may renew the license within the 1-year period from the date of most recent renewal* by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the continuing education requirements of 37-54-210; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a license if the licensee has continued to perform independent appraisal services as a licensed real estate appraiser following expiration of the license."

Section 3. Section 37-54-303, MCA, is amended to read:

"37-54-303. Classes of certification — education and experience requirements. (1) A real estate appraiser may be certified in ~~any~~ one or ~~more~~ *both* of the following classes:

(a) general real estate, which relates to the appraisal of all types of real property;

(b) ~~agricultural/rural lands, which relates to the appraisal of agricultural and rural lands, including timberlands;~~

~~(c)~~ residential real estate, which relates to the appraisal of expensive or complex 1 to 4 family homes.

(2) The board shall adopt rules pertaining to real estate appraisal education and experience that are at least as stringent as those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989."

Section 4. Section 37-54-304, MCA, is amended to read:

"**37-54-304. Certification examination.** (1) A person who satisfies the qualification requirements of 37-54-202 and the education and experience requirements of 37-54-303 may apply for examination as a certified real estate appraiser in the manner prescribed by this section.

(2) The board shall adopt and administer a written examination for certified real estate appraisers and establish standards of acceptable performance for each class of certification that are at least as stringent as those required for compliance with Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

(3) An applicant must be examined on the following subjects:

(a) technical terms commonly used in or related to:

(i) real estate appraisal;

(ii) appraisal report writing; and

(iii) economic concepts applicable to real estate;

(b) principles of land economics, real estate law, and real estate appraisal processes;

(c) problems likely to be encountered in gathering, interpreting, and processing data required for developing and communicating an appraisal;

(d) standards for the development and communication of certified real estate appraisals;

(e) (i) theories of depreciation and cost estimating;

(ii) methods of capitalization; and

(iii) the mathematics of real estate appraisal appropriate to the class or classes of certification sought by the applicant; and

(f) types of misconduct for which disciplinary action may be initiated under this chapter.

(4) Examinations must be given at least four times each year ~~in Helena and~~ at ~~other~~ times and places as the board determines.

(5) An applicant may not retake the examination within 6 months after having failed it a second or subsequent time."

Section 5. Section 37-54-310, MCA, is amended to read:

"**37-54-310. Renewal of certificate — continuing education requirements.** (1) A certificate issued under 37-54-305 ~~must be renewed every 3 years~~ *expires on March 31 following the date of issuance or renewal and is invalid thereafter.*

(2) A certificate may be renewed upon payment of a renewal fee ~~and production of~~.

(3) (a) The certificate holder shall produce evidence satisfactory to the board that during the ~~certification~~ *3-year* period immediately ~~preceding the application for renewal~~ *following the date of issuance of the certificate, and during each 3-year period thereafter,* the certified real estate appraiser has:

~~(a)~~*(i)* completed at least 45 classroom hours of instruction in courses or seminars approved by the board, at least 15 hours of which must be related to standards of professional appraisal practice;

~~(b)~~*(ii)* completed an education program determined by the board to be equivalent to the courses and seminars approved under subsection ~~(2)(a)~~ *(3)(a)(i)*; or

~~(c)~~*(iii)* participated, other than as a student, in an education program approved by the board that relates to the theory and technique of real property appraisal.

(b) Continuing education hours must be credited to the 3-year period during which the instruction occurred and may not be carried over to a subsequent 3-year period.

~~(3)~~*(4)* An applicant for renewal shall state the class of certification previously held and presently sought."

Section 6. Section 37-54-311, MCA, is amended to read:

"**37-54-311. Late renewal of certificate.** (1) A ~~certificate holder who does not renew a~~ certificate *that is not renewed* within ~~3 years from the date of issuance may renew it, within 2 years from the date the certificate expires,~~ *1 year of the most recent renewal date automatically terminates. A certificate holder may renew the certificate within the 1-year period from the date of most recent renewal* by:

(a) filing with the board an application for late renewal on a form approved by the board;

(b) satisfying the continuing education requirements of 37-54-310; and

(c) paying a late renewal fee prescribed by the board.

(2) The board may refuse to renew a certificate if the certificate holder has continued to perform independent appraisal services in this state following expiration of the certificate."

Section 7. Section 37-54-403, MCA, is amended to read:

"**37-54-403. Standards of professional appraisal practice.** (1) A licensed or certified real estate appraiser shall comply with generally accepted standards of professional appraisal practice, evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation.

(2) If the appraisal standards board of the appraisal foundation modifies the standards or issues supplemental standards that it considers appropriate for all classes of real estate appraisers ~~and requests the board to consider the adoption of the modifications or supplements, the board shall conduct a public hearing~~, *the modification is automatically adopted as observable in this state unless the board determines that a public hearing is necessary* to determine whether the modified or supplemented standards must be observed in this state. If following the hearing the board determines the modified or supplemented standards are appropriate, the board shall adopt the standards by rule."

Section 8. **Transition.** Until the transition from a 3-year to a 1-year renewal system is completed, a 3-year license or certificate issued under Title 37, chapter 54, in effect on [the effective date of this act] remains in effect until its scheduled time of expiration, at which time fees must be prorated on a monthly basis between the scheduled expiration date and the annual renewal date.

Section 9. **Effective date.** [This act] is effective on passage and approval.

Approved February 25, 1993.

CHAPTER NO. 82

[HB 178]

AN ACT EXCEPTING THE PROCESS OF ANY BOARD-APPROVED PRACTICE REVIEW PROGRAM FROM THE REQUIREMENTS FOR PRIVILEGED COMMUNICATIONS PERTAINING TO CERTIFIED OR LICENSED PUBLIC ACCOUNTANTS OR THEIR EMPLOYEES; AND AMENDING SECTION 37-50-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-50-402, MCA, is amended to read:

"**37-50-402. Privileged communications** — ***exceptions.*** *(1)* Except by permission of the client, ~~or~~ person, ~~or~~ firm, or corporation engaging ~~him~~ *a certified or licensed public accountant or an employee of the accountant* or *by permission of* the heirs, successors, or personal representatives of ~~such~~ *the* client, ~~or~~ person, ~~or~~ firm, or corporation and except for the expression of opinions on financial statements, ~~no~~ *a* certified public accountant, licensed public accountant, or employee thereof ~~shall~~ *may not* be required to ~~nor shall he~~ *disclose or divulge or* voluntarily disclose or divulge information ~~of which~~ ~~he~~ *that the certified or licensed accountant or an employee* may have ~~become possessed~~ relative to and in connection with any professional services as a public accountant. The information derived from or as a result of ~~such~~ professional services ~~shall be deemed~~ *is considered* confidential and privileged.

(2) The provisions of this section ~~shall~~ *do* not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction, ~~or~~ *pursuant to* a board proceeding, *or in the process of any board-approved practice review program.*"

Approved February 25, 1993.

CHAPTER NO. 83

[HB 96]

AN ACT ALLOWING HOLDERS OF "PRISONER OF WAR" AND "SURVIVOR OF PEARL HARBOR" SPECIAL LICENSE PLATES AND MEMBERS OF THE NATIONAL GUARD OR RESERVE ARMED FORCES TO BE AUTHORIZED TO RECEIVE MORE THAN ONE SET OF SPECIAL LICENSE PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"**61-3-332.** *(Temporary)* **Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned thereto in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section~~, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date~~.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on ~~such~~ *the* license plates, and the word "Montana" and the year must be placed across the plates. ~~Such registration~~ *Registration* plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of ~~such~~ numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and ~~no~~ *a* year number may *not* be indicated ~~thereon~~ *on the plates* because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there must be placed on the number plates assigned thereto, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement

passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. ~~No~~ *A* registration or license fee may *not* be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued ~~a~~ special license ~~plate~~ *plates* with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue ~~one set of~~ national guard plates, *numbered in sets of two with a different number on each set,* and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued ~~a~~ special license ~~plate~~ *plates* with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of ~~one set of~~ *special license* plates, *numbered in sets of two with a different number on each set.* The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued a special license plate under this section with a design or decal displaying the letters "DV".

(i) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(ii) Special license plates issued to a disabled veteran are not transferable to another person.

(iii) A disabled veteran is not entitled to a special license plate for more than one vehicle.

(iv) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by ~~his~~ *the veteran's* service record, may upon application and presentation of proof be issued ~~a~~ special license ~~plate~~ *plates, numbered in sets of two with a different number on each set,* with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, ~~for one motor vehicle only~~ *numbered in sets of two with a different number on each set,* designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if ~~he~~ *the person* was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of proof, in a form prescribed by the department, of ~~his~~ *the person's* qualification under this subsection, there must be issued to each applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or

United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to qualified veterans. The plates must be placed or mounted on the vehicle owned by the veteran designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Each veteran who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue fund to the credit of the department of military affairs to be appropriated by the legislature for construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person. *(Terminates July 1, 1996—sec. 4, Ch. 654, L. 1989.)*

61-3-332. *(Effective July 1, 1996)* **Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned thereto in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In

years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section~~, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date~~.

(4) In the case of motorcars and trucks, number plates must be of metal 6 inches wide and 12 inches in length. ~~For number plates issued after 1976, the~~ *The* outline of the state of Montana must be used as a distinctive border on ~~such~~ *the* license plates, and the word "Montana" and the year must be placed across the ~~bottom of the~~ plates. ~~Such registration~~ *Registration* plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers ~~and be numbered consecutively for each series of plates~~. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of ~~such~~ numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings *provided* in this section ~~provided~~, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and ~~no~~ *a* year number may *not* be indicated ~~thereon~~ *on the plates* because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there must be placed on the number plates assigned thereto, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. ~~No~~ *A* registration or license fee may *not* be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued ~~a~~ special license ~~plate~~ *plates* with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue ~~one set of~~ national guard plates, *numbered in sets of two with a different number on each set,* and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued ~~a~~ special license ~~plate~~

plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of ~~one set of~~ *special license* plates, *numbered in sets of two with a different number on each set.* The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued a special license plate under this section with a design or decal displaying the letters "DV".

(i) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(ii) Special license plates issued to a disabled veteran are not transferable to another person.

(iii) A disabled veteran is not entitled to a special license plate for more than one vehicle.

(iv) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by ~~his~~ *the veteran's* service record, may upon application and presentation of proof be issued ~~a~~ special license ~~plate~~ *plates, numbered in sets of two with a different number on each set,* with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, ~~for one motor vehicle only~~ *numbered in sets of two with a different number on each set,* designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if ~~he~~ *the person* was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of proof, in a form prescribed by the department, of ~~his~~ *the person's* qualification under this subsection, there must be issued to each applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to qualified veterans. The plates must be placed or mounted on the vehicle owned by the veteran designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Each veteran who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue fund to the credit of the department of military affairs to be appropriated by the legislature for construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person."

Section 2. **Effective date.** [This act] is effective January 1, 1994.

Approved February 26, 1993.

CHAPTER NO. 84

[HB 180]

AN ACT REVISING THE DEFINITION OF "SPECIAL MOBILE EQUIPMENT"; EXCLUDING FARM TRACTORS AND CONCRETE MIXERS FROM THE DEFINITION OF "SPECIAL MOBILE EQUIPMENT"; AND AMENDING SECTION 61-1-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-1-104, MCA, is amended to read:

"**61-1-104. Special mobile equipment.** "Special mobile equipment" means ~~every~~ *a* vehicle not designed ~~or used primarily~~ for the transportation of persons or property ~~and~~ *on the highways but* incidentally operated or moved over the highways, including ~~farm tractors,~~ road construction or maintenance machinery, ditch-digging apparatus, *trailers used to apply fertilizer in the field, and* well-boring apparatus~~, and concrete mixers~~. *The fact that equipment is permanently attached to a vehicle does not make the vehicle special mobile equipment.* The ~~foregoing~~ enumeration *in this section* is partial and does not exclude other ~~such~~ vehicles ~~which~~ *that* are within the general terms of this section."

Approved March 5, 1993.

CHAPTER NO. 85

[SB 29]

AN ACT INCREASING THE PENALTY FOR SEXUAL INTERCOURSE WITHOUT CONSENT WHEN TWO OR MORE OFFENDERS WERE INVOLVED; AND AMENDING SECTION 45-5-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-503, MCA, is amended to read:

"**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of ~~his~~ *the person's* spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, ~~he~~ *the offender* shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

~~(b)~~ An act "in the course of committing sexual intercourse without consent" ~~shall include~~ *includes* an attempt to commit the offense or flight after the attempt or commission.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable *medical and counseling* costs ~~of counseling~~ that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Approved March 5, 1993.

CHAPTER NO. 86

[SB 33]

AN ACT PROVIDING FOR NO CHARGE TO THE EXPERIENCE RATING ACCOUNT OF AN EMPLOYER FOR UNEMPLOYMENT COMPENSATION BENEFITS PAID TO CLAIMANTS WHEN THE EMPLOYER IS ORDERED TO STATE OR FEDERAL ACTIVE DUTY IN THE NATIONAL GUARD OR RESERVES; AMENDING SECTION 39-51-1214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-1214, MCA, is amended to read:

"39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except for cost reimbursement, benefits paid ~~shall~~ *must* be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) ~~No~~ *A* charge ~~shall~~ *may not* be made to the account of ~~such~~ *a* covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated ~~his~~ services voluntarily without good cause attributable to ~~such~~ *a* covered employer or who had been discharged for misconduct in connection with ~~such~~ services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators;

(c) if the base period employer continues to provide employment with no reduction in hours or wages; ~~or~~

(d) if benefits are paid to claimants who are in training approved under 39-51-2307*; or*

(e) if the base period employer is ordered to state or federal active duty in the national guard or reserves."

Section 2. **Effective date — retroactive applicability.** (1) [This act] is effective on passage and approval.

(2) [Section 1] applies retroactively, within the meaning of 1-2-109, to benefit claims filed on or after August 2, 1990.

Approved March 5, 1993.

CHAPTER NO. 87

[SB 198]

AN ACT REVISING THE LAWS RELATING TO HIGHWAY SYSTEMS AND THE ALLOCATION OF FEDERAL-AID HIGHWAY FUNDS BY THE HIGHWAY COMMISSION; AMENDING SECTIONS 2-15-2502, 60-2-110, 60-2-111, 60-2-204, 60-3-201, 60-3-202, 60-3-205, 60-3-206, 60-3-211, 60-3-217, 60-3-218, AND 61-10-148, MCA; AND REPEALING SECTIONS 60-2-103, 60-2-104, 60-2-105, 60-3-102, 60-3-103, 60-3-104, 60-3-105, 60-3-203, 60-3-204, 60-3-209, 60-3-210, 60-3-213, 60-3-214, AND 60-3-215, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in Title 60, chapter 2, part 1, and Title 60, chapter 3, part 2, unless otherwise provided, the following definitions apply:

(1) "Federal-aid highway funds" means those funds made available for expenditure by the department pursuant to Title 23, U.S.C.

(2) "National highway system" means the system of public highways designated by the commission and approved by the secretary of transportation as provided in Title 23, U.S.C.

(3) "Primary highway system" means the highways that have been functionally classified by the department as either principal or minor arterials and that have been selected by the commission to be placed on the primary highway system.

(4) "Secondary highway system" means the highways that have been functionally classified by the department as either minor arterials or major collectors and that have been selected by the commission, in cooperation with the boards of county commissioners, to be placed on the secondary highway system.

(5) "State highways" means the highways throughout the state that are not located on a defined highway system but that are on the state maintenance system.

(6) "Urban highway system" means the highways and streets that are in and near incorporated cities with populations of over 5,000 and within urban boundaries established by the department, that have been functionally classified as either urban arterials or collectors, and that have been selected by the commission, in cooperation with local government authorities, to be placed on the urban highway system.

Section 2. **Designation of public highways — allocation of funds.** (1) For the purpose of allocating state and federal-aid highway funds, the commission shall designate the public highways and streets to be placed on the following systems:

(a) the national highway system;

(b) the primary highway system;

(c) the secondary highway system; or

(d) the urban highway system.

(2) The commission shall consult with the board of county commissioners of the county in which a highway is located prior to designating a public highway to be placed on the secondary highway system.

(3) The commission shall consult with the appropriate local government authorities prior to designating a highway or street to be placed on the urban highway system.

(4) The commission may designate public highways not placed on the systems listed in subsection (1) as state highways.

Section 3. **Allocation of funds for projects.** (1) Each year, out of federal-aid highway funds available for construction purposes, the commission shall allocate a portion of the funds for projects located on:

(a) the national highway system;

(b) the primary highway system;

(c) the secondary highway system;

(d) the urban highway system; and

(e) state highways.

(2) In making allocations under subsection (1), the commission shall comply with all applicable provisions relating to the use of federal-aid highway funds contained in Title 23, U.S.C.

Section 4. **Maintenance system — designation of highways.** The commission shall designate the public highways that are to be included on the state maintenance system. The system must include all the highways that the department maintained on July 1, 1976.

Section 5. **Allocation of funds — apportionment.** The federal-aid highway funds allocated to the primary highway system for construction purposes must be apportioned among the five financial districts, corresponding to and congruent with the highway commission districts established in 2-15-2502.

Section 6. **Allocation of funds.** The commission may allocate federal-aid highway funds for projects or programs in which all or a portion of the work is on highways that are not located on the highway systems defined in [section 1]. The allocations must be made without regard to the financial district in which the project or program is located.

Section 7. Section 2-15-2502, MCA, is amended to read:

"**2-15-2502. Highway commission.** (1) The highway commission consists of five members. One member must be a resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Powell;

(b) District 2. Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Broadwater, Jefferson, Park;

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Lewis and Clark;

(d) District 4. Carter, Powder River, Fallon, Custer, Rosebud, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan;

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Judith Basin, Fergus, Petroleum, Treasure, Wheatland, Sweet Grass.

(2) Two members may not be residents of the same district at the time of appointment or ~~thereafter~~ during their respective terms of office.

(3) Not more than three members may at the time of appointment or during their respective terms be members of the same political party.

(4) An elective state official or state officer, during the term of office to which ~~he was~~ elected or appointed, or a state employee may not be a member of the commission.

(5) A resolution, motion, or other decision of the commission may not be adopted or passed without the favorable vote of at least three members.

(6) The commission is allocated to the department of transportation for administrative purposes only as prescribed in 2-15-121.

(7) The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission.

(8) The commission may adopt rules necessary for its government.

~~(8)~~*(9)* The administrator of the highway division shall act as liaison between the highway commission and the department of transportation."

Section 8. Section 60-2-110, MCA, is amended to read:

"**60-2-110. Setting priorities and selecting projects.** *(1)* The commission shall establish priorities and select and designate segments for construction and reconstruction on ~~federal-aid interstate and federal-aid primary and state highway systems~~ *the national highway system, the primary highway system, the secondary highway system, the urban highway system, and state highways.*

(2) The commission shall consult with the board of county commissioners of the county in which a highway is located when establishing priorities and when selecting and designating segments on the secondary highway system for construction and reconstruction.

(3) The commission shall consult with the appropriate local government authorities when establishing priorities and selecting and designating segments on the urban highway system for construction and reconstruction.

(4) The commission shall use information gathered or discovered by and documents prepared by the department, and department officials and employees shall provide assistance and advice."

Section 9. Section 60-2-111, MCA, is amended to read:

"**60-2-111. Letting of contracts on state and federal-aid highways.** (1) Except as provided in subsection (2), all contracts for ~~work on~~ *the construction or reconstruction of* ~~state and federal-aid highways~~ *the highways and streets located on highway systems and state highways as defined in [section 1],* including portions in cities and towns, and all contracts entered into under 7-14-4108 ~~shall~~ *must* be let by the commission. Except as otherwise specifically provided, the commission may enter ~~such~~ *the* types of contracts and upon ~~such~~ terms as it may decide. All contracts ~~shall~~ *must* meet the requirements of Title 18, chapter 2, part 4. When there is no prevailing rate of wages set by collective bargaining, the commission shall determine the prevailing rate to be stated in the contract.

(2) The commission may delegate the authority, with all applicable statutory restrictions, to award any contract covered by this section to the department or to a unit of local government."

Section 10. Section 60-2-204, MCA, is amended to read:

"**60-2-204. Maintenance agreements with local governments.** The department may enter into an agreement with a local governing body to maintain portions of public highways within its boundaries upon ~~such~~ terms and conditions as may be agreed upon, provided that, in the case of highways in the state maintenance system as ~~defined~~ *referred to* in ~~60-2-105 and~~ 60-2-203 *and [section 4]*:

(1) the department shall bear the entire cost of maintenance, operation, and construction work performed by the local governing body pursuant to these agreements; and

(2) the department is responsible for the entire cost of placement and maintenance of all traffic control devices involved in these agreements required by 61-8-203."

Section 11. Section 60-3-201, MCA, is amended to read:

"**60-3-201. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of transportation's suspense account for gasoline tax refund, must be used and expended as provided in this section. The portion of that money on hand at any time that is needed to pay highway bonds and interest on highway bonds when due and to accumulate and maintain a reserve for payment of highway bonds and interest, as provided in laws and in resolutions of the state board of examiners authorizing the bonds, must be deposited in the highway bond account in the debt service fund established by 17-2-102. Subject to that provision:

(a) 9/10 of 1% of all money must be deposited in the state park account;

(b) 1/2 of 1% of all money must be deposited in a snowmobile account in the state special revenue fund;

(c) 1/8 of 1% of all money must be deposited in an off-highway vehicle account in the state special revenue fund; and

(d) 1/25 of 1% of all money must be deposited in the aeronautics revenue fund of the department of transportation under the provisions of 67-1-301.

(e) The remainder of the money must be used:

(i) by the department of transportation on the ~~federal-aid~~ highways in this state selected and designated ~~under Title 23, U.S.C., on highways leading from each county seat in the state to the federal highway system of federal-aid roads if the county seat is not on the system, and on the other roads that have been or may be authorized by the laws of Montana~~ *by the commission*;

(ii) for collection of the license taxes; and

(iii) for the enforcement of the Montana highway code under Article VIII, section 6, of the constitution of this state.

(2) The department shall, in expending this money, carry forward construction from year to year, using the money expended ~~through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state~~ in accordance with ~~60-3-204 through 60-3-206~~ *this title*. Nothing in this title conflicts with Title 23, U.S.C., and the rules by which it is administered.

(3) The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(4) Money credited to the state park account in the state special revenue fund may be used only for the creation, improvement, and maintenance of state parks where motorboating is allowed, except for the payment of refunds under 15-70-221 through 15-70-226. The legislature finds that of all the fuel sold in the state for consumption in internal combustion engines, not less than 9/10 of 1% is used for propelling boats on waterways of this state.

(5) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost and to promote snowmobile safety, and 10% of the amount deposited in the snowmobile account must be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than 1/2 of 1% is used for propelling snowmobiles on public lands of this state.

(6) (a) Money credited to the off-highway vehicle account under subsection (1)(c) may be used only to develop and maintain facilities open to the general public at no admission cost, to repair areas that are damaged by off-highway vehicles, and to promote off-highway vehicle safety. Ten percent of the money deposited in the off-highway vehicle account must be used to promote off-highway vehicle safety. Up to 10% of the money deposited in the off-highway vehicle account may be used to repair areas that are damaged by off-highway vehicles.

(b) The legislature finds that of all fuel sold in this state for consumption in internal combustion engines, not less than 1/8 of 1% is used for propelling off-highway vehicles in this state.

(7) Money credited to the aeronautics account of the department of transportation may be used only to develop, improve, and maintain facilities open to the public at no admission cost and to promote aviation safety. The legislature finds that of all the fuel sold in this state for consumption in internal combustion engines, not less than 1/25 of 1% is used for propelling aircraft in this state."

Section 12. Section 60-3-202, MCA, is amended to read:

"**60-3-202. Funding highway system maintenance.** For the purpose of funding the increased cost of maintaining the state highway system as designated in ~~60-2-105~~ *[section 4]*, 1/4 cent per gallon of the special fuel tax collected under 15-70-321 and 1/4 cent per gallon of the gasoline license tax collected under 15-70-204 are allocated ~~therefor~~ *for highway maintenance*."

Section 13. Section 60-3-205, MCA, is amended to read:

"**60-3-205. Apportionment of state funds to ~~federal-aid~~ primary highway system.** (1) Prior to the beginning of each biennium, the commission, referring to highway sufficiency ratings developed by the department, shall designate a level of sufficiency considered adequate and a lesser level of sufficiency considered critical, both to be used to compute the apportionment of ~~construction~~ *federal-aid highway* funds for the ~~federal-aid~~ primary *highway* system during the succeeding biennium.

(2) The department shall then compute the ratio:

(a) between the mileage rated below adequate sufficiency in each financial district and the total mileage rated below adequate sufficiency of the ~~federal-aid~~ primary *highway* system in the state; and

(b) between the mileage rated at or below critical sufficiency in each financial district and the total mileage rated at or below critical sufficiency of the ~~federal-aid~~ primary *highway* system in the state.

(3) The department, subject to the limitation provided in subsection (4), shall then distribute three-fourths of the available ~~state construction~~ *federal-aid highway* funds for the ~~federal-aid~~ primary *highway* system among the financial districts according to the ratios computed in subsection (2)(a) and one-fourth of the available ~~state construction~~ *federal-aid highway* funds for the ~~federal-aid~~ primary *highway* system among the financial districts according to the ratios computed in subsection (2)(b).

(4) A financial district may not receive more than one-third of the total funds available for the ~~federal-aid~~ primary *highway* system in any biennium. If a financial district would receive more than one-third of the total funds available under the formula in subsection (3), its apportionment is limited to the one-third maximum and any excess funds it would have received must be redistributed among the other districts according to the formula.

(5) To the extent necessary to permit the orderly programming and construction of projects, obligations in any financial district may exceed the amount apportioned to that district by up to 25%. The amount of excess obligations must be deducted from future apportionments to that district."

Section 14. Section 60-3-206, MCA, is amended to read:

"**60-3-206. Apportionment of state funds to ~~federal-aid~~ secondary highway system.** (1) Each fiscal year the department shall apportion ~~available state construction~~ *the federal-aid highway* funds *allocated* for the ~~federal-aid~~ secondary highway system among the ~~financial districts~~ *counties*. The proportion ~~which~~ *that* each ~~district~~ *county* ~~shall receive shall be~~ *receives is* computed on the following basis:

(a) one-fourth in the ratio of land area in each ~~district~~ *county* to the total land area in the state;

(b) one-fourth in the ratio of the rural population in each ~~district~~ *county* to the total rural population in the state;

(c) one-fourth in the ratio of the rural road mileage in each ~~district~~ *county* to the total rural road mileage in the state;

(d) one-fourth in the ratio of value of rural lands in each ~~district~~ *county* to the total value of rural lands in the state.

(2) ~~Funds apportioned to each district shall be further apportioned to each county in the district on the same basis, considering ratios of land area, rural population, rural road mileage, and value of rural lands. To the extent necessary to permit orderly programming and construction of projects, obligations in any county may exceed the amount apportioned to that county to the extent of five times the amount of the last apportionment to the county. The amount of any excess obligations shall be deducted from future apportionments to that county.~~ *To the extent necessary to permit orderly programming and construction of projects, obligations in any county may exceed the amount apportioned to that county. The amount of any excess obligations must be deducted from future apportionments to that county.*

(3) For the purposes of this section, terms are defined as follows:

(a) "Rural population" means total population less the population in cities over 5,000 persons and their unincorporated fringe urban areas as reported in the latest federal census. Federal census population figures ~~shall~~ *must* be adjusted in the interim between censuses in accordance with the percentage of change in annual motor vehicle registration figures for each county.

(b) "Rural road mileage" means all road mileage outside of incorporated cities, exclusive of road mileage on the ~~federal-aid~~ primary highway system and the ~~federal-aid interstate~~ *national highway* system. Rural road mileage reported by the road inventory of the department ~~shall~~ *must* be used in determining rural road mileage.

(c) "Value of rural lands" includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.

(i) The basis for the value of rural lands ~~shall~~ *must* be computed from the latest biennial report of the department of revenue.

(ii) The basis for the value of state-owned lands ~~shall~~ *must* be computed from the latest figures on the total grazing, timber, and agricultural lands in each county contained in the latest biennial report of the department of state lands.

(iii) The average value of privately owned lands ~~shall be~~ *is* the average value of state-owned lands if the actual value is not available."

Section 15. Section 60-3-211, MCA, is amended to read:

"**60-3-211. Apportionment of state funds to ~~federal-aid~~ urban ~~highways~~ *highway system*.** (1) Each fiscal year, the department shall apportion ~~state construction~~ *the federal-aid highway* funds ~~available for matching federal-aid urban funds~~ *allocated for the urban highway system* to the cities in the state *with populations of* over 5,000 ~~population~~ in the ratio of urban population in each city to the total urban population in all cities in the state *with populations of* over 5,000 ~~population~~.

(2) For the purpose of this section, "urban population" is defined as population within the incorporated limits of cities *with populations of* over 5,000 ~~population~~ and that population within unincorporated urban fringe areas delineated and reported in the latest federal census.

(3) To the extent necessary to permit orderly programming and construction of projects, obligations in any city may exceed the amount apportioned to that city. The amount of any excess obligations ~~shall~~ *must* be deducted from future apportionments to that city."

Section 16. Section 60-3-217, MCA, is amended to read:

"**60-3-217.** *(Temporary)* **Expenditures.** The department shall expend the money of the highway reconstruction trust fund account on the ~~federal-aid interstate~~ *national highway,* primary *highway,* and secondary highway systems and on those highways that it is required to maintain by 60-2-203. If needed, these funds may be apportioned to the various federal-aid systems to match the federal-aid funds available for obligation. *(Terminates July 1, 2003—sec. 1, Ch. 191, L. 1991.)* "

Section 17. Section 60-3-218, MCA, is amended to read:

"**60-3-218.** *(Temporary)* **Reconstruction trust program.** ~~(1)~~ Subject to 60-3-217, the department shall administer a program to initiate, plan, design, and carry out reconstruction projects on the *national highway,* primary *highway,* and secondary *highway* systems and on those highways that it is required to maintain by 60-2-203 to straighten, widen, repair, or preserve existing pavement or make major improvements to existing highways. Funds expended under 60-3-217 may be used for pavement preservation projects on the ~~interstate~~ *national highway,* ~~and~~ primary *highway, and secondary highway* systems but may not be used for routine repairs. ~~The department shall expend these funds throughout the state according to need, without regard to 60-3-203.~~ Priority must be given to those projects necessitated in whole or in part by the impact of mineral development.

~~(2) In order to accommodate changes in the financial district structure and implementation of the reconstruction program, the department may suspend the 25% overrun limitation on the allocation of federal-aid primary funds for fiscal years 1984 and 1985.~~ *(Terminates July 1, 2003—sec. 1, Ch. 191, L. 1991.)*
"

Section 18. Section 61-10-148, MCA, is amended to read:

"**61-10-148. Disposition of fines and forfeited bonds.** (1) Except as provided in 61-12-701 and subsection (2), one-half of all the money collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the state treasurer for deposit in the state highway account in the state special revenue fund. The remaining half, less the deductions required by law, must be deposited in the county road fund. This subsection does not apply to fines and forfeited bonds paid to justices' courts.

(2) If the apprehension or arrest was for a violation of Title 61, chapter 10, and if the offense occurred on a road or highway not included under ~~60-2-105~~ *[section 4]* and 60-2-203, all money collected as fines and forfeited bonds must be distributed to the county treasurer for deposit in the county road fund."

Section 19. **Repealer.** Sections 60-2-103, 60-2-104, 60-2-105, 60-3-102, 60-3-103, 60-3-104, 60-3-105, 60-3-203, 60-3-204, 60-3-209, 60-3-210, 60-3-213, 60-3-214, and 60-3-215, MCA, are repealed.

Section 20. **Codification instruction.** (1) [Sections 1 through 4 and 6] are intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [sections 1 through 4 and 6].

(2) [Section 5] is intended to be codified as an integral part of Title 60, chapter 3, part 2, and the provisions of Title 60, chapter 3, part 2, apply to [section 5].

Approved March 5, 1993.

CHAPTER NO. 88

[SB 161]

AN ACT GENERALLY REVISING THE MICROBUSINESS DEVELOPMENT ACT; REMOVING THE MINIMUM INTEREST RATE ON LOANS; REVISING MATCHING FUNDING; REMOVING TIME RESTRICTIONS ON ADDITIONAL LOANS; MODIFYING CERTIFICATION REQUIREMENTS FOR A STATEWIDE MICROBUSINESS DEVELOPMENT CORPORATION; ELIMINATING THE AUDIT AND EVALUATION REPORT FOR THE PROGRAM; AMENDING SECTIONS 17-6-406, 17-6-407, AND 17-6-408, MCA; REPEALING SECTION 9, CHAPTER 602, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-406, MCA, is amended to read:

"**17-6-406. Microbusiness finance program — powers and duties of department.** There is a microbusiness finance program administered by the department. The department shall adopt rules to implement the provisions of this part, including but not limited to:

(1) establishing criteria and procedures for certifying microbusiness development corporations;

(2) establishing criteria and procedures to select from competing development loan applications and to award development loans to certified microbusiness development corporations;

(3) establishing criteria and procedures to be followed by certified microbusiness development corporations that administer revolving loan funds supported by the program;

(4) determining the amount and method of computation and payment of interest rates charged to recipients of development loans and specifying amortization schedules and other terms and conditions for development loans as may be necessary~~. However, the rate of interest may not be less than 3% a year.~~;

(5) establishing criteria for determining nonperformance and declaring default in the administration of development loans and requiring the refund of defaulted development loan funds to the microbusiness development loan account;

(6) establishing criteria for satisfactory performance in development loan administration to determine eligibility for renewal of development loans or for additional development loans;

(7) establishing guidelines for maximum and minimum interest rates that may be charged by certified microbusiness development corporations on microbusiness loans; and

(8) dividing the state into not more than 12 multicounty service regions within each of which not more than one microbusiness development corporation may be funded at any time. However, a corporation that is funded as a statewide microbusiness development corporation under 17-6-408 may offer specialized

services to constituents within regions having a funded regional microbusiness development corporation."

Section 2. Section 17-6-407, MCA, is amended to read:

"**17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations.** (1) There is in the state special revenue fund a microbusiness development loan account into which the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, and money received in repayment of the principal of development loans must be deposited. The department may make development loans from the account in amounts not to exceed $250,000 a loan to a certified microbusiness development corporation.

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which all interest received on development loans, service charges or fees received from certified microbusiness development corporations, grants, donations, and private or public income must be deposited. Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(3) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan ~~after 1 year following approval of the previous loan,~~ if the applicant meets the performance criteria established by the department.

(4) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) geographic representation of all regions of the state, including both urban and rural communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with its plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with its plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

(5) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private ~~grants;~~ *funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;*

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed $20,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed $20,000;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed $20,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed $20,000.

(6) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(7) Certified microbusiness development corporations are required to ~~match~~ *contribute cash from other sources to leverage and secure* development loans from the program ~~with contributions to their revolving loan fund from other sources~~. *Contributions provided by the corporation must be* on a ratio of at least $1 from other sources for each ~~$3~~ *$6* from the program. ~~Matching~~ *These* contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(8) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and condi-

tions considered appropriate by the department that are consistent with the purposes of and with rules promulgated to implement this part.

(9) (a) Unless subject to federal law or rule, each certified microbusiness development corporation that receives a development loan under this part shall pay the cost of an audit of its operations to be conducted at least once every 2 years. The department shall designate an auditor to conduct the audit.

(b) If an audit is performed under a requirement of federal law or rule, the department shall waive the audit required in subsection (9)(a) with respect to all issues addressed by the federal audit report. However, the department may require an audit of matters that are not, in the department's judgment, addressed by the federal report—for example, verification of compliance with requirements specific to the program, such as job-generation standards and reporting.

(10) A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on the receivables of the corporation receiving the loan."

Section 3. Section 17-6-408, MCA, is amended to read:

"**17-6-408. Certification of microbusiness development corporations.** The department may certify:

(1) a microbusiness development corporation when it determines that the corporation:

(a) has developed a viable plan for providing training, access to financing, and technical assistance for qualified microbusinesses;

(b) has broad-based community support in a designated multicounty region of the state, as reflected, for example, by the membership of its board of directors; and

(c) has an adequate source of operating capital; or

(2) a statewide microbusiness development corporation when the department determines that the corporation meets the conditions under ~~subsection~~ *subsections* (1)*(a) and (1)(c)* and, in addition:

(a) has a viable plan to provide specialized services to constituents throughout the state; *and*

(b) does not preempt or duplicate efforts of microbusiness development corporations within local communities~~; and~~

~~(c) obtains written indications of support from local development organizations in the communities in which it plans to offer its services~~."

Section 4. **Repealer.** Section 9, Chapter 602, Laws of 1991, is repealed.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 10, 1993.

CHAPTER NO. 89

[SB 175]

AN ACT EXEMPTING THE FIRST 1,000 TONS OF TRAVERTINE AND BUILDING STONE PRODUCTION FROM PROPERTY TAXATION; AMENDING SECTION 15-6-208, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-208, MCA, is amended to read:

"**15-6-208. Mineral exemptions.** (1) One-half of the contract sales price of coal sold by a coal producer who extracts less than 50,000 tons of coal in a calendar year is exempt from taxation.

(2) Metal mines producing less than 20,000 tons of ore in a taxable year ~~shall be~~ *are* exempt from property taxation on one-half of the merchantable value.

(3) New production, as defined in 15-23-601, is exempt from taxation for the first 12 months of production as provided in 15-23-612.

(4) The first 1,000 tons of travertine and building stone extracted from a mine in a taxable year are exempt from property taxation."

Section 2. **Applicability.** [This act] applies to tax years beginning after December 31, 1993.

Approved March 15, 1993.

CHAPTER NO. 90

[SB 183]

AN ACT PROVIDING THAT PROPERTY OWNED BY BOTH A TAX-EXEMPT AND TAXABLE ENTITY OR USED FOR BOTH TAX-EXEMPT AND TAXABLE PURPOSES BE ASSESSED AND TAXED BASED UPON THE APPORTIONED OWNERSHIP OR USE OF THE PROPERTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Apportionment of tax-exempt property.** (1) If property is owned in any manner by both a tax-exempt person or entity and a person or entity subject to taxation, the ownership interest of the person or entity subject to taxation in the property must be assessed, and that interest is taxable. The department of revenue shall assess the value of the taxable interest in the property by prorating the value of the property between the taxable interest and the nontaxable interest based on the ownership interests shown on the title to the property or any other document that evidences the ownership of the property. If there is no title to the property or other document that evidences the ownership interests or if the title or other document does not show the ownership interest, the value of the property must be prorated among the owners as if each owner owned equal interests in the property.

(2) If property is tax-exempt by virtue of its use, it loses its tax-exempt status when the tax-exempt use ends. If the property is used for both a tax-exempt use and a taxable use, the property is taxed based on the taxable use. The department shall assess the property based on the ratio of the taxable use to the total tax-exempt and taxable use during the preceding calendar year multiplied by the market value of the property.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 24, part 12, and the provisions of Title 15 apply to [section 1].

Approved March 15, 1993.

CHAPTER NO. 91

[SB 187]

AN ACT GENERALLY REVISING THE STATE YOUTH SERVICES COUNCIL AND THE YOUTH SERVICES ADVISORY COUNCILS; RENAMING THE STATE COUNCIL AS THE "STATE FAMILY SERVICES COUNCIL"; REQUIRING THE GOVERNOR TO APPOINT MEMBERS TO THE STATE COUNCIL; REQUIRING THAT CERTAIN PEOPLE SERVE ON THE STATE COUNCIL; ASSIGNING SPECIFIC DUTIES TO THE STATE COUNCIL; RENAMING THE ADVISORY COUNCILS AS "FAMILY SERVICES ADVISORY COUNCILS"; ALLOWING FOR AN INCREASE IN THE NUMBER OF MEMBERS ON THE ADVISORY COUNCILS; REQUIRING THAT MEMBERS OF BOTH THE STATE COUNCIL AND THE ADVISORY COUNCILS HAVE KNOWLEDGE IN SPECIFIC AREAS RELATING TO FAMILY SERVICES; AMENDING SECTIONS 52-1-103, 52-1-202, 52-1-203, AND 52-2-704, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-1-103, MCA, is amended to read:

"**52-1-103. Powers and duties of department.** The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

(3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who are referred or committed to the department;

(4) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(5) administer youth correctional facilities;

(6) provide supervision, care, and control of youth released from a state youth correctional facility;

(7) license youth care facilities, child-placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for severely disabled persons, and adult foster care facilities;

(8) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

(9) administer interstate compacts for children and delinquent youth;

(10) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

(11) (a) make a written evaluation of each plan developed by the local ~~youth~~ *family* services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those portions that will not be implemented, and the reasons for not implementing those portions;

(b) develop a statewide youth services and resources plan that takes into consideration local needs as reflected in plans developed by the local ~~youth~~ *family* services advisory councils;

(12) administer services to the aged;

(13) provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

(14) utilize at maximum efficiency the resources of state government in a coordinated effort to:

(a) provide for children in need of temporary protection or correctional services; and

(b) coordinate and apply the principles of modern institutional administration to the institutions in the department;

(15) subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:

(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and

(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions in the department;

(16) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(17) propose programs with specific goals and objectives to the legislature to meet the projected long-range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department;

(18) contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

(19) adopt rules necessary to carry out the purposes of 41-3-1126, 41-5-527 through 41-5-529, and this chapter."

Section 2. Section 52-1-202, MCA, is amended to read:

"**52-1-202. State ~~youth~~ *family* services council — membership.** (1) *(a)* The governor ~~may~~ *shall* appoint a *presiding officer and up to three other members to 2-year terms on the* state ~~planning and advisory~~ *family services* council ~~or designate an existing council~~ to advise the director on policies relating to services to ~~children and~~ youth *and families.*

(b) The governor may also appoint the presiding officers of legislative committees that are related to youth and family services to serve as members of the council.

(c) Presiding officers of the local family services advisory councils representing each of the department's regional service areas shall serve on the state council.

(2) The council shall:

(a) develop a strategic plan for the department;

(b) advise the governor, the department, and other state agencies on local needs and services for youth and families;

(c) advocate for youth and families; and

(d) coordinate and communicate with local communities and councils.

~~(2)~~*(3)* A member of the council must have knowledge of and experience in at least one of the following areas:

~~(a) services to:~~

~~(i) youth in need of care;~~

~~(ii) youth in need of supervision;~~

~~(iii) delinquent youth;~~

~~(iv) emotionally disturbed youth; or~~

~~(v) chemically dependent youth; or~~

~~(b) domestic violence issues.~~

(a) reservation and urban Indian issues;

(b) methods of prevention to minimize risk for abuse and neglect;

(c) juvenile corrections;

(d) parent or family issues;

(e) emotionally disturbed youth; or

(f) treatment and care of abused and neglected children.

~~(3)~~*(4)* Membership of the council must include as many of these areas of expertise as possible.

~~(4)~~*(5)* Members must be compensated and reimbursed as provided for in 2-15-122."

Section 3. Section 52-1-203, MCA, is amended to read:

"**52-1-203. Local ~~youth~~ *family* services advisory councils.** (1) The department shall establish a local ~~youth~~ *family* services advisory council within each local service area to ensure a broad-based community plan for ~~children and~~ youth *and family* services within the area. A local ~~youth~~ *family* services advisory council may act in an advisory capacity only. Each local advisory council consists of *at least* ~~seven~~ *7 members and not more than 13* members. The director shall appoint members to each local advisory council. At least two members must be nominated by the county commissioners within the area~~, and at least two members must be nominated by district court judges within the area~~. Members of the local advisory councils must be broadly representative of the local service area ~~and may not be employed by or under contract to the department or the youth court~~. *A member of the local council must have knowledge of at least one of the following areas:*

(a) reservation and urban Indian issues;

(b) methods of prevention to minimize risk for abuse and neglect;

(c) juvenile corrections;

(d) parent or family issues;

(e) emotionally disturbed youth; or

(f) treatment and care of abused and neglected children.

(2) The department shall provide technical assistance to the local advisory councils as necessary.

(3) Each local advisory council shall:

(a) make an annual written review and evaluation of needs and services within the local service area and provide a copy of the review and evaluation to the state planning and advisory council;

(b) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to ~~the children and~~ youth *and families* within the local service area; and

(c) develop a plan with specific goals and objectives for a system of community-based services for ~~the children and~~ youth *and families* within the local service area and provide a copy of the plan to the state planning and advisory council.

(4) Members must be compensated and reimbursed as provided for in 2-15-122."

Section 4. Section 52-2-704, MCA, is amended to read:

"**52-2-704. Lead agency — duties of department.** (1) The department is designated as the lead agency for the purposes of planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

(a) assess child-care needs and resources within the state;

(b) develop a state child-care plan after consultation with the local ~~youth~~ *family* services advisory councils established under 52-1-203 and the child-care advisory council established in 52-2-705;

(c) coordinate child-care programs administered by the department and the departments of social and rehabilitation services, health and environmental sciences, and labor and industry;

(d) issue licenses to persons to receive children into a day-care center on a regular basis;

(e) prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued;

(f) adopt rules for day-care facilities consistent with the purposes of this part; and

(g) issue registration certificates to a person or persons to receive children into a family day-care home or group day-care home on a regular basis.

(3) The department may:

(a) enter into interagency agreements to administer and coordinate child-care programs;

(b) accept any federal funds made available for the improvement or promotion of child-care services within the state;

(c) administer any state and federal funds that may be appropriated for the purposes of the part."

Section 5. **Code commissioner instruction.** The code commissioner shall change any reference to a "youth services advisory council" that appears in legislation enacted by the 53rd legislature to "family services advisory council".

Section 6. **Effective date.** [This act] is effective July 1, 1993.

Approved March 15, 1993.

CHAPTER NO. 92

[SB 227]

AN ACT CLARIFYING THE PAYMENT OF ESTIMATED CORPORATION LICENSE OR INCOME TAX; AMENDING SECTIONS 15-31-502, 15-31-510, AND 87-2-903, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-502, MCA, is amended to read:

"**15-31-502. Assessment and payment of tax — estimated tax payment — *amount of required installments.*** (1) All taxpayers shall compute the amount of tax payable under this chapter and shall remit the amount to the department of revenue on or before the 15th day of the 5th month following the close of the taxable period.

(2) *(a)* Each corporation shall make estimated tax payments if its annual estimated tax ~~can reasonably be expected to be~~ *is* $5,000 or more. The estimated payments must be made in installments, as follows~~:~~,

~~(a) If~~ *if* the $5,000 threshold is met or exceeded:

~~The following percentages of the estimated tax must be paid on the 15th day of the applicable months:~~

	~~4th month~~	~~6th month~~	~~9th month~~	~~12th month~~
~~Before the 1st day of the 4th month of the taxable year:~~	~~25%~~	~~25%~~	~~25%~~	~~25%~~
~~After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year:~~		~~33-⅓%~~	~~33-⅓%~~	~~33-⅓%~~
~~After the last day of the 5th month and before the 1st day of the 9th month of the taxable year:~~			~~50%~~	~~50%~~
~~After the last day of the 8th month and before the 12th month of the taxable year:~~				~~100%~~

(i) For a corporation taxed on a calendar-year basis:

For the following required installments the due date is:

1st	*April 15*
2nd	*June 15*
3rd	*September 15*
4th	*December 15*

(ii) For a corporation taxed on a fiscal-year basis:

For the following required installments the due date is:

1st	*15th day of the 4th month*
2nd	*15th day of the 6th month*
3rd	*15th day of the 9th month*
4th	*15th day of the 12th month*

(b) ~~If after paying any installment of estimated tax the taxpayer makes a new estimate, the amount of each installment, if any, is the amount that would have been paid if the new estimate had been made when the first estimate for the taxable year was made, increased or decreased, as the case may be, by the amount computed by dividing:~~

~~(i) the difference between:~~

~~(A) the amount of estimated tax required to be paid before the date on which the new estimate was made; and~~

~~(B) the amount of estimated tax that would have been required to be paid before that date if the new estimate had been made when the first estimate was made;~~

~~(ii) by the number of installments remaining to be paid on or after the date on which the new estimate was made.~~ *Except as provided in 15-31-510, the amount of any required installment is 25% of the required annual payment. The required annual payment is the lesser of:*

(i) 80% of the tax shown on the return for the taxable year or, if a return is not filed, 80% of the tax for that year; or

(ii) 100% of the tax shown on the return of the corporation for the preceding taxable year if the preceding taxable year was a period of 12 months and if the corporation filed a return for that year.

(3) The application of this section to taxable years of less than 12 months must be in accordance with rules adopted by the department.

(4) At the election of the corporation, any installment of the estimated tax may be paid before the date prescribed for its payment."

Section 2. Section 15-31-510, MCA, is amended to read:

"15-31-510. Estimated payments — interest penalty — tax returns — penalty — interest. (1) For corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there is assessed a 20% per ~~annum~~ *year* underpayment interest penalty calculated as follows:

(a) For purposes of this subsection (a), the amount of underpayment is ~~in excess of~~ the amount of the *required* installment ~~that would be required to be paid if the estimated tax were equal to 80% of the tax shown on the return for the taxable year or, if no return was filed, 80% of the tax for the year~~ *set forth in 15-31-502* ~~over~~ *that exceeds* the amount, if any, of the installment paid on or before the last date prescribed for payment.

(b) Notwithstanding the provisions of subsection (1)(a), the interest penalty with respect to an underpayment of any installment may not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds the amount that would have been required to be paid on or before that date if the estimated tax were ~~the lesser of the following:~~

~~(i) the tax shown on the return of the corporation for the preceding taxable year if a return showing a liability for tax was filed for the preceding taxable year and the preceding year was a taxable year of 12 months;~~

~~(ii) an amount equal to the tax computed at the rates applicable to the taxable year, but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year; or~~

~~(iii)~~ an amount equal to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:

~~(A)~~*(i)* for the first 3 months of the taxable year in the case of the installment required to be paid in the 4th month;

~~(B)~~*(ii)* for the first 3 months or for the first 5 months of the taxable year in the case of the installment required to be paid in the 6th month;

~~(C)~~*(iii)* for the first 6 months or for the first 8 months of the taxable year in the case of the installment required to be paid in the 9th month; and

~~(D)~~*(iv)* for the first 9 months or for the first 11 months of the taxable year in the case of the installment required to be paid in the 12th month of the taxable year.

(c) For purposes of subsection (1)(b)~~(iii)~~, the taxable income must be placed on an annualized basis by:

(i) multiplying by 12 the taxable income referred to in subsection (1)(b)~~(iii)~~; and

(ii) dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subsection (1)(b)~~(iii)~~.

(d) Notwithstanding subsections (1)(a) through (1)(c), the interest penalty with respect to an underpayment of any installment may not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds 80% of the amount determined under subsection (1)(e).

(e) To determine the amount under this subsection (e) for any installment:

(i) take the taxable income for all months during the taxable year preceding the filing month;

(ii) divide the amount by the base period percentage for all months during the taxable year preceding the filing month;

(iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

(iv) multiply the tax computed under subsection (1)(e)(iii) by the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(f) For purposes of this subsection (1):

(i) the base period percentage for any period of months is the average percentage that the taxable income for the corresponding months in each of the 3 preceding taxable years bears to the taxable income of the 3 preceding years;

(ii) the term "filing month" means the month in which the installment is required to be paid;

(iii) this subsection (1) applies only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70%; and

(iv) the department of revenue may by rule provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(2) If the tax for any corporation is not paid on or before the due date of the return as provided in 15-31-111(2), there is assessed a penalty of 10% of the amount of the tax due, unless it is shown that the failure was due to reasonable cause and not to neglect.

(3) If any tax due under this section is not paid when due, by reason of extension granted or otherwise, interest is added to the tax due at the rate of 12% a year from the due date until paid."

Section 3. Section 87-2-903, MCA, is amended to read:

"**87-2-903. Compensation and duties of agents — penalty for late submission of license money.** (1) License agents, except salaried employees of the department, ~~shall~~ *must* receive for all services rendered the sum of ~~40 cents for the 1992 license year and~~ 50 cents ~~thereafter~~ for each license, permit, or certificate issued. Each license agent shall submit to the department all duplicates of each class of licenses sold and shall accompany the duplicate licenses with all ~~moneys~~ *money* received for the sale of the licenses, less the appropriate fee. The department may designate classes of license agents and may establish a deadline for submission of license money by each class of agent. Each license agent shall keep ~~his~~ *the* license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(2) For purposes of this section, the term "license" includes any license, permit, and certificate prescribed by the department.

(3) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate fee, by the deadline established by the department, an interest charge equal to the rate charged on late corporation license tax payments under ~~15-31-502~~ *15-31-510(2)* must be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904."

Section 4. **Applicability — rulemaking.** (1) [This act] applies to tax years beginning after December 31, 1993.

(2) The department of revenue may institute rulemaking under Title 2, chapter 4, to implement [this act] prior to October 1, 1993, but the rules may not be effective prior to October 1, 1993.

Approved March 15, 1993.

CHAPTER NO. 93

[SB 152]

AN ACT CLARIFYING THAT THE SCOPE OF THE PRACTICE OF SPEECH PATHOLOGY INCLUDES ORAL MOTOR TRAINING, COGNITIVE RETRAINING, AND DYSPHAGIA THERAPY; AND AMENDING SECTION 37-15-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-15-102, MCA, is amended to read:

"**37-15-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "ASHA" means the American speech-language and hearing association.

(2) "Association" means the Montana speech-language and hearing association.

(3) "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents ~~himself to be an audiologist when he presents himself~~ to the public *that the person is an audiologist* by *incorporating in* any title or description of services or functions that ~~he~~ *the person* directly or indirectly performs ~~incorporating~~ the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

(4) "Audiology aide" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(5) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1849.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Practice of audiology" means rendering or offering to render a service in audiology to individuals or groups of individuals who have or are suspected of having hearing disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, rehabilitation, instruction, and research;

(b) participating in hearing conservation and hearing aid and assistive listening device evaluation, prescription, preparation, dispensing, and orientation;

(c) fabricating ear molds;

(d) providing auditory training and speech reading;

(e) conducting tests of vestibular function;

(f) evaluating tinnitus;

(g) planning, directing, conducting, or supervising programs that render or offer to render a service in audiology; and

(h) speech or language screening, limited to a pass/fail determination.

(8) "Practice of speech-language pathology" means rendering or offering to render a service in speech-language pathology to individuals or groups of individuals who have or are suspected of having communication disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, and rehabilitation;

(b) determining the need for augmentative communication systems and providing training in the use of these systems;

(c) planning, directing, conducting, or supervising programs that render or offer to render a service in speech-language pathology;

(d) nondiagnostic pure-tone air conduction, tympanometry, and acoustic reflex screening, limited to a pass/fail determination; ~~and~~

(e) aural rehabilitation, which includes services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairment~~.~~*;*

(f) oral motor rehabilitation, which includes services and procedures for evaluating and facilitating face, lip, and tongue mobility and control;

(g) cognitive retraining, which includes services and procedures for evaluating and facilitating memory, attention, reasoning, processing, judgment, and other related areas in individuals with language impairment resulting from head injury, stroke, or other insult; and

(h) dysphagia therapy, which includes services and procedures for evaluating and facilitating swallowing and feeding in those individuals with swallowing disorders.

(9) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents ~~himself to be a speech-language pathologist when he presents himself~~ to the public *that the person is a speech-language pathologist* by *incorporating in* any title or description of services or functions that ~~he~~ *the person* directly or indirectly performs ~~incorporating~~ the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

(10) "Speech-language pathology aide" means ~~any~~ *a* person meeting the minimum requirements established by the board ~~of speech-language pathologists and audiologists~~ who works directly under the supervision of a licensed speech-language pathologist.

(11) "Unethical conduct" means:

(a) the obtaining of ~~any~~ *a* fee by fraud or misrepresentation;

(b) employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter unless that person assumes the legal status of a supervised aide; *or*

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful."

Approved March 15, 1993.

CHAPTER NO. 94

[SB 142]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VI, SECTION 10, OF THE MONTANA CONSTITUTION TO PROVIDE A UNIFORM TIME LIMIT FOR GUBERNATORIAL ACTION ON LEGISLATION BY INCREASING THE TIME THE GOVERNOR HAS TO ACT ON A BILL WHILE THE LEGISLATURE IS IN SESSION AND REDUCING THE TIME THE GOVERNOR HAS TO ACT ON A BILL AFTER THE LEGISLATURE HAS ADJOURNED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VI, section 10, of The Constitution of the State of Montana is amended to read:

"**Section 10. Veto power.** (1) Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, shall be submitted to the governor for his signature. If he does not sign or veto the bill within ~~five~~ *10* days after its delivery to him ~~if the legislature is in session or within 25 days if the legislature is adjourned~~, it shall become law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it shall become law.

(4) (a) If the legislature is not in session when the governor vetoes a bill approved by two-thirds of the members present, he shall return the bill with his reasons therefor to the secretary of state. The secretary of state shall poll the members of the legislature by mail and shall send each member a copy of the governor's veto message. If two-thirds or more of the members of each house vote to override the veto, the bill shall become law.

(b) The legislature may reconvene as provided by law to reconsider any bill vetoed by the governor when the legislature is not in session.

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill."

Section 2. **Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1994 by printing on the ballot the full title of this act and the following:

☐ FOR providing a uniform time limit for gubernatorial action on bills.

☐ AGAINST providing a uniform time limit for gubernatorial action on bills.

CHAPTER NO. 95

[SB 116]

AN ACT EXCLUDING FROM MINIMUM WAGE AND OVERTIME REQUIREMENTS CERTAIN OUTSIDE SALESPERSONS OR MARKETING REPRESENTATIVES WHO ARE EMPLOYED IN SELLING OR MARKETING PRODUCTS OR SERVICES IN THE FOOD DISTRIBUTION INDUSTRY; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees ~~thereof~~ *of a nonprofit organization* who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work ~~which~~ *that* is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that ~~such~~ *the* exclusion ~~shall~~ *may* not exceed ~~a period of~~ 180 days from their initial date of employment and further provided that during this exclusion period wages paid ~~such~~ *the* learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined ~~and delimited~~ by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility*;*

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside ~~salesman~~ *salesperson* paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a ~~salesman, partsman~~ *salesperson, parts person,* or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if ~~he~~ *the salesperson, parts person, or mechanic* is employed by a nonmanufacturing establishment primarily engaged in the business of selling ~~such~~ *the* vehicles or implements to ultimate purchasers;

(f) a ~~salesman~~ *salesperson* primarily engaged in selling trailers, boats, or aircraft if ~~he~~ *the salesperson* is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside ~~salesman~~ *salesperson* paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a ~~salesman~~ *salesperson* paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for ~~such~~ employment on the basis of trip rates~~,~~ or other delivery payment plan~~,~~ if the commissioner finds that ~~such~~ *the* plan has the general purpose and effect of reducing hours worked by ~~such~~ *the* employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and ~~which~~ *that* are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee with respect to ~~his~~ employment in agriculture by a farmer, notwithstanding other employment of ~~such~~ *the* employee in connection with livestock auction operations in which ~~such~~ *the* farmer is engaged as an adjunct to the raising of livestock, either ~~on his own account~~ *alone* or in conjunction with other farmers, if ~~such~~ *the* employee is:

(i) primarily employed during ~~his~~ *a* workweek in agriculture by ~~such~~ *a* farmer; and

(ii) paid for ~~his~~ employment in connection with ~~such~~ *the* livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment ~~which~~ *that* sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with ~~his~~ *the employee's* spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in ~~such~~ *the* institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as ~~such~~ *the* employee and ~~his~~ *the employee's* spouse reside in ~~such~~ *the* facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by ~~his~~ *the* employer in ~~such~~ forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee ~~where~~ *when* no bargaining unit is recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 16, 1993.

CHAPTER NO. 96

[SB 188]

AN ACT PROVIDING THAT A COMMERCIAL LEASEHOLDER OF STATE LAND MAY SUBLEASE STATE LAND FOR A PROFIT; PROVIDING THAT THE DEPARTMENT OF STATE LANDS MAY ADJUST LEASE RATES IF STATE LAND IS SUBLEASED FOR A PROFIT; AND AMENDING SECTION 77-6-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-208, MCA, is amended to read:

"**77-6-208. Assignment of leases — subleasing — loss of preference right.** (1) Leases to state lands may be assigned on blanks prescribed by the department, but ~~no~~ *an* assignment is *not* binding on the state unless the assignment is filed with the department~~,~~ *and* approved by it and payment made of the assignment fee under 77-1-302.

(2) Preference ~~shall~~ *must* always be given to the applicant who wants the land for ~~his~~ *the applicant's* own individual use, so that the full advantage coming from the leasing and use of the lands may reach those who actually till the soil and so that they are not compelled to pay a higher rental than that due the state.

(3) *(a)* If a lessee, *other than a holder of a commercial lease,* subleases state lands on terms less advantageous to the sublessee than the terms given by the state, the department shall cancel the lease, subject to the appeal procedure provided in 77-6-211.

(b) If a lessee subleases state lands without filing a copy of the sublease with the department and without receiving ~~its~~ *the department's* approval, the department may cancel the lease, subject to the appeal procedure provided in 77-6-211.

(c) Upon approval by the department, a commercial leaseholder may sublease state land on terms less advantageous to the sublessee than the terms given to the lessee by the state. However, the department may adjust the lease rate to require that the lessee pay the state a portion of what the sublessee pays to the lessee.

(4) The subleasing of state land may result in loss of the preference right to renew the lease as provided in 77-6-212.

(5) ~~No~~ *An* assignment or series of assignments may *not* be made to avoid the loss of the preference right under 77-6-212."

Approved March 16, 1993.

CHAPTER NO. 97

[SB 159]

AN ACT REVISING THE TAX DEED PROCESS; REQUIRING A TAXPAYER WHO REPURCHASES TAX DEED PROPERTY TO PAY INTEREST; CLARIFYING THAT CERTIFIED MAIL INCLUDES MAIL WITH A RETURN RECEIPT REQUESTED; CONFORMING THE TAX DEED FORM TO THE REQUIREMENTS OF THE LAW; PROVIDING FOR A FORM FOR NOTICE THAT A TAX DEED MAY BE ISSUED AND FOR A FORM FOR PROOF OF NOTICE; AND AMENDING SECTIONS 7-8-2303, 15-18-114, 15-18-212, AND 15-18-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2303, MCA, is amended to read:

"**7-8-2303. Repurchase rights of taxpayer or successors.** At any time before the time fixed for the first offering of property for sale pursuant to 7-8-2301, ~~notice of which has been given as provided in 7-8-2302,~~ the taxpayer or *the taxpayer's* successor in interest or legal representative ~~whose property shall hereafter be deeded to the county~~ may ~~purchase such~~ *repurchase the* property *from the county. The property may be repurchased,* subject to the reservations ~~hereinafter~~ provided *for in 7-8-2305,* by payment to the county of the full amount of the taxes, penalties, and interest due on ~~said~~ *the* land at the time of taking ~~said~~ *the* tax deed *plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of repurchase.* ~~Such~~ *The* purchase and payment may be effected by an installment contract with annual payments as ~~hereinafter~~ provided *for in 7-8-2304.*"

Section 2. Section 15-18-114, MCA, is amended to read:

"**15-18-114. Distribution of redemption proceeds.** (1) When a property tax lien for which the county is listed as purchaser is redeemed, the money received from the redemption, including penalties and interest but not costs, must be distributed to the credit of the various funds to which the taxes would have originally been distributed and in the same proportion as the taxes would have originally been distributed.

(2) (a) When a property tax lien for which the recorded purchaser is other than the county is redeemed, the county treasurer shall distribute to the person listed as the purchaser on the tax sale certificate and in the record kept by the county treasurer the amount the purchaser paid the county for the property tax lien plus any subsequent amount paid pursuant to 15-18-112 plus interest, as specified in 15-16-102, from the date of payment until the date of redemption. Any money remaining after distributing redemption proceeds to the purchaser other than the county must be distributed pursuant to subsection (1).

(b) (i) The distribution must be made by certified mail, *return receipt requested,* by the county treasurer to the purchaser at the address listed on the tax sale certificate as provided in 15-17-212(1)(e).

(ii) If the money distributed to the purchaser is returned unopened to the county treasurer, the treasurer shall publish once a week for 2 consecutive weeks in the official newspaper of the county a notice stating that:

(A) the county treasurer is in possession of money belonging to the purchaser for the redemption of the delinquency on the property named in the tax sale certificate;

(B) the money will be held by the county treasurer for a period of 1 year from the date of publication; and

(C) if the money is not claimed by the purchaser within the 1-year period, the purchaser relinquishes all claim to the money and the money will be credited to the county general fund.

(3) The publication required in subsection (2)(b)(ii) must be made at least annually, but the 1-year period described in subsection (2)(b)(ii)(B) may not begin until the date of publication.

(4) The county treasurer shall keep an accurate account of all money paid in redemption, including a separate accounting of other delinquent taxes, interest, penalties, and costs, and when and to whom distributed."

Section 3. Section 15-18-212, MCA, is amended to read:

"**15-18-212. Notice — proof of notice — penalty for failure to notify.** (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, ~~no~~ *an* assignment has *not* been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk ~~must~~ *shall* provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), ~~no~~ additional notice need *not* be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b)~~, which~~ *and the* failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall notify the purchaser or assignee of ~~his~~ *the* obligation to give notice under subsection (1)(b). The notice of obligation may be sent by certified mail, *return receipt requested,* to the purchaser or assignee at the address contained on the tax sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall cancel the property tax lien evidenced by the tax sale certificate or the assignment.

(4) The notice required under subsections (1) and (2) must be made by certified mail, *return receipt requested,* to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or ~~such other~~ *another* newspaper as the board of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

(b) a statement that the address of the interested party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), (2), and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which ~~description~~ must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed that a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) Proof of notice in whatever manner given must be filed with the county clerk. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification."

Section 4. Section 15-18-213, MCA, is amended to read:

"**15-18-213. Form of tax deed — prima facie evidence.** (1) The form of a tax deed issued under the provisions of this chapter, executed by a county treasurer, must be made in substance as follows:

This deed is made by .... (name of county treasurer), county treasurer of the county of .... (name of county), in the state of Montana, to .... (name of purchaser, ~~his~~ *the purchaser's* agent, or assignee), as provided by the laws of the state of Montana:

Whereas, there was assessed for .... (year) the following real property .... (description of the property); and

Whereas, the taxes for .... (year) levied against the property amounted to $..........; and

Whereas, the taxes were not paid and a property tax lien for the payment of the taxes attached and was sold to .... (name of purchaser or ~~his~~ *the purchaser's* agent or assignee) on .... (date, including year) for the sum of $.........., which amount included delinquent taxes in the amount of $.........., penalties in the amount of $.........., interest in the amount of $.........., and other costs in the amount of $..........; and

Whereas, a tax sale certificate was duly issued and filed or the sale otherwise recorded as required by law; and

Whereas, ~~not less than 60 days or more than 90 days prior to this date,~~ notice was given to interested parties *in accordance with 15-18-212* that the issuance of a tax deed was pending*; and*

Whereas, the property tax lien has not been redeemed by .... (name of former owner) or any other person entitled to redeem it.

Now, therefore, I, ... (treasurer's name), county treasurer of the county of ...., in the state of Montana, in consideration of the sum of $.......... paid, hereby grant to .... (name of purchaser or ~~his~~ *the purchaser's* agent or assignee) all the property situated in .... County, state of Montana, described ~~hereinabove~~ *in this document.*

Witness my hand on this date .... (date, including year).

.... County Treasurer
.... County

(2) A tax deed executed in substantially the form provided in subsection (1) is prima facie evidence that:

(a) the property was assessed as required by law;

(b) the taxes were levied in accordance with law;

(c) the taxes were not paid when due;

(d) notice of tax sale was given and a property tax lien was sold at the proper time and place as provided by law;

(e) the property was not redeemed, and proper notice of a pending tax deed issuance was made as required by law;

(f) the person who executed the deed was legally authorized to do so; and

(g) if the real property was sold to pay delinquent taxes on personal property, the real property belonged to the person liable to pay the personal property tax."

Section 5. **Form of notice that tax deed may issue.** Section 15-18-212 requires that notice be given to all persons considered interested parties and to the current occupant of property that may be lost to a tax deed. The notice may be made as follows:

NOTICE THAT A TAX DEED MAY BE ISSUED

TO:............................... ....
(Name) (Address, when unknown, so state)

Pursuant to section 15-18-212, Montana Code Annotated, NOTICE IS HEREBY GIVEN:

1. As a result of a property tax delinquency, a property tax lien exists on the following described real property in which you may have an interest:

....

....

2. The property taxes became delinquent on......................

3. The property tax lien was attached as the result of a tax sale held on ....

4. The property tax lien was purchased at a tax sale on .... by .... (Name) .... (Address).

5. The lien was subsequently assigned to ....

6. As of the date of this notice, the amount of tax due is:

TAXES: ....

PENALTY: ....

INTEREST: ....

COST: ....

TOTAL: ....

7. For the property tax lien to be liquidated, the total amount listed in paragraph 6 must be paid by ...., which is the date that the redemption period expires or expired.

8. If all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to ...., which is the date the redemption period expires, or on or prior to the date on which the county treasurer will otherwise issue a tax deed, a tax deed may be issued to the purchaser on the day following the date that the redemption period expires or on the date the county treasurer will otherwise issue a tax deed.

9. The business address and telephone number of the county treasurer who is responsible for issuing the tax deed is: ....County Treasurer,.................... (Address), ... (Telephone).

FURTHER NOTICE FOR THOSE PERSONS LISTED ABOVE WHOSE ADDRESSES ARE UNKNOWN:

1. The address of the interested party is unknown.

2. The published notice meets the legal requirements for notice of a pending tax deed issuance.

3. The interested party's rights in the property may be in jeopardy.

DATED at .... this .... (Date).

.... Signature

Section 6. **Form of proof of notice.** Section 15-18-212 requires that proof of notice must be filed with the county clerk. The proof of notice may be made as follows:

PROOF OF NOTICE

I, ... (Name and Address), acting as or on behalf of the owner of the property tax lien, have complied with the notice requirements of Title 15, chapter 18, MCA, as follows:

1. A "Notice of Issuance of Tax Deed" was mailed to the owners, current occupant, and interested parties, as that term is defined in section 15-18-111(3), MCA. A copy of each notice is attached or is on file in the office of the county clerk.

2. The notices were mailed by certified mail, return receipt requested. Copies of the return receipts are attached or are on file in the office of the county clerk.

3. Notice was given to interested parties with unknown addresses by publishing in the official newspaper of the county, which is ...., on .... and .... Proof of publication is attached.

DATED: ....

.... (Signature)

SUBSCRIBED AND SWORN TO before me this .... (Date).

....
Notary Public for the State of Montana
Residing in ....
My Commission Expires ....

Approved March 17, 1993.

CHAPTER NO. 98

[HB 18]

AN ACT ESTABLISHING THE MONTANA FAMILY POLICY ACT TO GUIDE STATE GOVERNMENT ACTIONS THAT IMPACT CHILDREN AND FAMILIES.

WHEREAS, the family is the basic institution in society through which our children's sense of well-being and self-esteem are developed and nurtured; and

WHEREAS, because our entire society benefits when families function well, it is in society's best interest to ensure that public policies and programs support and strengthen family life; and

WHEREAS, in fiscal year 1992, 3,310 Montana children and youth were removed from their families and placed in foster homes, group homes, and residential treatment facilities at a cost to the state of more than $16 million; and

WHEREAS, because of the high level of expenditures required to provide out-of-home placement, many experts now question whether public revenue spent for room, board, and related costs might be more wisely spent providing services specifically needed to enable a family to continue functioning as a family; and

WHEREAS, mounting evidence demonstrates that efforts that are made to support and strengthen vulnerable families before a crisis occurs can substantially contribute to family health and stability and prevent future long-term governmental costs; and

WHEREAS, because even with a reformed service system for families, some parents will not be available or able to protect or care adequately for their children, a range of out-of-home services should be available for these children and their families; and

WHEREAS, state and local policymakers increasingly are examining entire state systems for serving troubled children and families and are developing a more comprehensive approach to the multifaceted problems they face; and

WHEREAS, just as families nurture and sustain their members, healthy communities do the same for their member children and families; and

WHEREAS, because family services should be rooted in local communities and reflect local needs, characteristics, and resources, services should be provided as close as possible to the home community of the child or family and families should be fully involved in the planning and delivery of those services; and

WHEREAS, promoting family well-being and assuring children's safety must be the concern of all community sectors.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 and 2] may be cited as the "Montana Family Policy Act".

Section 2. **Policy and guiding principles.** (1) It is the policy of the state of Montana to support and preserve the family as the single most powerful influence for ensuring the healthy social development and mental and physical well-being of Montana's children.

(2) The following principles must guide the actions of state government, state agencies, and agents of the state that serve children and families:

(a) Family support and preservation must be guiding philosophies when the state, state agencies, or agents of the state plan or implement services for children or families. The state shall promote the establishment of a range of services to children and families, including the following components:

(i) supporting families toward healthy development by providing a community network that offers a range of family support services, activities, and programs designed to promote family well-being, with services that include prenatal care, parenting education, parent aides, and visiting nurses; early childhood screening and developmental services; child care; and family recreation;

(ii) assisting vulnerable families before crises emerge by providing specialized services to strengthen and preserve families experiencing problems before they become acute and by providing early intervention and family support services, such as respite care, health and mental health services, and home-based rehabilitation services linked to services in subsection (2)(a)(i);

(iii) protecting and caring for children in crisis by providing intensive services to protect children who have suffered or are at risk of suffering serious harm from child abuse and neglect, by providing care for children at risk of out-of-home placement for emotional disturbances or behavior problems, and by providing family support services to ensure that reasonable efforts are made to safely maintain children in their own homes or to provide temporary or permanent care for children who are removed from their families. These services include family-based services to avoid removal from the home whenever possible and to provide out-of-home care, reunification services, adoption services, and long-term substitute care.

(b) To maximize resources and establish a range of services driven by the needs of families rather than by a predetermined array of categorical services, the state, state agencies, and agents of the state shall work toward a system of comprehensive and coordinated services to children and families through joint agency planning, joint financing, joint service delivery, common intake and assessment, and other arrangements that promote more effective support for families.

(c) Needed services to children and families should be provided as close as possible to the home community. The state, state agencies, and agents of the state shall encourage community planning and collaboration. State agencies shall cooperate to support collaborative programs.

(d) The state encourages all sectors of society to participate in building the community capacity to meet the needs of children and families.

(3) The family policy objectives described in this section are intended to guide the state's efforts to provide services to children and families. This section may not be construed to require a service or a particular level of service or to grant a right of action to enforce this section or other law.

Approved March 17, 1993.

CHAPTER NO. 99

[HB 22]

AN ACT GENERALLY REVISING THE LAWS CONCERNING THE MONTANA COMMISSION ON UNIFORM STATE LAWS; PROVIDING FOR THE APPOINTMENT OF UNIFORM STATE LAW COMMISSIONERS BY THE LEGISLATIVE COUNCIL; CLARIFYING THE COMPENSATION OF COMMISSIONERS; AMENDING SECTIONS 1-12-101, 1-12-102, AND 1-12-104, MCA; REPEALING SECTION 1-12-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-12-101, MCA, is amended to read:

"**1-12-101. Appointment, composition, term of office.** *(1)* ~~A commission~~ *There* is ~~hereby created to be known as the~~ *a Montana* commission on uniform state laws, which ~~shall consist~~ *consists* of three recognized members of the bar or members of the faculty of the law school of the ~~state~~ university of

Montana *and any resident of this state who, because of long service in the cause of the uniformity of state legislation, has been elected a life member of the national conference of commissioners on uniform state laws.*~~, who shall~~ *Commissioners must* be appointed by the ~~governor~~ *legislative council* for terms of 4 years each or until their successors are appointed~~, and in addition thereto, any residents of this state who because of long service in the cause of the uniformity of state legislation shall have been elected life members of the national conference of commissioners on uniform state laws~~. *The legislative council may accept recommendations for appointments from the state bar of Montana, the Montana judges' association, and the dean of the law school.*

(2) Commissioners shall serve for no salary. Commissioners are entitled to reimbursement for expenses as provided in 2-18-501."

Section 2. Section 1-12-102, MCA, is amended to read:

"**1-12-102. Vacancies.** If an appointed commissioner dies, resigns, or fails or refuses to serve, ~~his~~ *the* office becomes vacant. The ~~governor~~ *legislative council* shall appoint a qualified person to fill the vacancy for the unexpired term."

Section 3. Section 1-12-104, MCA, is amended to read:

"**1-12-104. Duties of commissioners.** (1) Each commissioner shall *attempt to* attend the meeting of the national conference of commissioners on uniform state laws and~~, both in and out of such national conference,~~ shall ~~do all in his power to~~ promote uniformity in state laws upon all subjects ~~where~~ *in which* uniformity ~~may be deemed~~ *is* desirable and practicable.

(2) It ~~shall also be~~ *is* the duty of ~~said~~ *the* commission to bring about, as far as practicable, the uniform judicial interpretation of all uniform laws."

Section 4. **Transition.** Uniform state law commissioners appointed by the governor shall continue in office until the expiration of their current term.

Section 5. **Repealer.** Section 1-12-103, MCA, is repealed.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 17, 1993.

CHAPTER NO. 100

[HB 24]

AN ACT CLARIFYING THAT THE MONTANA CODE ANNOTATED IS THE OFFICIAL VERSION OF THE MONTANA STATUTES; PROHIBITING THE COPYRIGHT OF MONTANA STATUTES; AMENDING SECTIONS 1-11-103 AND 1-11-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-103, MCA, is amended to read:

"**1-11-103. Effect of Montana Code Annotated** — ***official version.*** (1) The Montana Code Annotated ~~shall be enacted as~~ *is* a reenactment of the Revised Codes of Montana, 1947, and the supplements thereto.

(2) The enactment of the Montana Code Annotated ~~shall~~ *may* not:

(a) revive a law repealed or superseded before the effective date of the Montana Code Annotated;

(b) affect an act done, right accrued, or obligation incurred or imposed by law prior to the effective date of the Montana Code Annotated;

(c) affect any action, suit, or proceeding pending on ~~such~~ *the* effective date *of the Montana Code Annotated*;

(d) repeal statutes of a nongeneral, nonpermanent nature, such as severability, construction, validating, repealing, or similar statutes, omitted from the Montana Code Annotated.

(3) The Montana Code Annotated ~~shall~~ *must* be given effect as a continuation of the Revised Codes of Montana and not as a new enactment. A defect in title of any act set out in prior laws and reenacted by the Montana Code Annotated is cured by ~~such~~ *the* enactment *of the Montana Code Annotated.*

(4) No implication or presumption of legislative construction is to be drawn from the classification or arrangement of the Montana Code Annotated.

(5) Unless specifically and expressly adopted as part of the law by the legislature, annotations, code commissioner notes, catchlines, or other editorial material included in the Montana Code Annotated may not be construed as part of the legislative text but are only for the purpose of convenience, orderly arrangement, and information.

(6) After enactment, the Montana Code Annotated, including all subsequent replacement volumes, ~~shall be~~ *is* prima facie the official laws of Montana. In case of any inconsistency in meaning arising through omission or otherwise between the provisions of the Montana Code Annotated and the corresponding portion of the official enrolled bill on file with the secretary of state, effect ~~shall~~ *must* be given to the official enrolled bill.

(7) The Montana Code Annotated, prepared in accordance with part 3, is the official version of the statutes of Montana. The official version of the statutes is the only publication of the statutes that may be used in public documents. This subsection is not intended to interfere with the supreme court's authority to adopt rules of evidence pursuant to Article VII, section 2, of the Montana constitution."

Section 2. Section 1-11-304, MCA, is amended to read:

"**1-11-304. Copyrights *prohibited.*** The Montana Code Annotated, supplements, or other publications ancillary thereto, as published, ~~shall be~~ *are* the sole property of the state of Montana and ~~shall~~ *may not* be copyrighted ~~for and in behalf of the state of Montana by the secretary of state~~."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 17, 1993.

CHAPTER NO. 101

[HB 44]

AN ACT ALLOWING THE INVESTMENT OF MAINTENANCE DISTRICT FUNDS; REQUIRING INTEREST COLLECTED ON DEPOSITS OR INVESTMENTS TO BE CREDITED TO THE FUND FROM WHICH THE MONEY WAS WITHDRAWN; REMOVING THE TIME RESTRICTION ON INVESTMENT IN UNITED STATES GOVERNMENT OBLIGATIONS; AMENDING SECTION 7-12-2175, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2175, MCA, is amended to read:

"**7-12-2175. Investment of *maintenance*, interest, and sinking fund money.** (1) The governing body of a county in which a special improvement district *or maintenance district* is located may invest *maintenance*, interest, and sinking fund money of the district in time deposits of a bank, savings and loan association, or credit union insured by the federal deposit insurance corporation~~,~~ ~~federal savings and loan insurance corporation,~~ or *the* national credit union administration or in direct obligations of the United States government ~~payable within 180 days from the time of investment~~.

(2) ~~All interest~~ *Interest* collected on ~~such~~ *the* deposits or investments ~~shall~~ *must* be credited to the ~~sinking~~ fund from which the money was withdrawn."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 17, 1993.

CHAPTER NO. 102

[HB 223]

AN ACT REVISING THE TIME WHEN THE COUNTY TREASURER MUST REMIT STATE MONEY; MAKING THE JUNE REMITTANCE AN ESTIMATE; ELIMINATING THE DECEMBER REMITTANCE; AMENDING SECTION 15-1-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-504, MCA, is amended to read:

"**15-1-504. Settlement of county treasurer with state treasurer.** (1) Except as provided in ~~subsections~~ *subsection* (2) ~~and (3)~~, the county treasurer, between the 1st and 20th days of each month, shall remit to the state treasurer all money belonging to the state that was collected by the county treasurer during the preceding month. The remittance must be accompanied by a detailed report upon a form that the state treasurer prescribes. The state treasurer may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.

(2) By June 20 of each year, the county treasurer shall remit to the state treasurer *an estimate of* all money belonging to the state that was collected by the county treasurer by June 15, in addition to the amount collected during the preceding month. In July, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of June.

~~(3) By December 20 of each year, the county treasurer shall remit to the state treasurer all money belonging to the state that was collected by the county treasurer by December 15, in addition to the amount collected during the preceding month. In January, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of December.~~"

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 17, 1993.

CHAPTER NO. 103

[HB 297]

AN ACT REMOVING THE CAPITAL GAIN EXCLUSION FROM TRUST AND ESTATE TAXABLE INCOME TO MAKE MONTANA INDIVIDUAL AND TRUST TAXABLE INCOME STATUTES CONSISTENT; AMENDING SECTION 15-30-136, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-136, MCA, is amended to read:

"**15-30-136. Computation of income of estates or trusts — exemption.** (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision ~~thereof~~ *of the state,* but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent the deduction of ~~such~~ *the* tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the taxable year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended, if ~~such~~ *the* expenses were not claimed as a deduction in the determination of Montana inheritance tax;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions ~~shall be~~ *are* allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for ~~such~~ *the* year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year~~;~~.

~~(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.~~

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and (6)."

Section 2. **Applicability — rulemaking.** (1) [This act] applies to tax years beginning after December 31, 1993.

(2) The department of revenue may institute rulemaking under Title 2, chapter 4, to implement [this act] prior to October 1, 1993, but the rules may not be effective prior to October 1, 1993.

Approved March 17, 1993.

CHAPTER NO. 104

[HB 312]

AN ACT CLARIFYING THAT THE BENEFICIAL USE TAX INVOLVES THE USE OF TAX-EXEMPT PROPERTY FOR INDUSTRIAL, TRADE, OR OTHER BUSINESS PURPOSES; AND AMENDING SECTIONS 15-24-1203, 15-24-1204, AND 15-24-1207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1203, MCA, is amended to read:

"**15-24-1203. Privilege tax on ~~gainful~~ *industrial, trade, or other business* use of tax-exempt property — exceptions.** ~~After March 17, 1969, there~~ *There* is imposed and ~~shall~~ *must* be collected a tax upon the possession or other beneficial use *for industrial, trade, or other business purposes* enjoyed by any private individual, association, or corporation of any property, real or personal, ~~which~~ *that* for any reason is exempt from taxation. ~~No~~ *The* tax may *not* be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on ~~such~~ *public* airport property are subject to tax. ~~No~~ *The* tax ~~shall~~ *may not* be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax ~~shall be~~ *is* imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts ~~shall~~ *are* not ~~be~~ subject to the tax. The tax may not be imposed upon the possession or other beneficial use of railroad right-of-way or track owned by the United States or acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state or the United States retains ownership and the right-of-way or track is used exclusively for rail transportation."

Section 2. Section 15-24-1204, MCA, is amended to read:

"**15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes.** The tax imposed upon ~~such~~ *the* possession or other beneficial use of tax-exempt property *for industrial, trade, or other business purposes* ~~shall~~ *must* be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner ~~thereof~~ *of the property,* ~~provided that there~~ *but the amount of payments that is made in lieu of taxes* ~~shall~~ *must* be credited against the *amount of* tax ~~so~~ *that is* imposed upon the beneficial use of property owned by the federal government ~~the amount of payments which are made in lieu of taxes~~."

Section 3. Section 15-24-1207, MCA, is amended to read:

"**15-24-1207. Reporting requirements — rules.** (1) Each private person who is a possessor or a beneficial user of tax-exempt property *for industrial, trade, or other business purposes* subject to tax pursuant to 15-24-1203 ~~must~~ *shall*, on or before March 1 each year, file with the department of revenue a statement of the possession or other beneficial use of tax-exempt property in the preceding calendar year and the value ~~thereof~~ *of the property*. The statement must be in the form prescribed by the department and must be verified by the possessor or beneficial user or, in the case of an association or corporation, by an officer of the association or corporation. The statement must include:

(a) the name and address of the person, association, or corporation;

(b) the location of the tax-exempt property; and

(c) the market value in dollars and cents of the tax-exempt property.

(2) The department may adopt any reasonable rules necessary to insure that the possessor or other beneficial user of tax-exempt property complies with the provisions of this part."

Approved March 17, 1993.

CHAPTER NO. 105

[HB 35]

AN ACT ELIMINATING THE PROVISIONS RELATING TO SUFFICIENCY OF PLEADING AND PROOF IN THE CRIMINAL PROSECUTION FOR MUTILATION, DESTRUCTION, OR CONCEALMENT OF HIDES; AND REPEALING SECTION 81-9-424, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 81-9-424, MCA, is repealed.

Approved March 18, 1993.

CHAPTER NO. 106

[HB 58]

AN ACT ALLOWING FOR THE KILLING OF A DOG THAT HARASSES LIVESTOCK; PROVIDING A PENALTY; INCREASING THE PENALTY FOR DOGGING LIVESTOCK; AND AMENDING SECTIONS 81-7-401 AND 81-7-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-7-401, MCA, is amended to read:

"**81-7-401. Killing of dogs *harassing,* destroying, or injuring stock — notice to owner.** *(1) As used in this section, "harasses" means worries, chases, or runs after livestock in a manner that may lead to subsequent injury to the livestock.*

(2) ~~Any~~ *A* dog, whether licensed or not, ~~which~~ *that,* while off the premises owned or under control of its owner *and on property owned, leased, or controlled by the livestock owner,* ~~shall kill, wound, or injure any~~ *harasses, kills, wounds, or injures* livestock not belonging to the ~~master~~ *owner* of ~~such~~ *the* dog ~~shall be deemed to be~~ *is considered* a public nuisance and*:*

(a) may be killed ~~forthwith~~ *immediately* by ~~any person~~ *the owner of the livestock or an agent or employee of the owner*~~.~~*;* or

(b) the owner *of the dog,* when *reasonably* notified *after due process,* shall kill ~~such~~ *the* dog within 24 hours *of notification*~~, and if he~~. *If the owner* fails to do so, an officer may be notified and shall kill *the dog* or cause *the dog* to be killed ~~such dog~~.

(3) A dog may not be killed in a manner that will endanger a person.

(4) ~~Nothing contained herein shall apply~~ *This section does not apply* to ~~any~~ *a* dog ~~acting~~ *herding livestock* under the direction of its ~~master~~ *owner* or the agents or employees of ~~such master~~ *its owner.*

(5) This section does not apply to a dog engaged in legitimate sport hunting or predator control activities under the direction of its owner or the agents or employees of its owner."

Section 2. **Penalty.** The owner of a dog that harasses, kills, wounds, or injures livestock is guilty of a misdemeanor and upon conviction shall be fined not more than $500.

Section 3. Section 81-7-403, MCA, is amended to read:

"**81-7-403. Dogging livestock.** Any person who permits or directs any dog owned by him or in his possession to chase or run any cattle or other livestock of which he is not the owner or the person in charge upon the open range or government lands or away from any watering place upon the open range is guilty of a misdemeanor and punishable by a fine of not more than ~~$50~~ *$500.*"

Approved March 18, 1993.

CHAPTER NO. 107

[HB 93]

AN ACT PROVIDING FOR THE STATUTORY APPROPRIATION OF CERTAIN TREASURY FUNDS TO PAY FOR GENERAL DEPOSITORY BANKING SERVICES AND TO ALLOW THE STATE TREASURER TO REPAY FEDERAL FUNDS AND INTEREST TO THE UNITED STATES TREASURER; AMENDING SECTIONS 17-3-106, 17-6-101, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-106, MCA, is amended to read:

"**17-3-106. Fiscal officer for receipt of federal grants.** *(1)* The state treasurer is ~~hereby~~ designated as the fiscal officer of the state to receive from the United States government or any of its agencies ~~any and~~ all funds ~~which~~ *that* may be made available as a grant ~~or grants~~ to the state of Montana under any act of congress, or otherwise, for any purpose or use ~~whatsoever~~. The state treasurer ~~is hereby authorized, empowered, and directed~~ *shall,* upon receipt of ~~any such fund or~~ *the* funds, ~~to~~ deposit the ~~same~~ *funds* in the proper fund in the state treasury.

(2) The state treasurer may return to the federal government any federal funds and the interest earned on the funds that may not be retained by the state according to federal law or the terms of the federal grant that made the funds available. The funds are statutorily appropriated, as provided in 17-7-502, to the state treasurer for the purpose of returning the funds under the provisions of this subsection."

Section 2. Section 17-6-101, MCA, is amended to read:

"**17-6-101. Deposit of funds in ~~the~~ hands of ~~the~~ state treasurer.** (1) Under the direction of the board of investments, the state treasurer shall deposit public ~~moneys~~ *money* in ~~his~~ *the treasurer's* possession and under ~~his~~ *the treasurer's* control in solvent banks, building and loan associations, savings and loan associations, and credit unions located in the state, except as otherwise provided by law, subject to national supervision or state examination.

(2) The state treasurer shall deposit funds in ~~such~~ banks, building and loan associations, savings and loan associations, and credit unions ~~and~~ in ~~such~~ amounts as may be designated by the board of investments and *shall* withdraw ~~such~~ deposits when instructed to by the board of investments.

(3) When ~~moneys have~~ *money has* been deposited under the board of investments and in accordance with the law, the *state* treasurer is not liable for loss on account of any ~~such~~ deposit occurring from any cause other than ~~his~~ *the treasurer's* own neglect or fraud.

(4) The state treasurer shall withdraw all deposits or any part ~~thereof~~ *of deposits* from time to time to pay and discharge the legal obligations of the state duly presented to ~~him~~ *the treasurer* in accordance with the law.

(5) The state treasurer may contract with a financial institution to provide general depository banking services. The cost of contracting for banking services is statutorily appropriated, as provided in 17-7-502, from the general fund."

Section 3. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; *17-3-106;* 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; *17-6-101;* 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved March 18, 1993.

CHAPTER NO. 108

[HB 104]

AN ACT PROVIDING FOR THE SEIZURE AND FORFEITURE OF MONEY, EQUIPMENT, AND PERSONALTY INVOLVED IN THE THEFT OF LIVESTOCK OR THE TRANSPORTATION OF STOLEN LIVESTOCK; ALLOWING THE DEPARTMENT OF LIVESTOCK TO RETAIN FORFEITED PROPERTY; ESTABLISHING A SPECIAL REVENUE ACCOUNT; PROVIDING A STATUTORY APPROPRIATION; ALLOWING INCOME DERIVED FROM THE SALE OF FORFEITED PROPERTY TO BE USED BY THE DEPARTMENT OF LIVESTOCK FOR PERSONNEL TRAINING; AND AMENDING SECTIONS 17-7-502, 81-5-104, 81-5-109, 81-5-110, AND 81-5-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-5-104, MCA, is amended to read:

"**81-5-104. Stolen livestock — seizure and forfeiture of vehicle *and certain other property* used ~~to transport~~ *in theft or transportation.*** (1) The use of any vehicle, *money, equipment, or personalty* for the *theft or* transportation of any stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, llama, bison, hogs, poultry, or the products of any ~~thereof~~ *stolen livestock* is unlawful~~, and such vehicle shall be forfeited to the state~~. Any vehicle, *money, equipment, or personalty* ~~found in such use~~ *used for the theft or unlawful transportation* or upon probable cause believed to be devoted wholly or in part to ~~such use shall~~ *the theft or unlawful transportation must* be seized and held.

(2) Within 45 days after the seizure, any peace officer or officer of the agency that seizes any property shall file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall cause the ~~same~~ *summons* to be served upon all owners or claimants of the property by one of the following methods:

(a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no ~~such~~ newspaper *of general county circulation*, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the petition and summons to the most recent address of ~~such~~ *the* owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for ~~such~~ unlawful transportation; or

(b) the *vehicle* owner ~~thereof~~ is not in collusion with the party or parties guilty of the theft."

Section 2. Section 81-5-109, MCA, is amended to read:

"**81-5-109. Presumption — hearing — disposition of vehicle *and other property.*** (1) There is a rebuttable presumption of forfeiture as to all property used for the *theft or* transportation of the livestock as provided in 81-5-104.

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, a hearing on the petition for forfeiture must be set without a jury not less than 60 days after the answer is

filed. Notice of the hearing must be given in the manner provided for service of petition and summons.

(4) If the court finds *that* a vehicle, *money, equipment, or personalty* was not used for the purpose charged or that it was used without the consent or knowledge of the owner, it shall order the property released to the owner of record on the date of the seizure. If the court finds *that* the vehicle, *money, equipment, or personalty* was used for the purpose charged and was used with the knowledge and consent of the owner, the property must be ordered forfeited."

Section 3. Section 81-5-110, MCA, is amended to read:

"**81-5-110. Sale at public auction — *retention of property.*** *(1)* Vehicles, *equipment, and personalty* forfeited under 81-5-109 ~~shall~~ *may* be sold at public auction in the manner of sales of personal property under execution and may be sold by any sheriff, livestock inspector, or other peace officer.

(2) The department may retain the vehicles, equipment, and personalty forfeited under 81-5-109 for official use by the department, including personnel training. If the department retains forfeited property that it determines to be suitable for everyday use by department personnel, the department shall reduce similar property purchases accordingly.

(3) Money forfeited under 81-5-109 must be placed in the special revenue account created in 81-5-111(2) for use by the department for personnel training or enforcement purposes."

Section 4. Section 81-5-111, MCA, is amended to read:

"**81-5-111. Disposition of proceeds — *special revenue account.*** ~~The officer making the sale, after~~ *(1) After* deducting the expenses of ~~keeping~~ *retaining* the ~~property~~ *vehicle, equipment, or personalty* and the cost of the sale ~~so far as the balance of sale proceeds permit~~, *the officer making the sale or the department, if it retains the vehicle, equipment, or personalty,* shall pay all liens *to the extent the balance of sale proceeds permit,* according to ~~their~~ *the lien* priorities~~,~~ ~~which~~ *that* are established~~,~~ by intervention or otherwise ~~in the proceedings, as being~~. *A lien must be* bona fide and ~~as having~~ *have* been created without the lienor having any notice or reasonable cause to believe that the vehicle, *equipment, or personalty* was being or was to be used for the *theft or* illegal transportation ~~and shall pay the balance of the proceeds to the treasurer of this state to be credited to the department of livestock fund~~.

(2) There is an account in the state special revenue fund. The proceeds from the sale of vehicles, equipment, and personalty provided for in 81-5-110 must be deposited in the account, are statutorily appropriated, as provided in 17-7-502, and must be used by the department for personnel training or enforcement purposes."

Section 5. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; *81-5-111;* 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Approved March 18, 1993.

CHAPTER NO. 109

[HB 111]

AN ACT ELIMINATING THE REQUIREMENT THAT THE GOVERNOR APPROVE APPLICATIONS FOR FEDERAL ASSISTANCE PROGRAM FUNDS PRIOR TO SUBMISSION TO FEDERAL AUTHORITIES; AMENDING SECTION 17-3-108, MCA; REPEALING SECTION 17-3-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-3-108, MCA, is amended to read:

"**17-3-108. ~~Expenditure — approved~~ *Approved* budget amendment.** ~~Approval of a state agency application under 17-3-104 shall not constitute~~

~~authority to expend any federal assistance program funds subsequently granted.~~ Financing for new or expanded programs from federal assistance program sources may be made available only by approved budget amendment."

Section 2. **Repealer.** Section 17-3-104, MCA, is repealed.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1993.

CHAPTER NO. 110

[HB 122]

AN ACT ALLOWING NONMONETARY LEASE TRANSACTIONS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IN EXCHANGE FOR SERVICES RENDERED ON THE LEASED LANDS; AMENDING SECTION 87-1-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-209, MCA, is amended to read:

"**87-1-209. Acquisition and sale of lands or waters.** (1) The department, with the consent of the commission and, in the case of land acquisition involving more than 100 acres or $100,000 in value, the approval of the board of land commissioners, may acquire by purchase, lease, agreement, gift, or devise and may acquire easements upon lands or waters for the purposes listed in this subsection. The department may develop, operate, and maintain acquired lands or waters:

(a) for fish hatcheries, nursery ponds, or game farms;

(b) as lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) for public hunting, fishing, or trapping areas;

(d) to capture, propagate, transport, buy, sell, or exchange any game, birds, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes or to exercise control measures of undesirable species;

(e) for state parks and outdoor recreation;

(f) to extend and consolidate by exchange, lands or waters suitable for these purposes.

(2) The department, with the consent of the commission, may acquire by condemnation lands or structures for the preservation of historical or archaeological sites that are threatened with destruction or alteration.

(3) (a) The department, with the consent of the commission, may dispose of lands and waters acquired by it on those terms after public notice as required by subsection (3)(b), without regard to other laws ~~which~~ *that* provide for sale or

disposal of state lands and with or without reservation, as it considers necessary and advisable.

(b) Notice of sale describing the lands or waters to be disposed of ~~shall~~ *must* be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated or, if no newspaper is published in that county, then in any newspaper with general circulation in that county.

(c) The notice ~~shall~~ *must* advertise for cash bids to be presented to the director within 60 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid ~~shall~~ *must* be accepted upon payment of the balance due within 10 days after mailing notice by ~~registered or~~ certified mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders ~~shall~~ *must* be similarly notified in succession until a sale is completed. Deposits ~~shall~~ *must* be returned to the unsuccessful bidders except bidders defaulting after notification.

(d) The department shall reserve the right to reject any bids ~~which~~ *that* do not equal or exceed the full market value of the lands and waters as determined by the department. If the department does not receive a bid that equals or exceeds fair market value, it may then sell the lands or waters at private sale. The price accepted on any private sale must exceed the highest bid rejected in the bid process. The department shall convey the lands and waters without covenants of warranty by deed executed by the governor or in ~~his~~ *the governor's* absence or disability by the lieutenant governor, attested by the secretary of state and further countersigned by the director.

(4) The department, with the consent of the commission, is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas in which game and nongame fur-bearing animals and game and nongame birds may breed and replenish and areas ~~which~~ *that* provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by the department and appropriated by the legislature.

(5) The department is authorized to enter into leases of land under its control in exchange for services to be provided by the lessee on the leased land."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1993.

CHAPTER NO. 111

[HB 125]

AN ACT ALLOWING A PRIVATE EASEMENT FOR A FIREARMS SHOOTING RANGE SAFETY ZONE; AND AMENDING SECTION 70-17-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-17-101, MCA, is amended to read:

"**70-17-101. Servitudes attached to land.** The following land burdens or servitudes upon land may be attached to other land as incidents or appurtenances and are then called easements:

(1) the right of pasture;

(2) the right of fishing;

(3) the right of taking game;

(4) the right-of-way;

(5) the right of taking water, wood, minerals, and other things;

(6) the right of transacting business upon land;

(7) the right of conducting lawful sports upon land;

(8) the right of receiving air, light, or heat from or over or discharging the same upon or over land;

(9) the right of receiving water from or discharging the same upon land;

(10) the right of flooding land;

(11) the right of having water flow without diminution or disturbance of any kind;

(12) the right of using a wall as a party wall;

(13) the right of receiving more than natural support from adjacent land or things affixed thereto;

(14) the right of having the whole of a division fence maintained by a coterminous owner;

(15) the right of having public conveyances stopped or of stopping the same on land;

(16) the right of a seat in church;

(17) the right of burial;

(18) the right of conserving open space to preserve park, recreational, historic, aesthetic, cultural, and natural values on or related to land;

(19) the right of receiving sunlight or wind for recognized nonfossil forms of energy generation; *and*

(20) the right of using land adjacent to a firearms shooting range as a range safety zone."

Approved March 18, 1993.

CHAPTER NO. 112

[HB 127]

AN ACT ALLOWING THE USE OF HEARSAY EVIDENCE OF THE YOUTH'S STATEMENTS AT A TEMPORARY INVESTIGATIVE HEARING IN A CHILD ABUSE, NEGLECT, OR DEPENDENCY PROCEEDING; AND AMENDING SECTION 41-3-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-403, MCA, is amended to read:

"**41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting ~~such~~ relief ~~as~~ *that* may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, ~~shall~~ *must* be served by a peace officer or a representative of the department of family services on the person or persons named ~~therein~~ *in the order.* When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon thereafter as possible.

(c) The order ~~shall~~ *must* require the person served to comply immediately with the terms ~~thereof~~ *of the order* or to appear before the court issuing the order on the date specified and show cause why ~~he~~ *the person* has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided ~~herein~~ *in this part,* the rules of civil procedure ~~shall~~ apply. *Hearsay evidence of statements made by the affected youth is admissible at the hearing.*

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary legal custody of the youth with the department of family services until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department of family services worker;

(b) medical and psychological evaluation of *the* youth or parents, guardians, or person having legal custody;

(c) ~~require~~ *requirement that* the youth, parents, guardians, or person having legal custody ~~to~~ receive counseling services;

(d) ~~place~~ *placement of* the youth in temporary medical facility or facility for protection of the youth;

(e) ~~require~~ *requirement that* the parents, guardian, or other person having custody ~~to~~ furnish ~~such~~ services ~~as~~ *that* the court may designate;

(f) ~~inquire~~ *inquiry* into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and ~~order~~ *requirement for a* contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) ~~such~~ other temporary disposition ~~as~~ *that* may be required in the best interest of the youth."

Approved March 18, 1993.

CHAPTER NO. 113

[HB 291]

AN ACT TRANSFERRING FROM THE SECRETARY OF STATE TO THE COMMISSIONER OF POLITICAL PRACTICES THE RESPONSIBILITY TO FURNISH COPIES OF ELECTION LAWS; ELIMINATING THE COMMISSIONER OF POLITICAL PRACTICES' AUTHORITY TO PRESCRIBE THE MANNER IN WHICH COUNTY CLERKS AND RECORDERS RECEIVE AND MAINTAIN REPORTS; AND AMENDING SECTIONS 13-12-101 AND 13-37-117, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-12-101, MCA, is amended to read:

"**13-12-101. Copies of election laws to be furnished.** ~~(1)~~ The secretary of state shall furnish to each election administrator copies of this title sufficient to provide each election precinct in ~~his~~ *the administrator's* county with two copies and to provide a small extra supply for the administrator.

~~(2) The secretary of state shall, at the expense of the state, furnish the election administrator with copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections. The public official with whom a candidate files a declaration, petition, or acceptance of nomination shall transmit one copy to the candidate. A copy shall also be furnished to any other person required to file a statement. Upon his own information or at the written request of any elector, the secretary of state shall provide a copy to any other individual who is a candidate or who is required to make a statement required by this title.~~"

Section 2. Section 13-37-117, MCA, is amended to read:

"**13-37-117. Commissioner to provide forms, ~~and~~ manuals, *and election laws*.** (1) The commissioner shall prescribe forms for ~~statements~~ *reports* and other information required to be filed pursuant to chapters 35, 36, or 37 of this title and furnish forms and appropriate information to persons required to file ~~statements~~ *reports* and *other* information.

(2) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file ~~statements~~ *reports* pursuant to chapters 35, 36, or 37 of this title.

(3) The commissioner shall, ~~prescribe the manner in which the county clerk and recorders shall receive, file, collate, and maintain reports filed with them~~

~~under chapters 35, 36, or 37 of this title~~ *at the expense of the state, furnish copies of the election laws relating to penalties, campaign practices, campaign finances, and contested elections to candidates and to any other persons required to file reports or other information pursuant to chapters 35, 36, or 37 of this title.*"

Approved March 18, 1993.

CHAPTER NO. 114

[HB 43]

AN ACT PROVIDING THAT A TENURED SCHOOL ADMINISTRATOR EMPLOYED IN AN ADMINISTRATIVE POSITION PRIOR TO OCTOBER 1, 1991, MAY BE TRANSFERRED TO A TEACHING POSITION WITH A REDUCTION IN SALARY; PROVIDING FOR SENIORITY RECOGNITION; AMENDING SECTION 20-4-208, MCA; REPEALING SECTION 4, CHAPTER 204, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-208, MCA, is amended to read:

"**20-4-208. Transfer from administrative position.** (1) A tenure teacher serving in an administrative position may be assigned to a teaching position with a reduction in salary when the economic conditions of the district require a reduction of administrative staff. The salary for the new position must be the same as the salary that the teacher would have received if the teacher had been continuously employed in the new position rather than in the administrative position.

(2) If a board policy or a collective bargaining agreement provides seniority rights for teachers, a district that assigns a tenure teacher serving in an administrative position to a teaching position shall recognize for teacher seniority purposes the tenure teacher's time of service in the administrative position.

~~(2)~~*(3)* As used in this section, the term:

(a) "administrative position" means a position that the trustees of a district designate as administrative or supervisory in nature, not including the position of district superintendent; and

(b) "reduction of administrative staff" is limited to reductions necessary because of declining enrollment or financial exigency.

~~(3)~~*(4)* When a tenure teacher serving in an administrative position is to be transferred under this section, the teacher must be notified prior to May 1 by certified letter or by personal notification for which a signed receipt must be obtained. The notification must include:

(a) a statement of the reason or reasons for the reduction of administrative staff; and

(b) a printed copy of this section for the teacher's information.

~~(4)~~*(5)* A tenure teacher who receives notice under subsection ~~(3)~~ *(4)* may request in writing, within 10 days of the notice, a hearing before the board of trustees. The board of trustees shall set the hearing not less than 10 days or more than 20 days from receipt of the request unless both parties agree to an extension. If a hearing is requested, the trustees shall:

(a) conduct the hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1); and

(b) resolve at the end of the hearing to uphold the transfer or to reject the transfer and return the teacher to the administrative position.

~~(5)~~*(6)* A tenure teacher may appeal a decision under this section to the county superintendent as provided in 20-3-210. The county superintendent shall conduct a hearing to determine whether the reason or reasons for the transfer were in compliance with the provisions of subsection (1).

~~(6)~~*(7)* The teacher or the trustees may appeal the determination of the county superintendent to the superintendent of public instruction as provided in 20-3-107.

~~(7)~~*(8)* A tenure teacher who is transferred to a teaching position under this section must be offered the next comparable administrative position for which he is endorsed that becomes available in the district."

Section 2. **Repealer.** Section 4, Chapter 204, Laws of 1991, is repealed.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1993.

CHAPTER NO. 115

[HB 289]

AN ACT REQUIRING PUBLIC AGENCY HEADS TO ACTIVELY MANAGE VACATION LEAVE FOR AGENCY EMPLOYEES; PROVIDING THAT A PUBLIC EMPLOYEE IS ENTITLED TO USE EXCESS VACATION LEAVE IF THE EMPLOYEE IS DENIED REASONABLE OPPORTUNITY TO USE EXCESS LEAVE; AMENDING SECTION 2-18-617, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-617, MCA, is amended to read:

"**2-18-617. Accumulation of leave — cash for unused — transfer.** (1) ~~Annual~~ *(a) Except as provided in subsection (1)(b), annual* vacation leave may be accumulated to a total not to exceed two times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.

(b) It is the responsibility of the head of an employing agency to provide reasonable opportunity for an employee to use rather than forfeit accumulated vacation leave. If an employee makes a reasonable written request to use excess vacation leave before the excess vacation leave must be forfeited under subsection (1)(a) and the employing agency denies the request, the excess vacation leave is not forfeited and the employing agency shall ensure that the employee may use the excess vacation leave before the end of the calendar year in which the leave would have been forfeited under subsection (1)(a).

(2) An employee who terminates ~~his~~ employment for *a* reason not reflecting discredit on ~~himself shall be~~ *the employee is* entitled upon the date of ~~such~~ termination to cash compensation for unused vacation leave, assuming that the employee has worked the qualifying period set forth in 2-18-611.

(3) However, if an employee transfers between agencies of the same jurisdiction, ~~there shall be no~~ cash compensation *may not be* paid for unused vacation leave. In ~~such~~ a transfer, the receiving agency assumes the liability for the accrued vacation credits transferred with the employee."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1993.

CHAPTER NO. 116

[SB 25]

AN ACT AUTHORIZING A MULTIJURISDICTIONAL SERVICE DISTRICT TO PROVIDE DISPATCH SERVICES; AMENDING SECTION 7-11-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-11-1102, MCA, is amended to read:

"**7-11-1102. Services that may be provided.** (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 16, part 24;

(b) road, street, and highway maintenance;

(c) libraries;

(d) jails;

(e) dog control programs; ~~and~~

(f) ambulance service; *and*

(g) dispatch service."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1993.

CHAPTER NO. 117

[SB 132]

AN ACT AUTHORIZING THE PUBLIC SERVICE COMMISSION TO ADOPT STANDARDS FOR UTILITY PRODUCTS AND SERVICES BY ADMINISTRATIVE RULE OR ORDERED TARIFF PROVISION; AND AMENDING SECTION 69-3-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-108, MCA, is amended to read:

"**69-3-108. Standards for and examinations of products and services.** (1) The commission shall ascertain and prescribe for each kind of public utility suitable and convenient commercial units of product or service. These ~~shall be~~ *are* lawful units for the purposes of this chapter.

(2) The commission shall ascertain and fix adequate and serviceable standards for the measurement of quality, pressure, initial voltage, or other conditions pertaining to the supply of the product or service rendered by any public utility and ~~prescribe~~ *establish* reasonable ~~regulations~~ *standards* for examination and testing of ~~such~~ *the* product or service and for the measurement ~~thereof~~ *of the product or service.*

(3) The commission shall provide for the examination and testing of ~~any and all~~ appliances used for the measuring of any product or service of a public utility. ~~Any~~ *A* consumer or user may have ~~any such~~ appliances tested upon payment of the fees fixed by the commission. The commission shall establish ~~and declare~~ reasonable fees to be paid for testing ~~such~~ appliances on the request of the consumers or users, the fee to be paid by the consumer or user at the time of ~~his~~ *the* request. These fees~~, however, shall~~ *must* be paid by the public utility and repaid to the complaining party if the quality or quantity of the product or the character of the service is found by the commission defective or insufficient in a degree to justify the demand for testing, or the commission may apportion the fees between the parties as justice may require.

(4) The commission may, in its discretion, purchase ~~such~~ materials, apparatus, and standard measuring instruments for ~~such~~ examinations and tests as it ~~may deem~~ *considers* necessary.

(5) The commission or its agents, experts, or examiners ~~shall have the power to~~ *may* enter upon any premises occupied by ~~any~~ *a* public utility for the purpose of making the examinations and tests provided in this chapter and ~~to~~ set up and use on ~~such~~ *the* premises any apparatus and appliances and occupy reasonable space ~~therefor~~ *for the examinations and tests.* ~~Any~~ *A* public utility refusing to allow ~~such~~ examinations to be made, as ~~herein~~ provided *in this chapter,* ~~shall be~~ *is* subject to the penalties prescribed in 69-3-206.

(6) The standards and fees established by the commission pursuant to this section must be established through administrative rules or ordered tariff provisions, in accordance with the Montana Administrative Procedure Act."

Approved March 18, 1993.

CHAPTER NO. 118

[SB 137]

AN ACT TRANSFERRING THE DUTY OF CORONER EDUCATION FROM THE ATTORNEY GENERAL TO THE BOARD OF CRIME CONTROL; AND AMENDING SECTION 7-4-2905, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2905, MCA, is amended to read:

"**7-4-2905. Coroner education and continuing education.** (1) Coroner education ~~will~~ *must* be conducted by the ~~attorney general~~ *board of crime control*. The cost of conducting ~~such~~ *the* education must be borne by the ~~office of the attorney general~~ *department of justice* from money appropriated for ~~such~~ *the* education. The county shall pay the salary, mileage, and per diem of each coroner-elect, coroner, and deputy coroner attending from that county.

(2) (a) The ~~attorney general~~ *board* shall conduct a 40-hour basic coroner course of study after each general election. The course, or an equivalent course approved by the ~~attorney general~~ *board*, must be completed before the first Monday in January following the election. The ~~attorney general~~ *board* may conduct other basic coroner courses at times ~~he~~ *it* considers appropriate.

(b) The ~~attorney general~~ *board* shall annually conduct a 16-hour advanced coroner course. Failure of any coroner or deputy coroner to satisfactorily complete the advanced coroner course, or an equivalent course approved by the ~~attorney general~~ *board*, at least once every 2 years results in forfeiture of office."

Approved March 18, 1993.

CHAPTER NO. 119

[SB 140]

AN ACT DEFINING THE LEGAL RESPONSIBILITY OF PARTICIPANTS IN EQUINE ACTIVITIES, EQUINE ACTIVITY SPONSORS, AND EQUINE PROFESSIONALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** The purpose of [sections 1 through 3] is to assist courts and juries in defining the circumstances under which persons responsible for equines may be found liable for damages to persons harmed in the course of equine activities. It is the policy of the state of Montana that a person is not liable for damages sustained by another solely as a result of risks inherent in equine activities if those risks are or should be reasonably obvious, expected, or necessary to persons engaged in equine activities. It is the policy of the state of Montana that an equine activity sponsor or equine professional who is negligent and causes foreseeable injury to a participant bears responsibility for that injury in accordance with other applicable law.

Section 2. **Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Engage in an equine activity" means to ride, train, drive, or be a passenger upon an equine, whether mounted or unmounted, or to assist a participant, equine activity sponsor, or equine professional. The phrase does not mean activity by a spectator at an equine activity, unless the spectator is improperly in an unauthorized area in immediate proximity to an equine activity.

(2) "Equine" means a horse, pony, mule, donkey, or hinny.

(3) "Equine activity" means:

(a) equine shows, fairs, competitions, performances, or parades that involve any breed of equines and any of the equine disciplines, including but not limited to dressage, hunter and jumper horse shows, grand prix jumping, 3-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, endurance trail riding and western games, and hunting;

(b) equine training or teaching activities;

(c) boarding equines;

(d) riding, inspecting, grooming, or evaluating an equine belonging to another, whether or not the owner has received monetary consideration or another thing of value for the use of the equine or permits a prospective purchaser of the equine to ride, inspect, groom, or evaluate the equine;

(e) rides, trips, hunts, pack trips, or other equine activities of any type, however informal, that are sponsored by an equine activity sponsor; and

(f) providing veterinarian or farrier services.

(4) "Equine activity sponsor" means an individual, group, club, partnership, corporation, or other entity, whether operating for profit or nonprofit, that sponsors, organizes, or provides the facilities for an equine activity. The phrase includes but is not limited to pony clubs; 4-H clubs; hunt clubs; riding clubs; riding classes and programs; therapeutic riding programs; operators, instructors, and promoters of equine facilities; stables; clubhouses; pony ride strings; farms; ranches; and arenas.

(5) "Equine professional" means a person engaged for compensation in:

(a) instructing a participant or renting to a participant an equine for the purpose of riding, driving, or being a passenger upon the equine;

(b) selling or renting equipment or tack to a participant; or

(c) providing veterinary or farrier services.

(6) "Participant" means a person, whether amateur or professional, who directly engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

(7) "Risks inherent in equine activities" means dangers or conditions that are an integral part of equine activities, including but not limited to:

(a) the propensity of an equine to behave in ways that may result in injury or harm to or the death of persons on or around the equine;

(b) the unpredictability of an equine's reaction to such things as medication; sounds; sudden movement; and unfamiliar objects, persons, or other animals;

(c) hazards, such as surface and subsurface ground conditions;

(d) collisions with other equines or objects; or

(e) the potential of another participant to not maintain control over the equine or to not act within the person's ability.

Section 3. **Equine activity liability limitations.** (1) Except as provided in subsections (2) and (3), an equine activity sponsor or an equine professional is not liable for an injury to or the death of a participant engaged in an equine activity resulting from risks inherent in equine activities.

(2) An equine participant shall act in a safe and responsible manner at all times to avoid injury to the participant and others and to be aware of risks inherent in equine activities.

(3) Subsection (1) does not apply:

(a) if the equine activity sponsor or the equine professional:

(i) provided the equipment or tack and the equipment or tack caused the injury because the equine activity sponsor or equine professional failed to reasonably and prudently inspect or maintain the equipment;

(ii) provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to safely engage in the equine activity and the participant's ability to safely manage the particular equine based on the participant's representations as to the participant's ability;

(iii) owned, leased, rented, or otherwise was in lawful possession and control of the land or facilities upon which the participant sustained injuries caused by a dangerous latent condition that was known or should have been known to the equine activity sponsor or the equine professional;

(iv) committed an act or omission that constituted willful or wanton disregard for the safety of the participant and the act or omission caused the injury; or

(v) intentionally injured the participant; or

(b) in a products liability action.

Section 4. **Mule and horseracing.** [Sections 1 through 3] do not apply to the horseracing and mule racing industry as regulated in Title 23, chapter 4.

Section 5. **Applicability.** [Sections 1 through 3] apply to injuries and deaths that occur on or after [the effective date of this act].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1993.

CHAPTER NO. 120

[SB 146]

AN ACT CREATING THE MONTANA LIMITED LIABILITY COMPANY ACT; AND AMENDING SECTIONS 30-13-141, 30-13-202, 30-13-301, 30-13-311, 35-1-308, 35-1-1031, 35-2-305, 35-2-826, 35-4-206, AND 35-12-505, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because the secretary of state is authorized to adopt rules prescribing forms and establishing fees. The legislature intends that fees be commensurate with the cost of the services provided. It is further the intent of the legislature that the secretary of state make the forms consistent with existing forms used for corporate and other business entities, when practical and applicable, and that the new forms be as easy to use as possible.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 78] may be cited as the "Montana Limited Liability Company Act".

Section 2. **Definitions.** As used in [sections 1 through 78], unless the context requires otherwise, the following definitions apply:

(1) "Articles of organization" means articles filed pursuant to [section 8] and those articles as amended or restated.

(2) "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

(3) "Court" includes every court having jurisdiction in the case.

(4) "Disqualified person" means any person or entity that for any reason is or becomes ineligible under [sections 1 through 78] to become a member in a professional limited liability company.

(5) "Event of dissociation" means an event that causes a person to cease to be a member, as provided in [section 45].

(6) "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

(7) "Foreign limited liability company" means an entity that is:

(a) an unincorporated association;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than [sections 1 through 78].

(8) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

(9) "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

(10) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(11) "Limited liability company" or "domestic limited liability company" means an organization that is formed under [sections 1 through 78].

(12) "Limited liability company interest" or "interest in the limited liability company" means the interest that can be assigned under [section 41] and that is available to creditors under [section 42].

(13) "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

(14) "Manager" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person designated in accordance with [section 21].

(15) "Member" means a person who has been admitted to membership in a limited liability company as provided in [section 44] and who has not dissociated from the limited liability company.

(16) "Operating agreement" means an agreement, written or oral, as to the conduct of the business and affairs of a limited liability company that is binding upon all of the members.

(17) "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

(18) "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

(19) "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

(20) "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under [sections 1 through 78] to own shares issued by a professional limited liability company.

(21) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(22) "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in [section 71].

Section 3. **Name.** (1) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) Contests over names registered under this section are governed by 35-1-310.

Section 4. **Reservation of name.** (1) The exclusive right to use a name may be reserved by:

(a) a person intending to organize a limited liability company and to adopt that name;

(b) a limited liability company or foreign limited liability company registered in this state that intends to adopt that name;

(c) a foreign limited liability company intending to register in this state and to adopt that name; or

(d) a person intending to organize a foreign limited liability company and to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign

limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a nonrenewable period of 120 days from the date the application is filed.

(3) The holder of a reserved limited liability company name may renew the reservation for successive periods of 120 days each from the date of renewal.

(4) The right to the exclusive use of a reserved name may be transferred to another person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved, and by specifying the name to be transferred and the name and address of the transferee. The transfer may not extend the term during which the name is reserved.

Section 5. **Registered office and registered agent.** (1) A limited liability company shall continuously maintain in this state:

(a) a registered office that may but need not be the same as its place of business; and

(b) a registered agent for service of process (at the registered office) on the limited liability company that is either an individual resident of this state, a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

(3) A limited liability company may change its registered office or registered agent, or both, by delivering to the secretary of state a statement setting forth:

(a) the name of the limited liability company;

(b) the address of its current registered office;

(c) if the address of its registered office is to be changed, the new address of the registered office;

(d) the name and address of its current registered agent; and

(e) if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address.

(4) The change of address of the registered office or registered agent is effective on delivery of the statement to the secretary of state. The appointment of a new registered agent is effective on delivery of the statement to the secretary of state and on receipt by the secretary of state of evidence that the new registered agent has accepted appointment pursuant to subsection (2).

(5) A registered agent of a limited liability company may resign as registered agent by delivering a written notice and 2 copies to the secretary of state. The secretary of state shall mail a copy of the notice to the limited liability company at its registered office and its principal place of business. The appointment of the registered agent terminates 30 days after receipt of the notice by

the secretary of state or on the appointment of a new registered agent, whichever occurs first.

(6) If a registered agent changes its address to another place in this state, it may change the address by delivering a statement to the secretary of state as required by subsection (3), except that it need be signed only by the registered agent. The statement must recite that a copy of the statement has been mailed to the limited liability company.

Section 6. **Purpose.** (1) A limited liability company organized under [sections 8 through 18] has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of organization.

(2) Limited liability companies may be organized under [sections 8 through 18] for any lawful purpose except for the purpose of banking or insurance.

Section 7. **Powers.** A limited liability company may:

(1) sue, be sued, complain, and defend in all courts;

(2) transact its business, carry on its operations, and have and exercise the powers granted by this section in any state; in any territory, district, or possession of the United States; and in any foreign country;

(3) make contracts and guarantees, incur liabilities, and borrow money;

(4) sell, lease, exchange, transfer, convey, mortgage, pledge, and otherwise dispose of any of its assets;

(5) acquire by purchase or in any other manner, take, receive, own, hold, improve, and otherwise deal with any interest in real or personal property, wherever located;

(6) issue notes, bonds, and other obligations and secure any of them by mortgage, deed of trust, or security interest of any of its assets;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and otherwise use and deal in and with stock or other interests in and obligations of domestic and foreign corporations, associations, general or limited partnerships, limited liability companies, business trusts, and individuals;

(8) invest its surplus funds, lend money from time to time in any manner that may be appropriate to enable it to carry on the operations or fulfill the purposes set forth in its articles of organization, and take and hold real property and personal property as security for the payment of funds loaned or invested;

(9) elect or appoint agents and define their duties and fix their compensation;

(10) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(11) be a promoter, stockholder, partner, member, associate, or agent of any corporation, partnership, domestic or foreign limited liability company, joint venture, trust, or other enterprise;

(12) indemnify and hold harmless any member, agent, or employee from and against any claims and demands whatsoever, except in the case of action or failure to act by the member, agent, or employee that constitutes willful misconduct or recklessness, and subject to the standards and restrictions, if any, set forth in the articles of organization or operating agreement;

(13) cease its activities and dissolve;

(14) pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any of its current or former directors, officers, employees, and agents;

(15) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, make donations in aid of war activities; and

(16) do every other act not inconsistent with law that is appropriate to promote and further the business and affairs of the limited liability company.

Section 8. **Formation.** One or more persons may form a limited liability company by signing and filing articles of organization with the secretary of state. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred.

Section 9. **Articles of organization.** (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of [section 3];

(b) the latest date on which the limited liability company is to dissolve;

(c) the address of its principal place of business in this state and, if different, its registered office and the name and address of its resident agent at the registered office in this state;

(d) a statement of whether the limited liability company is to be managed by a manager or by its members;

(e) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, the names and street addresses of the initial members;

(f) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in [section 7].

Section 10. **Amendment of articles of organization — restatement.** (1) The articles of organization of a limited liability company are amended by filing articles of amendment with the secretary of state. The articles of amendment must set forth:

(a) the name of the limited liability company;

(b) the date the articles of organization were filed; and

(c) the amendment to the articles of organization.

(2) The articles of organization may be amended as desired, so long as the amended articles of organization contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.

(3) Articles of organization may be restated at any time. Restated articles of organization must be filed with the secretary of state, must be specifically designated as such in the heading, and must state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its articles of organization.

(4) An amendment to the articles of organization of a limited liability company must be in the form and manner designated by the secretary of state.

Section 11. **Execution of documents.** (1) Unless otherwise specified in [sections 1 through 78], a document required by [sections 1 through 78] to be filed with or delivered to the secretary of state must be executed:

(a) by any manager if management of the limited liability company is vested in one or more managers or by a member if management of the limited liability company is reserved to the members;

(b) if the limited liability company has not been formed, by the person or persons forming the limited liability company; or

(c) if the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(2) The person executing the document shall sign it and state, beneath or opposite the signature, the person's name and the capacity in which the person signs.

(3) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document do not need to be shown to or filed with the secretary of state.

Section 12. **Filing with secretary of state.** (1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of the articles of organization or any other document required to be filed pursuant to [sections 1 through 78] must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of [sections 1 through 78], the secretary of state shall, when all required filing fees have been paid:

(a) endorse on each signed original and duplicate copy the word "filed" and the date and time of its acceptance for filing;

(b) retain the signed original in the secretary of state's files; and

(c) return the duplicate copy to the person who filed it or to the person's representative.

(2) If the secretary of state is unable to make the determination required for filing by subsection (1) at the time any documents are delivered for filing, the documents are considered to have been filed at the time of delivery if the secretary of state subsequently determines that the documents as delivered conform to the filing provisions of [sections 8 through 18].

Section 13. **Effect of delivery or filing of articles of organization.** (1) A limited liability company is formed when the articles of organization are delivered to the secretary of state for filing.

(2) Each copy of the articles of organization stamped "filed" and marked with the filing date is conclusive evidence that all conditions precedent required to be performed by the organizers have been complied with and that the limited liability company has been legally organized and formed under [sections 1 through 78].

Section 14. **Filing of facsimile copy.** (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under [sections 1 through 78] and the signatures on the facsimile copy in the same manner as an original for purposes of [sections 1 through 78], provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy. constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

Section 15. **Annual report for secretary of state.** (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

(e) the last date upon which the limited liability company is to be dissolved;

(f) if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of organization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of [sections 72 through 78] and rules promulgated under [sections 72 through 78]. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

Section 16. **Administrative dissolution — rules.** (1) A domestic limited liability company may be dissolved involuntarily by order of the secretary of state if the limited liability company has failed:

(a) for 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of the change;

(b) for 140 days to file its annual report within the time required by law; or

(c) to remit any fees required by law.

(2) The secretary of state may adopt rules to establish procedures for administrative dissolutions consistent with subsection (1).

Section 17. **Reinstatement of dissolved limited liability company.** (1) The secretary of state may:

(a) reinstate a limited liability company that has been dissolved under the provisions of [section 16];

(b) restore to a reinstated limited liability company its right to carry on business in this state and to exercise all of its privileges and immunities.

(2) A limited liability company applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was a member at the time of dissolution, setting forth:

(a) the name of the limited liability company;

(b) a statement that the assets of the limited liability company have not been liquidated;

(c) a statement that a majority of its members have authorized the application for reinstatement; and

(d) if its name has been legally acquired by another entity prior to its application for reinstatement, the name under which the limited liability company desires to be reinstated.

(3) The limited liability company shall submit with its application for reinstatement a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid.

(4) When all requirements are met and the secretary of state reinstates the limited liability company to its former rights, the secretary of state shall:

(a) conform and file in the office of the secretary of state reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the reinstated limited liability company a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the limited liability company one or more certified copies of the certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

(6) A restoration of limited liability company rights pursuant to this section relates back to the date the limited liability company was involuntarily dis-

solved, and the limited liability company is considered to have been an existing legal entity from the date of its original organization.

Section 18. **Fees for filing, copying, and services — rules.** (1) The secretary of state shall establish by rule fees for filing documents as required by [sections 1 through 78].

(2) The secretary of state shall establish by rule fees for copying documents, priority handling, transmitting or filing facsimile copies, and providing computer-generated information.

(3) The fees prescribed under this section must be reasonably related to the costs of processing the documents and preparing and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section.

Section 19. **License fee.** (1) In addition to the filing fee authorized by [section 18], the secretary of state shall charge and collect from each foreign limited liability company a license fee of $50 at the time of filing its articles of organization.

(2) In addition to the filing fee authorized by [section 18], the secretary of state shall charge and collect from each foreign limited liability company a license fee of $50 at the time of filing an application for a certificate of authority to transact business.

Section 20. **Agency power of members and managers.** (1) Except as provided in subsection (2), a member is an agent of the limited liability company for the purpose of its business or affairs and the act of a member, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the member is dealing has knowledge of the fact that the member has no such authority.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) a member, acting solely in the capacity as a member, may not be an agent of the limited liability company; and

(b) a manager is an agent of the limited liability company for the purpose of its business or affairs and the act of a manager, including but not limited to the execution of any instrument in the name of the limited liability company for apparently carrying on in the usual way the business or affairs of the limited liability company binds the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter and the person with whom the manager is dealing has knowledge of the fact that the manager has no such authority.

(3) An act of a manager or a member that is not apparently for carrying on in the usual way the business of the limited liability company does not bind the limited liability company, unless authorized in accordance with the articles of

organization or the operating agreement, at the time of the transaction or at any other time.

(4) An act of a manager or member in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

Section 21. **Admissions of members and managers.** (1) Except as provided in subsection (2), an admission or representation made by a member concerning the business or affairs of a limited liability company within the scope of the member's authority as provided for by [sections 1 through 78] is evidence against the limited liability company.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) an admission or representation made by a manager concerning the business or affairs of a limited liability company within the scope of the manager's authority, as provided for by [sections 1 through 78], is evidence against the limited liability company; and

(b) the admission or representation of a member, acting solely in the capacity as a member, may not constitute evidence.

Section 22. **Limited liability company charged with knowledge of or notice to member or manager.** (1) Except as provided in subsection (2), notice to a member of any matter relating to the business or affairs of the limited liability company and the knowledge of the member acting in the particular matter, acquired while a member or of which the member had knowledge at the time of becoming a member, and the knowledge of any other member who reasonably could and should have communicated it to the acting member operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that member.

(2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) notice to a manager of any matter relating to the business or affairs of the limited liability company and the knowledge of the manager acting in the particular matter, acquired while a manager or of which the manager had knowledge at the time of becoming a manager, and the knowledge of any other manager who reasonably could and should have communicated it to the acting manager operate as notice to or knowledge of the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of that manager; and

(b) notice to or knowledge of a member of a limited liability company while the member is acting solely in the capacity as a member is not notice to or knowledge of the limited liability company.

Section 23. **Liability of members to third parties.** A person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

Section 24. **Management.** (1) Unless the articles of organization vest management of the limited liability company in a manager or managers, management of the business or affairs of the limited liability company is vested in the members. Subject to any provisions in the articles of organization, the operating agreement, or [sections 1 through 78] restricting or enlarging the management rights and duties of any person, group, or class of persons, the members may manage the affairs of the limited liability company and make all necessary decisions.

(2) If the articles of organization vest management of the limited liability company in one or more managers, the managers may manage the business or affairs of the limited liability company as provided in the articles of organization or operating agreement. Unless otherwise provided in the articles of organization or an operating agreement, the managers:

(a) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of more than one-half of the members;

(b) need not be members of the limited liability company or natural persons; and

(c) unless they have been earlier removed or have earlier resigned, shall hold office until their successors are elected and qualified.

Section 25. **Duties of members and managers.** (1) Subject to contrary provision of articles of organization or an operating agreement, a member or manager is not liable, responsible, or accountable in damages or otherwise to the limited liability company or to the members of the limited liability company for any action taken or for failure to act on behalf of the limited liability company unless the act or omission constitutes gross negligence or willful misconduct.

(2) Each member and manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived by the member or manager without the consent of a majority of the disinterested members or managers or other persons participating in the management of the business or affairs of the limited liability company from:

(a) any transaction connected with the conduct or winding up of the limited liability company; or

(b) any use by the member or manager of its property, including but not limited to confidential or proprietary information of the limited liability company or other matters entrusted to the member or manager as a result of the member's or manager's status as member or manager.

(3) A member who is not also a manager of a limited liability company in which management is vested in managers under [section 24] has no duty to the limited liability company or to the other members solely by reason of acting in the capacity as a member.

Section 26. **Voting.** (1) Except as provided in the articles of organization, the operating agreement, or [sections 1 through 78] and subject to subsection (2), the affirmative vote, approval, or consent of more than one-half of the members, if management of the limited liability company is vested in the members, or of the managers or other persons vested with the management of the limited liability company, if the management of the limited liability company is vested in the managers or persons, is required to decide any matter connected with the business.

(2) Except as provided in writing in the articles of organization or the operating agreement, the affirmative vote, approval, or consent of all members is required to:

(a) amend the articles of organization or a written operating agreement; or

(b) authorize a member, manager, or other person to do any act on behalf of the limited liability company that contravenes the articles of organization or a written operating agreement, including any written provision of the articles of organization or a written operating agreement that expressly limits the purpose, business, or affairs of the limited liability company or its conduct.

Section 27. **Limitation of liability and indemnification of members and managers.** (1) Subject to subsection (2), the articles of organization or operating agreement may:

(a) eliminate or limit the personal liability of a member or a manager for monetary damages for breach of any duty provided for in [section 25]; and

(b) provide for indemnification of the member or the manager for judgments, settlements, penalties, fines, or expenses incurred in a proceeding to which an individual is a party because the individual is or was a member or a manager.

(2) A provision permitted under subsection (1) may not limit or eliminate the liability of a member or a manager for:

(a) the amount of a financial benefit received by a member or a manager to which the member or the manager is not entitled;

(b) an intentional infliction of harm by the member or the manager on the limited liability company or its members;

(c) an intentional violation of criminal law by the member or the manager; or

(d) an unlawful distribution by the member or the manager.

Section 28. **Records and information.** (1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liability company shall keep at its principal place of business the following:

(a) a current and past list, setting forth the full name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) a copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the information and statements provided to or that should have been provided to the members to enable them to prepare their federal, state, and local tax returns for the period;

(d) copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) unless provided in writing in an operating agreement:

(i) a writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to by each member are to be made;

(ii) a writing, if any, stating events that require the limited liability company to be dissolved and its affairs wound up; and

(iii) other writings, if any, prepared pursuant to a requirement in an operating agreement.

(2) A member may, at the member's own expense, inspect and copy any limited liability company record, wherever the record is located, upon reasonable request during ordinary business hours.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in the managers, shall render, to the extent the circumstances make it just and reasonable, true and full information of all things affecting the members to any member and to the legal representative of any deceased member or of any member under legal disability.

(4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section may not be grounds for imposing liability on any person for the debts and obligations of the limited liability company.

Section 29. **Contributions to capital.** An interest in a limited liability company may be issued in exchange for property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

Section 30. **Liability for contribution.** (1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) (a) Except as provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any enforceable promises to contribute cash or property or to perform services

even if the member is unable to perform because of death, disability, or other reason.

(b) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value or the stated contribution that has not been made.

(3) (a) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return money or other property paid or distributed in violation of [sections 1 through 78] may be compromised only with the unanimous consent of the members.

(b) Notwithstanding the compromise, the original obligation may be enforced by a creditor of a limited liability company who extends credit or otherwise acts in reliance on the obligation after the member signs a writing that reflects the obligation and before the amendment or compromise.

Section 31. **Sharing of profits and losses.** Unless otherwise provided in the articles of organization or a written operating agreement, each member must be repaid that member's contributions to capital and share equally in the profits, losses, and surpluses remaining after all liabilities, including those to members, are satisfied.

Section 32. **Sharing of distributions.** Except as provided in [sections 33 and 50], distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in writing in the articles of organization or the operating agreement. If the articles of organization or the operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the articles of organization or the operating agreement or at the times determined by the members or managers pursuant to [section 26].

Section 33. **Distributions on event of dissociation.** Upon the occurrence of an event of dissociation under [section 45] that does not cause dissolution, a dissociating member is entitled to receive:

(1) any distribution to which the member is entitled under the articles of organization or the operating agreement; and

(2) if not otherwise provided in the articles of organization or the operating agreement, within a reasonable time after dissociation, the fair value of the member's interest in the limited liability company as of the date of dissociation based upon the member's right to share in distributions from the limited liability company.

Section 34. **Distribution in kind.** Except as provided in the articles of organization or the operating agreement:

(1) a member, regardless of the nature of the member's contribution, may not demand or receive any distribution from a limited liability company in any form other than cash; and

(2) a member may not be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the members exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

Section 35. **Distributions.** (1) A distribution may not be made if, after giving effect to the distribution:

(a) the limited liability company would not be able to pay its debts as they become due in the usual course of business; or

(b) the limited liability company's total assets would be less than the sum of its total liabilities plus, unless the articles of organization or the operating agreement provides otherwise, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution that are superior to the rights of the member receiving the distribution.

(2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) on either:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or

(b) a fair valuation or other method that is reasonable under the circumstances.

(3) Except as provided in subsection (5), the effect of a distribution under subsection (1) is measured as of:

(a) the date the distribution is authorized if the payment occurs within 120 days after the date of authorization; or

(b) the date payment is made if it occurs more than 120 days after the date of authorization.

(4) A limited liability company's indebtedness to a member incurred by reason of a distribution to be made to that member in accordance with this section is at parity with the limited liability company's indebtedness to its general unsecured creditors, except as otherwise provided by agreement.

(5) For purposes of this section:

(a) if terms of indebtedness provide that payment of principal and interest is to be made only if and to the extent that payment of a distribution to members could then be made under this section, indebtedness of a limited liability company, including indebtedness issued as a distribution, is not a liability for purposes of determinations made under subsection (2); and

(b) if the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is actually made.

Section 36. **Liability upon wrongful distribution.** (1) A member or manager who votes for or assents to a distribution in violation of the articles of organization, the operating agreement, or [section 35] is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating [section 35] or the articles of organization or the operating agreement if it is established that the member or manager did not act in compliance with [section 35].

(2) A member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:

(a) from each other member or manager who voted for or assented to the unlawful distribution; and

(b) from each member for the amount the member received, knowing that the distribution was made in violation of [section 35] or the articles of organization or the operating agreement.

Section 37. **Right to distribution.** Subject to [section 50], when a member becomes entitled to receive a distribution, the member has the status of and is entitled to all remedies available to a creditor of the limited liability company with respect to the distribution.

Section 38. **Ownership of limited liability company property.** (1) Property transferred to or otherwise acquired by a limited liability company becomes property of the limited liability company. A member has no interest in specific limited liability company property.

(2) Property may be acquired, held, and conveyed in the name of the limited liability company. Any estate in real property may be acquired in the name of the limited liability company, and title to any estate acquired must vest in the limited liability company rather than in the members individually.

Section 39. **Transfer of real property.** (1) Except as provided in subsection (5), title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any member in the name of the limited liability company.

(2) Title to property of the limited liability company that is held in the name of one or more members or managers may be transferred by an instrument of transfer executed by the persons in whose name title is held if there is an indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company, even if the name of the limited liability company is not indicated.

(3) Property transferred under subsection (1) or (2) may be recovered by the limited liability company if it proves that the act of the person executing the

instrument of transfer did not bind the limited liability company under [section 20] unless the property has been transferred by the initial transferee or a person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the limited liability company.

(4) Title to property of the limited liability company may be transferred free of any claims of the limited liability company or its members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of a limited liability company if title is held in the name of one or more persons other than the limited liability company and there is no indication in the instrument transferring title to the property to them of:

(a) their capacity as members or managers of a limited liability company; or

(b) the existence of a limited liability company.

(5) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:

(a) title to property of the limited liability company that is held in the name of the limited liability company may be transferred by an instrument of transfer executed by any manager in the name of the limited liability company; and

(b) a member, acting solely in the capacity of a member, may not transfer title as provided in subsection (5)(a).

Section 40. **Nature of membership interest.** A membership interest is personal property.

Section 41. **Assignment of membership interest.** (1) Except as provided in writing in the articles of organization or an operating agreement:

(a) a membership interest is assignable in whole or in part;

(b) an assignment entitles the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;

(c) an assignment of a membership interest does not of itself dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or to exercise any rights of a member;

(d) until the assignee of a limited liability company interest becomes a member, the assignor continues to be a member and to have the power to exercise rights of a member, subject to the members' right to remove the assignor pursuant to [section 45(1)(c)(ii)];

(e) until an assignee of a membership interest becomes a member, the assignee has no liability as a member solely as a result of the assignment; and

(f) the assignor of a membership interest is not released from liability as a member solely as a result of the assignment.

(2) The articles of organization or an operating agreement may provide that a member's interest in a limited liability company may be evidenced by a certificate of membership interest issued by the limited liability company and may also provide for the assignment or transfer of a membership interest represented by a certificate and make other provisions with respect to the certificates.

(3) Unless otherwise provided in the articles of organization or an operating agreement, the pledge or granting of a security interest, lien, or other encumbrance in or against any of the membership interest of a member is not an assignment and may not cause the member to cease to be a member or to cease to have the power to exercise any rights or powers of a member.

Section 42. **Rights of judgment creditor.** On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the membership interest of the member with payment of the unsatisfied amount of judgment, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the membership interest. [Sections 1 through 78] does not deprive a member of the benefit of any exemption laws applicable to a membership interest.

Section 43. **Right of assignee to become member.** (1) Except as otherwise provided in the articles of organization or a written operating agreement, an assignee of an interest in a limited liability company may become a member only if the other members unanimously consent.

(2) An assignee who becomes a member has, to the extent assigned, the rights and powers of and is subject to the restrictions and liabilities of a member under the articles of organization, an operating agreement, and [sections 1 through 78]. An assignee who becomes a member is liable for obligations of the assignor to make contributions and to return distributions under [section 30]; however, the assignee is not obligated for liabilities of which the assignee had no knowledge at the time the assignee became a member and that could not be ascertained from the articles of organization or a written operating agreement.

(3) Whether or not an assignee of a membership interest becomes a member, the assignor is not released from liability to the limited liability company under [section 30].

(4) Except as otherwise provided in writing in the articles of organization or the operating agreement, a member who assigns the member's entire interest in the limited liability company ceases to be a member and to have the power to exercise any rights of a member when the assignee becomes a member with respect to the assigned interest.

Section 44. **Admission of members.** (1) Subject to subsection (2), a person may become a member in a limited liability company:

(a) in the case of a person acquiring a limited liability company interest directly from the limited liability company, upon compliance with the articles of organization or the operating agreement or, if the articles of organization or the operating agreement does not so provide in writing, upon the written consent of all members; and

(b) in the case of an assignee of a limited liability company interest, as provided in [section 41].

(2) The effective time of admission of a member to a limited liability company is the later of:

(a) the date the limited liability company is formed; or

(b) the time provided in the articles of organization or the operating agreement or, if no time is provided, when the person's admission is reflected in the records of the limited liability company.

Section 45. **Events of dissociation.** (1) A person ceases to be a member of a limited liability company upon the occurrence of one or more of the following events:

(a) the member withdraws by voluntary act from the limited liability company as provided in subsection (3);

(b) the member ceases to be a member of the limited liability company as provided in [section 43];

(c) the member is removed as a member:

(i) in accordance with the articles of organization or the operating agreement; or

(ii) subject to contrary written provisions in the articles of organization or the operating agreement, by an affirmative vote of a majority of the members who have not assigned their interests when the member assigns all the member's interest in the limited liability company;

(d) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, the member:

(i) makes an assignment for the benefit of creditors;

(ii) files a voluntary petition in bankruptcy;

(iii) is adjudicated as bankrupt or insolvent;

(iv) files a petition or answer seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;

(v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding under subsection (1)(d); or

(vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of any substantial part of the member's properties;

(e) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time if:

(i) 120 days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed;

(ii) within 90 days after the appointment without the member's consent or acquiescence of a trustee, receiver, or liquidator of the member or of any substantial part of the member's properties, the appointment is not vacated or stayed; or

(iii) within 90 days after the expiration of any stay, the appointment is not vacated;

(f) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of a member who is an individual:

(i) the member's death; or

(ii) the entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage the member's person or estate;

(g) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of a member who is a trustee or is acting as a member by virtue of being a trustee of a trust, the termination of the trust but not merely the substitution of a new trustee;

(h) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company;

(i) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of a member that is a corporation, the filing of articles of dissolution, or the equivalent for the corporation, or involuntary dissolution and the lapse of 90 days after notice to the corporation of revocation without a reinstatement of its charter;

(j) subject to contrary written provisions in the articles of organization or the operating agreement or written consent of all members at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company; or

(k) if the limited liability company is a professional limited liability company, a member becomes a disqualified person.

(2) The members may provide in writing in the articles of organization or the operating agreement for other events that result in a person ceasing to be a member of the limited liability company.

(3) Unless the articles of organization or the operating agreement provides in writing that a member may not withdraw by voluntary act from a limited liability company, the member may withdraw at any time by giving 30 days' written notice to the other members or other notice required in the articles of

organization or the operating agreement. Unless otherwise provided in the articles of organization or the operating agreement, in the case of a limited liability company for a definite term or particular undertaking, a withdrawal by a member before the expiration of that term is a breach of the articles of organization or the operating agreement. If a member has the power to withdraw but the withdrawal violates a provision of the articles of organization or is a breach of the operating agreement or the withdrawal occurs as a result of otherwise wrongful conduct of the member, the limited liability company may:

(a) recover from the withdrawing member damages for violation of the articles of organization or for breach of the operating agreement, including the reasonable cost of obtaining replacement of the services the withdrawn member was obligated to perform;

(b) offset the damages against the amount otherwise distributable to the member; and

(c) pursue any other remedies provided for in the articles of organization or the operating agreement or otherwise available under applicable law.

Section 46. **Dissolution.** A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

(1) at the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

(2) the written consent of all members;

(3) an event of dissociation of a member, unless the business of the limited liability company is continued by the consent of all the remaining members within 90 days following the occurrence of an event of dissociation or as otherwise provided in writing in the articles of organization or operating agreement; or

(4) entry of a decree of judicial dissolution under [section 47].

Section 47. **Judicial dissolution.** On application by or for a member, a district court may order dissolution of a limited liability company, or other appropriate relief, when it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.

Section 48. **Winding up.** (1) Except as otherwise provided in the articles of organization or the operating agreement, the business or affairs of the limited liability company may be wound up:

(a) by the members or managers who have authority under [section 23] to manage the limited liability company prior to dissolution; or

(b) if one or more of the members or managers have engaged in wrongful conduct or upon other cause shown, by the district court on application of any member or any member's legal representative or assignee.

(2) The persons winding up the business or affairs of the limited liability company may, in the name of and for and on behalf of the limited liability company:

(a) prosecute and defend suits;

(b) settle and close the business of the limited liability company;

(c) dispose of and transfer the property of the limited liability company;

(d) discharge the liabilities of the limited liability company; and

(e) distribute to the members any remaining assets of the limited liability company.

Section 49. **Agency power of members or managers after dissolution.** (1) Except as provided in subsections (3) through (5), after an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) by an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) by any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of dissolution is presumed to constitute notice of dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

Section 50. **Distribution of assets.** Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under [section 33 or 34];

(2) unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under [section 33 or 34]; and

(3) unless otherwise provided in the articles of organization or an operating agreement, to members first for the return of their contributions and second

respecting their limited liability company interests, in the proportions in which the members share in distributions.

Section 51. **Articles of dissolution.** Upon the dissolution and the commencement of winding up of the limited liability company, articles of dissolution must be filed in the office of the secretary of state and must set forth:

(1) the name of the limited liability company;

(2) the date of filing of its articles of organization and all amendments to the articles;

(3) the reason for filing the articles of dissolution;

(4) the effective date of the articles of dissolution, which must be a date certain, if they are not to be effective upon the filing;

(5) any other information that the members or managers filing the articles determine necessary;

(6) the name of the agent or agents authorized to receive service of process after dissolution of the limited liability company; and

(7) the name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company.

Section 52. **Revocation of dissolution.** (1) A limited liability company may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholders' action.

(3) After the revocation of dissolution is authorized, the limited liability company may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the limited liability company;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized; and

(d) a statement of the action that was taken to revoke the dissolution.

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution, and the limited liability company resumes carrying on its business as if dissolution had never occurred.

Section 53. **Known claims against dissolved limited liability companies.** (1) A dissolved limited liability company may dispose of the known claims against it by filing articles of dissolution pursuant to [section 53] and following the procedure described in this section.

(2) The dissolved limited liability company shall notify its known claimants in writing of the dissolution at any time after the effective date of the dissolution. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the later of the effective date of the written notice or the filing of the articles of dissolution pursuant to [section 51], by which the dissolved limited liability company must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved limited liability company is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved limited liability company by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution.

Section 54. **Unknown claims against dissolved limited liability companies.** (1) Subject to [section 53], the dissolution of a limited liability company, including dissolution by the expiration of its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution. A proceeding by or against the limited liability company may be prosecuted or defended by the limited liability company in its name. The members and managers have power to take action as appropriate to protect the remedy, right, or claim.

(2) A claim may be enforced under [section 53] or this section:

(a) against the dissolved limited liability company, to the extent of the undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved limited liability company, to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.

(3) Subsections (1) and (2) apply to foreign limited liability companies and their members transacting business in this state for any claims otherwise arising or accruing under Montana law.

Section 55. **Authority to transact business required.** (1) A foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the members or managers or carrying on other activities concerning internal affairs of the limited liability company;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a function of the limited liability company;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

Section 56. **Consequences of transacting business without authority.** (1) A foreign limited liability company transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it

determines that a certificate is required, the court may further stay the proceeding until the foreign limited liability company or its successor obtains the certificate.

(4) A foreign limited liability company is liable for a civil penalty of $5 for each day, but not to exceed a total of $1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection and deposit them to the general fund.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this state.

Section 57. **Application for certificate of authority.** (1) A foreign limited liability company may apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company or, if its name is unavailable for use in this state, a name that satisfies the requirements of [section 63];

(b) the name of the state or country under whose law it is organized;

(c) its date of organization and period of duration;

(d) the street address of its principal office;

(e) the address of its registered office in this state and the name of its registered agent at that office; and

(f) the names and usual business addresses of its current managers, if different from its members.

(2) A foreign limited liability company shall deliver with the completed application a certificate of existence or a similar document authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law the foreign limited liability company is organized.

Section 58. **Registered office and registered agent of foreign limited liability company.** Each foreign limited liability company authorized to transact business in this state shall continuously maintain in this state:

(1) a registered office that may be the same as any of its places of business; and

(2) a registered agent who may be:

(a) an individual who resides in this state and whose business office is identical with the registered office; or

(b) a domestic corporation, a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state.

Section 59. **Resignation of registered agent of foreign limited liability company.** (1) The registered agent of a foreign limited liability company may resign the agency appointment by signing and delivering to the secretary of state for filing the original and two copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(2) After filing the statement, the secretary of state shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if the office has not been discontinued. The secretary of state shall mail the other copy to the foreign limited liability company at its principal office address shown in its most recent annual report.

(3) The agency appointment is terminated and the registered office discontinued, if provided in the statement, 30 days after the date on which the statement was filed.

Section 60. **Change of registered office or registered agent of foreign limited liability company.** (1) A foreign limited liability company authorized to transact business in this state may change its registered office or registered agent, or both, by delivering to the secretary of state, for filing, a statement of change setting forth:

(a) the foreign limited liability company's name;

(b) the street address of its current registered office;

(c) if the address of its registered office is to be changed, the new address of the registered office;

(d) the name and address of its current registered agent;

(e) if its registered agent or the agent's address is to be changed, the name and address of the successor registered agent or the current registered agent's new address; and

(f) the fact that after the change or changes are made, the street addresses of its registered office and the business office of its registered agent are identical.

(2) If a registered agent changes the street address of the registered agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the registered agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state, for filing, a statement of change that complies with the requirements of subsection (1) and that states that the foreign limited liability company has been notified of the change.

Section 61. **Amended certificate of authority.** (1) A foreign limited liability company authorized to transact business in this state shall obtain an amended certificate of authority from the secretary of state if it changes:

(a) its name;

(b) the period of its duration; or

(c) the state or country of its organization.

(2) The requirements of [section 57] for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.

Section 62. **Effect of certificate of authority.** (1) A certificate of authority issued by the secretary of state authorizes a foreign limited liability company to transact business in this state subject to the right of the state to revoke the certificate as provided in [sections 55 through 68].

(2) A foreign limited liability company with a valid certificate of authority has the same rights and privileges as a domestic company of similar character and, except as otherwise provided by [sections 55 through 68], is subject to the same duties, restrictions, penalties, and liabilities imposed on a domestic limited liability company of similar character.

(3) [Sections 55 through 68] do not authorize the state to regulate the organization or internal affairs of a foreign limited liability company authorized to transact business in the state.

Section 63. **Name.** A certificate of authority may not be issued to a foreign limited liability company unless the name of the company satisfies the requirements of [section 3]. If the name of a foreign limited liability company does not satisfy the requirements of [section 3], to obtain or maintain a certificate of authority:

(1) the foreign limited liability company may add the words "limited company", the abbreviation "l.l.c.", or the abbreviation "l.c." to its name for use in this state; or

(2) if its real name is unavailable, the foreign limited liability company may use an assumed business name that is available and that satisfies the requirements of [section 15] if it files the assumed business name with the secretary of state.

Section 64. **Withdrawal of foreign limited liability company.** (1) A foreign limited liability company authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the secretary of state.

(2) A foreign limited liability company authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

(a) the name of the foreign limited liability company and the name of the state or country under whose law it is organized;

(b) that it is not transacting business in this state and that it surrenders its authority to transact business in this state;

(c) that it revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this state;

(d) a mailing address to which the secretary of state may mail a copy of any process served on the secretary of state under subsection (3);

(e) a commitment to notify the secretary of state in the future of any change in its mailing address;

(f) that all taxes imposed on the foreign limited liability company by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to the application to the effect that the department is satisfied from the available evidence that all taxes imposed have been paid. The issuance of the certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

(g) additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by the foreign limited liability company.

(3) After the withdrawal of the foreign limited liability company is effective, service of process on the secretary of state under this section is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under subsection (2).

Section 65. **Grounds for revocation.** The secretary of state may commence a proceeding under [section 66] to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this state if:

(1) the foreign limited liability company does not deliver its annual report to the secretary of state within 140 days after it is due;

(2) the foreign limited liability company is without a registered agent or registered office in this state for 60 days or more;

(3) the foreign limited liability company does not inform the secretary of state under [section 5] that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within 60 days of the change, resignation, or discontinuance; or

(4) the secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of company records in the state or country under whose law the foreign limited liability company is organized, stating that it has been dissolved or disappeared as the result of a merger.

Section 66. **Procedure for and effect of revocation.** (1) If the secretary of state determines that one or more grounds exist under [section 65] for revocation of a certificate of authority, the secretary of state shall serve the foreign limited liability company with written notice of the secretary of state's determination.

(2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after service of the notice is mailed, the secretary of state may revoke the foreign limited liability company's certificate of authority by signing a certificate

of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and mail a copy to the foreign limited liability company.

(3) The authority of a foreign limited liability company to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign limited liability company's certificate of authority appoints the secretary of state as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign limited liability company was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign limited liability company. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign limited liability company at its principal office shown in its most recent annual report or in any subsequent communication received from the foreign limited liability company, stating the current mailing address of its principal office or, if no report or communication is on file, in its application for a certificate of authority.

(5) Revocation of a foreign limited liability company's certificate of authority does not terminate the authority of the registered agent of the foreign limited liability company.

Section 67. **Appeal from revocation.** (1) A foreign limited liability company may appeal the secretary of state's revocation of its certificate of authority to the district court within 30 days after service of the certificate of revocation is mailed. The foreign limited liability company may appeal by petitioning the court to set aside the revocation and by attaching to the petition copies of its certificate of authority and the secretary of state's certificate of revocation.

(2) The court may summarily order the secretary of state to reinstate the certificate of authority or may take any other action the court considers appropriate.

(3) The court's final decision may be appealed as in other civil proceedings.

Section 68. **Admission of foreign professional limited liability companies — application — revocation.** (1) A foreign professional limited liability company is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the foreign professional limited liability company meets the requirements of [section 73];

(b) the foreign professional limited liability company is organized only for purposes for which a professional limited liability company may be organized under [sections 72 through 78]; and

(c) all the members and not less than one-half of the managers of the foreign professional limited liability company are qualified persons with respect to the foreign professional limited liability company.

(2) Notwithstanding [section 55], a foreign professional limited liability company may not be required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the members and not less than one-half of the managers are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the foreign professional limited liability company.

(4) The certificate of authority may be revoked by the secretary of state if the foreign professional limited liability company fails to comply with any provision of [sections 72 through 78]. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional limited liability companies that have given cause for revocation, together with the pertinent facts, and shall concurrently mail to each foreign professional limited liability company at its registered office in this state a notice that the certification has been made. A certificate of authority of a foreign professional limited liability company may not be revoked unless there have been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during the 60 days.

(5) A foreign professional limited liability company is subject to all other provisions of [sections 72 through 78] not inconsistent with this section.

Section 69. **Suits by and against limited liability company.** Suit may be brought by or against a limited liability company in its own name.

Section 70. **Authority to sue on behalf of limited liability company.** Except as otherwise provided in the articles of organization or the operating agreement, suit on behalf of the limited liability company may be brought in the name of the limited liability company by:

(1) any member or members of a limited liability company, whether or not the articles of organization vest management of the limited liability company in one or more managers who are authorized to sue by the vote of more than one-half of the members, unless the vote of all members is required under [section 26(2)], provided that in determining the vote required under [section 26], the vote of a member who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company must be excluded; or

(2) any manager or managers of a limited liability company, if the articles of organization vest management of the limited liability company in one or more managers, who are authorized to bring suit on behalf of the limited liability company by the vote required pursuant to [section 26], provided that in determining the required vote, the vote of a manager who has an interest in the outcome of the suit that is adverse to the interest of the limited liability company must be excluded.

Section 71. **Merger.** (1) Pursuant to any agreement, a domestic limited liability company may merge with or into one or more limited liability companies formed under the laws of this state or any other state. The surviving limited liability company is as provided in the merger agreement.

(2) A domestic limited liability company that is not the surviving limited liability company in the merger shall file articles of dissolution that must have an effective date not later than the effective date of the merger.

(3) If, following a merger of one or more domestic limited liability companies or one or more limited liability companies formed under the laws of any other state, the surviving limited liability company is not a domestic limited liability company, there must be attached to the articles of dissolution for each domestic limited liability company articles of merger executed by the surviving limited liability company:

(a) stating that the surviving limited liability company may be served with process in the state of Montana in any action, suit, or proceeding for the enforcement of any obligation of the domestic limited liability company;

(b) irrevocably appointing the secretary of state as the surviving limited liability company's agent to accept service of process in any action, suit, or proceeding; and

(c) specifying the address to which a copy of process must be mailed to the surviving limited liability company by the secretary of state.

(4) When the articles of dissolution required by subsection (2) have become effective, the following must be vested in and enforced against the surviving limited liability company as they were in each of the limited liability companies that merged:

(a) all of the rights, privileges, and powers of each of the limited liability companies that merged;

(b) all property, real, personal, and mixed;

(c) all debts due to any of the limited liability companies; and

(d) all other things and causes of action belonging to each of the limited liability companies.

Section 72. **Purposes of professional limited liability companies.** Professional limited liability companies may be organized under [sections 72 through 78] only for the purpose of rendering professional services and services ancillary to professional services within a single profession, except that a professional limited liability company may be organized for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which companies may be organized under [sections 1 through 78] to the extent that the combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to the professions.

Section 73. **Professional limited liability company name.** The name of a domestic or foreign professional limited liability company:

(1) must contain the words "professional limited liability company", "professional l.l.c.", or "p.l.l.c."; and

(2) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of organization.

Section 74. **Professional limited liability company managers.** At least one-half of the managers of a professional limited liability company must be qualified persons with respect to the limited liability company.

Section 75. **Membership in professional limited liability company.** (1) Only the following persons may be members of a professional limited liability company:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of organization of the professional limited liability company;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of organization of the professional limited liability company; and

(c) domestic or foreign professional corporations and domestic or foreign professional limited liability companies authorized by law in this state to render a professional service permitted by the articles of organization of the professional limited liability company.

(2) The licensing authority may by rule further restrict or condition the issuance of membership interests in order to preserve ethical standards, but a rule may not cause a member at the time the rule becomes effective to become a disqualified person.

Section 76. **Rendering services.** A domestic or foreign professional limited liability company may render professional services in this state only through natural persons permitted to render the services in this state; however, nothing in [sections 72 through 78] requires any person employed by a professional limited liability company to be licensed to perform services for which a license is not otherwise required or prohibits the rendering of professional services by a licensed natural person acting in that person's individual capacity, even if the person is a member or manager of a professional limited liability company.

Section 77. **Responsibility for services.** (1) An individual who renders professional services as an employee of a domestic or foreign professional limited liability company is liable for any negligent or wrongful act or omission in which the individual personally participates to the same extent as if the individual had rendered the services as a sole practitioner. An employee of a professional limited liability company is not liable for the conduct of other employees unless the employee is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional limited liability company whose employee performs professional services within the scope of the employee's employment or apparent authority to act for the company is liable to the same extent as the employee.

(3) Except as otherwise provided by statute, the personal liability of a member of a domestic or foreign professional limited liability company is no

greater in any respect than that of a member of a limited liability company otherwise organized under [sections 72 through 78].

Section 78. **Relationship to clients and patients.** (1) The relationship between an individual performing professional services as an employee of a domestic or foreign professional limited liability company and a client or patient is the same as if the individual performed the services as a sole practitioner.

(2) The relationship between a domestic or foreign professional limited liability company performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a domestic or foreign professional limited liability company and its employees.

Section 79. Section 30-13-141, MCA, is amended to read:

"**30-13-141. Definitions.** As used in 30-13-141 through 30-13-147, the following definitions apply:

(1) "Owner" means the person who owns the original fixation of sounds embodied in a master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.

(2) "Performer" means the person or persons appearing in a performance.

(3) "Person" means any individual, firm, partnership, *limited liability company,* corporation, or association.

(4) "Sound recording" means a phonograph record, disc, wire, tape, film, or other article on which sound is recorded."

Section 80. Section 30-13-202, MCA, is amended to read:

"**30-13-202. Registration of assumed business name — when prohibited.** (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name which is the same as or deceptively similar to an assumed business name already registered or to any corporate name, limited partnership name, *limited liability company name,* trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) When the applicant is other than a corporation, ~~or~~ limited partnership, *or limited liability company,* the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of ~~such~~ *the* words."

Section 81. Section 30-13-301, MCA, is amended to read:

"30-13-301. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Applicant" means the person filing an application for registration of a trademark under this part or ~~his~~ *the person's* legal representatives, successors, or assigns.

(2) "Mark" means any trademark or service mark entitled to registration under this part whether registered or not.

(3) "Person" means any individual, firm, partnership, *limited liability company,* corporation, association, union, or other organization.

(4) "Registrant" means the person to whom the registration of a trademark under this part is issued or ~~his~~ *the person's* legal representatives, successors, or assigns.

(5) "Service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others.

(6) "Trade name" means a word, name, symbol, device, or any combination thereof used by a person to identify ~~his~~ *the person's* business, vocation, or occupation and distinguish it from the business, vocation, or occupation of others.

(7) "Trademark" means any word, name, symbol, device, or any combination thereof adopted and used by a person to identify goods made or sold by ~~him~~ *the person* and to distinguish them from goods made or sold by others."

Section 82. Section 30-13-311, MCA, is amended to read:

"30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who adopts and uses a mark in this state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for ~~such~~ registration and, if a corporation, the state of incorporation *or, if a limited liability company, the state of organization*;

(b) the essential feature of the mark to be registered;

(c) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with ~~such~~ *the* goods or services and the class in which ~~such~~ *the* goods or services fall;

(d) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or ~~his~~ *the applicant's* predecessor in business;

(e) a statement that the mark is presently in use in this state by the applicant; and

(f) a statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form ~~thereof~~ or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken for it.

(2) The application must be signed by the applicant or a member of the firm *or limited liability company* or an officer of the corporation or association applying.

(3) The application must be accompanied by two copies of a specimen or facsimile of ~~such~~ *the* mark.

(4) The application for registration must be accompanied by a filing fee as provided for in 30-13-320."

Section 83. Section 35-1-308, MCA, is amended to read:

"**35-1-308. Corporate name.** (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited"; the abbreviation "corp.", "inc.", "co.", or "ltd."; or words or abbreviations of similar meaning in another language; and

(b) may not contain language that states or implies that the corporation is organized for a purpose or purposes other than those permitted by 35-1-114 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of another corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only distinguishable for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, *limited liability company name,* trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names."

Section 84. Section 35-1-1031, MCA, is amended to read:

"**35-1-1031. Corporate name of foreign corporation.** (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-1-308, to obtain or maintain a certificate of authority to transact business in this state the foreign corporation shall:

(a) add the word "corporation", "incorporated", "company", or "limited" or the abbreviation "corp.", "inc.", "co.", or "ltd." to its corporate name for use in this state; or

(b) use a fictitious name to transact business in this state if its real name is unavailable and deliver to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name of a foreign corporation, including a fictitious name, must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name of another foreign corporation authorized to transact business in this state;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, *limited liability company name,* trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the secretary of state's records from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name of another domestic or foreign corporation, including the fictitious name, that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-1-308, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-1-308 and obtains an amended certificate of authority under 35-1-1029."

Section 85. Section 35-2-305, MCA, is amended to read:

"**35-2-305. Corporate name.** (1) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by 35-2-117 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) a corporate name reserved or registered under Title 35, chapter 1, 35-2-306, or 35-2-307;

(c) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a domestic business or nonprofit corporation that has been dissolved, but only distinguishable for a period of 120 days after the effective date of the dissolution; or

(e) any assumed business name, limited partnership name, *limited liability company name,* trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names."

Section 86. Section 35-2-826, MCA, is amended to read:

"**35-2-826. Corporate name of foreign corporation.** (1) If the corporate name of a foreign corporation does not satisfy the requirements of 35-2-305, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state, may use a fictitious name to transact business in this state if:

(a) its real name is unavailable; and

(b) it delivers to the secretary of state, for filing, a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.

(2) Except as authorized by subsections (3) and (4), the corporate name, including a fictitious name, of a foreign corporation must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309, 35-1-311, 35-2-306, or 35-2-307;

(c) the fictitious name of another foreign business or nonprofit corporation authorized to transact business in this state;

(d) the corporate name of a domestic corporation that has dissolved, but distinguishable only for a period of 120 days after the effective date of dissolution; and

(e) any assumed business name, limited partnership name, *limited liability company name,* trademark, or service mark registered or reserved with the secretary of state.

(3) A foreign corporation may apply to the secretary of state for authorization to use in this state the name of another corporation, incorporated or authorized to transact business in this state, that is not distinguishable in the records of the secretary of state from the name applied for. The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to transact business in this state and the foreign corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) If a foreign corporation authorized to transact business in this state changes its corporate name to one that does not satisfy the requirements of 35-2-305, it may not transact business in this state under the changed name until it adopts a name satisfying the requirements of 35-2-305 and obtains an amended certificate of authority under 35-2-823."

Section 87. Section 35-4-206, MCA, is amended to read:

"**35-4-206. Corporate name.** The name of a domestic or foreign professional corporation:

(1) must contain the words "professional corporation" or the abbreviation "P.C.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, *limited liability company name*, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation."

Section 88. Section 35-12-505, MCA, is amended to read:

"**35-12-505. Name.** The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain the words "limited partnership" in full;

(2) may not contain the name of a limited partner unless:

(a) it is also the name of a general partner; or

(b) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership; and

(4) may not be the same as or deceptively similar to the name of any corporation, ~~or~~ limited partnership, *or limited liability company* organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state."

Section 89. **Codification instruction.** [Sections 1 through 78] are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 78].

Approved March 18, 1993.

CHAPTER NO. 121

[SB 209]

AN ACT GENERALLY REVISING THE LAW REGARDING THE LICENSED PRACTICE OF OPTOMETRY; PROVIDING FOR THE PURPOSE OF THE REGULATION OF THE PRACTICE OF OPTOMETRY; CHANGING THE NAME OF THE BOARD OF OPTOMETRISTS TO THE BOARD OF OPTOMETRY; REVISING MEETING REQUIREMENTS OF THE BOARD; REQUIRING THAT THE LICENSURE EXAMINATION BE CONDUCTED BY THE NATIONAL BOARD OF EXAMINERS IN OPTOMETRY; REVISING QUALIFICATION REQUIREMENTS, RECIPROCITY, AND CONTINUING EDUCATION REQUIREMENTS FOR THE PRACTICE OF OPTOMETRY; REVISING THE DISCIPLINARY AUTHORITY OF THE BOARD OVER HOLDERS OF CERTIFICATES OF REGISTRATION; AMENDING SECTIONS 2-15-1846, 37-10-101, 37-10-201, 37-10-301, 37-10-302, 37-10-303, 37-10-308, AND 37-10-311, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1846, MCA, is amended to read:

"**2-15-1846. Board of ~~optometrists~~ *optometry*.** (1) There is a board of ~~optometrists~~ *optometry*.

(2) The board consists of four members appointed by the governor with the consent of the senate. Three members must be registered optometrists of this state and actually engaged in the exclusive practice of optometry in this state during their terms of office. One member must be a representative of the public who is not engaged in the practice of optometry.

(3) Members shall serve staggered 4-year terms.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. **Purpose.** The legislature finds that the practice of the profession of optometry is a privilege and is not a natural right of individuals. The legislature considers it necessary, in the interests of protecting the public health, safety, and welfare and in order to provide for the optometric needs of the public, to provide laws and delegate rulemaking authority regarding the granting of licenses and their subsequent use so that the public is protected from the unprofessional, improper, unauthorized, and unqualified practice of optometry.

Section 3. Section 37-10-101, MCA, is amended to read:

"**37-10-101. Definitions — practice of optometry.** (1) The practice of optometry is the profession constituting the art and science of visual care and is ~~hereby~~ defined to be any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions ~~which~~ *that* consummate the process of human vision to ascertain the presence ~~therein~~ of abnormal conditions or functions ~~which~~ *that* may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition of the process of vision ~~which~~ *that* may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, *and* any physical, mechanical, or physiological therapy~~,~~ and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those topical drugs, not including corticosteroids, approved by the board for use in ocular treatment limited to the anterior segment of the eye and adnexa. Glaucoma may not be treated.

(2) Nothing in subsection (1) prohibits an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

(3) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of ~~optometrists~~ *optometry* provided for in 2-15-1846; and

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18."

Section 4. Section 37-10-201, MCA, is amended to read:

"**37-10-201. Organization — meetings.** The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year, at Helena or some other place *within the state* designated by the president~~, on the fourth Monday of July~~ and, in addition, whenever ~~and wherever~~ the president and secretary call a meeting *at a location within the state.* The department shall keep a record of the proceedings of the board, which ~~shall~~ *must* be open to public inspection."

Section 5. Section 37-10-301, MCA, is amended to read:

"**37-10-301. Certificate required for practice — unlawful acts — injunction.** (1) It is unlawful for a person to:

(a) practice optometry in this state unless ~~he~~ *that person* has first obtained a certificate of registration;

(b) sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) materially alter with fraudulent intent a certificate of registration;

(e) use or attempt to use a certificate of registration ~~which~~ *that* has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application ~~for an examination by the department or~~ for a certificate of registration;

(h) advertise by displaying a sign or by otherwise ~~holding himself out~~ *claiming* to be an optometrist without having at the time a valid certificate of registration;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from:

(i) doing the merely mechanical work on an ophthalmic lens ~~which~~ *that* is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

(ii) replacing or duplicating an existing lens for glasses;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred."

Section 6. Section 37-10-302, MCA, is amended to read:

"**37-10-302. Examination — qualifications — application — issuance of certificate.** (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, ~~he~~ *the applicant* is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, ~~he~~ *the applicant* must pass an examination given by the *national board of examiners in optometry on behalf of the* department, subject to 37-1-101. Examinations ~~shall~~ *must* be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and ~~shall~~ *must* be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) ~~No~~ *A* person is *not* eligible to ~~take the examination~~ *receive a certificate of registration* unless ~~he~~ *that person* is 18 years of age or older and of good moral character.

(3) ~~No~~ *A* person is *not* eligible to ~~take the examination~~ *receive a certificate of registration* unless ~~he~~ *that person* has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and ~~which~~ *that* is accredited by the international association of boards of examiners in optometry. ~~Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.~~

(4) A person desiring ~~to be examined in optometry~~ *a certificate of registration* shall file an application, in the manner prescribed by the board, ~~at least 4 weeks before the examination is held,~~ and *pay* a fee prescribed by the board ~~shall accompany the application~~.

(5) A person *who* successfully ~~passing~~ *passes* the examination ~~shall~~ *administered by the national board of examiners in optometry and who has met the requirements for qualification as an optometrist must* be registered in a register ~~which shall be~~ kept by the department~~,~~ and, on the payment of a fee prescribed by the board, ~~shall~~ *must* receive a certificate of registration signed by the members of the board."

Section 7. Section 37-10-303, MCA, is amended to read:

"**37-10-303. Reciprocity.** If an applicant for a certificate of registration has been admitted to practice optometry in another state and has attained an average of 75% in ~~his~~ *the* examination in ~~the other~~ *that* state, ~~he~~ *that person* may, at the discretion of the board, be granted a certificate to practice ~~his profession~~ *optometry* in this state without examination, on payment of all fees, if the state ~~from~~ *in* which the applicant ~~comes~~ *is admitted to practice* offers equal privileges to applicants for certificates of registration from this state."

Section 8. Section 37-10-308, MCA, is amended to read:

"**37-10-308. Continuing education required for license renewal.** ~~A licensed optometrist in active practice in this state~~ *An optometrist licensed pursuant to 37-10-302 or 37-10-303* is required to attend not less than 12 hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the board as a prerequisite for ~~his~~ license renewal. A copy of this section ~~shall~~ *must* be sent to each licensee by the department prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason."

Section 9. Section 37-10-311, MCA, is amended to read:

"**37-10-311. Revocation — unprofessional conduct.** (1) The board may revoke *or suspend* a certificate of registration *or may reprimand, prescribe probation for, or censure the holder of a certificate of registration* for:

(a) physical or mental incompetence;

(b) gross malpractice or repeated malpractice;

(c) a violation of any of the provisions of this chapter or rules or orders of the board; or

(d) unprofessional conduct.

(2) Unprofessional conduct includes:

(a) obtaining a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, a suspended or unlicensed optometrist to perform work covered by this chapter;

(c) directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;

(d) permitting another to use ~~his~~ *the holder's* certificate of registration;

(e) soliciting or sending a solicitor from house to house;

(f) treatment or advice in which untruthful or improbable statements are made;

(g) professing to cure nonocular disease;

(h) advertising in which ambiguous or misleading statements are made; or

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist.

(3) Before a certificate is revoked~~,~~ *or suspended or before the holder is reprimanded, placed on probation, or censured,* the holder ~~shall~~ *must* be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked *or suspended* a second time ~~shall~~ *may* not be permitted to practice optometry in this state."

Section 10. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 37, chapter 10, and the provisions of Title 37, chapter 10, apply to [section 2].

Section 11. **Effective date.** [Sections 4 and 6 and this section] are effective on passage and approval.

Approved March 18, 1993.

CHAPTER NO. 122

[SB 241]

AN ACT EXTENDING THE TAPROOM BEER SALE EXEMPTION TO FOREIGN BREWERS; AMENDING SECTION 16-3-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-214, MCA, is amended to read:

"**16-3-214. Beer sales by brewers — taproom exception.** (1) Subject to the limitations and restrictions contained in this code, ~~any~~ *a* brewer ~~duly licensed as such by the United States of America~~ who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, ~~shall~~ *must* be licensed by the department, in accordance with the provisions of this code and ~~such~~ rules ~~as may be~~ prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery located in Montana to:

(i) a wholesaler;

(ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or

(iii) the public; or

(b) provide, without charge, its own products for consumption on its licensed premises; or

(c) do any one or more of ~~such~~ *the* acts of sale and delivery of beer.

(2) ~~No~~ *An* additional license fee may *not* be imposed on a brewery providing, without charge, its own products on its licensed premises for consumption on the premises.

(3) This section does not prohibit a brewer located outside of Montana from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1993.

CHAPTER NO. 123

[SB 250]

AN ACT CONFORMING THE OPEN MEETING LAW TO THE INTERPRETATION OF THE PUBLIC PARTICIPATION AND RIGHT TO KNOW PROVISIONS OF THE MONTANA CONSTITUTION BY REMOVING THE EXCEPTION FOR COLLECTIVE BARGAINING STRATEGY MEETINGS; AND AMENDING SECTION 2-3-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-3-203, MCA, is amended to read:

"**2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public — exceptions.** (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) Provided, however, the presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting ~~shall~~ *must* be open.

(4) *(a)* However, *except as provided in subsection (4)(b),* a meeting may be closed to discuss a strategy to be followed with respect to ~~collective bargaining or~~ litigation when an open meeting would have a detrimental effect on the ~~bargaining or~~ litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business which is within the jurisdiction of that agency ~~shall be~~ *is* subject to the requirements of this section."

Approved March 18, 1993.

CHAPTER NO. 124

[SB 273]

AN ACT REMOVING THE PROHIBITION AGAINST A POLICE OFFICER WORKING IN ANOTHER DEPARTMENT OF A THIRD-CLASS CITY OR A TOWN; PROVIDING A RESTRICTION; AMENDING SECTION 7-32-4114, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-4114, MCA, is amended to read:

"**7-32-4114. Restrictions on activities of policemen.** (1) ~~No~~ *Except as provided in subsection (2), a* member of the police force may *not* hold any other office or be employed in any other department of the city or town government.

(2) A member of the police force of a third-class city or of a town may be employed in another department of the city or town government. However, the member may not hold political office in the city or town government.

~~(2)~~*(3)* The fact that a person is an officer or member of the police department does not deprive ~~his~~ *the person's* spouse or any member of ~~his~~ *the person's* family of the right to participate in political activity or to hold public or political office.

~~(3)~~*(4)* An officer or member of the police department may participate in political activity provided ~~he~~ *that the officer* does not do so while on duty or in uniform or that it does not otherwise interfere with the performance of ~~his~~ duties."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1993.

CHAPTER NO. 125

[SB 328]

AN ACT CLARIFYING THAT THE LIEN AVAILABLE FOR SPRAYING OR DUSTING GRAINS OR CROPS INCLUDES BOTH AERIAL AND GROUND APPLICATION AND THE USE OF FERTILIZER; AMENDING SECTION 71-3-901, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-901, MCA, is amended to read:

"**71-3-901. Who may have lien — amount.** ~~Any~~ *A* person, firm, corporation, or partnership ~~which shall~~ *that* under contract, express or implied, ~~perform~~ *performs* labor or services or ~~furnish~~ *furnishes* material in crop dusting or spraying grains or crops, *whether by aerial or ground application,* for the purpose of *fertilization or* weed, disease, or insect control for promoting the growth of ~~such~~ *the* grains or crops ~~shall have~~ *has* a lien upon all ~~such~~ grains or crops ~~so crop~~ dusted or sprayed for and on account of the labor or service performed and material furnished, upon complying with the provisions of this part~~; provided, however, that any such lien shall~~. *A lien may* not exceed the prevailing price charged in the particular locality in which ~~such~~ *the* grain or crops are sprayed or dusted."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 18, 1993.

CHAPTER NO. 126

[SB 355]

AN ACT MAKING PERMANENT THE INCREASE IN FEE FOR A MOTORBOAT CERTIFICATE OF NUMBER; ALLOCATING THE FEE INCREASE TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ACQUIRE AND MAINTAIN MARINE SEWAGE PUMPOUT EQUIPMENT AND OTHER BOAT FACILITIES; AMENDING SECTION 23-2-512, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-512, MCA, is amended to read:

"**23-2-512.** *(Temporary)* **Identification number.** (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of $2.50. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft for the current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) Should the ownership of a motorboat, sailboat, or personal watercraft change, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the

numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continues in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of his interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and furnish the county treasurer with his new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. No numerals, letters, or devices other than those used in connection with the identifying number issued may be placed in the proximity of the identifying number. No numerals, letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may be carried as to interfere with the motorboat's, sailboat's, or personal watercraft's identification. No number other than the number and license decal assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number shall be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(10) (a) Except as provided in subsection (10)(b), fees, other than the fee in lieu of tax, collected under this section shall be transmitted to the state treasurer, who shall deposit the fees in the motorboat or sailboat certificate identification account of the state special revenue fund. These fees shall be used only for the administration and enforcement of this part, as amended.

(b) Of the fee collected under the provisions of subsection (1), 20% must be deposited by the state treasurer in an account in the state special revenue fund to the credit of the department to be used to provide necessary education for boat owners, to acquire decibel meters as required to implement the provisions of 23-2-523(9) and 23-2-526(3), and to acquire marine sewage pumpout equipment.

(11) An owner of a motorboat, sailboat, or personal watercraft must within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name when the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, abandoned, or frauded or within 60 days after change of state of principal use or if a motorboat becomes documented as a vessel of the United States. *(Terminates July 1, 1993—sec. 13, Ch. 728, L. 1991.)*

23-2-512. *(Effective July 1, 1993)* **Identification number.** (1) The owner of each motorboat, sailboat, or personal watercraft requiring numbering by this state shall file an application for number in the office of the county treasurer where the motorboat, sailboat, or personal watercraft is owned, on forms prepared and furnished by the department of justice. The application must be signed by the owner of the motorboat, sailboat, or personal watercraft and be accompanied by a fee of ~~$2~~ *$2.50*. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the department of justice, stating the number assigned to the motorboat, sailboat, or personal watercraft and the name and address of the owner.

(2) The applicant, upon the filing of the application, shall pay to the county treasurer the fee in lieu of tax required for a motorboat 10 feet in length or longer, a sailboat 12 feet in length or longer, or a personal watercraft for the current year of certification before the application for certification or recertification may be accepted by the county treasurer.

(3) Should the ownership of a motorboat, sailboat, or personal watercraft change, a new application form with the certification fee must be filed within a reasonable time with the county treasurer and a new certificate of number assigned in the same manner as provided for in an original assignment of number.

(4) If an agency of the United States government has in force a comprehensive system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this part by the department of justice must be in conformity.

(5) Every certificate of number and the license decals assigned under this part continues in effect for a period not to exceed 1 year unless terminated or discontinued in accordance with the provisions of this part. Certificates of number and license decals must show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(6) Certificates of number expire on December 31 of each year and may not be in effect unless renewed under this part.

(7) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice within a reasonable time of the acquisition of all or any part of ~~his~~ *the purchaser's* interest, other than the creation of a security interest, in a motorboat, sailboat, or personal watercraft numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat, sailboat, or personal watercraft. The transfer, loss, theft, destruction, or abandonment terminates the certificate of number for the motorboat, sailboat, or personal watercraft. Recovery from theft or transfer of a part interest that does not affect the owner's right to operate the motorboat, sailboat, or personal watercraft does not terminate the certificate of number.

(8) A holder of a certificate of number shall notify the county treasurer within reasonable time if ~~his~~ *the holder's* address no longer conforms to the address appearing on the certificate and *shall* furnish the county treasurer with ~~his~~ *the* new address. The department of justice may provide by rule for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(9) (a) The number assigned must be painted on or attached to each outboard side of the forward half of the motorboat, sailboat, or personal watercraft or, if there are no ~~such~~ sides, at a corresponding location on both outboard sides of the foredeck of the motorboat, sailboat, or personal watercraft. The number assigned must read from left to right in Arabic numerals and block characters of good proportion at least 3 inches tall excluding border or trim of a color that contrasts with the color of the background and be so maintained as to be clearly visible and legible. The number may not be placed on the obscured underside of the flared bow where it cannot be easily seen from another vessel or ashore. ~~No numerals~~ *Numerals,* letters, or devices other than those used in connection with the identifying number issued may *not* be placed in the proximity of the identifying number. ~~No numerals~~ *Numerals,* letters, or devices that might interfere with the ready identification of the motorboat, sailboat, or personal watercraft by its identifying number may *not* be carried ~~as to interfere~~ *in a manner that interferes* with the motorboat's, sailboat's, or personal watercraft's identification. ~~No~~ *A* number other than the number and license decal assigned to a motorboat, sailboat, or personal watercraft or granted reciprocity under this part may *not* be painted, attached, or otherwise displayed on either side of the forward half of the motorboat, sailboat, or personal watercraft.

(b) The certificate of number ~~shall~~ *must* be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, sailboat, or personal watercraft whenever the motorboat, sailboat, or personal watercraft is on waters of this state.

(c) Boat liveries are not required to have the certificate of number on board each motorboat, sailboat, or personal watercraft, but a rental agreement must be carried on board livery motorboats, sailboats, or personal watercraft in place of the certificate of number.

(10) *(a)* ~~Fees~~ *Except as provided in subsection (10)(b), fees,* other than the fee in lieu of tax, collected under this section ~~shall~~ *must* be transmitted to the state treasurer, who shall deposit the fees in the motorboat or sailboat certificate identification account of the state special revenue fund. These fees ~~shall~~ *must* be used only for the administration and enforcement of this part, as amended.

(b) Of the fee collected under the provisions of subsection (1), 20% must be deposited by the state treasurer in an account in the state special revenue fund to the credit of the department to be used to acquire and maintain marine sewage pumpout equipment and other boat facilities.

(11) An owner of a motorboat, sailboat, or personal watercraft must within a reasonable time notify the department of justice, giving the motorboat's, sailboat's, or personal watercraft's identifying number and the owner's name when the motorboat, sailboat, or personal watercraft is transferred, lost, destroyed, abandoned, or frauded or within 60 days after change of state of principal use or if a motorboat becomes documented as a vessel of the United States."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved March 18, 1993.

CHAPTER NO. 127

[HB 197]

AN ACT DESIGNATING SILVER BOW COUNTY AND DEER LODGE COUNTY AS A CULTURAL HERITAGE AREA; REQUIRING THE DEPARTMENT OF TRANSPORTATION, AS FUNDS BECOME AVAILABLE, TO ERECT AND MAINTAIN SIGNS IDENTIFYING THE CULTURAL HERITAGE AREA; PROVIDING A STATUTORY APPROPRIATION; AND AMENDING SECTION 17-7-502, MCA.

WHEREAS, Butte-Silver Bow and Anaconda-Deer Lodge are the sites of more than 100 years of living history of the early development of natural resources and the industrialization of America; and

WHEREAS, the cities of Butte and Anaconda have been recognized for their rich mining, smelting, social, labor, and ethnic history on the state and national levels; and

WHEREAS, Butte-Silver Bow and Anaconda-Deer Lodge make a significant contribution to understanding and interpreting the history of the great State of Montana; and

WHEREAS, the natural and cultural resources of the region have been inventoried, and an assessment has been made of the suitability of these resources for protection and interpretation; and

WHEREAS, Butte-Silver Bow has been designated a National Historic Landmark District by the U.S. Department of Interior and is listed on the National Register of Historic Places, as are many sites in Anaconda-Deer Lodge; and

WHEREAS, many of these nationally significant mining and smelting sites are threatened by demolition, vandalism, natural deterioration, and proposed reclamation; and

WHEREAS, natural and cultural resources of Butte-Silver Bow and Anaconda-Deer Lodge can make a substantial contribution to economic development in the region, especially in regard to enhancing tourism opportunities; and

WHEREAS, there exists a critical need to develop a comprehensive and coordinated plan of action to protect and interpret the historic/cultural future of Butte-Silver Bow and Anaconda-Deer Lodge.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Butte-Anaconda cultural heritage area.** There is established a cultural heritage area encompassing Silver Bow County and Deer Lodge County.

Section 2. **Cultural heritage area signs — location and design — funding.** (1) As used in this section, "department" means the department of transportation provided for in 2-15-2501.

(2) Subject to the provisions of federal law, the department shall, as funds are available under subsection (4), erect and maintain at specified locations on the primary and interstate highways in Silver Bow County and Deer Lodge County signs identifying those counties as a cultural heritage area.

(3) The consolidated governments of Butte-Silver Bow and Anaconda-Deer Lodge shall design the signs and designate the general locations for the signs. The department shall determine the exact location of each sign.

(4) The department may accept money from other state agencies, federal agencies, local governments, or private persons for the purposes of subsections (2) and (3) and may expend, as a statutory appropriation under 17-7-502, the money received for those purposes.

Section 3. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; *[section 2];* 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Approved March 19, 1993.

CHAPTER NO. 128

[HB 377]

AN ACT CLARIFYING THAT THE COMMISSIONER OF POLITICAL PRACTICES SHALL PROVIDE CANDIDATES WITH THE CODE OF FAIR CAMPAIGN PRACTICES; ELIMINATING THE REQUIREMENT THAT THE COMMISSIONER OF POLITICAL PRACTICES PROVIDE COPIES OF THE CODE OF FAIR CAMPAIGN PRACTICES TO THE SECRETARY OF STATE, COUNTY REGISTRARS, AND CITY AND TOWN CLERKS; AND AMENDING SECTION 13-35-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-35-302, MCA, is amended to read:

"**13-35-302. Candidates to be given opportunity to subscribe to campaign practices code ~~—publicity~~.** (1) The commissioner of ~~campaign~~ *political* practices shall prepare a form ~~which contains~~ *that sets forth* the code of fair campaign practices provided for in 13-35-301 and a place for a candidate to sign the form and to indicate that the candidate endorses, subscribes to, and pledges to abide by the code.

(2) ~~Each candidate required to file statements or reports with the commissioner shall be sent a copy of this form~~ *The commissioner shall send a copy of the form to each candidate required to file reports or other information with the commissioner.* Signing the form is voluntary, and a failure or refusal to sign is not a violation of the election laws. A form ~~shall~~ *must* be sent for each election as soon as feasible. The signed form ~~shall~~ *must* be returned to the commissioner.

(3) ~~The commissioner shall supply the secretary of state, the county registrars, and the city and town clerks with forms.~~ Any candidate not required to file with the commissioner but wishing to subscribe to the code may obtain the form from the commissioner~~, the secretary of state, a county registrar, or a city or town clerk~~ and may sign the form and deliver it to the commissioner."

Approved March 19, 1993.

CHAPTER NO. 129

[HB 380]

AN ACT AMENDING THE AIR QUALITY PERMIT REQUIREMENTS FOR INCINERATORS; REQUIRING AN AIR QUALITY PERMIT FOR BOILERS AND INDUSTRIAL FURNACES; ELIMINATING AN EXEMPTION FOR INCINERATORS THAT BURN 200 POUNDS OR LESS PER HOUR; AMENDING SECTIONS 75-2-103 AND 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

It is the intent of the legislature that the statutory size cutoff for incinerators that burn 200 pounds or less per hour, as provided for in 75-2-215, be eliminated and that the requirements of 75-2-215 be extended to boilers and industrial furnaces. As a result, the requirements of 75-2-215 would apply to all incinerators and all boilers and industrial furnaces subject to 75-10-406, regardless of size. In order to lessen the burden on the department of health and environmental sciences, the board of health and environmental sciences may provide by rule for general permits that apply to classes or categories of sources subject to the requirements of 75-2-215. The board shall use this authority to the greatest extent possible, consistent with its obligation to protect public health and the environment.

It is also the intent of the legislature to clarify the provisions of 75-2-215 by amending the definitions in 75-2-103. The definition of incinerator contains no reference to end use or economic value of the feed, but rather focuses on the process employed. The definition of solid waste is intended to be more encompassing than the use of that definition elsewhere in Title 75, and the reference to "marketable byproducts" contained in other definitions is intentionally omitted. The overriding purpose of this bill is to protect air quality, public health, and the physical environment, and the legislature does not believe it appropriate to draw distinctions in applicability based upon whether or not the incineration activity is, for example, associated with waste disposal or volume reduction in conjunction with recycling.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-103, MCA, is amended to read:

"**75-2-103. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which are or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(4) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Emission" means a release into the outdoor atmosphere of air contaminants.

(7) "Hazardous waste" means any material designated as hazardous waste pursuant to Title 75, chapter 10, part 4.

(8) (a) "Incinerator" means any single or multiple chambered combustion device that burns combustible material, alone or with a supplemental fuel or catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of all or any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters burning used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

~~(7)~~*(9)* "Person" means an individual, *a* partnership, *a* firm, *an* association, *a* municipality, *a* public or private corporation, *a* subdivision or agency of the state, *a* trust, *an* estate, or any other legal entity and includes persons resident in Canada.

(10) (a) "Solid waste" means all putrescible and nonputrescible solid, semisolid, liquid, or gaseous wastes, including but not limited to garbage; rubbish; refuse; ashes; swill; food wastes; commercial or industrial wastes; medical waste; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction, demolition, or salvage wastes; dead animals, dead animal parts, offal, animal droppings, or litter; discarded home

and industrial appliances; automobile bodies, tires, interiors, or parts thereof; wood products or wood byproducts and inert materials; styrofoam and other plastics; rubber materials; asphalt shingles; tarpaper; electrical equipment, transformers, or insulated wire; oil or petroleum products or oil or petroleum products and inert materials; treated lumber and timbers; and pathogenic or infectious waste.

(b) Solid waste does not include municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, or slash and forest debris regulated under laws administered by the department of state lands."

Section 2. Section 75-2-215, MCA, is amended to read:

"**75-2-215. Solid or hazardous waste incineration — additional permit requirements.** (1) ~~A~~ *Until the department has issued an air quality permit pursuant to 75-2-211 that includes the conditions required by this section, a* person may not construct, *install, alter, or* ~~modify~~ *use*~~, or operate~~ a solid or hazardous waste incinerator *or a boiler or industrial furnace subject to the provisions of 75-10-406, except as provided in subsection (2).* ~~of any of the following categories until the department has issued an air quality permit pursuant to this chapter, including the conditions provided in this section:~~

~~(a) a new solid or hazardous waste incinerator that is designed to burn more than 200 pounds an hour of solid or hazardous waste; or~~

~~(b) an existing or permitted solid or hazardous waste incinerator that is designed to burn more than 200 pounds an hour of solid or hazardous waste and that incinerates or would incinerate solid or hazardous waste in an amount, form, kind, or content different from its designed or permitted operation or that incinerates or would incinerate any solid or hazardous waste that changes the nature, character, or composition of its emissions.~~

(2) An existing or permitted solid or hazardous waste incinerator or a boiler or industrial furnace subject to the provisions of 75-10-406 is subject to the provisions of subsection (1) only if it incinerates or uses as fuel or would incinerate or use as fuel solid or hazardous waste in an amount, form, kind, or content that changes the nature, character, or composition of its emissions from its design or permitted operation.

~~(2)~~*(3)* The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing ~~incineration~~ *emission source* at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste *or the use of hazardous waste as fuel for a boiler or industrial furnace,* as proposed in the permit application or modification;

(b) the public has had an opportunity to review and comment on the permit application or modification; and

(c) the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment.

~~(3)~~*(4)* The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(5) The board may by rule provide for general air quality permits under the provisions of 75-2-211 and this section. The rules must cover numerous similar classes or categories of incinerators and boilers or industrial furnaces.

~~(4)~~*(6)* This section does not relieve an owner or operator of a solid or hazardous waste incinerator *or a boiler or industrial furnace* that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter."

Section 3. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 19, 1993.

CHAPTER NO. 130

[SB 52]

AN ACT ALLOWING THE INTEREST EARNED ON COUNTY ROAD FUND OR COUNTY BRIDGE FUND MONEY TO BE CREDITED TO THE ROAD FUND OR BRIDGE FUND; AMENDING SECTION 7-6-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-204, MCA, is amended to read:

"**7-6-204. Crediting of interest.** (1) Unless otherwise provided, ~~all~~ interest paid and collected on ~~such~~ deposits or investments ~~shall~~ *must* be credited to the general fund of the county, city, or town to whose credit ~~such~~ *the* funds are deposited.

(2) ~~All interest~~ *Interest* paid and collected on the deposits or investments of the funds of a volunteer fire district or department organized in an unincorporated area under Title 7, chapter 33, part 21 or 23, must be credited to the account of that fire district or department.

(3) Interest paid and collected on the deposits or investments of the county road fund or county bridge fund may be credited to the county road fund or county bridge fund."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved March 19, 1993.

CHAPTER NO. 131

[SB 86]

AN ACT ALLOWING THE STATE TREASURER TO USE OUT-OF-STATE FINANCIAL INSTITUTIONS FOR SERVICES THAT ARE NOT AVAILABLE THROUGH IN-STATE FINANCIAL INSTITUTIONS; AND AMENDING SECTION 17-6-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-101, MCA, is amended to read:

"**17-6-101. Deposit of funds in the hands of the state treasurer.** (1) Under the direction of the board of investments, the state treasurer shall deposit public ~~moneys~~ *money* in ~~his~~ *the treasurer's* possession and under ~~his~~ *the treasurer's* control in solvent banks, building and loan associations, savings and loan associations, and credit unions located in the state, except as otherwise provided by law, subject to national supervision or state examination.

(2) If needed financial services are not available through solvent banks, building and loan associations, savings and loan associations, and credit unions located in the state, the state treasurer may deposit public money in out-of-state financial institutions subject to national supervision.

~~(2)~~*(3)* The state treasurer shall deposit funds in ~~such~~ banks, building and loan associations, savings and loan associations, and credit unions and in ~~such~~ amounts ~~as~~ *that* may be designated by the board of investments and withdraw ~~such~~ deposits when instructed to by the board of investments.

~~(3)~~*(4)* When ~~moneys have~~ *money has* been deposited under the board of investments and in accordance with the law, the treasurer is not liable for loss on account of any ~~such~~ deposit occurring from any cause other than ~~his~~ *the treasurer's* own neglect or fraud.

~~(4)~~*(5)* The state treasurer shall withdraw all deposits or any part ~~thereof~~ *of the deposits* from time to time to pay and discharge the legal obligations of the state ~~duly~~ presented to ~~him~~ *the treasurer* in accordance with the law."

Approved March 19, 1993.

CHAPTER NO. 132

[SB 129]

AN ACT ELIMINATING THE REQUIREMENT THAT AN ATTEMPT BE MADE TO IDENTIFY THE DRIVER OF A VEHICLE VIOLATING SCHOOL BUS REGULATIONS; AND AMENDING SECTION 61-8-351, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-351, MCA, is amended to read:

"**61-8-351. Meeting or passing school bus — ~~identification of violator —~~ penalty.** (1) The driver of a vehicle upon a highway or street either inside or outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus ~~which~~ *that* has stopped on the highway or street ~~for the purpose of receiving~~ *to receive* or ~~discharging~~ *discharge* any school children*:*

(a) shall stop the vehicle not less than 10 feet before reaching ~~such~~ *the* school bus when there is in operation on ~~said~~ *the* bus a visual flashing red signal as specified in 61-9-402*;* and

(b) *may* ~~said driver shall~~ not proceed until the children have entered the school bus or have alighted and reached the side of the highway or street ~~on which they live~~ and until ~~such~~ *the* school bus ~~resumes motion or the driver has signaled traffic to proceed~~ *ceases operation of its visual flashing red signal.*

(2) ~~In addition the~~ *The* driver of a vehicle shall slow to a rate of speed that is reasonable under the conditions existing at the point of operation and *must* be prepared to stop when meeting or overtaking from either direction any school bus ~~which~~ *that* is preparing to stop on the highway or street ~~for the purpose of receiving~~ *to receive* or ~~discharging any~~ *discharge* school children as indicated by flashing amber lights as specified in 61-9-402.

(3) ~~Every~~ *Each* bus used for the transportation of school children ~~shall~~ *must* bear upon the front and rear ~~thereof~~ plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height~~,~~ and, in addition, ~~shall~~ *must* be equipped with visual signals meeting the requirements of 61-9-402. Amber flashing lights ~~shall~~ *must* be actuated by the driver approximately 150 feet in cities and approximately 500 feet in other areas before the bus is stopped to receive or discharge school children on the highway or street. Red lights ~~shall~~ *must* be actuated by the driver of ~~said~~ *the* school bus whenever but only whenever ~~such~~ *the* vehicle is stopped on the highway or street whether inside or outside the corporate limits of any city or town ~~for the purpose of receiving~~ *to receive* or ~~discharging~~ *discharge* school children. However, a school district board of trustees may, in its discretion, adopt a policy prohibiting the operation of amber or red lights when a bus is stopped at the school site ~~for purposes of receiving~~ *to receive* or ~~discharging~~ *discharge* school children and ~~such~~ *the* receipt or discharge does not involve street crossing by the children~~;~~ ~~and such~~. *The* lights may not be operated in violation of ~~such a~~ *that* policy.

(4) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school *or for school*

functions, all markings ~~thereon~~ *on the bus* indicating "SCHOOL BUS" ~~shall~~ *must* be covered or concealed.

(5) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus ~~which~~ *that* is on a different roadway or when upon a controlled-access highway and the school bus is stopped in a loading zone ~~which~~ *that* is a part of or adjacent to ~~such~~ *the* highway and where pedestrians are not permitted to cross the roadway.

(6) Whenever a vehicle is established to have been in violation of subsection (1) ~~and the identity of the driver of said vehicle cannot be established~~, the person in whose name the vehicle is registered is prima facie the driver of the vehicle at the time of the alleged violation.

(7) Violation of subsection (1) is punishable upon conviction by a fine of not more than $500."

Approved March 19, 1993.

CHAPTER NO. 133

[SB 178]

AN ACT EXTENDING CERTAIN BUDGET REPORTING PERIODS FOR SCHOOL TRUSTEES AND COUNTY SUPERINTENDENTS; AMENDING SECTIONS 7-6-4407, 20-5-307, 20-5-312, 20-6-412, 20-7-705, 20-9-131, 20-9-141, 20-9-142, 20-9-211, 20-9-212, 20-9-213, 20-9-439, 20-9-501, 20-9-503, 20-9-506, 20-10-144, 20-10-146, AND 20-10-147, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-131, MCA, is amended to read:

"**20-9-131. Final budget meeting.** (1) On the ~~fourth~~ *second* Monday in ~~July~~ *August,* at the time and place noticed pursuant to 20-9-115, the trustees of each district shall meet to consider the preliminary budget submitted to or prepared by the county superintendent, including all information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budget for the district and determine the amounts to be raised by tax levies for the district not later than the ~~second~~ *fourth* Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of ~~such~~ *the* district or on any item or amount contained in ~~such~~ *the* budget."

Section 2. Section 20-5-307, MCA, is amended to read:

"**20-5-307. Budgeting, levy requirement, and paying elementary tuition.** (1) The tuition amount that has been established in 20-5-305 must be paid during the ensuing school fiscal year. The trustees of the elementary district shall include the amount in the tuition fund of the preliminary budget. If the trustees should fail to include the amount or any portion of it in the preliminary budget they shall adjust the budgeted amount in adopting the final budget to provide for the total tuition amount that is due during the ensuing school fiscal year. The adjustment is not subject to the budget adjustment provisions of 20-9-132.

(2) The county superintendent shall report the net tuition fund levy requirement for each elementary district to the county commissioners on the ~~second~~ *fourth* Monday of August, and a levy on the district must be made by the county commissioners in accordance with 20-9-142. The levy requirement must be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the fund balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund.

(3) The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification provided under the provisions of 20-5-306. At least one-half of the payments must be made in December, and the remaining payments must be made by June 15 of the fiscal year.

(4) Any unanticipated tuition receipts received under the provisions of chapter 7, part 4, or this part for the current school fiscal year must be deposited in a separate account of the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget."

Section 3. Section 20-5-312, MCA, is amended to read:

"**20-5-312. Reporting, budgeting, and payment for high school tuition.** (1) Except as provided in subsection (2), on March 15, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(a) totaling the previous school fiscal year's expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) above by the October 1 enrollment of the district for the previous school fiscal year, as reported to the office of public instruction for purposes of accreditation pursuant to 20-7-102 and 20-9-344; and

(c) subtracting from the amount determined in subsection (1)(b) the per-ANB amount allowed by the foundation program schedules and the per-ANB amount that is the ANB value per mill calculated pursuant to 20-9-366, multiplied by the number of permissive and retirement mills levied.

(2) The tuition for a full-time high school special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for full-time high school special education pupils as designated in 20-9-311 for funding purposes.

(3) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(4) When the county superintendent receives a tuition report from a district, he shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(5) When the district superintendent receives a tuition report or reports for high school pupils residing in his district and attending an out-of-district high school under approved tuition agreements, he shall determine the total amount of tuition due the out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

(6) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence must be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall cause the payment by county warrant of at least one-half of the high school tuition obligations established under this section out of the first money realized from the county basic special tax for high schools. The remaining obligations must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer of the county where each high school entitled to tuition is located. Except as provided in subsection (8), the county treasurer shall credit tuition receipts to the general fund of the applicable high school district, and the tuition receipts must be used in accordance with the provisions of 20-9-141.

(7) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the ~~second~~ *fourth* Monday of August, and a levy on the district must be made by the county commissioners in accordance with 20-9-142. The levy requirement must be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the fund balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments must be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school district feel the transfer privilege provided by this subsection is being abused, they may

appeal to the county superintendent of schools, who shall hold a hearing and either approve or disapprove the transfer.

(8) Any unanticipated tuition receipts received under the provisions of chapter 7, part 4, or this part for the current school fiscal year must be deposited in a separate account of the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget."

Section 4. Section 20-6-412, MCA, is amended to read:

"**20-6-412. Property tax valuation after district boundary change.** The property tax valuation used under the provisions of 20-9-142 for the purposes of fixing the tax levies, except the debt service fund tax levy, for a district that has had a boundary change at any time before the ~~second~~ *fourth* Monday in August shall include the property tax valuation of any territory added to the district by such boundary change or exclude the property tax valuation of any territory detached from the district by such boundary change."

Section 5. Section 20-7-705, MCA, is amended to read:

"**20-7-705. Adult education fund.** (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) The trustees of a district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district that is not unified with an elementary district or of a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more than 2 mills on the district, for the operation of an adult education program when the superintendent of public instruction has approved the educational program to be supported by the levy. The trustees shall obtain the approval of the superintendent of public instruction before the fourth Monday of June in order to include the expenditures to be financed by the levy in the preliminary budget. The superintendent of public instruction shall promulgate rules and forms for the approval.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the preliminary budget. Any expenditures in support of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program that has been approved by the superintendent of public instruction is included as a revenue item on the

final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the ~~second~~ *fourth* Monday of August and a levy on the district must be made by the county commissioners in accordance with 20-9-142."

Section 6. Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303; and

(ii) any additional general fund budget amount adopted by the trustees of the district under the provisions of 20-9-145 and 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund balance reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(vi) anticipated net proceeds taxes for new production, as defined in 15-23-601;

(vii) anticipated revenue from local government severance taxes as provided in 15-36-112;

(viii) anticipated revenue from coal gross proceeds under 15-23-703;

(ix) anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(x) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(xi) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any additional general fund budget amount adopted by the trustees of the district as the permissive amount under the provisions of 20-9-145 to determine the general fund permissive net levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by a district levy as provided in 20-9-303 and 20-9-353 to determine the additional general fund levy requirement.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund permissive net levy requirement by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the ~~second~~ *fourth* Monday of August by the county superintendent as the general fund permissive net levy requirement and the additional general fund levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142."

Section 7. Section 20-9-142, MCA, is amended to read:

"**20-9-142. Fixing and levying taxes by board of county commissioners.** On the ~~second~~ *fourth* Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district. It is the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget."

Section 8. Section 20-9-439, MCA, is amended to read:

"**20-9-439. Computation of net levy requirement — procedure when levy inadequate.** (1) The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:

(a) determine the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435; and

(iii) any other money anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from such sources as legally authorized money transfers into the debt service fund or from rental income;

(b) the total amount available to reduce the property tax, determined in subsection (1)(a), must be subtracted from the final budget expenditure amount for the debt service fund as established in 20-9-438;

(c) the net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners on the ~~second~~ *fourth* Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(2) If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for such purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county."

Section 9. Section 20-9-501, MCA, is amended to read:

"**20-9-501. Retirement fund.** (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-801. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on any other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget; and

(v) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the ~~second~~ *fourth* Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000."

Section 10. Section 20-9-503, MCA, is amended to read:

"**20-9-503. Budgeting, tax levy, and use of the building reserve fund.** (1) Whenever an annual building reserve authorization to budget is available to a district, the trustees shall include such authorized amount in the building reserve fund of the preliminary budget. The county superintendent shall report such amount as the building reserve fund levy requirement to the county commissioners on the ~~second~~ *fourth* Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 20-9-142.

(2) The trustees of any district maintaining a building reserve fund shall have the authority to expend moneys from such fund for the purpose or purposes for which it was authorized without such specific expenditures being included in the final budget when, in their discretion, there is a sufficient amount of money to commence the authorized projects. Such expenditures shall not invalidate the district's authority to continue the annual imposition of the building reserve taxation authorized by the electors of the district.

(3) Whenever there is money credited to the building reserve fund for which there is no immediate need, the trustees may invest such money in accordance with 20-9-213(4). The interest earned from the investment shall be credited to the building reserve fund or the debt service fund, at the discretion of the trustees, and expended for any purpose authorized by law for such fund."

Section 11. Section 20-9-506, MCA, is amended to read:

"**20-9-506. Budgeting and net levy requirement for nonoperating fund.** (1) The trustees of any district which does not operate a school or will not operate a school during the ensuing school fiscal year shall adopt a nonoperating school district budget in accordance with the school budgeting provisions of this title. Such nonoperating budget shall contain the nonoperating fund and, when appropriate, a debt service fund. The nonoperating budget form shall be promulgated and distributed by the superintendent of public instruction under the provisions of 20-9-103.

(2) After the adoption of a final budget for the nonoperating fund, the county superintendent shall compute the net levy requirement for such fund by subtracting from the amount authorized by such budget the sum of:

(a) the end-of-the-year cash balance of the nonoperating fund or, if it is the first year of nonoperation, the cash balance determined under the transfer provisions of 20-9-505;

(b) the estimated state and county transportation reimbursements; and

(c) any other moneys that may become available during the ensuing school fiscal year.

(3) The county superintendent shall report the net nonoperating fund levy requirement and any net debt service fund levy requirement determined under the provisions of 20-9-439 to the county commissioners on the ~~second~~ *fourth* Monday of August, and such levies shall be made on the district by the county commissioners in accordance with 20-9-142."

Section 12. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenues and net tax levy requirements for district transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount.

(2) (a) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988;

(h) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(i) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the ~~second~~ *fourth* Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 13. Section 20-10-146, MCA, is amended to read:

"**20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount; and

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund. The county transportation fund operating reserve may not be more than 35% of the final county transportation fund budget for the ensuing school fiscal year and must be used for the purpose of paying transportation fund warrants under the county transportation fund budget.

(v) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vi) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) notwithstanding the provisions of subsection (3), subtracting the money available as determined in subsection (2)(b) to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the ~~second~~ *fourth* Monday of August by the county superintendent and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 14. Section 20-10-147, MCA, is amended to read:

"**20-10-147. Bus depreciation reserve.** (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting

provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners on the ~~second~~ *fourth* Monday of August as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses or to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer."

Section 15. Section 7-6-4407, MCA, is amended to read:

"**7-6-4407. Resolution to fix annual tax levy.** (1) The council must~~,~~*:*

(a) on or before the second Monday of August of each year, by resolution determine the amount of the city or town taxes for all purposes to be levied and assessed on the taxable property in the city or town for the current fiscal year*; and*

(b) on or before the fourth Monday of August of each year, by resolution determine the amount of school district taxes for all purposes to be levied and assessed on the taxable property in the city or town for the current fiscal year.

(2) (a) Except as provided in subsection (2)(b), the city or town clerk must at once certify to the county clerk a copy of ~~such~~ *the* resolution, and the county treasurer must collect ~~said~~ *the* taxes as provided in this part.

(b) In cities where the council has provided by ordinance for the collection of ~~such~~ *the* taxes by the city treasurer, the city clerk must certify a copy of ~~such~~ *the* resolution to ~~said~~ *the* city treasurer."

Section 16. Section 20-9-211, MCA, is amended to read:

"**20-9-211. Annual financial report of county superintendent.** No later than *the second Monday in* September ~~1~~ of each school fiscal year, the county superintendent shall report to the superintendent of public instruction the financial activity during the preceding school fiscal year of each district of the county in accordance with the reporting requirements prescribed by the superintendent of public instruction. ~~Such~~ *The* reports ~~shall~~ *must* be prepared on forms provided by the superintendent of public instruction."

Section 17. Section 20-9-212, MCA, is amended to read:

"**20-9-212. Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts which are entitled to a portion of the money according to the apportionments ordered by the county superintendent. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners.

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each ~~budgeted~~ fund ~~included in the final budget of each district and for each nonbudgeted fund~~ established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if ~~no~~ *a* fund is *not* designated by law. Interest and penalties on delinquent school taxes ~~shall~~ *must* be credited to the same fund and district for which the original taxes were levied.

(7) send all revenue received for a joint district, part of which is situated in ~~his~~ *that* county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months ~~thereafter~~ *after that date* until the end of the school fiscal year;

(8) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(9) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(10) invest the money of any district as directed by the trustees of the district within 3 working days of the direction;

(11) each month give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance;

(12) remit promptly to the state treasurer receipts for the county tax for a vocational-technical center when levied by the board of county commissioners under the provisions of 20-16-202;

(13) invest the money received from the basic county tax in support of the elementary foundation programs and the basic special tax in support of the high school foundation programs within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) and (1)(b).

(14) remit on a monthly basis to the state treasurer, in accordance with the provisions of 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333 for elementary and high school district foundation program support, including all interest earned and excluding any amount required for high school out-of-county tuition under the provisions of 20-9-334, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 18. Section 20-9-213, MCA, is amended to read:

"**20-9-213. Duties of trustees.** The trustees of each district shall have the sole power and authority to transact all fiscal business and execute all contracts in the name of the district. ~~No~~ *A* person other than the trustees acting as a governing board may *not* expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants to be issued for the payment of lawful obligations;

(3) issue warrants on any budgeted fund in anticipation of budgeted revenues, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, by directing the county treasurer to invest any money of the district in direct obligations of the United States government; in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC, FSLIC, or NCUA located in the state; or in a repurchase agreement as authorized in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6.

(5) cause the district to record every transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August ~~1~~ *15*, the financial activities of each fund maintained by the district during the last completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted *not later than September 1* to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district."

Section 19. **Effective date.** [This act] is effective July 1, 1993.

Approved March 19, 1993.

CHAPTER NO. 134

[SB 207]

AN ACT REVISING THE MONTANA WAGE PROTECTION LAWS; PROVIDING FOR PAYMENT OF WAGES BY ELECTRONIC FUNDS TRANSFER OR SIMILAR MEANS OF DIRECT DEPOSIT; ELIMINATING THE REQUIREMENT THAT AN EMPLOYER PAY INTEREST ON UNPAID WAGES DUE

AN EMPLOYEE; REVISING THE HEARING PROCESS FOR A WAGE CLAIM; AND AMENDING SECTIONS 39-3-204, 39-3-206, 39-3-208, AND 39-3-216, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-204, MCA, is amended to read:

"**39-3-204. Payment of wages generally.** (1) ~~Every~~ *Except as provided in subsection (4), every* employer of labor in the state of Montana shall pay to each employee the wages earned by ~~such~~ *the* employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value ~~thereof~~ *of the checks,* and no person for whom labor has been performed may withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the ~~same~~ *wages* are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever ~~such~~ *the* deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at ~~such~~ *the* time of payment of wages any employee is absent from the regular place of labor, ~~he~~ *the employee* is entitled to ~~such~~ payment at any time thereafter.

(3) Provisions of this section do not apply to any professional, supervisory, or technical employee who by custom receives ~~his~~ wages earned at least once monthly.

(4) Wages may be paid to the employee by electronic funds transfer or similar means of direct deposit if the employee has consented in writing or electronically, if a record is retained, to be paid in this manner. However, an employee may not be required to use electronic funds transfer or similar means of direct deposit as a method for payment of wages."

Section 2. Section 39-3-206, MCA, is amended to read:

"**39-3-206. Penalty for failure to pay wages at times specified in law.** (1) An employer~~, as defined in this part,~~ who fails to pay ~~any of his employees~~ *an employee* as provided in this part or *who* violates any other provision of this part is guilty of a misdemeanor. A penalty must also be assessed against and paid by the employer to the employee in an amount not to exceed ~~100%~~ *110%* of the wages due and unpaid.

~~(2) The employer shall also pay the employee annualized interest on the unpaid wages from the date the wages were due. The interest must be calculated by the department and compounded annually, but the annualized rate may not be less than 2 percentage points a year above the prime rate of major New York banks on the date of settlement.~~

~~(3)~~*(2)* Nothing in this section may be construed to relieve an employer from the requirement to pay an employee the full amount of wages due~~, including interest,~~ if the employer is found in violation of this part."

Section 3. Section 39-3-208, MCA, is amended to read:

"**39-3-208. Contracts in violation of part void.** Any contract or agreement made between ~~any person, partnership, or corporation and any party in~~

~~his or its employ~~ *an employer and an employee* the provisions of which violate, evade, or circumvent this part is unlawful and void, but the employee may sue to recover ~~his~~ *the* wages earned, together with the penalty ~~and interest~~ specified in 39-3-206 or separately to recover the penalty ~~and interest~~ if the wages have been paid."

Section 4. Section 39-3-216, MCA, is amended to read:

"**39-3-216. Hearing.** (1) If the department determines that a wage claim exists and the employer does not appeal the determination, the department may enter a default order against the employer for the amount of wages due and owing. The department may enforce the default order pursuant to 39-3-212.

(2) When the department determines that a wage claim exists ~~and if it fails to settle the claim with the parties, it shall cause the matter to be brought to a hearing before a department hearings officer. The~~, *the department shall mail the determination to the parties at the last-known address of each party. If a party appeals the department's determination within 15 days after the determination is mailed by the department, a* hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that *service need not be made as prescribed for civil actions in the district court and* the hearings officer is not bound by statutory or common-law rules of evidence. *The department shall by rule provide relief for a person who does not receive the determination by mail.*

(3) The decision of the hearings officer is final unless further review is initiated pursuant to 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause."

Approved March 19, 1993.

CHAPTER NO. 135

[SB 234]

AN ACT CLARIFYING THE CONFIDENTIALITY OF CORPORATION LICENSE OR INCOME TAX RECORDS; AMENDING SECTIONS 15-31-406 AND 15-38-109, MCA; AND REPEALING SECTIONS 15-31-507 AND 15-31-508, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Confidentiality of tax records.** (1) Except as provided in this section in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any return or report required under this chapter or any other information relating to taxation secured in the administration of this chapter; or

(b) any federal return or information in or disclosed on a federal return or report required by law or rule of the department of revenue under this chapter.

(2) (a) An officer or employee charged with custody of returns and reports required by this chapter may not be ordered to produce any of them or evidence

of anything contained in them in any administrative proceeding or action or proceeding in any court, except:

(i) in an action or proceeding in which the department is a party under the provisions of this chapter; or

(ii) in any other tax proceeding or on behalf of a party to an action or proceeding under the provisions of this chapter when the returns or reports or facts shown in them are directly pertinent to the action or proceeding.

(b) If the production of a return, report, or information contained in them is ordered, the court shall limit production of and the admission of returns, reports, or facts shown in them to the matters directly pertinent to the action or proceeding.

(3) This section does not prohibit:

(a) the delivery of a certified copy of any return or report filed in connection with a return to the taxpayer who filed the return or report or to the taxpayer's authorized representative;

(b) the publication of statistics prepared in a manner that prevents the identification of particular returns, reports, or items from returns or reports;

(c) the inspection of returns and reports by the attorney general or other legal representative of the state in the course of an administrative proceeding or litigation under this chapter;

(d) access to information under subsection (4); or

(e) the director of revenue from permitting a representative of the commissioner of internal revenue of the United States or a representative of a proper officer of any state imposing a tax on the income of a taxpayer to inspect the returns or reports of a corporation. The department may also furnish those persons abstracts of income, returns, and reports; information concerning any item in a return or report; and any item disclosed by an investigation of the income or return of a corporation. The director of revenue may not furnish that information to a person representing the United States or another state unless the United States or the other state grants substantially similar privileges to an officer of this state charged with the administration of this chapter.

(4) The department shall on request:

(a) allow the inspection of returns and reports by the legislative auditor, but the information furnished to the legislative auditor is subject to the same restrictions on disclosure outside that office as provided in subsection (1); and

(b) deliver corporation income tax data to the legislative fiscal analyst and the office of budget and program planning, but the information furnished to the legislative fiscal analyst and the office of budget and program planning is subject to the same restrictions on disclosure outside those offices as provided in subsection (1).

(5) A person convicted of violating this section shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If a public servant, as defined in 45-2-101, is convicted of violating this

section, the person forfeits office and may not hold any public office or public employment in the state for a period of 1 year after conviction.

Section 2. Section 15-31-406, MCA, is amended to read:

"**15-31-406. License tax sections incorporated by reference.** The provisions of the following sections of this chapter are incorporated into this part by reference and made a part ~~hereof~~ *of this part*:

(1) that part of 15-31-101 ~~which~~ *that* defines the term "corporation" and 15-31-102, which specifies the classes of organizations whose income ~~shall~~ *may* not be taxed;

(2) sections 15-31-111 through 15-31-114, 15-31-117 through 15-31-119, 15-31-141, 15-31-142, 15-31-301 through 15-31-313, 15-31-501 through *15-31-506*, 15-31-509, 15-31-525, 15-31-526, 15-31-531, 15-31-532, 15-31-541, ~~and~~ 15-31-543, *and [section 1]*, except that the term "gross income" ~~shall~~ *must* be construed as excluding the net amount of interest income from valid obligations of the United States and except that wherever the words "tax", "license tax", "license fee", "corporation excise tax", or like words appear, referring to the tax imposed under part 1 of this chapter, there ~~shall be~~ *is* substituted the words "income tax"."

Section 3. Section 15-38-109, MCA, is amended to read:

"**15-38-109. Restricted access to records.** The information furnished by the producer to the department for the purpose of this chapter ~~shall~~ *must* be treated as provided in ~~15-31-507~~ *[section 1]*."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 5, and the provisions of Title 15 apply to [section 1].

Section 5. **Repealer.** Sections 15-31-507 and 15-31-508, MCA, are repealed.

Approved March 19, 1993.

CHAPTER NO. 136

[SB 279]

AN ACT ESTABLISHING ADDITIONAL SURVEY REQUIREMENTS FOR SURVEYS AFFECTING IRRIGATION DISTRICTS; LIMITING THE RESPONSIBILITY OF IRRIGATION DISTRICTS FOR CERTAIN IRRIGATION WATER DISTRIBUTION CHANGES; AMENDING SECTIONS 76-3-401, 76-3-402, AND 85-7-1922, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Surveys affecting irrigation districts — additional survey requirements.** (1) (a) A surveyor who completes a survey identified in subsection (2) that establishes or defines a section line and creates a parcel that crosses the established or defined section line so that an irrigation district assessment boundary is included in more than 1 section shall note on the survey the acreage of the farm unit or created parcel in each section.

(b) The surveyor shall notify the appropriate irrigation district of the existence of the survey and the purpose of the survey.

(2) The requirements of subsection (1) apply only to surveys for which the surveyor determines that, based on available public records, the survey involves land:

(a) traversed by a canal or ditch owned by an irrigation district; or

(b) included in an irrigation district.

(3) For purposes of this section, "irrigation district" means a district established pursuant to Title 85, chapter 7.

Section 2. Section 76-3-401, MCA, is amended to read:

"**76-3-401. Survey requirements for lands other than subdivisions.** All divisions of land for sale other than a subdivision after July 1, 1974, into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor. *Surveys required under this section must comply with the requirements of [section 1].*"

Section 3. Section 76-3-402, MCA, is amended to read:

"**76-3-402. Survey and platting requirements for subdivided lands.** (1) Every subdivision of land after June 30, 1973, ~~shall~~ *must* be surveyed and platted in conformance with this chapter, *including the requirements of [section 1],* by or under the supervision of a registered land surveyor.

(2) Subdivision plats ~~shall~~ *must* be prepared and filed in accordance with this chapter and regulations adopted pursuant ~~thereto~~ *to this chapter.*

(3) All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners ~~shall~~ *must* be filed in accordance with Corner Recordation Act of Montana (Title 70, chapter 22, part 1). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body ~~shall~~ *must* be prepared and filed by a registered engineer or a registered land surveyor, as their respective licensing laws allow, in accordance with this chapter and regulations adopted pursuant ~~thereto~~ *to this chapter.*"

Section 4. Section 85-7-1922, MCA, is amended to read:

"**85-7-1922. Regulation, supervision, apportionment, and control of water distribution.** *(1)* In addition to all other powers granted them by the laws of Montana, boards of commissioners of all irrigation districts~~, now or hereafter~~ organized under any law of this state~~, shall have the power and authority to~~ *may* regulate, supervise, apportion, and control the furnishing and delivery of water through the distribution system of the district. ~~Such~~ *The* authority to regulate, supervise, apportion, and control ~~shall~~ *does* not apply to users who have water rights or ditch rights, established, acquired by court decree, use, appropriation or otherwise, at the time or prior to the organization of ~~such~~ *the* district, without regard to whether ~~said~~ *the* distribution system or ~~any~~ *a* portion ~~thereof~~ *of the system* belongs to the district or to the owner of lands served by ~~said~~ *the* district.

(2) Notwithstanding the provisions of 85-7-1921 and the powers granted to the board of commissioners under subsection (1) of this section, the irrigation district is not required to:

(a) construct, operate, or maintain internal delivery systems; or

(b) divide irrigation water after the water is delivered to the established project delivery points."

Section 5. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 76, chapter 3, part 4, and the provisions of Title 76, chapter 3, part 4, apply to [section 1].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved March 19, 1993.

CHAPTER NO. 137

[SB 306]

AN ACT REVISING STAGGERED TERMS FOR SCHOOL BOARD TRUSTEES; PROVIDING AN EXCEPTION FOR FILLING A TRUSTEE VACANCY; AND AMENDING SECTION 20-3-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-302, MCA, is amended to read:

"**20-3-302. Legislative intent to elect less than majority of trustees.** (1) It is the intention of the legislature that the terms of a majority of the trustee positions of any district with elected trustees may not regularly expire and be subject to election on the same regular school election day. ~~Therefore, in~~ *In* elementary districts, there may not be more than three trustee positions in first-class districts, two trustee positions in second-class districts or third-class districts having five trustee positions, or one trustee position in third-class districts having three trustee positions regularly subject to election at the same time. In high school districts there may not be more than two additional trustee positions in first- or second-class districts or more than one in third-class districts regularly subject to election at the same time. In high school districts operating a county high school, there may not be more than two trustee positions to be filled by members residing in the elementary district where the county high school building is located or more than one trustee position to be filled by members residing outside of the elementary district where the county high school building is located subject to election at the same time.

(2) ~~While it is the intention of the legislature that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same time, it is recognized that the~~ *In the* following circumstances~~,~~ relating

to ~~the terms of trustees appointed to~~ newly created *trustee* positions, ~~or to positions vacated by death, resignation, or operation of law, may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time~~ *the initial terms may be shortened to comply with the intent of subsection (1)*:

(a) the creation of a new elementary district under the provisions of 20-6-217;

(b) the consolidation of two or more elementary districts to form an elementary district under the provisions of 20-6-203 *or the consolidation of two or more high school districts to form a high school district under the provisions of 20-6-315*;

(c) the establishment of additional trustee positions of a high school district under the provisions of 20-3-353 or 20-3-354 or new trustee positions under the provisions of 20-3-352(3);

(d) the change of a district's classification under the provisions of 20-6-201 ~~and~~ *or* 20-6-301;

~~(e) the filling of a trustee position that has become vacant under the provisions of 20-3-308 or any other provision of law;~~

~~(f)~~*(e)* the establishment of additional elementary trustee positions under the provisions of 20-3-341(3); or

~~(g)~~*(f)* ~~any other circumstance arising under the law wherein a trustee position is filled by appointment subject to election at the next regular school election~~ *the establishment of additional high school trustee positions under the provisions of 20-6-313.*

(3) If the change of a district's classification under 20-6-201 or 20-6-301 decreases the number of trustee positions, the positions must be eliminated in a manner that complies with the intent of subsection (1).

(4) Although the legislature intends that the terms of a majority of trustees of any district may not regularly expire and be subject to election at the same time, it is recognized that filling a vacancy under 20-3-308 may lead to a subsequent school election in which a majority of trustee positions are subject to election at the same time."

Section 2. Section 20-6-201, MCA, is amended to read:

"**20-6-201. Elementary district classification.** (1) Each elementary district shall have a classification of:

(a) first class, if it has a population of 6,500 or more;

(b) second class, if it has a population of 1,000 or more but less than 6,500; or

(c) third class, if it has a population of less than 1,000.

(2) The population of an elementary district ~~shall~~ *must* be determined by the county superintendent on the basis of the best available population information for the district.

(3) The county superintendent shall establish the classification of each elementary district in the county on the basis of the population determined for the district and the district classification criteria prescribed in this section. Whenever the population of an elementary district increases or decreases requiring an adjustment of the district classification according to the criteria prescribed in this section, the county superintendent shall declare ~~such~~ *the* district's classification to be changed in accordance with the determined population, except that the classification of an elementary district ~~shall~~ *may* not be changed more than once every 5 years.

(4) Whenever the county superintendent changes an elementary district's classification with the result that a larger number of trustees is required on the elementary board of trustees, the increased number of trustee positions ~~shall~~ *must* be filled in the manner provided for ~~filling trustee vacancies~~ *in 20-3-302.* ~~Such positions shall be subject to election on the next regular school election day. If the county superintendent changes an elementary district's classification with the result that a lesser number of trustees is required, the next elementary trustee positions that become vacant under any circumstances shall not be filled until the number of elementary trustee positions has been reduced to the number required by law.~~"

Approved March 19, 1993.

CHAPTER NO. 138

[SB 349]

AN ACT ESTABLISHING A 10-DAY PERIOD WITHIN WHICH A TENANT IS REQUIRED TO ANSWER A LANDLORD'S COMPLAINT AND SUMMONS IN A LANDLORD'S ACTION FOR UNLAWFUL DETAINER; AND AMENDING SECTION 70-27-115, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-27-115, MCA, is amended to read:

"**70-27-115. Defendant's appearance and answer.** On or before the day fixed for ~~his~~ *the defendant's* appearance, the defendant may appear and answer or move to dismiss the complaint for failure to state a claim. *In any case, the defendant shall answer the complaint and summons within 10 days.*"

Approved March 19, 1993.

CHAPTER NO. 139

[SB 369]

AN ACT ALLOWING THE SALE AND USE OF CERTAIN PESTICIDES FOR UP TO 6 YEARS FROM THE DATE THAT DISTRIBUTION FROM THE REGISTRANT, MANUFACTURER, FORMULATOR, OR DISTRIBUTOR IS TERMINATED; AMENDING SECTION 80-8-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-201, MCA, is amended to read:

"**80-8-201. Registration.** (1) Every pesticide distributed, sold, or offered for sale within ~~this~~ *the* state or delivered for transportation or transported in intrastate commerce or between points within ~~this~~ *the* state ~~shall~~ *must* be registered with the department. The registration ~~shall~~ *must* be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement including:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is ~~so~~ registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement ~~shall be~~ *is* required only ~~with respect to~~ *for* information ~~which~~ *that* is different from that furnished when the pesticide was registered or last reregistered.

(3) ~~Any~~ *A* pesticide imported into ~~this~~ *the* state ~~which~~ *that* is subject to *and has been registered under* the provisions of ~~any~~ *a* federal act providing for the registration of pesticides ~~and has been registered under the provisions of a federal act shall~~ *must* be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of this section and 80-8-105(3). The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of $70 for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the ~~article~~ *pesticide* warrants the proposed claims for it and if the ~~article~~ *pesticide* and its labeling and other material required to be submitted comply with the requirements of 80-8-202, ~~it~~ *the department* shall register the ~~article~~ *pesticide.*

(6) If it does not appear to the department that the ~~article~~ *pesticide* warrants the proposed claims for it or if the ~~article~~ *pesticide* and its labeling and other material required to be submitted do not comply with this chapter, ~~it~~ *the department* shall notify the applicant of the manner in which the ~~article~~ *pesticide,* labeling, or other material required to be submitted fails to comply with the chapter ~~so as to afford~~ *to provide* the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the ~~article~~ *pesticide.* The department may suspend or cancel the registration of a pesticide whenever it does not appear that the ~~article~~ *pesticide* or its labeling comply with this chapter or whenever scientific evidence proves that the ~~article~~ *pesticide* endangers ~~man~~ *humans* or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in ~~this~~ *the* state to another plant in ~~this~~ *the* state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of $70 for a special local need or experimental-use permit registration. The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted ~~thereunder~~ *under the act.* The department of agriculture shall provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the departments of health and environmental sciences, agriculture, and fish, wildlife, and parks are in agreement with the proposed registration, the department of agriculture shall issue the registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department of agriculture shall issue the registration.

(c) The registrant applying for registration ~~shall~~ *must* be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration ~~shall~~ *must* be accepted by the departments and implemented by the department of agriculture.

(9) *(a)* Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. ~~If~~ *Except as provided in subsection (9)(b), if* the federal cancellation allows existing stock to be used past the final date of cancellation, ~~such~~ *the* sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of ~~such~~ *the* products to ~~insure~~ *ensure* their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136a-1(i)(5) may be sold and used according to environmental protection agency labeling requirements or other requirements for a period not to exceed 6 years from the date that distribution from the registrant, manufacturer, formulator, or distributor is terminated."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 22, 1993.

CHAPTER NO. 140

[SB 312]

AN ACT AMENDING THE FAMILY PRACTICE TRAINING ACT OF 1985 TO ALLOW PHYSICIANS TO TRAIN MORE THAN 2 MONTHS IN A COMMUNITY; AND AMENDING SECTION 50-5-603, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-603, MCA, is amended to read:

"**50-5-603. Montana family practice training program.** (1) There is ~~created~~ a Montana family practice training program to train resident physicians in family practice.

(2) The program is under the authority of the department, and the department shall contract with a nonprofit corporation organized under the laws of Montana or certified to do business in Montana, to coordinate the training of family practice resident physicians. The officers and directors of the corporation must be qualified by education, experience, and interest to administer and oversee family practice resident physician training activity.

~~(3) No resident physician may train more than 2 months in any one community in any 12-month period.~~"

Approved March 22, 1993.

CHAPTER NO. 141

[SB 259]

AN ACT CLARIFYING THAT AN AGRICULTURAL PROPERTY OWNER WHO PETITIONS FOR THE RELOCATION OF AN OVERHEAD UTILITY LINE SHALL PAY THE FULL COST OF RELOCATING THE LINE; AND AMENDING SECTION 69-4-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4-404, MCA, is amended to read:

"**69-4-404. Costs of relocation.** The costs of relocating an overhead utility line as ordered under 69-4-403 ~~shall~~ *must* be paid ~~50% by the utility and 50%~~ by the owner of the land. ~~However, if the person petitioning for the order fails for any reason to install the agricultural improvement within 2 years following the date relocation is completed, he must reimburse the owner of the line the full cost of relocation, and the court has continuing jurisdiction over the parties for the purpose of ordering such reimbursement.~~"

Approved March 22, 1993.

CHAPTER NO. 142

[SB 111]

AN ACT CREATING A PROPERTY MANAGER'S LICENSE; DEFINING "PROPERTY MANAGER" AND THE PRACTICE OF PROPERTY MANAGEMENT; PROVIDING QUALIFICATIONS FOR A LICENSE; PROVIDING PENALTIES; CREATING EXEMPTIONS FROM REAL ESTATE AND PROPERTY MANAGEMENT LICENSING; AMENDING SECTION 37-51-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it delegates rulemaking authority to the board of realty regulation to provide for the licensure and regulation of real estate property managers. The legislature intends that the board have general authority to adopt rules in regard to licensing procedures, including but not limited to issuance of licenses, administration of examinations, establishment of criteria for grading of examinations, promulgation of disciplinary standards for licensees, establishment of fee schedules consistent with the program area costs, and provisions for investigation of complaints against licensees.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-102, MCA, is amended to read:

"**37-51-102. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which ~~he~~ *the individual* undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(f) receives a fee, commission, or other compensation for referring to a licensed broker or salesman the name of a prospective buyer or seller of real property; or

(g) advertises or ~~holds himself out as~~ *represents to the public that the individual is* engaged in any of the activities referred to in subsections (3)(a) through (3)(f).

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(5) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(8) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(9) "Property manager" includes a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession of real estate belonging to others without transfer of the title to the property, pursuant to [sections 2 and 3].

~~(9)~~*(10)* "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

~~(10)~~*(11)* "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate."

Section 2. **License required to manage property.** It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

Section 3. **Definition of property management — exemptions from application.** (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

(a) a relative of the owner of the real estate, defined as follows:

(i) a son or daughter of the property owner or a descendant of either;

(ii) a stepson or stepdaughter of the property owner;

(iii) a brother, sister, stepbrother, or stepsister of the property owner;

(iv) the father or mother of the property owner or the ancestor of either;

(v) a stepfather or stepmother of the property owner;

(vi) a son or daughter of a brother or sister of the property owner;

(vii) a brother or sister of the father or mother of the property owner;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner; or

(ix) the spouse of the property owner;

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

(f) an officer of the state or any of its political subdivisions in the conduct of official duties;

(g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States;

(h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed;

(i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties; or

(j) a person employed on a salaried basis by only one person.

(2) A licensed real estate broker on active status or a licensed real estate salesman on active status and acting under the supervision of a real estate broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesman.

Section 4. **Qualification of property manager applicants — examination — form of licenses.** (1) The board by rule shall require an applicant for licensure to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) Examinations must be given at least once every 4 months at places within the state that the board prescribes. The board shall establish by rule the contents of and requirements to pass the examination.

(4) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(5) The board shall prescribe the form of the license, and the license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(6) The department shall prepare and deliver annually to the licensee a pocket card in a form prescribed by the board.

Section 5. **Annual renewal — continuing education — fees.** (1) Annual fees for renewal of the property manager license are due and payable during the month of October. Failure to remit the annual fee before November 15 automatically cancels the license. The board shall establish by rule penalty fees for late renewals.

(2) The board shall prescribe by rule requirements for continuing education that applicants shall satisfy before they are allowed to renew their licenses.

(3) The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

Section 6. **Property manager's office — notice of change of address.** A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. The office manager must be designated on the license. If the property manager changes the location of the office, the property manager shall notify the department of the new address within 10 days after the change of address.

Section 7. **Revocation, suspension, or denial of license — initiation of proceedings — grounds.** (1) The board may on its own motion and shall, on the sworn written complaint of a person, investigate the actions of a property manager licensee, subject to 37-1-101 and 37-1-121. The board may revoke or suspend a license, place the licensee on probation, issue a letter of censure or reprimand to the licensee, or levy a fine in an amount not to exceed $5,000, proceeds of which must be placed in the state general fund, if the licensee:

(a) is guilty of fraud or deceit in procuring or attempting to procure a license;

(b) is unfit or incompetent by reason of negligence, habit, or other causes;

(c) has demonstrated unworthiness, incompetency, or lack of honesty;

(d) is guilty of unprofessional conduct as defined by regulations prescribed by the board; or

(e) has willfully or repeatedly superseded the authority of the license by selling or attempting to sell real property or otherwise has willfully or repeatedly violated [sections 2 through 9].

(2) The board may deny an application for licensure if the applicant:

(a) made untrue or fraudulent statements in support of the application;

(b) failed to meet the requirements stated in [section 4] for licensing; or

(c) violated any of the grounds set forth in this section, that would be grounds for suspension or revocation of a license if a license had already been issued.

Section 8. **Transactions with nonlicensed persons unlawful — action for compensation limited to licensees.** (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by [sections 2 through 9].

(2) An action may not be brought or maintained in the courts for the collection of compensation for the lease of real estate unless the plaintiff first alleges that the plaintiff was licensed or was authorized to act without a license at the time the alleged cause of action or claim arose.

Section 9. **Penalties — criminal — civil.** (1) A person who acts without a license or while a license is suspended or revoked or who violates any provision of [sections 2 through 9] is guilty of a misdemeanor. For a first conviction, the person shall be punished by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent offense, the person shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) If a person is determined in a civil action to have received any money or the equivalent as a fee, commission, or other compensation while violating the provisions of [sections 2 through 9], the person is also liable for a penalty of not less than the amount received and not more than three times the amount received, as the court may determine.

Section 10. **Codification instruction.** [Sections 2 through 9] are intended to be codified as an integral part of Title 37, chapter 51, and the provisions of Title 37, chapter 51, apply to [sections 2 through 9].

Section 11. **Effective date.** [This act] is effective July 1, 1993.

Approved March 22, 1993.

CHAPTER NO. 143

[SB 109]

AN ACT EXPANDING THE DEFINITION OF "SERIOUS BODILY INJURY" IN CRIMINAL LAW TO INCLUDE BODILY INJURY THAT CREATES A SUBSTANTIAL RISK OF SERIOUS PERMANENT DISFIGUREMENT OR OF PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OR PROCESS OF ANY BODILY MEMBER OR ORGAN; AND AMENDING SECTION 45-2-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"**45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare ~~he~~ *the beneficiary* is interested~~, but~~. *Benefit does* not *include* an advantage promised generally to a group or class of voters as a consequence of public measures ~~which~~ *that* a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan ~~which~~ *that* results in the repeated commission of the same offense or *that* affects the same person or the same persons or the property ~~thereof~~ *of the same person or persons.*

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to ~~such a~~ *that* device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression ~~which~~ *that* is false and ~~which~~ *that* the offender does not believe to be true;

(b) fail to correct a false impression ~~which~~ *that* the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property~~, failing to disclose~~ *without disclosing* a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether ~~such~~ *the* impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance ~~which~~ *that* the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything ~~which~~ *that* exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to ~~his~~ *the person's* or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony ~~which~~ *that* involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare ~~he~~ *the affected person* is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing ~~which~~ *that* is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. ~~The foregoing definition~~ *Intoxicating substance* does not ~~extend to~~ *include* dealcoholized wine or ~~to~~ any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(31) An "involuntary act" means any act ~~which~~ *that* is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when ~~he~~ *the person* is aware of ~~his~~ *the person's own* conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when ~~he~~ *the person* is aware that it is highly probable that ~~such~~ *the* result will be caused by ~~his~~ *the person's* conduct. When knowledge of the existence of a particular fact is an element of an offense, ~~such~~ knowledge is

established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect ~~which~~ *that* renders ~~him~~ *the person* incapable of appreciating the nature of ~~his~~ *the person's own* conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling ~~his~~ *the person's own* conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or *in which* the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when ~~he~~ *the person* consciously disregards a risk that the result will occur or that the circumstance exists or when ~~he~~ *the person* disregards a risk of which ~~he~~ *the person* should be aware that the result will occur or that the circumstance exists. The risk must be of ~~such~~ a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance ~~thereof~~ *of the labor or service.*

(39) "Obtains or exerts control" includes but is not limited to the taking, *the* carrying away, or *the* sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official

detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or ~~which~~ *that* may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with ~~such~~ *the* proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though ~~such~~ *the* interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which ~~he~~ *the person* directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of ~~his~~ office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of ~~his~~ *the person's* authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision ~~thereof~~ *of government.*

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments ~~which~~ *that* represent or embody rights concerning anything of value, including labor or services, or ~~which~~ *that* are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things ~~which~~ *that* are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish ~~which~~ *that* ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and *any* whole or partial copies, descriptions, photographs, prototypes, or models thereof ~~which~~ *that* constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest ~~which~~ *that* the offender has no authority to defeat or impair, even though the offender ~~himself~~ may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group ~~thereof~~ has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is ~~his~~ *the person's* conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although ~~such~~ *the* purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(59) *(a)* "Serious bodily injury" means bodily injury ~~which~~ *that:*

(i) creates a substantial risk of death; ~~or which~~

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ*; or*

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. ~~It~~

(b) The term includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above ~~such~~ *the* land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in ~~his~~ *the officer's* presence.

(67) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause ~~such~~ *the* action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups ~~which he~~ *that the person* purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property at the time and place of the crime or, if ~~such~~ *the market value* cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value ~~shall~~ *must* be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, ~~shall be~~ *is* considered the amount due or collectible. ~~thereon or thereby, such~~ *The* figure *is* ordinarily ~~being~~ the face amount of the indebtedness less any portion ~~thereof which~~ *of the instrument that* has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation ~~shall be~~ *is* considered the amount of economic loss ~~which~~ *that* the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network ~~shall be~~ *is* considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of ~~such~~ economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $300 by the standards set forth in subsection (69)(a) ~~above~~, its value ~~shall be~~ *is* considered to be an amount less than $300.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or *by* mobile equipment, with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance ~~which~~ *that*, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Approved March 22, 1993.

CHAPTER NO. 144

[SB 92]

AN ACT REVISING THE LAWS RELATING TO COUNTY PARK DISTRICTS; REDUCING THE PERCENTAGE OF ELECTORS REQUIRED TO SIGN THE PETITION TO CREATE A DISTRICT; ALLOWING A PARK DISTRICT TO ENCOMPASS TERRITORY IN MORE THAN ONE COUNTY; REVISING THE PROCEDURE FOR CREATING A PARK DISTRICT; AND AMENDING SECTIONS 7-16-2403, 7-16-2411, 7-16-2412, 7-16-2413, 7-16-2421, 7-16-2423, AND 7-16-2431, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2403, MCA, is amended to read:

"**7-16-2403. Territory of county park district.** A county park district may contain the entire territory of a county, ~~or any~~ *a* part of a county, *or territory in more than one county.* A county park district may include incorporated municipalities within ~~the~~ *a* county."

Section 2. Section 7-16-2411, MCA, is amended to read:

"**7-16-2411. Creation of county park district.** (1) Proceedings for the creation of a county park district may be initiated by:

(a) a petition signed by not less than ~~15%~~ *10%* of the qualified electors of the proposed park district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a county park district.

(2) The petition or resolution must contain:

(a) the boundaries of the proposed district;

(b) the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and

(c) the proposed number of members of the county park district commission. The number of members must be an odd number and may not be less than three.

(3) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by not less than 10% of the qualified electors of the territory within the county proposed to be included in the district.

~~(3)~~*(4)* Upon receipt of a petition for the creation of a county park district, the county clerk shall examine it and within 15 days either reject the petition if it is insufficient under the provisions of ~~subsections~~ *subsection* (1), ~~and~~ (2), *or (3)* or certify that the petition is sufficient and present it to the county governing body at its next meeting.

~~(4) The county governing body shall schedule a public hearing on the creation of a county park district no earlier than 21 days or later than 45 days after the presentation of the petition or adoption of the resolution of intent to~~

~~create a district. It shall cause to be published in the official county newspaper notice of the public hearing and the proposed boundary, mill levy, and number of members of the district commission.~~

(5) The text of the petition or resolution must be published as provided in 7-1-2121 in each county in which the territory of the proposed district lies.

~~(5)~~*(6)* At the hearing, the county governing body shall hear testimony of all interested persons on whether a county park district should be created; testimony regarding the proposed boundary, property tax mill levy, and number of members of the district commission; and any other matter relating to the proposed district.

~~(6)~~*(7)* After the hearing, if the county governing body determines that the proposed park district should be created, it shall by resolution set the boundaries of the proposed park district, the maximum mill levy for the proposed park district, and the number of members to be on the district commission. The resolution must also call for an election~~, which may be held in conjunction with any regularly scheduled election,~~ on the question of whether to create the county park district. *The election may be held in conjunction with a regularly scheduled election, provided that at least 75 days have elapsed between the adoption of the resolution and the election.*"

Section 3. Section 7-16-2412, MCA, is amended to read:

"**7-16-2412. Election on creation of district.** (1) The election on the question of whether to create a county park district must be conducted as provided in Title 13.

(2) Only qualified electors residing within the proposed park district may vote on the question of whether to create the district.

(3) The question of creating a county park district shall be submitted to the electors in substantially the following form:

☐ FOR the creation of a county park district which may levy not more than .... mills of property tax for the operation of the district.

☐ AGAINST the creation of a county park district.

~~(4) If a proposed county park district includes one or more municipalities or parts of municipalities, separate majorities on the question of forming the district are required of those voting who reside within each municipality and of those not residing within a municipality.~~"

Section 4. Section 7-16-2413, MCA, is amended to read:

"**7-16-2413. Formation of county park district — appointment of initial commission.** (1) If ~~the question of forming a county park district is approved by the electorate of the district, the county~~ *a majority of the votes cast at the election in each municipality or part of a municipality and in the unincorporated territory of each county included in the proposed district approve the formation of the park district, the* governing body *of each county* shall, within 10 days of receipt of the official canvass of ~~such~~ *the* result, certify that the district is formed.

(2) Within 30 days after the certification of the formation of the district, the ~~county~~ governing body *of each county with territory included in the district* shall *jointly* appoint the initial members of the county park district commission. The members shall serve until their successors are elected and qualified."

Section 5. Section 7-16-2421, MCA, is amended to read:

"**7-16-2421. Election of commissioners.** (1) After appointment of the initial commission and except in the case of vacancies, all members of the county park district commission must be elected by the electors of the district.

(2) The election of members to the commission must be held in conjunction with the school elections held pursuant to 20-3-304.

(3) Candidates for the office of member of the county park district commission must be nominated by petition filed with the office of the election administrator ~~at least~~ *not earlier than 135 days or later than* 75 days prior to the election day and signed by at least five electors of the district.

(4) If the county park district lies in more than one county, the petition for nomination must be presented to the election administrator whose county contains the largest percentage of the territory of the district.

~~(4)~~*(5)* If no nomination petition is filed for an office, the county governing body shall appoint a member to fill the term. A person appointed pursuant to this subsection has the same term and obligations as a person elected to fill the office. If there are no petitions of nomination for members of the commission, no election need be held.

~~(5)~~*(6)* The term of office of elected members commences upon their being elected and qualified. The term of office of an elected member of the county park district commission is 4 years, except that a simple majority of the members of the first elected board shall serve terms of 2 years, with a minority of the board serving terms of 4 years. The members serving 2-year terms must be selected by lot.

~~(6)~~*(7)* A vacancy in the office of a member must be filled by appointment by the remaining members of the commission. The term of the appointed member expires upon the election and qualification of an elected successor or upon the election of a member to fill the unexpired term of the vacant office. The election must be held at the next scheduled school election *held pursuant to 20-3-304.*"

Section 6. Section 7-16-2423, MCA, is amended to read:

"**7-16-2423. Powers of county park district commission.** A county park district commission has all powers necessary for the betterment, operation, maintenance, and administration of park and recreation land within the territory of the district. In the exercise of this general grant of powers, the county park district commission may:

(1) employ or contract with administrative, professional, and other personnel necessary for the operation of the district;

(2) lease, purchase, or contract for the purchase of personal property, including property which after purchase constitutes a fixture on real property;

(3) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district and equip, operate, and maintain such buildings and facilities;

(4) adopt by resolution rules for the operation and administration of all parks and recreational facilities under its control;

(5) impose by resolution and collect charges for such services and facilities provided by the district as the commission considers necessary for the prudent operation of the district;

(6) establish a property tax mill levy for the operation of the district as provided in 7-16-2431;

(7) enter into agreements with any public or private entity or person for the operation of parks or recreational areas either by the district on behalf of the landowner or by another entity on behalf of the district;

(8) with the concurrence of the county governing body *or bodies*, accept donations of land or recreational-type easements on land within the district for park or recreational purposes on behalf and in the name of the county *or counties*;

(9) accept donations and devises of money or personal property."

Section 7. Section 7-16-2431, MCA, is amended to read:

"**7-16-2431. District budget — property tax levy.** (1) The county park district commission shall annually prepare a budget for the ensuing fiscal year and present the budget to the ~~county~~ governing body *of each county with territory included in the district* at the regular budget meetings as prescribed in Title 7, chapter 6, part 23, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) The county governing body ~~must~~ *shall*, annually at the time of levying county taxes, fix and levy a tax in mills on all taxable property within the district sufficient to raise the amount certified by the county park district commission. The tax ~~so~~ levied may not in any year exceed the maximum amount approved by the electorate in 7-16-2411 or 7-16-2432."

Approved March 22, 1993.

CHAPTER NO. 145

[SB 67]

AN ACT REVISING THE LAWS RELATED TO THE POWERS AND DUTIES OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND TO THE DISPOSITION OF FEES FOR SOLID WASTE MANAGEMENT; AMENDING SECTIONS 75-10-104, 75-10-105, 75-10-112, 75-10-116, AND 75-10-117, MCA; REPEALING SECTION 75-10-218, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is desirable for this bill in order to coordinate certain provisions of existing law with Chapter 398, Laws of 1991. Chapter 398 provided a delayed effective date, and when its provisions become effective on July 1, 1993, certain provisions of law will be amended. The purpose of this bill is to reinstate certain provisions of law that will be deleted when Chapter 398 becomes effective.

It is the intent of the legislature that [sections 1, 2, 4, and 5] of this bill maintain the existing authority of the department of health and environmental sciences rather than add new authority.

It is also the purpose of this bill to repeal a section of The Montana Solid Waste Management Act that was not included in Chapter 398. Chapter 398 repealed 75-10-110, effective July 1, 1993. [Section 6] of this bill repeals 75-10-218, a section of The Montana Solid Waste Management Act that is subordinate to 75-10-110.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-104, MCA, is amended to read:

"75-10-104. *(Temporary)* **Duties of department.** The department shall:

(1) prepare a state solid waste management and resource recovery plan as required by 75-10-807 for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) governing procedures to be followed in applying for and making loans;

(c) governing agreements between a local government and the department for grants or loans under this part;

(d) establishing, for the purpose of determining the solid waste management fee to which a facility is subject under 75-10-115, methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

(e) providing procedures for the quarterly collection of the solid waste management fee provided for in 75-10-115; and

(f) providing guidelines for integrated waste management;

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and conditionally exempt small quantities of hazardous waste as defined in Rule 16.44.402, Administrative Rules of Montana;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part;

(8) approve plans for a proposed solid waste management system submitted by a local government; and

(9) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility.

75-10-104. *(Effective July 1, 1993)* **Duties of department.** The department shall:

(1) prepare a state solid waste management and resource recovery plan as required by 75-10-807 for submission to the board;

(2) prepare rules necessary for the implementation of this part for submission to the board, including but not limited to rules:

(a) governing the submission of plans for a solid waste management system;

(b) governing procedures to be followed in applying for and making loans;

(c) governing agreements between a local government and the department for grants or loans under this part;

(d) establishing, for the purpose of determining the solid waste management fee to which a facility is subject under *75-10-115 or* 75-10-118, methods for determining or estimating the amount of solid waste incinerated or disposed of at a facility;

(e) providing procedures for the quarterly collection of the solid waste management ~~fee~~ *fees* provided for in *75-10-115 and* 75-10-118; and

(f) providing guidelines for integrated waste management;

(3) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system ~~which~~ *that* is compatible with the state plan whenever financial assistance is available;

(4) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating:

(a) a solid waste management system in order to ensure that the system conforms to the state plan;

(b) integrated waste management programs; and

(c) collection, disposal, reduction, and educational programs for household hazardous waste and conditionally exempt small quantities of hazardous waste as defined in Rule 16.44.402, Administrative Rules of Montana;

(5) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for loans are available;

(6) enforce and administer the provisions of this part;

(7) administer loans made by the state under the provisions of this part;

(8) approve plans for a proposed solid waste management system submitted by a local government; and

(9) serve as a clearinghouse for information on waste reduction and reuse, recycling technology and markets, composting, and household hazardous waste disposal, including chemical compatibility."

Section 2. Section 75-10-105, MCA, is amended to read:

"**75-10-105.** *(Temporary)* **Powers of department.** The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;

(3) make grants for a local government for planning or implementation of a solid waste management system; and

(4) collect the solid waste management fee provided for in 75-10-115.

75-10-105. *(Effective July 1, 1993)* **Powers of department.** The department may:

(1) accept loans and grants from the federal government and other sources to carry out the provisions of this part;

(2) make loans to a local government for the planning, design, and implementation of a solid waste management system;

(3) make grants for a local government for planning or implementation of a solid waste management system; and

(4) collect the solid waste management ~~fee~~ *fees* provided for in *75-10-115 and* 75-10-118."

Section 3. Section 75-10-112, MCA, is amended to read:

"**75-10-112. Powers and duties of local government.** A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste plan and propose modifications to the state's solid waste plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system ~~which~~ *that* the local government plans, designs, or constructs, for ~~such~~ *the* consideration and upon ~~such~~ *the* terms ~~as are~~ established by the local governments and consistent with the loan requirements ~~as~~ set forth in this part and rules *adopted to implement this part*;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds *that* the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules *adopted to implement this part*;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the ~~aforementioned~~ powers *authorized under this part*;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a ~~refuse disposal~~ *solid waste management* district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part."

Section 4. Section 75-10-116, MCA, is amended to read:

"**75-10-116.** *(Temporary)* **Penalties for failure to pay fee.** A person who owns a solid waste disposal facility subject to a fee under 75-10-115 and fails to pay the fee in the manner provided by department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

75-10-116. *(Effective July 1, 1993)* **Penalties for failure to pay fee.** A person who owns a solid waste disposal facility subject to a fee under *75-10-115 or* 75-10-118 and fails to pay the fee in the manner provided by department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool."

Section 5. Section 75-10-117, MCA, is amended to read:

"**75-10-117.** *(Temporary)* **Solid waste management ~~account~~ *accounts.*** (1) There ~~is a~~ *are* solid waste management ~~account~~ *accounts* in the ~~state~~ special revenue fund *type* provided for in 17-2-102.

(2) There must be deposited in the ~~account~~ *accounts*:

(a) all revenue from the solid waste management fee provided for in 75-10-115; and

(b) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source, intended to be used for the purposes of the ~~account~~ *accounts.*

(3) The ~~account~~ accounts may be used by the department only for the administration of part 2, this part, and 75-2-215.

75-10-117. *(Effective July 1, 1993)* **Solid waste management ~~account~~ *accounts*.** (1) There ~~is a~~ *are* solid waste management ~~account~~ *accounts* in the ~~state~~ special revenue fund *type* provided for in 17-2-102.

(2) There must be deposited in the ~~account~~ *accounts*:

(a) all revenue from the solid waste management ~~fee~~ *fees* provided for in *75-10-115 and* 75-10-118; ~~and~~

(b) fees, taxes, fines, and penalties as required under 75-10-910;

(c) fees collected under the provisions of 75-10-1006; and

~~(b)~~*(d)* money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source, intended to be used for the purposes of the ~~account~~ *accounts*.

(3) The ~~account~~ *accounts* may be used by the department only for the administration of part 2, this part, and 75-2-215."

Section 6. **Repealer.** Section 75-10-218, MCA, is repealed.

Section 7. **Effective date.** [This act] is effective July 1, 1993.

Approved March 22, 1993.

CHAPTER NO. 146

[HB 53]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO ESTABLISH THE OFFICE OF COUNTY SUPERINTENDENT OF SCHOOLS AS A PART-TIME OFFICE; PROVIDING THE PROCEDURE FOR ESTABLISHING THE PART-TIME OFFICE; AUTHORIZING THE ADJUSTMENT OF SALARY FOR A PART-TIME OFFICER; AMENDING SECTIONS 20-3-201 AND 20-3-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-201, MCA, is amended to read:

"**20-3-201. Election and qualifications — *part-time office allowed.*** (1) A county superintendent must be elected in each county of the state unless a county manager form of government has been organized in the county. The county superintendent must be elected at the general election preceding the expiration of the term of office of the incumbent.

(2) ~~A~~ *Upon verification by the county clerk and recorder, a* person is qualified to *file for and* assume the office of county superintendent who:

(a) is a qualified elector;

(b) holds a valid ~~teacher,~~ *current class 1 professional certificate, class 2 standard certificate, or class 3 administrative and supervisory* certificate issued by the superintendent of public instruction; and

(c) has at least 3 years of successful teaching experience.

(3) (a) When the office of county superintendent of schools is consolidated with another county office within the county, the officeholder must have the qualifications listed in subsection (2) or shall, with the approval of the governing body, contract for the full performance of the duties required of a county superintendent in 20-3-207 and 20-3-210 with:

(i) another county superintendent, with the approval of the governing body of that county;

(ii) a former county superintendent; or

(iii) a person who:

(A) is a qualified elector;

(B) holds a valid administrative certificate as provided in 20-4-106(1)(c);

(C) takes the oath of office in 20-1-202;

(D) is bonded in the manner provided for county officers in Title 2, chapter 9, part 7; and

(E) attends instructional training in the duties of a county superintendent as offered by the superintendent of public instruction.

(b) Whenever a governing body contracts with a person for performance of the duties required of a county superintendent under the provisions of subsection (3)(a)(iii), the contract must be for at least the duration of 1 school fiscal year.

(c) The superintendent of public instruction shall prescribe a contract form to be used.

(4) The board of county commissioners may establish the office of county superintendent as a part-time office under the provisions of [section 3], and adjust the salary established in 7-4-2503 to make it commensurate with the reduction in hours. A part-time county superintendent shall perform all duties of that office that are required by law."

Section 2. Section 20-3-204, MCA, is amended to read:

"**20-3-204. Office hours.** (1) ~~The~~ *Except for a part-time county superintendent provided for under 20-3-201(4), the* county superintendent of schools shall keep ~~his~~ *the* office *of the county superintendent* open from 8 a.m. until 5 p.m. every day when ~~he~~ *the county superintendent* is not engaged in the supervision of schools except on holidays and on Saturdays, provided that when the county superintendent has a deputy or clerk, the office ~~shall~~ *must* be kept open from 8 a.m. until 5 p.m. every day except holidays and except Saturdays. ~~Said~~ *The* office ~~shall~~ *must* be kept open at all times as business may require.

(2) This section ~~shall~~ *does* not apply to counties operating under the county manager plan."

Section 3. **Part-time office — establishment — restrictions.** (1) A board of county commissioners that intends to establish the office of county superintendent of schools as a part-time office shall:

(a) pass a resolution stating the intent of the board to consider the action;

(b) set a date for a hearing on the issue and provide proper notice of the hearing;

(c) conduct a hearing and accept testimony from any registered elector of the county who presents evidence for or against the establishment of the part-time office; and

(d) within 5 days of the hearing, issue an order regarding the establishment of the part-time office.

(2) A board may not issue an order establishing the office of county superintendent as a part-time office less than 7 days before the date on which declarations for nominations may first be filed for the office.

(3) A board may not establish the office of county superintendent as a part-time office during a term of office for which a county superintendent has been elected as a full-time officeholder.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 20, chapter 3, part 2, and the provisions of Title 20, chapter 3, part 2, apply to [section 3].

Section 5. **Effective date.** [This act] is effective on passage and approval and applies to each county upon the beginning of the next term of office after [the effective date of this act].

Approved March 24, 1993.

CHAPTER NO. 147

[HB 150]

AN ACT PROVIDING THAT THE BOARD OF LAND COMMISSIONERS MAY ANNEX LAND INTO FOREST FIRE PROTECTION DISTRICTS AND MAY DISSOLVE FOREST FIRE PROTECTION DISTRICTS; AND AMENDING SECTION 76-13-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-204, MCA, is amended to read:

"**76-13-204. Creation, *annexation of land into, and dissolution* of forest fire protection districts.** (1) ~~The~~ *In accordance with the provisions of subsections (2) and (3), the* board may create, *annex land to, or dissolve* forest fire protection districts.

(2) Before a district is created, *land is annexed into a district, or a district is dissolved,* the board shall hold a hearing in any county in which ~~the proposed district or a part thereof is included and the~~ *land affected by the proposed change is located.*

(a) The department shall give notice *at least 20 days in advance* of the hearing ~~at least 20 days in advance thereof~~ to all *property* owners to be affected by the proposed ~~district~~ *change.* Service of the notice may be made by ~~registered or~~ certified mail *to each affected property owner* or by publication *of the notice* in a newspaper published *or generally circulated* in the county in which the hearing is to be held ~~or, if no newspaper is published in the county, then in a newspaper having a general circulation therein~~.

(b) The department shall report to the board the arguments made for and against the proposed change and shall make a recommendation to the board.

~~(2)~~*(3) (a)* A forest fire protection district may not be created *or dissolved* unless approved in writing by *a* vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the ~~proposed~~ *affected* forest fire protection district.

(b) Land may not be annexed into a district unless approved by 51% of the owners representing at least 51% of the acreage to be annexed.

(4) Land annexed into a district may not be removed from that district unless that district is dissolved."

Approved March 24, 1993.

CHAPTER NO. 148

[HB 189]

AN ACT CLARIFYING THE DEPARTMENT OF COMMERCE'S RESPONSIBILITIES WITH RESPECT TO STATE PLANNING AND COMMUNITY DEVELOPMENT; AND AMENDING SECTIONS 90-1-102 AND 90-1-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-102, MCA, is amended to read:

"90-1-102. Functions of department of commerce — state planning. The department of commerce shall:

~~(1) develop and adopt a comprehensive plan for the physical development of the state;~~

~~(2)~~*(1)* make economic and social studies needed to accomplish the purposes of this part;

~~(3)~~*(2)* coordinate and assist regional development groups in the comprehensive development of the resources of the region to the betterment of Montana;

~~(4)~~*(3)* assemble and correlate information for the purpose of making long-range plans for economic and resource development of the state and its subdivisions relating to all of the factors ~~which~~ *that* influence the development of new and existing economic enterprises, including taxes and the regulation of industry;

~~(5)~~*(4)* provide advice and assistance to Montana business and labor in the field of economic development and bring to the attention of the governor those significant problems adversely affecting economic development ~~which~~ *that* may be relieved by state action;

~~(6)~~*(5)* locate and maintain information on prime sites for industrial, agricultural, mineral, forestry, commercial, and residential development and on sites of historical importance and make recommendations for protecting and preserving those sites;

~~(7)~~*(6)* apply for, accept, and administer grants from the federal government or other public or private sources to accomplish the objectives of this part and enter into contracts, including agreements with adjoining states, with respect to planning involving adjoining states;

~~(8)~~*(7)* serve as the consultative, coordinating, and advisory agency for state departments, officials, and agencies in state planning and for encouraging and aiding local planning bodies, either directly or by securing planning assistance, consulting services, and technical aid, which may include land use, demographic, and economic studies and surveys and comprehensive plans."

Section 2. Section 90-1-103, MCA, is amended to read:

"**90-1-103. Functions of department of commerce — community development.** The department of commerce shall:

(1) cooperate with and provide technical assistance to county, municipal, state, and regional planning commissions, zoning commissions, parks or recreation boards, community development groups, community action agencies, and similar agencies created for the purposes of aiding and encouraging orderly, productive, and coordinated development of the communities of the state;

(2) assist the governor in coordinating the activities of state agencies ~~which~~ *that* have an impact on solution of community development problems and implementation of community plans;

(3) serve as a clearinghouse for information, data, and other materials ~~which~~ *that* may be helpful or necessary to local governments to discharge their responsibilities and provide information on available federal and state financial and technical assistance;

(4) carry out continuing studies and analyses of the problems faced by communities within the state and develop those recommendations for administrative or legislative action as appear necessary. In carrying out the studies and analyses *and in providing technical assistance to communities,* the department shall pay particular attention to the *planning and financing of public facilities and to the* problems of metropolitan, suburban, and other areas in which economic and population factors are rapidly changing.

(5) administer the federal community development block grant program and adopt rules to implement the program."

Approved March 24, 1993.

CHAPTER NO. 149

[HB 203]

AN ACT ALLOWING A FIRE SERVICE AREA TO ENTER INTO MUTUAL AID AGREEMENTS; AMENDING SECTIONS 7-33-2108 AND 7-33-4112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Mutual aid agreements.** (1) A mutual aid agreement is an agreement for protection against natural or manmade disasters.

(2) The governing body of a fire service area may enter mutual aid agreements with the proper authority of:

(a) other fire service areas;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies that have fire-prevention services;

(e) private fire-prevention agencies;

(f) federal agencies; and

(g) fire districts.

Section 2. Section 7-33-2108, MCA, is amended to read:

"**7-33-2108. Mutual aid agreements.** (1) A mutual aid agreement is an agreement for protection against natural or manmade disasters.

(2) Fire district trustees may enter ~~such~~ *mutual aid* agreements with the proper authority of:

(a) other fire districts;

(b) unincorporated municipalities;

(c) incorporated municipalities;

(d) state agencies which have fire-prevention services;

(e) private fire-prevention agencies;

(f) federal agencies*; and*

(g) fire service areas."

Section 3. Section 7-33-4112, MCA, is amended to read:

"**7-33-4112. Mutual aid agreements.** (1) A mutual aid agreement is an agreement for protection against natural or manmade disasters.

(2) Councils or commissions of incorporated municipalities may enter ~~such~~ *mutual aid* agreements with the proper authority of:

(a) other incorporated municipalities;

(b) fire districts;

(c) unincorporated municipalities;

(d) state agencies which have fire protection services;

(e) private fire-prevention agencies;

(f) federal agencies*; and*

(g) fire service areas."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 33, part 24, and the provisions of Title 7, chapter 33, part 24, apply to [section 1].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1993.

CHAPTER NO. 150

[HB 208]

AN ACT REQUIRING THAT DEPOSITS BY EMPLOYERS TO THE MONTANA SELF-INSURERS GUARANTY FUND REQUIRED BY THE DEPARTMENT OF LABOR AND INDUSTRY BE IN AN AMOUNT CONCURRED WITH BY THE MONTANA SELF-INSURERS GUARANTY FUND; AND AMENDING SECTIONS 39-71-2105 AND 39-71-2106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2105, MCA, is amended to read:

"**39-71-2105. Additional proof of solvency — revocation of order.** The department, *with the concurrence of the Montana self-insurers guaranty fund,* may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this chapter and may at any time, upon notice to ~~such~~ *the* employer of not less than 10 or more than 20 days, after and upon a full hearing, revoke any order or approval ~~theretofore made~~."

Section 2. Section 39-71-2106, MCA, is amended to read:

"**39-71-2106. Requiring security of employer.** (1) (a) The department, *with the concurrence of the Montana self-insurers guaranty fund,* may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the department. Except as provided in subsection (1)(b), the security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and must be the greater of:

(i) $250,000; or

(ii) an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

(b) The department, *with the concurrence of the Montana self-insurers guaranty fund,* may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of solvency and financial ability to pay the liabilities provided by this chapter.

(2) (a) The department, *with the concurrence of the Montana self-insurers guaranty fund,* shall require an employer to give security in addition to the security described in subsection (1) if:

(i) the department determines that the employer is insolvent or lacks the financial ability to pay the compensation that is required under this chapter and that is chargeable to the employer during the fiscal year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is an association, corporation, or organization of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department, *with the concurrence of the Montana self-insurers guaranty fund,* finds reasonable and necessary to meet all liabilities that the employer may accrue under this chapter during the fiscal year.

(3) (a) The security provided for in subsection (2) must be deposited with the department and may be either an estimated percent of the employer's last preceding annual payroll or a percent of the established amount of ~~his~~ annual payroll for the fiscal year. The security may consist of:

(i) a bond or undertaking executed to the department in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will pay or cause to be paid to ~~his~~ employees all sums and amounts for which the employer becomes liable under the terms of this chapter during the fiscal year; or

(ii) any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations that the department considers solvent.

(b) Every deposit and the character and amount of the securities must at all times be subject to approval, revision, or change by the department as it may require.

(c) Upon proof of the final payment of the liability for which the securities are given, the securities or any remainder of the securities must be returned to the depositor.

(4) The department is liable for the value and safekeeping of all deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the deposits or securities and the earnings of the deposits or securities."

Section 3. **Saving clause.** The department of labor and industry may require an employer, without concurrence of the Montana self-insurers guaranty fund, to give security in addition to the requirements described in 39-71-2105 and 39-71-2106 for workers' compensation liabilities that the employer accrued prior to July 1, 1989.

Approved March 24, 1993.

CHAPTER NO. 151

[HB 211]

AN ACT PROVIDING LICENSURE FOR RESIDENTIAL AND INPATIENT HOSPICE FACILITIES; AND AMENDING SECTIONS 50-5-101 AND 50-5-210, MCA.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because it grants the department of health and environmental sciences the authority to adopt by rule specific licensing standards for residential hospice and inpatient hospice facilities.

It is the intent of the legislature that the department adopt rules for licensure of residential and inpatient hospice facilities to ensure that:

(1) hospice facilities are constrained to a certain standard of care;

(2) hospice facilities are managed and operated by hospice-trained staff or volunteers; and

(3) policies and procedures are in keeping with the hospice approach to care and with current trends in hospice care.

It is the intent of the legislature that the department adopt rules for inpatient hospice facilities that reflect applicable, current federal regulations and that the department go beyond adoption of existing relevant federal regulations for inpatient hospice facilities and provide for two levels of site-based hospice services. It is the intent of the legislature to ensure that residential and inpatient hospice facilities are integrated within a comprehensive, licensed hospice program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"**50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency which establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency which plans or assists in planning for such facilities.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(12) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(13) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(17) "Federal acts" means federal statutes for the construction of health care facilities.

(18) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(19) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

(20) "Health maintenance organization" means a public or private organization which provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and ~~his~~ *the patient's* family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. *The term includes:*

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state

licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, *including freestanding hemodialysis units*.

(27) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for persons with severe disabilities licensed under 52-4-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(33) "Offer" means the holding out by a health care facility that it can provide specific health services.

(34) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(35) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(36) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(40) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately

treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(41) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to persons under 21 years of age.

(42) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 2. Section 50-5-210, MCA, is amended to read:

"**50-5-210. Department to make rules — standards for hospices.** (1) The department shall by rule establish standards for the licensure of a hospice. These standards must consider the terminally ill patient and ~~his~~ *the patient's* family as a unit and require service delivery through a medically directed interdisciplinary team of professionals and volunteers acting under a defined hospice administration.

(2) A hospice must meet the standards of care defined by law for any skilled care it provides that normally would be provided by a licensed facility such as a hospital, skilled nursing facility, or home health agency.

(3) The department shall by rule establish standards for the licensure of a residential hospice facility.

(4) The department shall by rule establish standards for the licensure of a freestanding inpatient hospice facility in accordance with medicare certification regulations contained in 42 CFR, part 418, subparts C through E, as adopted by the department. To be licensed by the department, the facility must be managed directly by a medicare-certified hospice."

Approved March 24, 1993.

CHAPTER NO. 152

[HB 234]

AN ACT ADOPTING THE UNIFORM FOREIGN-MONEY CLAIMS ACT; PROVIDING FOR THE JUDICIAL DETERMINATION OF CLAIMS EXPRESSED IN THE MONEY OF FOREIGN COUNTRIES; ADOPTING THE DATE OF PAYMENT AS THE DATE FOR DETERMINING THE TIME FOR CONVERTING THE FOREIGN MONEY INTO UNITED STATES DOLLARS; PROVIDING A METHOD FOR DETERMINING REVALORIZATION AND INTEREST; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 15] may be cited as the "Uniform Foreign-Money Claims Act".

Section 2. **Definitions.** In [sections 1 through 15], the following definitions apply:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day preceding the date on which money, in accordance with [sections 1 through 15], is:

(a) paid to a claimant in an action or distribution proceeding;

(b) paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(c) used to recoup, setoff, or counterclaim in different money in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims are asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay or a claim for recovery of a loss, expressed in or measured by a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by intergovernmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to [section 5].

(9) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding 2 days.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

Section 3. **Scope.** (1) [Sections 1 through 15] apply only to a foreign-money claim in an action or distribution proceeding.

(2) [Sections 1 through 15] apply to foreign-money issues even if other law under the conflict-of-laws rules of this state applies to other issues in the action or distribution proceeding.

Section 4. **Variation by agreement.** (1) The effect of [sections 1 through 15] may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(2) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different money for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

Section 5. **Determining money of claim.** (1) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(2) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(a) regularly used between the parties as a matter of usage or course of dealing;

(b) used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(c) in which the loss was ultimately felt or will be incurred by the party claimant.

Section 6. **Determining amount of money of certain contract claims.** (1) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(2) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(3) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

Section 7. **Asserting and defending foreign-money claim.** (1) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

(2) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(3) A person may assert a defense, setoff, recoupment, or counterclaim in any money without regard to the money of other claims.

(4) The determination of the proper money of the claim is a question of law.

Section 8. **Judgments and awards on foreign-money claims — times of money conversion — form of judgment.** (1) Except as provided in subsection (3), a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(2) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars that will purchase that foreign money on the conversion date at a bank-offered spot rate.

(3) Assessed costs must be entered in United States dollars.

(4) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(5) A judgment or award made in an action or distribution proceeding on both a defense, setoff, recoupment, or counterclaim and the adverse party's claim must be netted by converting the money of the smaller into the money of the larger and by subtracting the smaller from the larger and must specify the rates of exchange used.

(6) A judgment substantially in the following form complies with subsection (1):

IT IS ADJUDGED AND ORDERED, that Defendant

(insert name) pay to Plaintiff

(insert name) the sum of _(insert amount in the foreign money)_ plus interest on that sum at the rate of _(insert rate - see [section 10])_ % a year or, at the option of the judgment debtor, the number of United States dollars that will purchase the _(insert name of foreign money)_ with interest due, at a bank-offered spot rate at or near the close of business on the banking day before the day of payment, together with assessed costs of _(insert amount)_ United States dollars.

(7) If a contract claim is of the type covered by [section 6(1) or (2)], the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars that will purchase the computed

amount of the money of payment on the conversion date at a bank-offered spot rate.

(8) A judgment must be filed and indexed in foreign money in the same manner, and has the same effect as a lien, as other judgments. It may be discharged by payment.

Section 9. **Conversions of foreign money in distribution proceeding.** The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

Section 10. **Prejudgment and judgment interest.** (1) Except as provided in subsection (2), recovery of prejudgment or preaward interest and the rate of interest to be applied in the action or distribution proceeding, with respect to a foreign-money claim, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this state.

(2) The court or arbitrator shall increase or decrease the amount of prejudgment or preaward interest otherwise payable in a judgment or award in foreign money to the extent required by the law of this state governing a failure to make or accept an offer of settlement or offer of judgment or governing conduct by a party or its attorney causing undue delay or expense.

(3) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this state.

Section 11. **Enforcement of foreign judgments.** (1) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this state as enforceable, the enforcing judgment must be entered as provided in [section 8], whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(2) A foreign judgment may be filed in accordance with any rule or statute of this state providing a procedure for its recognition and enforcement.

(3) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this state.

(4) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this state in United States dollars only.

Section 12. **Determining United States dollar value of foreign-money claims for limited purposes.** (1) Computations under this section are for the limited purposes of this section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(2) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking must be ascertained as provided in subsections (3) and (4).

(3) A party seeking process, costs, bond, or other undertaking under subsection (2) shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day preceding the filing of a request or application for the issuance of process, for the determination of costs, or for an application for a bond or other court-required undertaking.

(4) A party seeking the process, costs, bond, or other undertaking under subsection (2) shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

Section 13. **Effect of currency revalorization.** (1) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(2) If substitution under subsection (1) occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

Section 14. **Supplementary general principles of law.** Unless displaced by particular provisions of [sections 1 through 15], the principles of law and equity, including the law merchant, and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement its provisions.

Section 15. **Uniformity of application and construction.** [Sections 1 through 15] must be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of [sections 1 through 15] among states enacting it.

Section 16. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Applicability.** [This act] applies to actions and distribution proceedings commenced after October 1, 1993.

Approved March 24, 1993.

CHAPTER NO. 153

[HB 251]

AN ACT ALLOWING THE POSSESSION, TRANSPORTATION, SALE, OR PURCHASE OF ANTLERS AND ATTACHED SKULL FROM A GAME ANIMAL THAT HAS DIED FROM NATURAL CAUSES AND THAT HAS NOT BEEN UNLAWFULLY OR ACCIDENTALLY KILLED; AND AMENDING SECTION 87-3-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-111, MCA, is amended to read:

"**87-3-111.** *(Temporary)* **Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section do not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110;

(c) the possession, transportation, sale, or purchase of naturally shed antlers; or

(d) the donation and sale of paddlefish roe as caviar under the provisions of 87-4-601.

(3) Any person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102. *(Terminates June 30, 1993—sec. 5, Ch. 409, L. 1989.)*

87-3-111. *(Effective July 1, 1993)* **Unlawful to buy, sell, possess, or transport fish or game — exceptions — penalties.** (1) It is unlawful for any person to purchase, sell, offer to sell, possess, ship, or transport any game fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof protected by the laws of this state, whether belonging to the same or different species from that native to the state of Montana, except as specifically permitted by the laws of this state.

(2) The provisions of this section ~~shall~~ *do* not prohibit:

(a) the possession or transportation within the state of any legally taken fish, game bird, migratory game bird, game animal, or fur-bearing animal or part thereof;

(b) the sale, purchase, or transportation of hides, heads, or mounts of lawfully killed game birds, game fish, fur-bearing animals, or game animals, except that the sale or purchase of a hide, head, or mount of a grizzly bear is prohibited, except as provided in 87-3-110; or

(c) the possession, transportation, sale, or purchase of naturally shed antlers *or the antlers with a skull or portion of a skull attached from a game animal that has died from natural causes and that has not been unlawfully or accidentally killed.*

(3) Any person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction shall be punished as provided in 87-1-102."

Approved March 24, 1993.

CHAPTER NO. 154

[HB 259]

AN ACT CLARIFYING THAT AN EMPLOYEE INJURED WHILE PARTICIPATING IN A RECREATIONAL ACTIVITY IS NOT ENTITLED TO WORKERS' COMPENSATION; AND AMENDING SECTIONS 39-71-118 AND 39-71-123, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, workman, and volunteer firefighter defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for ~~such~~ *the* corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an airman or other person employed as a volunteer under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment; or

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities.

~~(2)~~*(3)* The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

~~(3)~~*(4)* (a) If the employer is a partnership or sole proprietorship, ~~such~~ *the* employer may elect to include as an employee within the provisions of this chapter any member of ~~such~~ *the* partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of ~~such~~ *an* election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection ~~(3)(d)~~ *(4)(d)*. A partner or sole proprietor is not considered an employee within this chapter until ~~such~~ notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.

~~(4)~~*(5)* The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 12.

~~(5)~~*(6)* An employee, workman, or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

~~(6)~~*(7)* For purposes of this section, an "employee, workman, or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state; or

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer."

Section 2. Section 39-71-123, MCA, is amended to read:

"**39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in ~~his~~ *the volunteer's* regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which ~~he~~ *the volunteer* is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118~~(4)~~ must be based upon a wage of not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter."

Approved March 24, 1993.

CHAPTER NO. 155

[HB 266]

AN ACT ELIMINATING THE REQUIREMENT THAT SUBDIVIDED STATE LAND BE SOLD IN ALTERNATE LOTS AT REGULAR LAND SALES; GENERALLY CLARIFYING STATUTORY LANGUAGE; AMENDING SECTION 77-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-312, MCA, is amended to read:

"**77-2-312. Subdivision of lands in or near municipalities.** (1) ~~All lands~~ *Lands* within the limits of ~~any~~ *a* town or city or within 3 miles of ~~such~~ *the* limits ~~shall~~ *must* be subdivided into lots or tracts of ~~not more than~~ 5 acres *or less* ~~each~~ before being offered for sale ~~and the lots must then be sold alternately at regular sales of state lands~~.

(2) When ~~such~~ tracts of 5 acres or less have been sold, the board shall, ~~whenever deemed~~ *as* necessary, cause the plat ~~thereof~~ to be filed ~~for record~~ with

the ~~county~~ clerk and recorder of the county in which the land is situated, but if ~~the same purchaser bids in~~ *a person purchases* two or more adjoining lots or tracts, ~~all~~ the *adjoining* lots ~~so purchased shall~~ *must* at the option of the purchaser be included in one certificate of purchase."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1993.

CHAPTER NO. 156

[HB 356]

AN ACT CLARIFYING THE PUBLIC SERVICE COMMISSION'S AUTHORITY TO REGULATE MOTOR CARRIER FITNESS AND TO INVESTIGATE AND HEAR COMPLAINTS CONCERNING VIOLATIONS OF TITLE 69, CHAPTER 12, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

In determining whether a motor carrier should be granted a certificate of operating authority, a threshold question to be answered by the public service commission is whether the carrier is fit, willing, and able to provide the proposed service, otherwise referred to as an inquiry into carrier fitness. [Section 1] is intended to clarify the public service commission's authority in this regard by codifying the carrier fitness requirement. Although 69-12-201 and 69-12-203 provide the commission with supervisory, regulatory, and enforcement authority over motor carriers, its authority to investigate and hear complaints concerning violations of Title 69, chapter 12, is not clearly defined. [Section 2] is intended to clarify this authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Carrier fitness.** A certificate of operating authority may not be issued or remain in force unless the holder of the certificate is fit, willing, and able to perform the authorized service and conforms to the provisions of this chapter and the rules and orders of the commission.

Section 2. **Complaints.** (1) The commission has jurisdiction to conduct investigations and hear complaints to determine whether a motor carrier has violated any of the commission's rules or orders or any provision of this chapter.

(2) Following an opportunity for hearing and upon a finding that a motor carrier has violated any of the commission's rules or orders or any provision of this chapter, the commission may suspend or revoke the motor carrier's certificate of operating authority or impose any penalty provided for under 69-12-108.

Section 3. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 69, chapter 12, part 4, and the provisions of Title 69, chapter 12, part 4, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 69, chapter 12, part 2, and the provisions of Title 69, chapter 12, part 2, apply to [section 2].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1993.

CHAPTER NO. 157

[HB 390]

AN ACT ADOPTING THE MONTANA INTEGRATED LEAST-COST RESOURCE PLANNING AND ACQUISITION ACT; PROVIDING THAT THE PUBLIC SERVICE COMMISSION MAY REQUIRE A PUBLIC UTILITY THAT PROVIDES ELECTRIC OR NATURAL GAS SERVICE TO FILE AN INTEGRATED LEAST-COST RESOURCE PLAN; ALLOWING THE INCLUSION OF CERTAIN COSTS IN RATES; INTEGRATING THE PLANNING PROCESS IN FACILITY SITING; AMENDING SECTIONS 69-3-701, 69-3-702, 75-20-304, AND 75-20-501, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants the public service commission rulemaking authority to adopt guidelines for an electric or natural gas utility to follow in compiling an integrated least-cost resource plan. It is the intent of the legislature that the rules not apply to rural electric cooperatives. It is also the intent of the legislature that the rules preserve the "used and useful" ratemaking standard. The rules are not intended to allow the commission to preapprove any resource use proposed in a plan. [Section 5] does not require coordination between the commission and the department of natural resources and conservation regarding their respective planning requirements. However, it is the intent of the legislature that the department and other state agencies share with the commission their expertise on environmental impacts of a utility's planned resource acquisitions. [Section 6] addresses commission rate treatment. The commission may include costs resulting from an integrated least-cost resource plan in a utility's rates.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 6] may be cited as the "Montana Integrated Least-Cost Resource Planning and Acquisition Act".

Section 2. **Policy — planning.** (1) It is the policy of the state of Montana to supervise, regulate, and control public utilities. To the extent that it is consistent with the policy and in order to benefit society, the state encourages efficient utility operations, efficient use of utility services, and efficient rates. It is further the policy of the state to encourage utilities to acquire resources in a manner that will help ensure a clean, healthful, safe, and economically productive environment.

(2) The legislature finds that the commission may include in rates the costs that are associated with acquiring the resources referred to in subsection (1) and that are consistent with this policy if the resources are actually used and useful for the convenience of the public. To advance this policy, the commission may require periodic long-range plans from utilities that provide electric and

natural gas service in a form and manner determined by the commission. The commission may receive comments on the plans.

(3) [Sections 1 through 6] do not constrain or limit the commission's existing statutory duties or responsibilities.

Section 3. **Definitions.** As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Abandonment costs" means the costs incurred for resources acquired and abandoned pursuant to a plan.

(2) "Consumer counsel" means the consumer counsel provided for in 5-15-201.

(3) "Externalities" mean the impacts on society that are not directly borne by the producer in production and delivery activities, which due to imperfections in or the absence of markets are not accounted for in the producer's production and pricing decisions.

(4) "Plan" means an integrated least-cost resource plan submitted by a utility in accordance with [sections 1 through 6] and the rules adopted under [sections 1 through 6].

(5) "Planning costs" means the costs of evaluating the future demand for services and of evaluating alternative methods of satisfying future demand.

(6) "Portfolio development costs" means the costs of preparing a resource in a portfolio for prompt and timely acquisition of the resource.

(7) "Public utility" means a public utility, as defined in 69-3-101, that provides electric or natural gas service. The term does not include municipal utilities.

Section 4. **Integrated least-cost plan.** (1) The commission may adopt rules requiring a public utility to prepare and file a plan for meeting the requirements of its customers in the most cost-effective manner consistent with the public utility's obligation to serve. The rules may prescribe the content and the time for filing a plan.

(2) A plan must contain but is not limited to an evaluation of the full range of cost-effective means for the public utility to meet the service requirements of its Montana customers, including conservation or similar improvements in the efficiency by which services are used.

(3) The commission may adopt rules providing guidelines to be used in preparing a plan and identifying the criteria to be used in determining cost-effectiveness. The criteria may include externalities associated with the acquisition of a resource by a public utility. The rules must establish the minimum filing requirements for acceptance of a plan by the commission for further review. If a plan does not meet the minimum filing requirements, it must be returned to the public utility with a list of deficiencies. A corrected plan must be submitted within the time established by the commission.

(4) A plan filed with the commission by a utility, as defined in 75-20-104, must be provided to the department of natural resources and conservation and the consumer counsel.

Section 5. **Public comment.** (1) The commission shall conduct a public meeting for the purpose of receiving comment on a plan. The commission or the department of public service regulation may comment on the plan. A comment by the commission or the department may not be construed as preapproval by the commission of rate treatment for any proposed resource.

(2) The department of natural resources and conservation:

(a) shall review a plan and comment on the need for new resources, the alternatives evaluated to meet the need, the environmental implications of the resource choices, and other related issues that it considers important. The department shall coordinate and deliver all comments from other executive branch agencies.

(b) may use a plan in the development of studies for a specific energy facility for which an application for a certificate of environmental compatibility and public need is submitted under Title 75, chapter 20.

(3) The consumer counsel shall review and may comment on a plan.

Section 6. **Rate treatment.** (1) The commission may include in a public utility's rates:

(a) the cost of resources acquired in accordance with a plan;

(b) the cost-effective expenditures for improving the efficiency with which the public utility provides and its customers use utility services; and

(c) the costs of complying with the planning requirements of [sections 1 through 6], including but not limited to:

(i) planning costs;

(ii) portfolio development costs; and

(iii) all or a portion of abandonment costs.

(2) The commission shall adopt rules establishing criteria governing the extent of recovery of abandonment costs.

Section 7. Section 69-3-701, MCA, is amended to read:

"**69-3-701. Definitions.** As used in this part, the following definitions apply:

~~(1) "Avoided costs" means the incremental costs, as determined by the commission, to an electric or natural gas utility of energy or capacity, or both, which, but for the purchase of conservation, the utility would generate or supply itself or purchase from another source.~~

~~(2)~~*(1)* "Commission" means the Montana public service commission created in 2-15-2602.

~~(3)~~*(2)* "Conservation" means any reduction in electric power or natural gas consumption as a result of investment in measures that increase the efficiency of electricity or gas use in building shells, space heating or cooling equipment, water heating equipment, or refrigeration equipment or other cost-effective measures which, over its economic life meet the criteria of 69-3-702.

~~(4) "Residential building" means a building used for residential occupancy that:~~

~~(a) has a system for heating, cooling, or both, that uses a fuel supplied by the utility; and~~

~~(b) contains at least one but not more than four separately or centrally heated dwelling units or contains more than four separately heated or cooled or both heated and cooled units.~~"

Section 8. Section 69-3-702, MCA, is amended to read:

"**69-3-702. Eligible conservation.** Conservation purchases or investments are eligible under this part if they are *provided for in [section 6]* ~~made to replace, upgrade, or enhance building shells, space heating or cooling equipment, or refrigeration equipment that was installed and in operation in the existing residential building at least 3 years before the conservation purchases or investments are made and if they are determined by the commission to cost no more than the utility's avoided costs~~."

Section 9. Section 75-20-304, MCA, is amended to read:

"**75-20-304. Waiver of provisions of certification proceedings.** (1) The board may waive compliance with any of the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part if the applicant makes a clear and convincing showing to the board at a public hearing that an immediate, urgent need for a facility exists and that the applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with the provisions of 75-20-216 through 75-20-222, 75-20-501, and this part.

(2) The board may waive compliance with any of the provisions of this chapter upon receipt of notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there exists an immediate need for construction of a new facility or associated facility or the relocation of a previously existing facility or associated facility in order to promote the public welfare.

(3) The board shall waive compliance with the requirements of subsections (2)(c), (3)(b), and (3)(c) of 75-20-301 ~~and 75-20-501(5)~~ and the requirements of subsections (1)(a)(iv) and (v) of 75-20-211, 75-20-216(3), and 75-20-303(3)(a)(iv) relating to consideration of alternative sites if the applicant makes a clear and convincing showing to the board at a public hearing that:

(a) a proposed facility will be constructed in a county where a single employer within the county has permanently curtailed or ceased operations causing a loss of 250 or more permanent jobs within 2 years at the employer's operations within the preceding 10-year period;

(b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located support by resolution such a waiver;

(c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased or been curtailed; and

(d) the proposed facility will have a beneficial effect on the economy of the county in which the facility is proposed to be located.

(4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer. The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but not limited to construction jobs or job losses during labor disputes.

(5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum adverse environmental impact for a facility defined in subsections (10)(b), (c), (d), or (e) of 75-20-104, for an associated facility defined in 75-20-104(3), or for any portion of or process in a facility defined in subsection (10)(a) of 75-20-104 to the extent that the process or portion of the facility is not subject to a permit issued by the department of health or board of health.

(6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request under subsection (3). However, any payments made under this subsection shall be credited toward the fee paid under 75-20-215 to the extent the data or evidence presented at the hearing or the decision of the board under subsection (3) can be used in making a certification decision under this chapter.

(7) The board may grant only one waiver under subsections (3) and (4) for each permanent loss of jobs as defined in subsection (3)(a)."

Section 10. Section 75-20-501, MCA, is amended to read:

"**75-20-501. Annual long-range plan submitted — contents — available to public — *least-cost plan*.** (1) ~~Each~~ *Except as provided in subsection (5), each* utility and each person contemplating the construction of a facility within this state in the ensuing 10 years shall furnish annually to the department for its review a long-range plan for the construction and operation of facilities.

(2) The plan ~~shall~~ *must* be submitted by July 1 of each year and must include the following:

(a) the general location, size, and type of all facilities to be owned and operated by the utility or person whose construction is projected to commence during the ensuing 10 years, as well as those facilities to be removed from service during the planning period;

(b) in the case of *planned development of* utility facilities, a description of efforts by the utility or person to coordinate ~~the plan~~ with other utilities ~~or~~ *and* ~~persons so as to provide a coordinated~~ regional ~~plan for meeting the energy needs of the region~~ *planning*;

(c) a description of the efforts to involve environmental protection and land use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process;

(d) projections of the demand for the service rendered by the utility or person and explanation of the basis for those projections and a description of the manner and extent to which the proposed facilities will meet the projected demand; and

(e) additional information that the board by rule or the department on its own initiative or upon the advice of interested state agencies might request in order to carry out the purposes of this chapter.

(3) The plan shall be furnished to the governing body of each county in which any facility included in the plan under (2)(a) of this section is proposed to be located and made available to the public by the department. The utility or person shall give public notice throughout the state of its plan by filing the plan with the environmental quality council, the department of health and environmental sciences, the department of transportation, the department of public service regulation, the department of state lands, the department of fish, wildlife, and parks, and the department of commerce. Citizen environmental protection and resource planning groups and other interested persons may obtain a plan by written request and payment ~~therefor~~ *for the plan* to the department.

(4) A rural electric cooperative may furnish the department with a copy of the long-range plan and 2-year work plan *or other integrated resource plan* required to be completed under federal rural electrification *administration or other federal agency* requirements in lieu of the long-range plan required in subsection (1).

(5) ~~No person may file an application for a facility unless the facility had been adequately identified in a long-range plan at least 2 years prior to acceptance of an application by the department, except for electric transmission lines of a design capacity of 230 kilovolts or less.~~ *The provisions of subsections (1) through (4) do not apply to a public utility that submits an integrated least-cost resource plan to the public service commission pursuant to [sections 1 through 6].*

(6) A public utility that submits an integrated least-cost resource plan pursuant to [sections 1 through 6] shall contract with the department to fund the actual and necessary costs of the department that are associated with preparing the department's comments on the public utility's plan and with obtaining other agencies' comments, as provided in [section 5]. If a contract is not entered into prior to the submission of the plan, the department, upon completion of its review and comment, shall bill the utility for the department's costs."

Section 11. **Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 1 through 6].

Section 12. **Effective date.** [This act] is effective July 1, 1993.

Approved March 24, 1993.

CHAPTER NO. 158

[HB 403]

AN ACT AUTHORIZING A SCHOOL DISTRICT TO ISSUE REFUNDING BONDS UNDER THE BOARD OF INVESTMENTS LOAN PROGRAM; AMENDING SECTION 20-9-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-412, MCA, is amended to read:

"**20-9-412. Issuance of refunding bonds without an election.** (1) Bonds of a school district issued for the purpose of providing the money needed to redeem outstanding bonds may be issued without submitting the proposition to the electorate at an election. In order to issue *refunding* bonds ~~for such purpose~~, the trustees, at a regular meeting or a ~~duly called~~ special meeting, shall adopt a resolution setting forth:

(a) the facts regarding the outstanding bonds that are to be redeemed;

(b) the reasons for issuing new bonds; and

(c) the term and details of the new bond issue.

(2) After the adoption of ~~such~~ *the* resolution, the trustees shall:

(a) sell the bonds at a private negotiated sale; or

(b) at their option, give notice of the sale of ~~such~~ *the* new bonds in the same manner that notice is required to be given for the sale of bonds authorized at a school election and sell ~~such~~ *the* new bonds in open competitive bidding, by written bids or by sealed bids.

(3) ~~Bonds shall~~ *Except for bonds refunded by a school district under the provisions of Title 17, chapter 5, part 16, including any variable rate finance program so authorized, bonds may* not be refunded by the issuance of new bonds unless the rate of interest offered on the new bonds is at least 1/2 of 1% per annum less than the rate of interest in the bonds to be refunded or redeemed.

(4) Refunding bonds issued pursuant to this section may be issued to refund outstanding bonds in advance of the date on which ~~such~~ *the* bonds mature or are subject to redemption, provided the proceeds of the refunding bonds, less any accrued interest or premium received upon the sale ~~thereof~~ *of the bonds*, are deposited with other funds appropriated to the payment of the outstanding bonds in escrow with a suitable banking institution in or out of the state. Funds ~~so~~ deposited ~~shall~~ *must* be invested in securities ~~which~~ *that* are general obligations of the United States or the principal and interest of which are guaranteed by the United States and ~~which~~ *that* mature or are callable at the option of the holder on ~~such~~ *the* dates and bear interest at ~~such~~ *the* rates and payable on ~~such~~ *the* dates ~~as shall be~~ required to provide funds sufficient, with any cash retained in the escrow account, to pay when due the interest to accrue on each refunded bond to its maturity or redemption date, if called for redemption, and to pay the principal ~~thereof~~ *of the bond* at maturity or upon ~~such~~ *the* redemption date, and to pay any redemption premium. The escrow account ~~shall~~ *must* be irrevocably appropriated to the payment of the principal of and interest and redemption

premium, if any, on the refunded bonds. Funds to the credit of the debt service fund for the payment of the refunded bonds and not required for the payment of principal of or interest ~~thereon~~ *on the bonds* due prior to issuance of the refunding bonds may be appropriated by the district to the escrow account. The school district may pay the reasonable costs and expenses of printing the refunding bonds and of establishing and maintaining the escrow account. Bonds refunded pursuant to this part are not to be considered outstanding for purposes of 20-9-406 or any other debt limitation."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1993.

CHAPTER NO. 159

[HB 404]

AN ACT CLARIFYING FUNDING FOR THE STATE VETERANS' CEMETERY; REVISING ELIGIBILITY FOR VETERANS' LICENSE PLATES; AMENDING SECTION 61-3-332, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Special revenue account — use of funds — solicitation.** (1) There is an account in the special revenue fund to the credit of the department of military affairs for the state veterans' cemetery.

(2) Plot allowances, donations, and, as provided in 61-3-332, revenue from veterans' license plate sales must be deposited into the account.

(3) As appropriated by the legislature, money in the account may be used only for the construction, maintenance, operation, and administration of the state veterans' cemetery.

(4) The department of military affairs may solicit veterans' license plate sales and donations on behalf of the state veterans' cemetery.

Section 2. Section 61-3-332, MCA, is amended to read:

"**61-3-332.** *(Temporary)* **Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned ~~thereto~~ *to the dealer,* in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on ~~such~~ *the* license plates, and the word "Montana" and the year must be placed across the plates. ~~Such~~ *The* registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of ~~such~~ *the* numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and ~~no~~ *a* year number may *not* be indicated ~~thereon~~ *on the plates* because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees ~~thereof~~ in *the* line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees ~~thereof~~ in the line of duty, there must be placed on the number plates assigned ~~thereto~~, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. ~~No~~ *A* registration or license fee may *not* be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued a special license plate with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue one set of national guard plates, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued a special license plate with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of one set of plates. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued a special license plate under this section with a design or decal displaying the letters "DV".

(i) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(ii) Special license plates issued to a disabled veteran are not transferable to another person.

(iii) A disabled veteran is not entitled to a special license plate for more than one vehicle.

(iv) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by ~~his~~ *the veteran's* service record, may upon application and presentation of proof be issued a special license plate with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, for one motor vehicle only, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran *or the surviving spouse of a veteran* of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if ~~he~~ *the veteran* was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of ~~proof, in a form prescribed by the department, of his~~ *a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's* qualification under this subsection, there must be issued to ~~each~~ *the* applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to *a* qualified ~~veterans~~ *veteran or to the veteran's surviving spouse*. The plates must be placed or mounted on the vehicle owned by the veteran *or the veteran's surviving spouse* designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) ~~Each~~ *A* veteran *or surviving spouse* who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue ~~fund to the credit of the department of military affairs to be appropriated by the legislature~~ *account established in [section 1]* for *administration,* construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person. *(Terminates July 1, 1996—sec. 4, Ch. 654, L. 1989.)*

61-3-332. *(Effective July 1, 1996)* **Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned ~~thereto~~ *to the dealer,* in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide non-removable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.

(4) In the case of motorcars and trucks, number plates must be of metal 6 inches wide and 12 inches in length. For number plates issued after 1976, the outline of the state of Montana must be used as a distinctive border on ~~such~~ *the* license plates, and the word "Montana" and the year must be placed across the bottom of the plates. ~~Such~~ *The* registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of ~~such~~ *the* numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings in this section provided, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and ~~no~~ *a* year number may *not* be indicated ~~thereon~~ *on the plates* because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees ~~thereof~~ in *the* line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees ~~thereof~~ in the line of duty, there must be placed on the number plates assigned ~~thereto~~, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. ~~No~~ *A* registration or license fee may *not* be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be

removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued a special license plate with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue one set of national guard plates, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued a special license plate with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of one set of plates. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued a special license plate under this section with a design or decal displaying the letters "DV".

(i) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(ii) Special license plates issued to a disabled veteran are not transferable to another person.

(iii) A disabled veteran is not entitled to a special license plate for more than one vehicle.

(iv) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by ~~his~~ *the veteran's* service record, may upon application and presentation of proof be issued a special license plate with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) Upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United

States special license plates, for one motor vehicle only, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran *or the surviving spouse of a veteran* of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if ~~he~~ *the veteran* was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of ~~proof, in a form prescribed by the department, of his~~ *a department of defense form 214 (DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show the applicant's* qualification under this subsection, there must be issued to ~~each~~ *the* applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to *a* qualified ~~veterans~~ *veteran or to the veteran's surviving spouse*. The plates must be placed or mounted on the vehicle owned by the veteran *or the veteran's surviving spouse* designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) ~~Each~~ *A* veteran *or surviving spouse* who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue ~~fund to the credit of the department of military affairs to be appropriated by the legislature~~ *account established in [section 1]* for *administration,* construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 10, chapter 2, part 6, and the provisions of Title 10, chapter 2, part 6, apply to [section 1].

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved March 24, 1993.

CHAPTER NO. 160

[HB 440]

AN ACT DEFINING A COUNTY WATER AND SEWER DISTRICT AS A UNIT OF LOCAL GOVERNMENT; AND AMENDING SECTION 7-13-2201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2201, MCA, is amended to read:

"7-13-2201. Definitions. (1) The word "board" and the words "boards of directors" ~~shall~~ apply to the board of directors of ~~such~~ *the* district.

(2) The term "county" ~~shall mean~~ *means* one or more counties and ~~shall be understood and construed to include~~ *includes a* city and county.

(3) The word "district" ~~shall apply~~, unless otherwise expressed or used, *applies* to a district formed under the provisions of this part and part 23. *A district is a unit of local government separate and distinct from a municipality, but a district may be treated as a municipality when applying for a grant, a loan, or other financial assistance from the state.*

(4) The term "municipality", as used in this part and part 23, ~~shall include~~ *includes* a consolidated city and county, city, or town and includes all corporations ~~heretofore organized and now existing and those hereafter~~ organized for municipal purposes within ~~such~~ *the* districts."

Approved March 24, 1993.

CHAPTER NO. 161

[HB 446]

AN ACT INCLUDING TRAINING OF MOTOR CARRIER SERVICES DIVISION OFFICERS OF THE DEPARTMENT OF TRANSPORTATION AS A FUNCTION OF THE BOARD OF CRIME CONTROL; AND AMENDING SECTION 44-4-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-4-301, MCA, is amended to read:

"**44-4-301. Functions.** (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board ~~shall have the authority to~~ *may* establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center administrators, and public safety communications officers.

(3) The board ~~shall have the authority to~~ *may* require basic training for officers, establish minimum standards for equipment and procedures and for advanced inservice training for officers, establish minimum standards for the certification of public safety communications officers, *establish minimum standards for the certification of motor carrier services division officers appointed under 61-12-201,* and establish minimum standards for law enforcement and detention officer training schools administered by the state or any of its political subdivisions or agencies, to insure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003."

Approved March 24, 1993.

CHAPTER NO. 162

[HB 464]

AN ACT EXTENDING THE ANTIFRAUD PROVISIONS OF THE SECURITIES LAWS BY MODIFYING THE DEFINITION OF AN INVESTMENT ADVISER; ELIMINATING THE DUAL REGISTRATION REQUIREMENT FOR BROKER-DEALERS AND INVESTMENT ADVISERS WHO ARE SOLE PROPRIETORS EMPLOYING NO OTHER SALESPERSONS, INVESTMENT ADVISERS, OR INVESTMENT ADVISER REPRESENTATIVES; AND AMENDING SECTIONS 30-10-103 AND 30-10-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-103, MCA, is amended to read:

"**30-10-103. Definitions.** When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for ~~his~~ *the person's* own account. "Broker-dealer" does not include:

(a) a ~~salesman~~ *salesperson,* issuer, bank, savings institution, trust company, or insurance company; or

(b) a person who ~~has no~~ *does not have a* place of business in this state if ~~he~~ *the person* effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of ~~such~~ *the* real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name as amended on the effective date ot this subsection.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absence of evidence to the contrary, is presumed to be offered or sold for speculation or investment purposes.

(b) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right but not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(9) (a) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (9)(a) to others for compensation, as part of a business; or

(ii) represents ~~himself as providing~~ *to any person that the financial planner or other person provides* the investment advisory services described in subsection (9)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

(iii) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of ~~his~~ *the person's* profession;

(iv) a registered broker-dealer *whose performance of services described in subsection (9)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation*;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1); or

(vii) ~~such~~ other persons not within the intent of this subsection (9) as the commissioner may by rule or order designate.

(10) (a) "Investment adviser representative" means any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

(i) makes any recommendation or otherwise renders advice regarding securities to clients;

(ii) manages accounts or portfolios of clients;

(iii) solicits, offers, or negotiates for the sale or sells investment advisory services; or

(iv) supervises employees who perform any of the foregoing.

(b) Investment adviser representative does not include ~~an individual~~ *a salesperson* registered ~~as a salesman~~ pursuant to 30-10-201*(1) whose performance of the services described in subsection (10)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser.*

(11) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(12) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

(13) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(14) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) ~~such~~ other items as the commissioner may by rule or order specify.

(15) "Registered broker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(16) (a) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(b) "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.

(c) Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(17) ~~"Salesman"~~ *"Salesperson"* means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a ~~salesman~~ *salesperson* only if ~~he~~ *the person* otherwise comes within this definition. ~~"Salesman"~~ *Salesperson* does not include an individual who represents an issuer in:

(a) effecting a transaction in a security exempted by subsection (1), (2), (3), (8), (9), (10), or (11) of 30-10-104;

(b) effecting transactions exempted by 30-10-105 except when registration as a ~~salesman~~ *salesperson*, pursuant to 30-10-201, is required by 30-10-105 or by any rule promulgated under 30-10-105; or

(c) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(18) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after July 1, 1961.

(19) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under ~~such~~ a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim

certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(20) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(21) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Section 2. Section 30-10-201, MCA, is amended to read:

"**30-10-201. Registration of broker-dealers, ~~salesmen~~ *salespersons*, investment advisers, and investment adviser representatives.** (1) It is unlawful for a person to transact business in this state as a broker-dealer or ~~salesman~~ *salesperson*, except as provided in 30-10-105, unless ~~he~~ *the person* is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a ~~salesman~~ *salesperson* to represent ~~him~~ *the broker-dealer or issuer* in this state, except in transactions exempt under 30-10-105, unless the ~~salesman~~ *salesperson* is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for any person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) ~~he~~ *the person* is so registered under parts 1 through 3 of this chapter;

(b) ~~he~~ *the person* is registered as a broker-dealer under parts 1 through 3 of this chapter;

(c) ~~his~~ *the person's* only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) broker-dealers;

(iv) banks;

(v) trust companies;

(vi) savings and loan associations;

(vii) employee benefit plans with assets of not less than $1 million;

(viii) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(ix) other institutional investors as are designated by rule or order of the commissioner; or

(d) ~~he has no~~ *the person does not have a* place of business in this state and during any 12 consecutive months does not direct business communications in this state in any manner to more than five present or prospective clients, other than those specified in subsection (3)(c), whether or not ~~he~~ *the person* or any of the persons to whom the communications are directed are then present in this state.

(4) A broker-dealer or a ~~salesman~~ *salesperson*, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in ~~such~~ *the* form as the commissioner prescribes and payment of the fee prescribed in 30-10-209. A ~~salesman~~ *salesperson* acting as agent for an issuer or broker-dealer who is not currently in compliance with the financial responsibility requirements prescribed by the Securities Exchange Act of 1934 and by regulations adopted under it, may, in the discretion of the commissioner, be required to file with the commissioner a bond of a surety company duly authorized to transact business in this state. The bond shall be in an amount determined by the commissioner, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of parts 1 through 3 of this chapter, and provide that upon failure to ~~so~~ comply, the ~~salesman shall be~~ *salesperson is* liable to any and all persons who may suffer loss by reason thereof.

(5) The application shall contain whatever information the commissioner requires. ~~No~~ *A* registration application of a broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative may *not* be withdrawn before the commissioner approves or denies ~~such~~ *the* registration, without the express written consent of the commissioner.

(6) When the registration requirements are met, the commissioner shall make the registration effective. ~~No~~ *An* effective registration of a broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative may *not* be withdrawn or terminated without the express written consent of the commissioner.

(7) Except as provided in subsection (6), registration of a broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative:

(a) is effective until December 31 following ~~such~~ *the* registration or ~~such~~ *any* other time as the commissioner may by rule adopt; and

(b) may be renewed.

(8) The registration of a ~~salesman~~ *salesperson* is not effective during any period when ~~he~~ *the salesperson* is not associated with an issuer or a registered broker-dealer specified in ~~his~~ *the* application. When a ~~salesman~~ *salesperson* begins or terminates a connection with an issuer or registered broker-dealer, the ~~salesman~~ *salesperson* and the issuer or broker-dealer shall promptly notify the commissioner.

(9) The registration of an investment adviser representative is not effective during any period when ~~he~~ *the person* is not associated with an investment adviser registered under this act and specified in the application. When an

investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner.

(10) Registration of a broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative may be renewed by filing, prior to the expiration ~~thereof~~ *of the registration*, an application containing ~~such~~ information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative filed by the applicant, payment of the prescribed fee, and, in the case of a broker-dealer who is not a member of NASD, inc., by filing a financial statement showing the financial condition of ~~such~~ *the* broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(11) Every registered broker-dealer and investment adviser shall make and keep ~~such~~ accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner. All *required* records ~~so required shall~~ *must* be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to ~~such~~ reasonable periodic, special, or other examinations, within or ~~without~~ *outside* this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(12) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative if ~~he~~ *the commissioner* finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) has filed an application for registration under this section which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative;

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that ~~his~~ *the person's* liabilities exceed ~~his~~ *the person's* assets or in the sense that ~~he~~ *the person* cannot meet ~~his~~ obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection ~~(h)~~ *(12)* without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection ~~(j)~~ *(12)*, and ~~he~~ *the commissioner* shall vacate any ~~such~~ order when the deficiency has been corrected; or

(k) has failed to reasonably supervise ~~his~~ *the person's* ~~salesmen~~ *salespersons* or employees or ~~his~~ investment adviser representatives or employees to assure their compliance with this act.

(13) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to ~~him~~ *the commissioner* when registration became effective unless the proceeding is instituted within 30 days after the date on which the registration became effective.

(14) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(15) Upon the entry of the order under subsection (12) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a ~~salesman~~ *salesperson* or investment adviser representative, that it has been entered and of the reasons ~~therefor~~ *for the order* and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set ~~down~~ for hearing. If ~~no~~ *a* hearing is *not* requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(16) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser repre-

sentative or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

(17) The commissioner may, after suspending or revoking registration of any broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative, impose a fine not to exceed $5,000 upon ~~such~~ *the* broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of ~~such~~ *the* broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of a broker-dealer, ~~salesman~~ *salesperson*, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of ~~his~~ *the* right to do business in this state under parts 1 through 3 of this chapter.

(18) A sole proprietor registered as a broker-dealer or investment adviser who does not employ other salespersons or investment adviser representatives, other than the sole proprietor, is not required to register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser representative if the sole proprietor meets the examination requirements established by the commissioner by rule."

Section 3. **Registration of previous filing.** A registered salesperson who has filed with the commissioner as an investment adviser representative as of October 1, 1993, shall register as an investment adviser representative by October 1, 1994.

Section 4. **Code commissioner instruction.** Wherever the term "salesman" or its equivalent appears in Title 30, chapter 10, parts 1 through 3, or in legislation enacted by the 1993 legislature, the code commissioner shall substitute the term "salesperson" or its equivalent and make any necessary grammatical changes to reflect the name change.

Approved March 24, 1993.

CHAPTER NO. 163

[HB 465]

AN ACT GENERALLY REVISING THE LAWS RELATING TO MEDICARE SUPPLEMENT INSURANCE; REVISING MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS TO COMPLY WITH THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990, PUBLIC LAW 101-508; AMENDING SECTIONS 33-22-902, 33-22-903, 33-22-904, 33-22-905, 33-22-906, 33-22-907, 33-22-908, 33-22-910, AND 33-22-911, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-902, MCA, is amended to read:

"**33-22-902. Purpose.** The purpose of this part is to establish minimum standards for medicare supplement ~~insurance~~ policies *and certificates* and to establish a regulatory program that meets the requirements of ~~Public Law 96-265, the Social Security Disability Amendments of 1980, approved June 9, 1980~~ *42 U.S.C. 1395ss(p)(1)(A).*"

Section 2. Section 33-22-903, MCA, is amended to read:

"**33-22-903. Definitions.** As used in this part, the following definitions apply:

(1) "Applicant" means:

(a) in the case of an individual medicare supplement policy ~~or subscriber contract~~, the person who seeks to contract for insurance benefits; and

(b) in the case of a group medicare supplement policy ~~or subscriber contract~~, the proposed certificate holder.

(2) "Certificate" means a certificate delivered or issued for delivery in this state under a group medicare supplement policy ~~or subscriber contract~~.

(3) "Certificate form" means the form on which the certificate is delivered or issued for delivery by the issuer.

~~(3)~~*(4)* "Entity" means an insurer as defined in 33-1-201, a health service corporation as defined in 33-30-101, and a health maintenance organization as defined in 33-31-102.

~~(4)~~*(5)* "Health care expenses":

(a) means expenses of a health maintenance organization associated with the delivery of health care services that are analogous to incurred losses of an insurer;

(b) does not include home office and overhead costs, advertising costs, commissions and other acquisition costs, taxes, capital costs, administrative costs, or claims processing costs.

(6) "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any entity delivering or issuing for delivery in this state medicare supplement policies or certificates.

~~(5)~~*(7)* "Medicare" means Health Insurance for the Aged, Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

~~(6)~~*(8)* "Medicare supplement policy" means a group or individual policy of disability insurance or a subscriber contract of a health service corporation, *other than a policy issued pursuant to a contract under 42 U.S.C. 1395l or 1395mm, or a policy issued under a demonstration project authorized pursuant to amendments to the federal Social Security Act,* that is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare ~~by reason of age~~. The term does not include:

(a) a policy or contract of one or more employers or labor organizations or of the trustees of a fund established by one or more employers or labor organizations, or *a* combination ~~thereof~~ *of employers, organizations, and trustees,* for employees or former employees, or *a* combination ~~thereof~~ *of current and former employees,* or for members or former members, or *a* combination ~~thereof~~ *of current and former members,* of the labor organizations; or

~~(b) a policy or contract of any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:~~

~~(i) is composed of individuals all of whom are actively engaged in the same profession, trade, or occupation;~~

~~(ii) has been maintained in good faith for purposes other than obtaining insurance; and~~

~~(iii) has been in existence for at least 2 years prior to the date of its initial offering of the policy or plan to its members;~~

~~(c)~~*(b)* individual policies or contracts issued pursuant to a conversion privilege under a policy or contract of group or individual insurance when the group or individual policy or contract includes provisions that are inconsistent with the requirements of this part or policies issued to employees or members as additions to franchise plans in existence on April 8, 1981.

(9) "Policy form" means the form on which the policy is delivered or issued for delivery by the issuer."

Section 3. Section 33-22-904, MCA, is amended to read:

"**33-22-904. Standards for policy provisions — rules.** (1) A medicare supplement ~~insurance~~ policy~~, contract,~~ or certificate in force in this state may not contain benefits that duplicate benefits provided by medicare.

(2) The commissioner shall adopt reasonable rules to establish specific standards for policy provisions of medicare supplement policies and certificates. *A requirement of this code relating to minimum required policy benefits, other than the minimum standards contained in this part, may not apply to medicare supplement policies and certificates.* The standards are in addition to and in accordance with applicable laws of this state, including the provisions of Title 33, chapter 22, and may cover but are not limited to:

(a) terms of renewability;

(b) initial and subsequent conditions of eligibility;

(c) nonduplication of coverage;

(d) probationary periods;

(e) benefit limitations, exceptions, and reductions;

(f) elimination periods;

(g) requirements for replacement;

(h) recurrent conditions; and

(i) definitions of terms.

(3) The commissioner may adopt reasonable rules that prohibit policy *or certificate* provisions not otherwise specifically authorized by statute that, in the opinion of the commissioner, are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a medicare supplement policy *or certificate.*

(4) Notwithstanding any other provisions of the law, a medicare supplement policy *or certificate* may not ~~deny a claim~~ *exclude or limit benefits* for losses incurred more than 6 months from the effective date of coverage ~~for~~ *because it involved* a preexisting condition. The policy *or certificate* may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of coverage.

(5) The commissioner may adopt rules necessary to conform medicare supplement policies and certificates to the requirements of federal law and federal regulations, including but not limited to rules:

(a) requiring refunds or credits if the policies or certificates do not meet loss requirements;

(b) establishing a uniform methodology for calculating and reporting loss ratios;

(c) ensuring public access to policies, premiums, and loss ratio information of issuers of medicare supplement insurance;

(d) establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases; and

(e) establishing a policy for holding public hearings prior to approval of premium increases."

Section 4. Section 33-22-905, MCA, is amended to read:

"**33-22-905. Minimum standards for benefits and payment of claims — rules.** The commissioner shall adopt reasonable rules to establish minimum standards for benefits, ~~and~~ payment of claims, *marketing practices, compensation arrangements, and reporting practices* for medicare supplement policies *and certificates.*"

Section 5. Section 33-22-906, MCA, is amended to read:

"**33-22-906. Loss ratio standards and filing requirements — limits on compensation.** ~~(1) Every entity providing group medicare supplement insurance benefits to a resident of this state shall file a copy of the master policy and each certificate used in this state with the commissioner as required by 33-1-501. The filing must be made not less than 60 days in advance of the delivery of any certificate or policy to a resident of this state.~~

~~(2)~~*(1)* Medicare supplement policies *and certificates* ~~are expected to~~ *must* return to policyholders *or certificate holders* benefits that are reasonable in relation to the premium charged. The commissioner shall adopt reasonable rules to establish minimum standards for loss ratios of medicare supplement policies *and certificates* on the basis of incurred claims experience or incurred health care expenses, where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of rules adopted pursuant to this section, medicare supplement policies *and certificates* issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, ~~shall~~ *must* be treated as ~~individual~~ *group* policies. Every entity providing medicare supplement insurance benefits to a resident of this state shall make premium adjustments:

(a) necessary to produce an expected loss ratio under the policy or ~~contract~~ *certificate* that meets the minimum loss ratio standards for medicare supplement policies *and certificates* as established by rule; and

(b) expected to result in a loss ratio at least as great as that originally anticipated by the entity when it established current premiums for the medicare supplement ~~insurance~~ policy or ~~contract~~ *certificate.*

~~(3)~~*(2)* The commissioner shall by rule establish the timing and manner of the premium adjustments. Every entity providing medicare supplement policies or certificates in this state shall annually file with the commissioner its rates, rating schedule, and supporting documentation demonstrating that it is in compliance with the applicable loss ratio standards of this part. An entity transacting medicare supplement insurance in this state may not adjust its rates more than twice a year and may not adjust its rates for the first year a policy is in force, except to allow for changes in federal laws or regulations relating to medicare. Each filing of rates and rating schedules must demonstrate that the actual and expected losses in relation to premiums complies with the requirements of this part.

~~(4)~~*(3)* An entity may not provide compensation to its insurance producers that is greater than the renewal compensation that would be paid on an existing policy *or certificate* if:

(a) the existing policy *or certificate* were replaced by another policy *or certificate* with the same insurer and the new ~~policy~~ benefits are substantially similar to the benefits under the old policy *or certificate*; and

(b) the old policy *or certificate* was issued by the same insurer or insurance group."

Section 6. Section 33-22-907, MCA, is amended to read:

"**33-22-907. Disclosure standards — informational brochure — rules.** (1) In order to provide for full and fair disclosure in the sale of medicare supplement policies *and certificates*, a medicare supplement policy may not be delivered or issued for delivery in this state and a certificate may not be delivered pursuant to a group medicare supplement policy delivered or issued for delivery in this state unless an outline of coverage is delivered to the applicant at the time application is made. The outline of coverage must be filed with the commissioner as required by 33-1-501. The filing must be made at least 60 days in advance of the date the outline of coverage is delivered to any resident of this state.

(2) (a) The commissioner shall prescribe the format and content of the outline of coverage required by subsection (1).

(b) For purposes of this section, "format" means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions.

(c) The outline of coverage must include:

(i) a description of the principal benefits and coverage provided in the policy *or certificate*;

(ii) a statement of the exceptions, reductions, and limitations contained in the policy *or certificate*;

(iii) a statement of the renewal provisions including any reservation by the ~~insurer~~ *issuer* of a right to change premiums *and disclosure of the existence of any automatic renewal premium increases based on the policyholder's or certificate holder's age*;

(iv) a statement that the outline of coverage is a summary of the policy *or certificate* issued or applied for and that the policy *or certificate* should be consulted to determine governing contractual provisions.

(3) The commissioner may prescribe by rule a standard form and the contents of an informational brochure for persons eligible for medicare ~~by reason of age~~, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of medicare. Except in the case of direct response insurance policies, the commissioner may require by rule that the information brochure be provided to any prospective insureds eligible for medicare at the same time the outline of coverage is delivered. With respect to direct response insurance policies, the commissioner may require by rule that the prescribed brochure be provided upon request, but not later than the time of policy delivery, to any prospective insureds eligible for medicare ~~by reason of age~~.

(4) The commissioner may adopt reasonable rules for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for medicare ~~by reason of age~~, other than:

(a) medicare supplement policies *or certificates*;

(b) disability income policies;

(c) basic, catastrophic, or major medical expense policies;

(d) single premium, nonrenewable policies; or

(e) other policies excepted in 33-22-903~~(6)~~*(8)*.

(5) The commissioner may further adopt reasonable rules to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies~~, subscriber contracts,~~ or certificates by persons eligible for medicare ~~by reason of age~~.

(6) As soon as practicable, but no later than 30 days before the annual effective date of a medicare benefit change, every entity providing medicare supplement insurance or benefits to a resident of this state shall notify its policyholders~~, contract holders,~~ and certificate holders, in a format that the commissioner prescribes by rule, of the changes it has made to the medicare supplement ~~insurance~~ policy or ~~contract~~ *certificate*."

Section 7. Section 33-22-908, MCA, is amended to read:

"**33-22-908. Notice of free examination.** Medicare supplement policies ~~or~~ *and* certificates must have a notice prominently printed on the first page of the policy or certificate or attached ~~thereto~~ *to the policy or certificate* stating in substance that the applicant has the right to return the policy or certificate within 30 days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. The ~~insurer~~ *issuer* shall pay any refund made pursuant to this section directly to the applicant in a timely manner."

Section 8. Section 33-22-910, MCA, is amended to read:

"**33-22-910. Filing requirements for advertising.** Every ~~entity providing~~ *issuer of* medicare supplement ~~insurance or benefits~~ *policies or certificates* in this state shall provide to the commissioner for ~~his~~ *the commissioner's* review *or approval* a copy of any medicare supplement advertising intended for use in this state, whether through written, radio, or television medium."

Section 9. Section 33-22-911, MCA, is amended to read:

"**33-22-911. Penalties.** In addition to any other penalties for violations of the insurance code, the commissioner may after hearing require ~~entities~~ *issuers* violating any provision of or rule adopted under Title 33, chapter 16, or this part to cease marketing a medicare supplement policy or certificate in this state that is related directly or indirectly to the violation or take ~~such~~ action ~~as~~ *that* is necessary to comply with the provisions of Title 33, chapter 16, or this part or the rules adopted under Title 33, chapter 16, or this part, or both."

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1993.

CHAPTER NO. 164

[HB 493]

AN ACT INCREASING THE PENALTIES FOR VIOLATION OF OR NONCOMPLIANCE WITH LAWS GOVERNING INSURANCE LICENSEES; AND AMENDING SECTIONS 33-1-317 AND 33-17-1001, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-317, MCA, is amended to read:

"**33-1-317. Penalty imposed by commissioner.** The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine not to exceed the sum of $25,000 upon a person found to have violated ~~any~~ *a* provision of this code or regulation ~~duly~~ promulgated by the commissioner, except that the fine imposed upon insurance producers or adjusters ~~shall~~ *may* not exceed ~~$500~~ *$5,000 per violation.* ~~Said~~ *The* fine ~~shall be~~ *is* in addition to all other penalties imposed by the laws of this state and ~~shall~~ *must* be collected by the commissioner in the name of the state of Montana. Imposition of ~~any~~ *a* fine ~~hereunder shall be~~ *under this section is* an order from which an appeal may be taken, pursuant to the provisions of 33-1-711."

Section 2. Section 33-17-1001, MCA, is amended to read:

"**33-17-1001. Suspension, revocation, or refusal of license.** (1) Except as provided in 33-17-411, *after a hearing, which must be held no less than 10 days after advance notice by certified mail, on charges given under 33-1-314(3),* the commissioner may suspend for ~~not more than 12 months~~ *up to 5 years,* ~~may~~ revoke ~~or~~, refuse to continue, or ~~may~~ deny ~~an application for~~ a license issued under this chapter ~~or any surplus lines insurance producer license if, after hearing held on not less than 10 days' advance notice by certified mail of the hearing and of the charges against the licensee given as provided in 33-1-314(3) to the licensee, he~~ *the commissioner* finds that the licensee or applicant has:

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused ~~had it then existed and been known to the commissioner~~;

(b) obtained or attempted to obtain a license through misrepresentation or fraud;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to ~~his~~ *the licensee's* own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of ~~his~~ *the licensee's* affairs under the license, used fraudulent, coercive, or dishonest practices or ~~has shown himself to be~~ *is* incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

(g) made a materially untrue statement in the license application;

(h) misrepresented the terms of an actual or proposed insurance contract;

(i) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

(j) had ~~his~~ *a similar* license suspended or revoked in any other state;

(k) forged another's name to an application for insurance;

(l) cheated on an examination for a license; or

(m) knowingly accepted insurance business from a person who is not licensed.

(2) The license of a partnership or corporation may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(e) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204."

Approved March 24, 1993.

CHAPTER NO. 165

[HB 513]

AN ACT REQUIRING THE STATE AUDITOR, AS INSURANCE COMMISSIONER, TO ENSURE THAT THE INTERESTS OF INSURANCE CONSUMERS ARE PROTECTED; AND AMENDING SECTIONS 33-1-303 AND 33-1-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-303, MCA, is amended to read:

"33-1-303. Deputies and assistants — employment, compensation, and termination. (1) The commissioner shall appoint a chief deputy insurance commissioner who ~~shall be~~ *is* in charge of the insurance department under the direction and control of the commissioner.

(2) The commissioner may appoint additional deputy insurance commissioners for the purposes that ~~he~~ *the commissioner* designates.

(3) The commissioner may employ a competent insurance actuary to perform actuarial duties, if any, of the department, to take charge of or assist in the examination of insurers, and to perform other duties assigned to ~~him~~ *the commissioner.*

(4) The commissioner may appoint or employ examiners to conduct or assist in examinations of insurers and others provided for under the code. Examiners must be competent, because of experience or special education or training, to fulfill the responsibilities of an insurance examiner.

(5) *The commissioner shall appoint or employ insurance protection analysts for the purpose of ensuring that insurers and their representatives comply with market regulations provided by law.*

(6) The commissioner may appoint and employ a field investigator whose primary duty it is, as directed by the commissioner, to make investigations in this state of violations or claimed violations of this code.

~~(6)~~*(7)* The commissioner may appoint a chief clerk for the insurance department and employ ~~such~~ other assistants and clerks as may be necessary to assist ~~him~~ *the commissioner* properly to discharge the duties imposed ~~upon him~~ under this code.

~~(7)~~*(8)* The commissioner may at any time terminate the appointment, designation, or employment of any ~~such~~ deputy, actuary, chief clerk, or other employee.

~~(8)~~*(9)* The commissioner may from time to time contract for and procure, on a fee or part-time basis, or both, ~~such~~ actuarial, technical, or other professional services as ~~he~~ *the commissioner* may require for the discharge of ~~his~~ duties.

~~(9)~~*(10)* The compensation of the commissioner's personal staff, as defined in Title 2, chapter 18, part 1, shall be as fixed by the commissioner but in the aggregate may not exceed current funds appropriated by the legislature to the insurance department or otherwise currently available for the purpose."

Section 2. Section 33-1-311, MCA, is amended to read:

"**33-1-311. General powers and duties.** (1) The commissioner shall enforce the provisions of this code and shall execute the duties imposed ~~upon him~~ by this code.

(2) The commissioner shall have the powers and authority expressly conferred upon ~~him~~ *the commissioner* by or reasonably implied from the provisions of this code.

(3) *The commissioner shall administer the department to ensure that the interests of insurance consumers are protected.*

(4) The commissioner may conduct ~~such~~ examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as ~~he may deem~~ *the commissioner considers* proper to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any ~~such~~ provision. The cost of ~~such~~ additional examinations and investigations ~~shall~~ *must* be borne by the state.

~~(4)~~*(5)* The commissioner ~~shall have such~~ *has* additional powers and duties as ~~may be~~ provided by other laws of this state.

~~(5)~~*(6)* The department is a criminal justice agency as defined in 44-5-103."

Approved March 24, 1993.

CHAPTER NO. 166

[HB 520]

AN ACT MAKING THE STATE ELECTRONIC BULLETIN BOARD SYSTEM A PERMANENT STATE SERVICE; EXPANDING THE TYPES OF INFORMATION FOR WHICH THE BULLETIN BOARD IS TO BE USED; REQUIRING THE DEPARTMENT OF ADMINISTRATION TO SUPPORT BROADER STATE AGENCY AND PUBLIC USE OF THE BULLETIN BOARD; AND AMENDING SECTIONS 2-17-322 AND 2-17-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-322, MCA, is amended to read:

"**2-17-322. Establishment.** *(1)* The department of administration shall establish and maintain~~, as a pilot project,~~ a centralized electronic bulletin board system for state agencies to use as a means of conveying information to the citizens of Montana. Agencies involved in communicating information to the public shall maintain appropriate information on the bulletin board system, *including but not limited to:*

(a) environmental assessments;

(b) rulemaking notices;

(c) board vacancy notices as required by 2-15-201;

(d) agency reports mandated by statute;

(e) parks reports required by 23-1-110;

(f) requests for bids or proposals; and

(g) public meeting notices and agendas.

(2) The purpose of ~~this pilot project~~ *the centralized electronic bulletin board system* is to encourage the practice of providing for direct citizen access to state computerized information."

Section 2. Section 2-17-323, MCA, is amended to read:

"**2-17-323. Responsibilities.** (1) The department of administration shall:

(a) set standards for the selection of software for the electronic bulletin boards;

(b) establish appropriate services on the centralized electronic bulletin board system to support file transfer by all state agencies;

(c) develop user-friendly file transfer and message systems for entities regularly interacting with state government, such as professional associations and citizen groups, and promote the systems' use to reduce copying and mailing costs for state government; and

~~(b)~~*(d)* determine procedures for bulletin board use.

(2) The department shall provide security to protect the integrity of its electronic bulletin board system. Each department is responsible for ensuring the integrity and appropriateness of the information that it places in the system.

(3) The department shall provide for an equitable method for recovering the cost of operating the electronic bulletin board system."

Approved March 24, 1993.

CHAPTER NO. 167

[HB 521]

AN ACT AMENDING THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT TO INCLUDE REFERENCES TO SEXUAL ABUSE; AMENDING SECTIONS 52-3-802, 52-3-803, 52-3-804, 52-3-805, 52-3-811, 52-3-812, 52-3-813, 52-3-815, AND 52-3-825, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-3-802, MCA, is amended to read:

"**52-3-802. Legislative findings and purpose.** The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, *sexual abuse,* neglect, and exploitation of Montana's elderly and developmentally disabled persons through the identification and reporting of acts of ~~such~~ abuse, *sexual abuse,* neglect, and exploitation."

Section 2. Section 52-3-803, MCA, is amended to read:

"**52-3-803. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a developmentally disabled person without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102.

(3) "Exploitation" means the unreasonable use of an older person or a developmentally disabled person, ~~his~~ *the person's* money, or ~~his~~ *the person's* property to the advantage of another by means of duress, menace, fraud, or undue influence.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's or a developmentally disabled person's welfare to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the developmentally disabled person.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to ~~protect himself~~ *provide personal protection* from abuse, *sexual abuse,* neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(10) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

Section 3. Section 52-3-804, MCA, is amended to read:

"52-3-804. **Duties of department of family services.** (1) The department shall investigate reports of abuse, *sexual abuse,* neglect, or exploitation received pursuant to 52-3-811(1)(a).

(2) The department of family services shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, or under Title 52, chapter 4, part 1, for a person alleged to have been abused, *sexually abused,* neglected, or exploited.

(4) If a person alleged to be abused, *sexually abused,* neglected, or exploited pursuant to this part or ~~his~~ *the person's* caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding there is probable cause to believe the person is abused, *sexually abused,* neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older or developmentally disabled person alleged to be abused, *sexually abused,* or neglected is suffering from abuse, *sexual abuse,* or neglect that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in 72-5-317."

Section 4. Section 52-3-805, MCA, is amended to read:

"**52-3-805. Adult protective service teams.** The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons who are victims of abuse, *sexual abuse,* neglect, or exploitation. The supervisor of adult protective services of the department of family services or ~~his~~ *the department's* designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or ~~his~~ *the county attorney's* designee, who is an attorney."

Section 5. Section 52-3-811, MCA, is amended to read:

"**52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, *sexual abuse,* ~~exploitation, or~~ neglect, *or exploitation,* they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, *sexual abuse,* ~~exploitation, or~~ neglect, *or exploitation* contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, *sexual abuse,* ~~exploitation, or~~ neglect, *or exploitation,* a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a developmentally disabled person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless ~~he~~ *the attorney* acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies; and

(g) a peace officer or other law enforcement official.

(4) Any other person may submit a report as provided in subsection (1)."

Section 6. Section 52-3-812, MCA, is amended to read:

"**52-3-812. Content of report.** (1) The report required by 52-3-811 may be made in writing or orally, by telephone or in person. A person who receives an oral report must prepare it in writing as soon as possible.

(2) The report referred to under this section shall contain:

(a) the names and addresses of the older person or the developmentally disabled person and the person, if any, responsible for ~~his~~ *the person's* care;

(b) the name and address, if available, of the person who is alleged to have abused, *sexually abused,* neglected, or exploited the older person or the developmentally disabled person;

(c) to the extent known, the person's age and the nature and extent of the abuse, *sexual abuse,* neglect, or exploitation, including any evidence of previous injuries sustained by the older person or the developmentally disabled person; and

(d) the name and address of the person making the report."

Section 7. Section 52-3-813, MCA, is amended to read:

"**52-3-813. Confidentiality.** (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 ~~shall~~ *must* be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who ~~has in his care~~ *is caring for* an older person or a developmentally disabled person who ~~he~~ *the physician* reasonably believes was abused, *sexually abused,* neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, *sexual abuse,* neglect, or exploitation;

(c) the person named in the report as allegedly being abused, *sexually abused,* neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, *sexual abuse,* ~~exploitation, or~~ neglect, *or exploitation* is later convicted of an offense constituting abuse, *sexual abuse,* ~~exploitation, or~~ neglect, *or exploitation* and if the identity of the older person or the developmentally disabled person who is the subject of the report is not disclosed to the researcher; and

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(3) The records and reports required to be kept confidential by subsection (1) ~~shall~~ *must* be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, *sexually abused,* neglected, or exploited an older person or a developmentally disabled person is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 8. Section 52-3-815, MCA, is amended to read:

"**52-3-815. Evidence of abuse, *sexual abuse,* or neglect to be gathered and submitted.** (1) A person or agency receiving a report of suspected abuse, *sexual abuse,* or neglect under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse, *sexual abuse,* or neglect and may, with the consent of an allegedly abused, *sexually abused,* or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused, *sexually abused,* or neglected person and regarded as evidence of abuse, *sexual abuse,* or neglect.

(2) A physician required to report under 52-3-811 may, with the consent of an allegedly abused, *sexually abused,* or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the physician, assist in establishing evidence related to the allegation of abuse, *sexual abuse,* or neglect.

(3) Evidence authorized to be gathered under this section must be submitted with the report required under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the report."

Section 9. Section 52-3-825, MCA, is amended to read:

"**52-3-825. Penalties.** (1) Any person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, *sexually abuses,* neglects, or exploits an older person or a developmentally disabled person is guilty of an offense and upon a first conviction may be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, and upon a second or succeeding conviction may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed $10,000, or both."

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1993.

CHAPTER NO. 168

[HB 535]

AN ACT AUTHORIZING THE CASH RENEWAL ON STATE LAND AGRICULTURAL LEASES UPON WHICH THE LESSEE HAS MADE IMPROVEMENTS AT THE LESSEE'S OWN EXPENSE; SETTING A RATE FOR RENEWAL OF A LEASE; AND AMENDING SECTION 77-6-501, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-501, MCA, is amended to read:

"**77-6-501. Agricultural leases.** (1) As to agricultural lands, all leases ~~shall~~ *except lease renewals upon which the lessee has made improvements at the lessee's expense, as provided in subsection (3), must* be continued or made upon a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops such as but not limited to potatoes and sugar beets or for high production cost methods when these methods would result in more income to the state. The board may not delegate the authority to approve ~~such~~ special crop share rentals.

(2) ~~If~~ *Except in the case of cash lease renewals under subsection (3), if* it is in the best interests of the state, the department may authorize a lease upon other basis than crop share, but in these cases the rental ~~shall~~ *must* at least equal the value of the usual landlord's share prevailing in the district under similar circumstances, and the department shall set forth in the records the conditions of the case and the rental to be charged.

(3) In cases in which the lessee has made substantial improvements for irrigation purposes to the lease at the lessee's own expense, the department shall authorize a cash lease renewal at not less than $15 an acre on the portion of the lease that has been improved."

Approved March 24, 1993.

CHAPTER NO. 169

[HB 631]

AN ACT ELIMINATING THE REQUIREMENT THAT A LOCAL GOVERNMENT APPROVE THE LEVY OR APPROPRIATION BY A BOARD, COMMISSION, OR GOVERNING ENTITY OF TAXES, REVENUE, OR FEES TO PAY FOR BONDS; AMENDING SECTIONS 7-6-2348 AND 7-6-4259, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2348, MCA, is amended to read:

"**7-6-2348. Budgets of appointed boards and commissions — exemption for bonds.** (1) With respect to tax and fee money, the proposed budget of and the number of mills to be assessed by any board, commission, or other governing entity, except a board of trustees of a public library *and an airport authority,* appointed by a local government are subject to approval by that local government.

(2) ~~Tax levies pledged to the payment of principal and interest on bonds issued by a commission, board, or governing entity must be approved by the local government.~~ *If a board, commission, or other governing entity, other than a port authority created under Title 7, chapter 14, part 11, issues bonds and pledges to the payment of the bonds, taxes, revenue, or fees in accordance with the statutes authorizing the issuance of the bonds, the taxes, revenue, or fees and the levy or appropriation of the taxes, revenue, or fees are not subject to approval by the local government appointing the board, commission, or governing entity."*

Section 2. Section 7-6-4259, MCA, is amended to read:

"**7-6-4259. Budgets of appointed boards and commissions — exemption for bonds.** (1) With respect to tax and fee money, the proposed budget of and the number of mills to be assessed by any board, commission, or other governing entity, except a board of trustees of a public library *and an airport* *authority,* appointed by a local government are subject to approval by that local government.

(2) ~~Tax levies pledged to the payment of principal and interest on bonds issued by a commission, board, or governing entity must be approved by the local government.~~ *If a board, commission, or other governing entity, other than a port authority created under Title 7, chapter 14, part 11, issues bonds and pledges to the payment of the bonds, taxes, revenue, or fees in accordance with the statutes authorizing the issuance of the bonds, the taxes, revenue, or fees and the levy or appropriation of the taxes, revenue, or fees are not subject to approval by the local government appointing the board, commission, or governing entity.*"

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 24, 1993.

CHAPTER NO. 170

[HB 110]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS, RATHER THAN A COURT, TO HOLD THE PROCEEDS FROM THE SALE OF SEIZED WILD ANIMALS, GAME BIRDS, OR FISH WHEN A PROSECUTION IS PENDING; AMENDING SECTION 87-1-513, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-513, MCA, is amended to read:

"**87-1-513. Disposition of proceeds of sale.** The money obtained upon the sale of ~~such~~ *seized* property ~~shall~~ *must* be ~~paid over to the court before whom~~ *retained and accounted for by the department when* the person having the ~~same~~ *property* in possession at the time of seizure is prosecuted or ~~in which~~ *when a* prosecution *of the person* is pending~~; and if~~. *If* the person charged with violation of the law is found guilty ~~before said court~~ of *or forfeits bond for* violation of the fish and game laws of the state, the money received for the sale of ~~said~~ *seized* property ~~shall~~ *must* be paid over to the state treasurer and be deposited ~~by him~~ to the credit of the fish and game fund~~; but should it be found that~~. *If* the party from whom the ~~same~~ *property* was taken ~~was~~ *is* not *found* guilty of any violation of the fish and game laws of this state, ~~said~~ *the* money ~~shall~~ *must* be paid to the party from whom ~~said~~ *the game* birds, *wild* animals, fish, or parts or portions thereof were taken. ~~No~~ *An* officer ~~shall be~~ *is not* liable for any damage on account of any search, examination, seizure, or sale ~~as herein provided~~. ~~Where~~ *When* wild animals, game birds, or fish are seized as *provided* in this part ~~provided~~ and the person or persons who killed or captured the ~~same~~ *wild animals, game birds, or fish* cannot be ascertained or ~~where~~ *when* the animals sold were killed pursuant to 87-1-225, then the money ~~so~~ received from the sale of ~~such~~ *the wild* animals, game birds, or fish ~~shall~~ *must* be paid ~~direct~~ *directly* to the state treasurer. The cost of advertising notice of sale, as ~~herein~~ required *by 87-1-511*, ~~shall~~ *must* be paid from the fish and game fund."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved March 25, 1993.

CHAPTER NO. 171

[SB 184]

AN ACT GENERALLY REVISING AND CLARIFYING THE UNEMPLOYMENT INSURANCE LAWS; CLARIFYING THE DEPARTMENT'S RESPONSIBILITY FOR REVIEWING AND ISSUING DETERMINATIONS ON AN INDIVIDUAL'S EMPLOYMENT STATUS WHEN AN UNEMPLOYMENT BENEFITS CLAIM IS FILED; CLARIFYING THAT THE EXCLUSIONS FROM EMPLOYMENT DO NOT APPLY TO A GOVERNMENTAL ENTITY OR A NONPROFIT ORGANIZATION UNLESS EXCLUDED UNDER THE FEDERAL UNEMPLOYMENT TAX ACT; ALLOWING TRANSFER OF AN ELIGIBLE EXPERIENCE RATING; REMOVING REFERENCE TO SECTION 203(A) OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT; REVISING REDUCTION OF BENEFITS BECAUSE OF THE AMOUNT RECEIVED FROM CERTAIN OTHER SOURCES TO REFLECT FEDERAL REQUIREMENTS FOR THE OFFSET OF BENEFITS DUE TO A PENSION RECEIPT; CLARIFYING THE DEPARTMENT'S AUTHORITY TO COLLECT OVERPAYMENTS THROUGH THE OFFSET OF CURRENT BENEFIT ENTITLEMENTS; SPECIFYING WAGES THAT QUALIFY AS EXTENDED BENEFITS; AMENDING SECTIONS 39-51-204, 39-51-1219, 39-51-2110, 39-51-2203, 39-51-2508, 39-51-3105, AND 39-51-3206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-204, MCA, is amended to read:

"**39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law ~~shall~~ *may* not be entitled to exemption under this subsection and ~~shall be~~ *are* subject to this chapter the same as state banks, provided that ~~such~~ *the* service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department ~~must~~ *shall* enter into agreements with the proper agencies under ~~such~~ *an* act of congress, which agreements ~~shall~~ become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under ~~such~~ *an* act of congress or who have, after acquiring potential rights to unemployment insurance under ~~such~~ *the* act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to ~~his~~ *the employee's* main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if ~~such~~ *the* service is performed by a student who is enrolled and is regularly attending classes at ~~such~~ *a* school, college, or university or by the spouse of ~~such~~ a student if ~~such~~ *the* spouse is advised, at the time ~~such~~ *the* spouse commences to perform ~~such~~ *the* service, that the employment of ~~such~~ *the* spouse to perform ~~such~~ *the* service is provided under a program to provide financial assistance to ~~such~~ *the* student by ~~such~~ *the* school, college, or university and ~~such~~ *the* employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at ~~such~~ *an* institution ~~which~~ *that* combines academic instruction with work experience if ~~such~~ *the* service is an integral part of ~~such~~ *the* program and ~~such~~ *the* institution has ~~so~~ certified *that fact* to the employer, except that this subsection ~~shall~~ *does* not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if ~~such~~ *the* service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and*:*

(i) who has acknowledged in writing that ~~he~~ *the cosmetologist or barber* is not covered by unemployment insurance and workers' compensation ~~and~~*;*

(ii) who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract ~~shall~~ *must* show *that* the cosmetologist or barber*:*

(A) is free from all control and direction of the owner in the contract ~~and in fact~~;

(B) receives payment for services from ~~his or her~~ individual clientele; *and*

(C) leases, rents, or furnishes all of ~~his or her~~ *the cosmetologist's or barber's* own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop ~~shall~~ *may* not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for ~~such~~ *the* service is $50 or more and ~~such~~ *the* service is performed by an individual who is regularly employed by ~~such~~ *the* employer to perform ~~such~~ *the* service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors or working members of a partnership;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an ~~agreed upon~~ *agreed-upon* portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization ~~which~~ *that* is operated primarily for religious purposes and ~~which~~ *that* is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by ~~such~~ *the* order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of ~~their~~ impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving ~~such~~ rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision ~~thereof~~ *of the state* by an individual receiving ~~such~~ work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

(4) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. *An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.*

(5) This section does not apply to a state or local governmental entity or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment as defined in the Federal Unemployment Tax Act."

Section 2. Section 39-51-1219, MCA, is amended to read:

"39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit. (1) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires all or substantially all of the business of an employer who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:

(a) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor ~~shall~~ *must*, upon the joint application of the predecessor and the successor within 90 days after ~~such~~ *the* acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of ~~such~~ *that* date.

(2) Whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires part of the business of an employer who at the time of acquisition was a covered employer and whenever ~~such~~ *that* portion of the business is continued by the successor:

(a) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last ~~four~~ *4* completed calendar quarters immediately preceding the date of transfer, ~~shall~~ *must*, upon the joint application of the predecessor and the successor within 90 days after ~~such~~ *the* acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of ~~such~~ *that* date.

(3) (a) The 90-day period may be extended at the discretion of the department.

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever ~~such~~ *a* mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer ~~shall~~ *must* be based on estimates of the applicable payrolls. *The successor must be notified in writing of the mandatory transfer, and unless the mandatory transfer is appealed within 30 calendar days, the right to appeal is waived.*

(c) Whenever a predecessor covered employer has an eligible experience rating account as of the last computation date and when it is shown by substan-

tial evidence that the management, the ownership, or both the management and the ownership are substantially the same for the successor as for the predecessor, the transfer provided for in subsections (1) and (2) is automatic. Whenever an automatic transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notification, the transfer must be based on estimates of the applicable payrolls. The successor must be notified in writing of the automatic transfer and shall request within 30 days of notification that the experience rating account of the predecessor not be transferred.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor and successor.

(b) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate is the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there was more than one predecessor, the successor's rate ~~shall~~ *must* be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition and remaining in effect for the balance of the rate year."

Section 3. Section 39-51-2110, MCA, is amended to read:

"**39-51-2110. Payment of benefits to aliens.** (1) Benefits ~~shall~~ *may* not be ~~payable~~ *paid* on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for the purposes of performing the services, or was permanently residing in the United States under color of law at the time the services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of ~~section 203(a)(7) or~~ section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to ~~them~~ *the individuals* because of ~~their~~ *the individuals'* alien status ~~shall~~ *must* be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, ~~no~~ *a* determination that benefits to ~~such~~ *the* individual are not payable because of ~~his~~ *the individual's* alien status ~~shall~~ *may not* be made except upon a preponderance of the evidence."

Section 4. Section 39-51-2203, MCA, is amended to read:

"**39-51-2203. Reduction of benefits because of amounts received from certain other sources.** (1) ~~Claimant's~~ *An individual's* weekly benefit amount ~~shall~~ *must* be reduced *(but not below zero)* by the amount that ~~he~~ *the individual* is receiving ~~from~~ *in the form of* a governmental or other pension, retirement pay, annuity, or other similar periodic payment ~~which~~ *that* is based on *the previous* work ~~for and entirely contributed to by a base-period employer.~~

~~(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.~~

~~(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.~~

~~(4) For the purposes of subsection (1), the department shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as amended in 1980 by P.L. 96-364, and as may be amended after March 11, 1981.~~ *of the individual and that is reasonably attributable to the week if:*

(a) the payment is made under a plan maintained or contributed to by a base-period or chargeable employer; and

(b) except in the case of payments made under the Social Security Act or the Railroad Retirement Act, the services performed for the employer by the individual after the beginning of the base period or the remuneration for services affect eligibility for or the amount of the pension, retirement pay, annuity, or other similar payment.

(2) The reduction required by subsection (1) does not apply in those instances in which the governmental or other pension, retirement pay, annuity, or other similar periodic payment is made from a fund to which the individual was required to make a direct contribution. A pension plan negotiated under a collective bargaining agreement is considered a direct employee contribution under this section."

Section 5. Section 39-51-2508, MCA, is amended to read:

"**39-51-2508. Eligibility requirements for extended benefits — disqualifications — acceptance of suitable work.** (1) An individual ~~shall be~~ *is* eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds that with respect to ~~such~~ *the* week *that the individual*:

(a) ~~he~~ is an exhaustee, as defined in 39-51-2501;

(b) has been paid total wages for employment in the base period, as defined in 39-51-201, in an amount not less than:

(i) 1.5 times the wages earned in the calendar quarter in which wages were the highest during the base period;

(ii) 40 times the individual's most recent weekly benefit amount; or

(iii) insured wages for 20 weeks of work;

~~(b)~~*(c)* ~~he~~ is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if ~~he is~~ disqualified, ~~he~~ *the individual* satisfies the requirements for requalification in that part; and

~~(c)~~*(d)* ~~he~~ has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection ~~(1)(b)~~ *(1)(c)*, an individual is disqualified for extended benefits if ~~he~~ *the individual* fails to seek work. ~~Such~~ *The* disqualification continues for the week in which ~~such~~ *the* failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of ~~his~~ *the individual's* weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may not be paid extended benefits unless ~~he~~ *the individual* has earned at least eight times the weekly benefit amount after the date of ~~such~~ *the* disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to 39-51-2302(3), requalifies for regular benefits may not be paid extended benefits unless ~~he~~ *the individual* has earned at least six times the weekly benefit amount.

(5) For the purposes of determining eligibility for extended benefits, the department shall by rule define the term "suitable work". ~~Such~~ *The* definition ~~shall~~ *must* be in accordance with the definition required by the Omnibus Reconciliation Act of 1980, P.L. 96-499, and as may be amended after March 19, 1981."

Section 6. Section 39-51-3105, MCA, is amended to read:

"**39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception.** Any assignment, pledge, or encumbrance of any right to benefits ~~which~~ *that* are or may become due or payable under this chapter ~~shall be~~ *is* void, and ~~such~~ *the* rights to benefits ~~shall be~~ *are* exempt from levy, execution, attachment, or any other remedy ~~whatsoever~~ provided for the collection of debt, and benefits received by any individual, so long as they are not mingled with other funds of the recipient, ~~shall be~~ *are* exempt from any remedy ~~whatsoever~~ for the collection of all debts except as provided in 39-51-3106 *and 39-51-3206*. Any waiver of any exemption provided for in this section ~~shall be~~ *is* void."

Section 7. Section 39-51-3206, MCA, is amended to read:

"**39-51-3206. Collection of benefit overpayments.** A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment. *A benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent.* The sum is collectible in the manner provided in this chapter for the collection of past-due contributions unless the department finds that the benefits were received through no fault of the person and the recovery of the benefits would be against equity and good conscience. An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment. Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States."

Section 8. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1993.

CHAPTER NO. 172

[SB 193]

AN ACT CHANGING OFFENDER FINANCIAL OBLIGATIONS WHEN AN OFFENDER IS PLACED IN A COMMUNITY-BASED CORRECTIONS FACILITY; AND AMENDING SECTION 53-30-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-30-323, MCA, is amended to read:

"53-30-323. **Offender payments.** (1) An offender placed in a community corrections facility or program under this part shall execute a written contract or agreement with the director of the facility or program, setting forth the terms and conditions for placement in the facility or program. The contract or agreement ~~may~~ *must* provide that a portion of any money received from employment of the offender be set aside for ~~payment of the following expenses in order of the priority in which they appear below:~~ *reimbursement to the community corrections facility.*

~~(a) reimbursement~~ *Reimbursement* to the community corrections facility or program for ~~a portion of~~ the cost of the room ~~and~~, board ~~provided at the facility or program~~, *and services is to be paid at a rate established under 53-1-501.* ~~The reimbursement rate must be reasonable, based on the offender's employment status and other financial obligations. However, the charges for room and board may not exceed 20% of the offender's net employment income.~~

~~(b) victim restitution ordered by the sentencing court, which may not exceed 20% of the offender's net employment income;~~

~~(c) deposits to a savings account or fund to be used by the offender for general living expenses following his release from the community corrections facility or program; and~~

~~(d) payment of family support.~~

(2) In a community corrections facility or program, the offender has the primary obligation to obtain employment, but the department of labor and industry shall provide assistance to the offender in obtaining suitable employment."

Approved March 25, 1993.

CHAPTER NO. 173

[SB 270]

AN ACT ESTABLISHING THE EMPLOYMENT SECURITY ACCOUNT; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO TRANSFER UNAPPROPRIATED FUNDS IN THE EMPLOYMENT SECURITY ACCOUNT TO THE UNEMPLOYMENT INSURANCE FUND; AUTHORIZING THE DEPARTMENT OF LABOR AND INDUSTRY TO TRANSFER MONEY BETWEEN FUND TYPES; AMENDING SECTION 39-51-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-404, MCA, is amended to read:

"**39-51-404. Administrative expenses.** (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature~~, provided that~~ *if* the expenses are incurred and the money is requisitioned after the enactment of an appropriation law ~~which~~ *that*:

(a) specifies the purposes for which ~~such~~ *the* money is appropriated and the amounts appropriated ~~therefor~~;

(b) limits the period within which ~~such~~ *the* money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount ~~which~~ *that* may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount ~~which does not exceed~~ *not exceeding* the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of ~~such~~ *the* 35 12-month periods.

(2) For the purposes of this section, amounts used during any ~~such~~ 12-month period ~~shall~~ *must* be charged against equivalent amounts ~~which~~ *that* were first credited and ~~which~~ *that* are not already ~~so~~ charged, except that ~~no~~ *an* amount used for administration during any ~~such~~ 12-month period may *not* be charged against any amount credited during ~~such~~ a 12-month period earlier than the 34th preceding ~~such~~ period. Money requisitioned for the payment of expenses of administration pursuant to this section ~~shall~~ *must* be deposited in the unemployment insurance administration account but, until expended, ~~shall~~ *must* remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds ~~so~~ deposited. If any money ~~so~~ deposited is for any reason not to be expended for the purpose for which it was appropriated

or if it remains unexpended at the end of the period specified by the law appropriating ~~such~~ *the* money, it ~~shall~~ *must* be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) ~~Beginning with the third quarter of 1983, an~~ *An* assessment equal to .1% of all taxable wages provided for in 39-51-1108 and .05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers ~~and may be used by the department for administrative purposes~~. All ~~such~~ assessments *and investment income* must be deposited in ~~the unemployment insurance administration account provided for in 39-51-406~~ *the employment security account provided for in [section 2].* ~~and used as appropriated by the legislature. Any assessments deposited to the unemployment insurance administration account, including investment income, that are not appropriated by the legislature must be transferred to the unemployment trust fund account provided for in 39-51-402.~~"

Section 2. **Employment security account.** (1) There is an account created in the state special revenue fund called the employment security account.

(2) The department may transfer funds from the account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide employment office programs.

(3) The department may transfer appropriation authority in the employment office program between the federal special revenue and the state special revenue fund types.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 39, chapter 51, part 4, and the provisions of Title 39, chapter 51, part 4, apply to [section 2].

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved March 25, 1993.

CHAPTER NO. 174

[SB 353]

AN ACT CHANGING THE DATE FOR ANNUAL APPLICATION FOR CAMPER DECALS TO BE CONSISTENT WITH THAT OF MOTOR HOMES AND TRAVEL TRAILERS; AMENDING SECTION 61-3-525, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-525, MCA, is amended to read:

"**61-3-525. Annual application for decals.** *(1) Camper decals expire annually on April 30.* Application ~~may~~ *for registration must* be made to the county treasurer ~~for the issuance of camper decals annually when the motor~~

~~vehicle to which the camper is customarily attached is registered~~ *not later than June 15 to renew the camper decal.* If the vehicle to which the camper is customarily attached may be reregistered by mail, application for the camper decals may also be made by mail in the manner provided in 61-3-535.

(2) The owner of a camper with a decal is entitled to operate the camper between May 1 and June 15 without displaying the decal for the current registration year if the owner, during that period, displays upon the camper the decal from the previous registration year."

Section 2. **Applicability.** The effective date applies to renewals on or after January 1, 1994. The owner of a camper with a decal that expires between January 1, 1994, and June 15, 1994, may operate the camper if the owner, during that period, displays upon the camper the decal from the previous registration year.

Section 3. **Effective date.** [This act] is effective January 1, 1994.

Approved March 25, 1993.

CHAPTER NO. 175

[SB 383]

AN ACT MODIFYING THE ANNUAL REPORT REQUIREMENTS FOR THE WATER LEASING STUDY; REVISING THE PROVISION LIMITING ELIGIBLE STREAMS TO 20 STREAM REACHES; AUTHORIZING THE USE OF RIVER RESTORATION FUNDS FOR WATER LEASING; AMENDING SECTIONS 85-2-436, 85-2-437, 87-1-257, AND 87-1-610, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-436, MCA, is amended to read:

"**85-2-436.** *(Temporary)* **Water leasing study.** (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the board pursuant to 85-2-437.

(b) Upon receipt of an application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to ~~his~~ *the appropriator's* rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by substantial credible evidence that ~~his~~ *the appropriator's* water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the board, commission, and water policy committee an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, *a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams*. If the department of fish, wildlife, and parks has not leased *additional* water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the board and commission and submitted to the water policy committee, which shall complete the final report by December 1, 1998.

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)* "

Section 2. Section 85-2-437, MCA, is amended to read:

"**85-2-437.** *(Temporary)* **Board designation of eligible stream reaches.** (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the board for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The board may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

(3) The board may designate no more than ~~10~~ *20* stream reaches in the state where water leasing pursuant to 85-2-436 may occur. If the department of fish, wildlife, and parks determines that a water lease cannot be reasonably obtained on a designated stream reach, the board may remove the designation from that stream reach and designate another stream reach pursuant to this section. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)* "

Section 3. Section 87-1-257, MCA, is amended to read:

"**87-1-257. River restoration program.** (1) The department shall administer a river restoration program.

(2) The program may consist of physical projects to improve rivers and their associated lands in order to conserve and enhance fish and wildlife habitat, *including but not limited to the leasing of water rights under 85-2-436.*

(3) The department shall work cooperatively with individuals, conservation districts, and state, local, private, tribal, and federal organizations to achieve the goals of the program and may contract with private organizations to implement specific river restoration projects.

(4) The department shall present projects to the local conservation district for review and recommendations and obtain any applicable permits.

(5) The department shall receive the consent of the landowner or lessee of any associated lands before initiating physical projects on these lands.

(6) ~~No~~ *A* project conducted under the program may *not* restrict or interfere with the exercise of any water right."

Section 4. Section 87-1-610, MCA, is amended to read:

"**87-1-610.** *(Temporary)* **Contributions for leasing appropriation rights — general spending authority.** (1) The department may accept contributions from public or private entities for the purpose of leasing appropriation rights to maintain or enhance instream flows for the benefit of fisheries.

(a) Any contributions accepted by the department under this section must be deposited in the fish and wildlife mitigation trust fund established in 87-1-611.

(b) The department shall expend money obtained under this section and deposited in the fish and wildlife mitigation trust fund exclusively to lease existing rights for the purpose of maintaining or enhancing instream flows for fisheries.

(2) The department may also expend other departmental funds to lease existing rights for the purpose of maintaining or enhancing instream flows for fisheries, *including but not limited to departmental funds in the river restoration special revenue account established under 87-1-258. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)* "

Section 5. **Effective date.** [This act] is effective July 1, 1993.

Approved March 25, 1993.

CHAPTER NO. 176

[SB 386]

AN ACT REDUCING FROM 20 DAYS TO 10 DAYS THE TIME ALLOWED A HOLDOVER TENANT TO FILE AN ANSWER TO A LANDLORD'S COMPLAINT IN AN ACTION FOR POSSESSION; AND AMENDING SECTION 70-24-429, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-429, MCA, is amended to read:

"**70-24-429. Holdover remedies — consent to continued occupancy — *tenant's response to service in action for possession.*** (1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) In an action for possession or unlawful holdover, the provisions of Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 10 days after service of summons and complaint, exclusive of the date of service.

~~(2)~~*(3)* If the landlord consents to the tenant's continued occupancy, 70-24-201(2)(e) applies."

Approved March 25, 1993.

CHAPTER NO. 177

[SB 393]

AN ACT ADOPTING THE MODEL SCHOOL INTEGRATED PEST AND PESTICIDE MANAGEMENT SAFETY PROGRAM ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 5] may be cited as the "Model School Integrated Pest and Pesticide Management Safety Program Act".

Section 2. **Statement of policy.** The legislature finds and declares that:

(1) the exposure of children to pesticides applied in and around schools can pose a potentially acute or chronic toxicological hazard to their health;

(2) infants and children can be especially vulnerable to pesticides, especially if pesticides are not properly applied or used;

(3) schools need to adopt pest management programs that minimize exposure of school children to pesticides and provide for alternative pest control methods; and

(4) the department shall prepare and distribute to each Montana school district a model integrated pest and pesticide management safety program that satisfies the provisions of this section.

Section 3. **Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Department" means the department of agriculture as provided for in 2-15-3001.

(2) "Director" means the director of agriculture as provided for in 2-15-3001.

(3) "School district" means a school district established according to Title 20, chapter 6.

Section 4. **Model school integrated pest and pesticide management safety program.** (1) The department shall develop a model school integrated pest and pesticide management safety program and distribute the program to school districts by July 1, 1994. The model program must provide guidance and recommendations to school districts on management of pests and pesticides and on alternatives within schools and on school grounds.

(2) The model program guidelines and recommendations must include information on pests, alternative and pesticide control methods and their integration, environmental concerns, and protection of public health. Special information and recommendations for protecting school children from exposure to pesticides and the acute or chronic potential adverse health effects of pesticides must be emphasized. The department may periodically revise the model program guidelines, policies, and recommendations as new integrated pest, pesticide, or alternative management techniques and methods are developed and as new information on protecting school children from pesticides is developed.

(3) The director may consult and obtain advice from pest and pesticide specialists, school personnel, and the public on any aspect of the model school integrated pest and pesticide management safety program.

Section 5. **Policymaking authority.** The department may adopt policies and guidelines to implement [sections 1 through 4].

Approved March 25, 1993.

CHAPTER NO. 178

[SB 407]

AN ACT AMENDING THE UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM; CHANGING THE EMPLOYER AND EMPLOYEE CONTRIBUTIONS TO THE OPTIONAL RETIREMENT PLAN; REQUIRING ALL ELIGIBLE PERSONS WHO ARE NEWLY HIRED TO JOIN THE OPTIONAL RETIREMENT PLAN; AMENDING SECTIONS 19-4-302, 19-21-111, 19-21-201, AND 19-21-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-302, MCA, is amended to read:

"**19-4-302. Active membership.** (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

(b) any person who is an administrative officer or a member of the instructional or scientific staff of:

(i) a vocational-technical center; or

(ii) a unit of the Montana university system and who has not elected *or is not required* to participate in the optional retirement program under Title 19, chapter 21;

(c) any person employed as a speech therapist, school nurse, or school psychologist or in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by (a), (b), (c), or (d) of this subsection (1);

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by (a), (b), (c), or (d) of this subsection (1) since the time of ~~such~~ *the* election, and who may ~~thereafter~~ elect to become a member of the retirement system.

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed in the capacity prescribed for ~~his~~ *the person's* eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for ~~his~~ *the person's* creditable service totally paid by an employer ~~as defined herein~~.

(3) (a) A substitute teacher:

(i) may elect to become an active member of the retirement system on the first day of employment in any fiscal year; or

(ii) shall become an active member of the retirement system on the 31st day of employment in any fiscal year if ~~he~~ *the substitute teacher* has not elected membership under subsection (3)(a)(i).

(b) The employer shall give written notification to a substitute teacher on ~~his~~ *the* first day of employment in any fiscal year of ~~his~~ *the* option to elect membership under subsection (3)(a)(i).

(4) A substitute teacher who did not elect membership under subsection (3)(a)(i) and subsequently becomes a member must be awarded creditable service for ~~his~~ substitute teaching service if ~~he~~ *the substitute teacher* contributes:

(a) an amount equal to the combined employee and employer contributions that would have been made if ~~he~~ *the substitute teacher* had elected membership; plus

(b) interest at the rate the contributions would have earned if they had been on deposit with the retirement system.

(5) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine ~~his~~ *the person's* eligibility for membership. All persons in similar circumstances shall be treated alike."

Section 2. Section 19-21-111, MCA, is amended to read:

"**19-21-111. Actuarial investigation to determine past service liability compared to contributions required.** (1) The legislative auditor shall, using independent actuarial assistance as necessary and in cooperation with the teachers' retirement board and the board of regents, determine the dollar value of past service liability of active, inactive, and retired teachers' retirement system members of the Montana university system as compared to contributions required of the Montana university system on behalf of teachers' retirement system members pursuant to 19-4-605. The legislative auditor shall report ~~his~~ *any* findings to the ~~53rd~~ legislature. The office of the commissioner of higher education shall pay for the determination, required by this section, of past service liability of teachers' retirement system members compared to contributions required of the Montana university system.

(2) If the valuation determines that the percentage contribution established in 19-21-203~~(2)(b)~~*(5)* has an adverse effect on the amortization of the unfunded liability, then the board of regents shall pay an additional sum over a period of 40 years to rectify the adverse effect.

(3) Changes in the teachers' retirement system occurring after July 1, 1987, that create additional unfunded liabilities may not be considered in the valuation, and the board of regents may not be required to pay any additional sum on that account except to the extent that those changes benefit members of the teachers' retirement system who are employees of the Montana university system.

(4) If the valuation determines that the board of regents is paying an amount in excess of that needed to amortize the unfunded liability, the teachers' retirement board shall credit the board of regents for the excess payments. The board of regents shall credit the active participants in the optional retirement program with the excess payments."

Section 3. Section 19-21-201, MCA, is amended to read:

"**19-21-201. Participation in program.** (1) ~~Academic~~ *Except as provided in subsection (2), academic* and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the optional retirement program instead of the teachers' retirement system. This election must be exercised:

(a) before January 1, 1988, for an eligible person hired before July 1, 1987;

(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and

(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to participate in the optional retirement program by reason of appointment, promotion, transfer, or reclassification to an eligible position.

(2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the optional retirement plan unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 4.

(b) A person hired who is a member of a public retirement system created in Title 19, chapter 3 or 4, shall elect to:

(i) remain with the retirement system of which the person is a member on the date hired; or

(ii) become a member of the optional retirement plan.

(c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.

~~(2)~~*(3)* The election must be exercised by filing a written notice with the teachers' retirement system and the disbursing officer of the employer. The election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

~~(3)~~*(4)* If an eligible officer or staff member fails to exercise the election, as provided by this section, that person must remain or become a member of the teachers' retirement system.

~~(4)~~*(5)* An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program."

Section 4. Section 19-21-203, MCA, is amended to read:

"**19-21-203. Contributions.** (1) Each optional retirement program participant shall contribute an amount equal to the member's contribution required under 19-4-602. The board of regents shall contribute an amount ~~equal to the employer contribution required under 19-4-605.~~

~~(2) The board of regents' contribution must be apportioned and paid as follows:~~

~~(a) to the designated company or companies, an amount equal to the greater of:~~

~~(i) the employer contribution to the teachers' retirement system not used to amortize past service unfunded liability as that unfunded liability is limited by 19-21-111; or~~

~~(ii) an amount~~ that, when added to the participant's contribution, is equal to ~~10%~~ *12%* of the participant's earned compensation~~; and~~

~~(b) to the teachers' retirement system, the balance of the board of regents' contribution.~~

(2) (a) On or after July 1, 1997, the board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer pick-up under section 414(h)(2) of that code.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the regents' contribution to the designated company or companies for the benefit of the participant.

(5) (a) The board of regents shall contribute the amounts specified in subsection (5)(b) to the teachers' retirement system to discharge the obligation incurred by the employees of the Montana university system who elect or who are required to become members of the optional retirement plan. The contributions paid by the board are for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system and must be consistent with the requirements of 19-21-111.

(b) (i) Beginning July 1, 1993, through June 30, 1997, the contributions to be made by the board of regents must equal 2.503% of earned compensation attributable to optional retirement participants.

(ii) Beginning July 1, 1997, the contribution rate must be adjusted, pursuant to 19-4-201, based on the actual experience of the members of the Montana university system who are members of the teachers' retirement system, and must be set at a rate sufficient to amortize the past service liability of the university system members by July 1, 2033."

Section 5. **Effective date.** [This act] is effective July 1, 1993.

Approved March 25, 1993.

CHAPTER NO. 179

[SB 420]

AN ACT ALLOWING JOINT DEBTORS TO BE COVERED UNDER A JOINT POLICY OF CREDIT LIFE OR CREDIT DISABILITY INSURANCE; AND AMENDING SECTIONS 33-21-103 AND 33-21-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-21-103, MCA, is amended to read:

"**33-21-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Credit disability insurance" means insurance on a debtor *or joint debtors* to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor *or either of the joint debtors* is disabled as defined in the policy.

(2) "Credit life insurance" means insurance on the life of a debtor *or the lives of joint debtors* pursuant to or in connection with a specific loan or other credit transaction.

(3) "Creditor" means:

(a) a lender of money or vendor or lessor of goods, services, property, rights, or privileges, for which payment is arranged through a credit transaction;

(b) any successor to the right, title, or interest of a lender, vendor, or lessor;

(c) an affiliate, associate, or subsidiary of a lender, vendor, or lessor;

(d) a director, officer, or employee of a lender, vendor, or lessor; or

(e) any other person in any way associated with a lender, vendor, or lessor.

(4) "Credit transaction" means a transaction by the terms of which, at a future date:

(a) repayment of money loaned is made;

(b) a loan commitment is made; or

(c) payment for goods, services, or property sold or leased is made.

(5) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights, or privileges for which payment is arranged through a credit transaction.

(6) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

(7) "Open-end credit" means credit extended by a creditor under an agreement in which:

(a) the creditor reasonably contemplates repeated transactions;

(b) the creditor imposes a finance charge from time to time on an outstanding unpaid balance; and

(c) the amount of credit that may be extended to the debtor during the term of the agreement (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid."

Section 2. Section 33-21-201, MCA, is amended to read:

"**33-21-201. Form of issuance.** An insurer may deliver or issue for delivery credit life insurance and credit disability insurance only in the following forms:

(1) individual policies of life insurance issued to debtors on a term plan;

(2) individual policies of disability insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;

(3) group policies of life insurance issued to creditors providing insurance ~~upon~~ *on* the lives of debtors on a term plan;

(4) group policies of disability insurance issued to creditors on a term plan insuring debtors or disability provisions in group credit life insurance policies to provide ~~such~~ *disability* coverage~~.~~*;*

(5) joint policies of life insurance issued to debtors providing insurance jointly on the lives of joint debtors on a term plan; or

(6) joint policies of disability insurance issued to debtors on a term plan insuring joint debtors or disability provisions in joint credit life insurance policies to provide disability coverage."

Approved March 25, 1993.

CHAPTER NO. 180

[HB 50]

AN ACT ALLOWING A MERCHANT TO STOP AND TEMPORARILY DETAIN A SUSPECTED SHOPLIFTER.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Temporary detention by merchant — liability.** (1) A merchant, as defined in 30-11-301, who has reason to believe that a person has committed or is in the process of committing the offense of theft may stop and temporarily detain that person. The merchant:

(a) shall promptly inform the person that the stop is for investigation of shoplifting and that upon completion of the investigation, the person will be released or turned over to the custody of a peace officer;

(b) may demand the person's name and present or last address and question the person in a reasonable manner for the purpose of ascertaining whether or not the person is guilty of shoplifting;

(c) may take into possession any merchandise for which the purchase price has not been paid and that is in the possession of the person or has been concealed from full view; and

(d) may detain the person or request the person to remain on the premises until a peace officer arrives.

(2) A stop, detention, questioning, or recovery of merchandise under this section must be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant, this section does not authorize a search of the detained person other than a search of the person's coat or other outer garments and any package, bag, or other container. After the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a peace officer.

(3) A merchant stopping, detaining, or arresting a person on the belief that the person is shoplifting is not liable for damages to the person unless the merchant acts in a manner contrary to this section.

(4) As used in this section, the following definitions apply:

(a) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment, with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct is prima facie evidence of concealment:

(i) concealing merchandise upon the person or in a container or otherwise removing merchandise from full view while upon the premises;

(ii) removing, changing, or altering a price tag;

(iii) transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale for by the merchant; or

(iv) abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise.

(b) "Shoplifting" means the theft of any goods offered for sale by a wholesale or retail store or other mercantile establishment.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 6, part 5, and the provisions of Title 46 apply to [section 1].

Approved March 25, 1993.

CHAPTER NO. 181

[HB 66]

AN ACT CREATING A REBUTTABLE PRESUMPTION OF GOOD FAITH AND NO MALICIOUS PURPOSE FOR CERTAIN PERSONS INVOLVED IN CHILD ABUSE AND NEGLECT INVESTIGATIONS AND PROCEEDINGS; AMENDING SECTION 41-3-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-203, MCA, is amended to read:

"**41-3-203. Immunity from liability.** Anyone investigating or reporting any incident of child abuse or neglect *under 41-3-201 or 41-3-202*, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose. *There is a rebuttable presumption that the person acted in good faith and with no malicious purpose.*"

Section 2. **Applicability.** [This act] applies to reports made or records furnished after [the effective date of this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1993.

CHAPTER NO. 182

[HB 68]

AN ACT CHANGING FROM WITHIN 10 DAYS AFTER THE OMNIBUS HEARING TO WITHIN 30 DAYS AFTER THE ARRAIGNMENT THE TIME WITHIN WHICH A DEFENDANT IN A CRIMINAL CASE MUST DISCLOSE CERTAIN MATTERS TO THE PROSECUTOR; AND AMENDING SECTION 46-15-323, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-15-323, MCA, is amended to read:

"**46-15-323. Disclosure by defendant.** (1) At any time after the filing in district court of an indictment or information, the defendant, in connection with the particular crime charged, shall upon written request of the prosecutor and approval of the court:

(a) appear in a lineup;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of ~~his~~ *the defendant's* hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions;

(g) provide handwriting samples; or

(h) submit to a reasonable physical or medical inspection; however, the inspection does not include psychiatric or psychological examination.

(2) Within ~~10~~ *30* days after the ~~omnibus hearing in district court~~ *arraignment* or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity.

(3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist or psychologist or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of the defense that due to a mental disease or defect, the defendant did not have a particular state of mind that is an essential element of the offense charged.

(4) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless ~~he~~ *the defendant* intends to use the privileged report or statement, or the witness who made it, at trial.

(5) Prior to trial the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses and disclose their reports or statements as required by this section. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list and the witness's report or statement has been disclosed as required by this section, except for good cause shown.

(6) Within ~~10~~ *30* days after the ~~omnibus hearing in district court~~ *arraignment* or at a later time as the court may for good cause permit, the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case-in-chief, together with their statements;

(b) the names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case; and

(c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(7) The defendant's obligation under this section extends to material and information within the possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

(8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of the case for additional material or information not otherwise provided for, that the prosecutor is unable, without undue hardship, to obtain the substantial equivalent by other means, and that disclosure of the material or information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person to make the material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony."

Approved March 25, 1993.

CHAPTER NO. 183

[HB 82]

AN ACT CREATING THE POSITION OF EXECUTIVE DIRECTOR FOR THE BOARD OF OUTFITTERS; ESTABLISHING QUALIFICATIONS AND DUTIES OF THE EXECUTIVE DIRECTOR; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Executive director — qualifications — powers and duties.** (1) The department may hire an executive director to assist the board in carrying out its duties under this chapter.

(2) The executive director must:

(a) be a citizen of the United States and a resident of Montana;

(b) have knowledge of outfitting and guiding; and

(c) have at least 2 years' experience in management or equivalent training or education.

(3) The duties of the executive director include:

(a) processing and investigating applications for licensure as an outfitter or guide;

(b) conducting investigations of outfitters and guides that involve violations of this chapter or rules of the board and reporting to the board regarding complaints and investigations of complaints;

(c) coordinating inspections, investigations, and training activities of investigators under this chapter; and

(d) coordinating investigations with other local, state, and federal agencies.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 47, part 2, and the provisions of Title 37, chapter 47, apply to [section 1].

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved March 25, 1993.

CHAPTER NO. 184

[HB 98]

AN ACT ELIMINATING THE LAWS RELATING TO THE RESIDENTIAL CONSERVATION SERVICE; REPEALING SECTIONS 90-4-501, 90-4-502, 90-4-503, AND 90-4-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 90-4-501, 90-4-502, 90-4-503, and 90-4-504, MCA, are repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1993.

CHAPTER NO. 185

[HB 112]

AN ACT PROVIDING THAT A VESTED MEMBER OF THE TEACHERS' RETIREMENT SYSTEM MAY, WITHOUT COST, RECEIVE CREDITABLE SERVICE FOR ACTIVE DUTY MILITARY SERVICE DURING THE KOREAN CONFLICT; AMENDING SECTION 19-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-404, MCA, is amended to read:

"**19-4-404. Creditable service for active service in military, red cross, or merchant marine.** (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the *Korean conflict between June 1, 1950, and January 31, 1955, and the* Vietnam conflict between December 22, 1961, and May 7, 1975, ~~both~~ dates inclusive, if ~~he~~ *the member* has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a completed application form and proper certification of ~~his~~ *the member's* military service.

(2) (a) If a member is ineligible for service credit under subsection (1), ~~he~~ *the member* may apply under the provisions of this subsection *(a)* for creditable service in the retirement system, except as provided in subsection (2)(b), for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person ~~shall~~ *must* be awarded creditable service, conditional upon ~~his~~ *the person's* completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if ~~he~~ *the person* contributes to the retirement system an amount equal to the combined employer and employee contributions for ~~his~~ *the person's* first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in ~~his~~ *the person's* account upon completion of 5 years of membership service in Montana. The contribution rate ~~shall be~~ *is* that rate in effect at the time ~~he~~ *the person* is eligible for the service.

(b) If a member elects to purchase additional service under 19-4-412, service purchased under this subsection (2) may be used only for the purpose of calculating ~~his~~ *the member's* retirement allowance and may not be considered creditable service for the purpose of determining eligibility under 19-4-801 or 19-4-802.

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1993.

CHAPTER NO. 186

[HB 129]

AN ACT APPROPRIATING MONEY FROM THE FEDERAL SPECIAL REVENUE FUND IN FISCAL YEARS 1994 AND 1995 TO THE DEPARTMENT OF LABOR AND INDUSTRY TO FUND APPRENTICESHIP INSTRUCTION PROGRAMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated from the federal special revenue fund, established in 39-51-1301, to the department of labor and industry to fund apprenticeship instruction programs pursuant to 39-6-103:

Fiscal year 1994	$140,000
Fiscal year 1995	140,000

Approved March 25, 1993.

CHAPTER NO. 187

[HB 133]

AN ACT AUTHORIZING CERTAIN FEDERAL OFFICERS AND AGENTS TO ENFORCE THE LAWS AND RULES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AS EX OFFICIO WARDENS; AND AMENDING SECTION 87-1-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-503, MCA, is amended to read:

"**87-1-503. Ex officio wardens.** All sheriffs and their deputies, constables, all peace officers of the state or any subdivision ~~thereof~~ *of the state,* ~~and~~ all state forest officers, ~~other~~ *and, as authorized by cooperative agreement, all* officers of the United States forest service, ~~or~~ agents of the United States fish and wildlife service, *peace officers of the bureau of land management, national park service, and corps of engineers* that are assigned to duty in this state, and field personnel of the department, as the director may appoint, are ~~hereby made~~ ex officio wardens, without pay, except that the department may, in its discretion, allow traveling expenses as provided for in 2-18-501 through 2-18-503, which, if allowed, must be paid upon proper vouchers from the state fish and game funds. Ex officio wardens ~~shall~~ have the same powers with reference to the enforcement of the fish and game laws of this state and the laws relating to parks and outdoor recreation contained in chapters 1 and 2 of Title 23, except chapter 2, part 7, as regularly appointed wardens, and it is ~~hereby made~~ their duty to assist, whenever possible, in the enforcement of those laws."

Approved March 25, 1993.

CHAPTER NO. 188

[HB 153]

AN ACT CONSOLIDATING THE PAYROLL/PERSONNEL/POSITION CONTROL SYSTEM WITHIN THE DEPARTMENT OF ADMINISTRATION BY TRANSFERRING THE PAYROLL FUNCTIONS OF THE STATE AUDITOR TO THE DEPARTMENT OF ADMINISTRATION; AND AMENDING SECTIONS 2-18-401, 2-18-402, 2-18-403, 2-18-404, AND 2-18-405, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-401, MCA, is amended to read:

"**2-18-401. Central payroll system — ~~state auditor~~ *department* to provide for inclusion of agencies.** The ~~state auditor~~ *department of administration* shall install and operate a uniform state central payroll system for all state agencies, including units of the Montana university system and the vocational-technical centers. The ~~auditor~~ *department* may provide for the orderly inclusion of state agencies into ~~such~~ *the* system and may make exceptions from the operation ~~thereof~~ *of the system* for ~~such~~ periods ~~as he~~ *it* determines necessary."

Section 2. Section 2-18-402, MCA, is amended to read:

"**2-18-402. Payroll agency fund — ~~auditor~~ *department* to determine disbursements and transfers.** (1) A fund in the agency fund type of the state treasury is ~~hereby~~ created, to be known as the state payroll agency fund.~~, which~~ *The* fund may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld ~~therefrom~~ *from compensation*, pursuant to law.

(2) The amount to be disbursed from the state payroll agency fund at any time ~~shall~~ *must* be determined by the ~~state auditor~~ *department of administration* and, on ~~his~~ order *of the department*, ~~shall~~ *must* be transferred ~~forthwith~~ from the fund, account, and appropriation ~~otherwise~~ properly chargeable ~~therewith~~ to the state payroll agency fund."

Section 3. Section 2-18-403, MCA, is amended to read:

"**2-18-403. Service charges.** The ~~state auditor~~ *department of administration* may provide for a system of charges for services rendered by the state central payroll system to any department or agency of the state. Funds collected under this section ~~shall~~ *must* be deposited to the credit of a state special revenue fund account and expended for the purpose of paying the expenses incurred by the state central payroll system."

Section 4. Section 2-18-404, MCA, is amended to read:

"2-18-404. Payroll roster — changes certified by appointing powers. (1) The ~~state auditor~~ *department of administration* shall establish and maintain a payroll roster of all persons employed by every state agency and may establish and maintain a roster of all established positions. The payroll roster ~~shall~~ *must* include exempt employees ~~but shall not necessarily~~ *and may* include emergency appointees or the equivalent.

(2) Each appointing power shall correctly and promptly certify to the ~~state auditor~~ *department* all changes, modifications, additions, and deletions to the payroll roster in compliance with all applicable merit service, fiscal, and other pertinent laws and rules.

(3) The state central payroll system ~~shall~~ *must* disburse or otherwise act in reliance upon all payroll roster certifications and attendance reports certified to the ~~state auditor~~ *department* by the respective appointing powers."

Section 5. Section 2-18-405, MCA, is amended to read:

"2-18-405. Payroll based on actual, end-of-period figures — pay date — change of payroll periods. (1) ~~By January 1, 1979, all~~ *All* state payroll systems ~~shall~~ *must* be based upon actual payroll figures submitted after the end of the payroll period and may not be based upon estimated payroll.

(2) All state payroll systems ~~shall~~ *must* provide for the fixing of payroll periods and designated days on which salaried employees ~~shall be~~ *are* paid for the preceding payroll period. The pay date ~~shall~~ *must* be uniform for all employees of each state agency employed in the same geographic area, and payroll warrants ~~shall~~ *must* be distributed or mailed and electronic funds transfers initiated within 10 business days following the close of the payroll period.

(3) The payroll period of employees of a state agency may not be changed by inclusion of the agency into the state payroll system or by any revision or modification of the system unless notice of the proposed change has been given to each employee who will be affected by ~~such~~ *the* change in the form and manner prescribed by the ~~state auditor~~ *department of administration* not less than 60 days prior to the effective date of the change."

Section 6. **Effective date.** [This act] is effective July 1, 1993.

Approved March 25, 1993.

CHAPTER NO. 189

[HB 164]

AN ACT INCREASING THE PENALTIES FOR VIOLATION OF THE NATURAL GAS PIPELINE SAFETY ACT OF 1968; AMENDING SECTION 69-3-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-207, MCA, is amended to read:

"69-3-207. Penalty for violation of natural gas pipeline safety provisions and regulations. (1) ~~Any~~ *A* person violating any safety regulation or provision adopted under the Natural Gas Pipeline Safety Act of 1968, as amended, ~~which~~ *that* applies to areas the commission has authority to enforce ~~shall be~~ *is* subject to a fine of not less than $100 or more than ~~$1,000~~ *$25,000.* Each day in which a violation of a safety regulation or provision continues is considered a separate offense and is subject to the penalty prescribed in this subsection, except that the maximum fine may not exceed ~~$200,000~~ *$500,000* for any related series of violations.

(2) In determining the amount of the penalty, the following ~~shall~~ *must* be considered: the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability; any history of prior violations; the effect on ability to continue to do business; any good faith in attempting to achieve compliance; ability to pay the penalty; and ~~such~~ other matters as justice may require.

(3) ~~Such~~ *The* fine ~~shall~~ *must* be recovered in a civil action upon the complaint of the commission in any court of competent jurisdiction.

(4) The commission may prescribe rules necessary to effectively administer this section."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1993.

CHAPTER NO. 190

[HB 187]

AN ACT REVISING THE LAW RELATING TO THEFT TO INCLUDE PURPOSELY OR KNOWINGLY OBTAINING OR EXERTING UNAUTHORIZED CONTROL OVER ANY PART OF ANY PUBLIC ASSISTANCE PROVIDED UNDER TITLE 52 OF THE MONTANA CODE ANNOTATED; AND AMENDING SECTION 45-6-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-301, MCA, is amended to read:

"**45-6-301. Theft.** (1) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in ~~such~~ *a* manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing ~~such~~ *that the* use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in ~~such~~ *a* manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing ~~such~~ *that the* use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in ~~such~~ *a* manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing ~~such~~ *that the* use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title *52 or* 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains or exerts unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person convicted of the offense of theft of property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding $300 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(7) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Approved March 25, 1993.

CHAPTER NO. 191

[HB 213]

AN ACT ALLOWING A LANDOWNER WITHIN AN IRRIGATION DISTRICT TO VOTE IN A DISTRICT ELECTION REGARDLESS OF COUNTY RESIDENCY; ALLOWING A SINGLE LANDOWNER WITHIN AN IRRIGATION DISTRICT TO DESIGNATE AN AGENT TO VOTE FOR THE OWNER; AND AMENDING SECTION 85-7-1710, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1710, MCA, is amended to read:

"**85-7-1710. Qualification of electors and nature of voting rights.** (1) At all elections held under the provisions of this part, except as otherwise expressly provided, the following holders of title or evidence of title to irrigable lands within the district, ~~herein~~ designated "electors", are entitled to vote:

(a) all individuals having the qualifications of electors under the constitution and general election laws of the state, except that ~~no~~ registration of electors *and county residency* may *not* be required;

(b) guardians, executors, administrators, and trustees;

(c) domestic corporations, by their duly authorized agents.

(2) In all elections held under this part, each elector is permitted to cast one vote for each 40 acres of irrigable land or major fraction ~~thereof~~ *of 40 acres* owned by the elector within the district, irrespective of the location of the irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks (except as ~~hereinafter~~ *otherwise* provided for), election precincts, or district divisions, but any elector owning any less than 40 acres of irrigable land is entitled to one vote. Until the irrigable area under the proposed plan of reclamation is determined, all land included within the boundaries of the district must be considered irrigable land for election purposes.

(3) Whenever land is owned by co-owners, the owners may designate one of their number or an agent to cast the vote for the owners. *Whenever the land is owned by a single owner, the owner may designate an agent to cast the vote.*~~, and one~~ *One* vote only for each 40 acres of irrigable land or major fraction ~~thereof~~ *of 40 acres* may be cast by the voting co-owner or *by an* agent. Whenever land is under contract of sale to a purchaser residing within the state, the purchaser may vote on behalf of the owner of the land. When voting, the agent of a corporation, *of a single owner* or co-owners, *of* the co-owner designated for *the* purpose of voting, or *of* the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district or with the election officials a written instrument of ~~his~~ *the agent's* authority, executed and acknowledged by the proper officers of the corporation, by the *single owner or* co-owners, or by the owner of land under contract of sale, as the case may be, and ~~thereupon~~ *upon filing,* the agent or co-owner or purchaser, as the case may be, is an elector within the meaning of this part. Whenever the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of 5% or more of the total acreage of the district or whenever the majority of the district board adopts a resolution allowing it, each elector is permitted to cast one vote

for each acre of irrigable land or major fraction of an acre of irrigable land owned by the elector within the district, irrespective of the location of ~~such~~ *the* irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than 1 acre of irrigable land within the district is entitled to one vote.

(4) The board of commissioners shall choose one of the following methods of balloting:

(a) 10 votes or less, separate ballots will be used; more than 10 votes, the elector shall vote in blocks of 10 using one ballot for each 10 votes and separate ballots for odd votes over multiples of 10; or

(b) the elector shall submit a ballot that includes the number of acres owned and the number of votes being cast."

Approved March 25, 1993.

CHAPTER NO. 192

[SB 84]

AN ACT REVISING THE LAW RELATING TO THE JURISDICTION AND COMMISSIONING OF NOTARIES AND TO THE NOTARIZATION OF DOCUMENTS; ADOPTING THE UNIFORM LAW ON NOTARIAL ACTS; AMENDING SECTIONS 1-5-401, 1-5-402, 1-5-403, 1-5-404, 1-5-405, 1-5-408, 1-5-415, 1-5-417, 70-21-101, AND 70-21-203, MCA; AND REPEALING SECTIONS 1-5-101, 1-5-102, 1-5-103, 1-5-104, 1-5-105, 1-5-106, 1-5-107, 1-5-108, 1-5-109, 1-5-110, 1-5-201, 1-5-202, 1-5-203, 1-5-204, 1-5-205, 1-5-206, 1-5-207, 1-5-208, 70-20-106, AND 70-20-107, MCA.

STATEMENT OF INTENT

It is the intent of the legislature that the secretary of state adopt rules establishing fees commensurate with the costs of reviewing the applications for and bonds of those persons submitting applications to become notaries public and with the costs of preparing their certificates of commission. The fees adopted by the secretary of state should reflect the cost of maintaining or upgrading the recordkeeping system used in the filing of the commissions.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 11] may be cited as the "Uniform Law on Notarial Acts".

Section 2. **Definitions.** As used in [sections 1 through 11], the following definitions apply:

(1) "Acknowledgment" means a declaration by a person that the person has executed an instrument for the purposes stated in the instrument and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified in the instrument.

(2) "In a representative capacity" means:

(a) for and on behalf of a corporation, partnership, trust, or other entity as an authorized officer, agent, partner, trustee, or other representative;

(b) as a public officer, personal representative, guardian, or other representative in the capacity recited in the instrument;

(c) as an attorney in fact for a principal; or

(d) in any other capacity as an authorized representative of another.

(3) "Notarial act" means any act that a notary public of this state is authorized to perform and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(4) "Notarial officer" means a notary public or other officer authorized to perform notarial acts.

(5) "Verification upon oath or affirmation" means a declaration that a statement is true made by a person upon oath or affirmation.

Section 3. **Notarial acts.** (1) In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the acknowledgment is the person whose true signature is on the instrument.

(2) In taking a verification upon oath or affirmation, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified.

(3) In witnessing or attesting a signature, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the officer and named in the instrument.

(4) In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(5) (a) In making or noting a protest of a negotiable instrument, the notarial officer shall identify the instrument and certify either:

(i) that due presentment has been made; or

(ii) the reason why it is excused and that the instrument has been dishonored by nonacceptance or nonpayment.

(b) The protest may also certify that notice of dishonor has been given to all parties or to specified parties.

(6) A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:

(a) personally known to the notarial officer;

(b) identified upon the oath or affirmation of a credible witness personally known to the notarial officer; or

(c) identified on the basis of identification documents.

Section 4. **Notarial acts in this state.** (1) A notarial act may be performed within this state by the following persons:

(a) a notary public of this state;

(b) a judge, clerk, or deputy clerk of any court of this state; or

(c) any other person authorized to perform the specific act by the law of this state.

(2) Notarial acts performed within this state under federal authority as provided in [section 7] have the same effect as if performed by a notarial officer of this state.

(3) Subject to the provisions of [section 5], notarial acts performed within Montana by notarial officers of bordering states have the same effect as if performed by a notarial officer of Montana.

(4) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

Section 5. **Reciprocity of notarial acts.** (1) A Montana notarial officer may perform a notarial act in a bordering state if the state recognizes the officer's authority within the state.

(2) A notarial act performed in Montana by a notarial officer of a bordering state has the same effect under Montana law as if the act were performed by a Montana notarial officer, provided that the bordering state grants Montana's notarial officers similar authority within the bordering state.

Section 6. **Notarial acts in other jurisdictions of the United States.** (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

(a) a notary public of that jurisdiction;

(b) a judge, clerk, or deputy clerk of a court of that jurisdiction; or

(c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) Notarial acts performed in other jurisdictions of the United States under federal authority as provided in [section 7] have the same effect as if performed by a notarial officer of this state.

(3) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(4) The signature and indicated title of an officer listed in subsection (1)(a) or (1)(b) conclusively establish the authority of a holder of that title to perform a notarial act.

Section 7. **Notarial acts under federal authority.** (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed anywhere by any of the following persons under authority granted by the law of the United States:

(a) a judge, clerk, or deputy clerk of a court;

(b) a commissioned officer on active duty in the military service of the United States;

(c) an officer of the foreign service or consular officer of the United States; or

(d) any other person authorized by federal law to perform notarial acts.

(2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and indicated title of an officer listed in subsection (1)(a), (1)(b), or (1)(c) conclusively establish the authority of a holder of that title to perform a notarial act.

Section 8. **Foreign notarial acts.** (1) A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if it is performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

(a) a notary public or notary;

(b) a judge, clerk, or deputy clerk of a court of record; or

(c) any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed or a certificate by a foreign service or consular officer of that nation stationed in the United States conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.

(4) An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.

(5) An official stamp or seal of an officer listed in subsection (1)(a) or (1)(b) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.

(6) If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

Section 9. **Certificate of notarial acts.** (1) A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed and the title of the office of the notarial officer and must include the official seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) and it:

(a) is in the short form set forth in [section 10];

(b) is in a form otherwise prescribed by the law of this state;

(c) is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

(3) By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by [section 3].

Section 10. **Short forms.** The following short-form certificates of notarial acts are sufficient for the purposes indicated if they are completed with the information required by [section 9(1)]:

(1) For an acknowledgment in an individual capacity:

State of ______________________________

(County) of ___________________________

(date)

This instrument was acknowledged before me on __________by

(name(s) of person(s))

____

____

(Signature of notarial officer)

(Seal, if any)

____

Title (and Rank)

[My commission expires: ________]

(2) For an acknowledgment in a representative capacity:

State of ______________________________

(County) of ____________________________

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

____

(Signature of notarial officer)

(Seal, if any)

____

Title (and Rank)

[My commission expires: ________]

(3) For a verification upon oath or affirmation:

State of ______________________________

(County) of ____________________________

(date)

Signed and sworn to (or affirmed) before me on ____________ by

(name(s) of person(s) making statement).

____

____

(Signature of notarial officer)

(Seal, if any)

____

Title (and Rank)

[My commission expires: ________]

(4) For witnessing or attesting a signature:

State of ______________________________

(County) of ____________________________

(date)

Signed or attested before me on __________________ by

(name(s) of person(s)).

____

____

(Signature of notarial officer)

(Seal, if any)

____

Title (and Rank)

[My commission expires: ________]

(5) For attestation of a copy of a document:

State of ______________________________

(County) of ___________________________

I certify that this is a true and correct copy of a document in the possession of_________________________.

Dated _________________

____

(Signature of notarial officer)

(Seal, if any)

____

Title (and Rank)

[My commission expires: ________]

Section 11. **Uniformity of application and construction.** [Sections 1 through 10] must be applied and construed to effectuate the general purpose to make uniform the law with respect to the subject of [sections 1 through 10] among states enacting it.

Section 12. Section 1-5-401, MCA, is amended to read:

"**1-5-401. Appointment.** The ~~governor~~ *secretary of state* may appoint and commission as many notaries public for the state of Montana as in ~~his~~ *the secretary of state's* judgment may be deemed best."

Section 13. Section 1-5-402, MCA, is amended to read:

"**1-5-402. Qualifications — residence.** ~~Every~~ *A* person appointed as notary public ~~must~~ *may not,* at the time of ~~his~~ appointment, *be a convicted felon. Each person appointed as a notary public must* be a citizen of the United States and of the state of Montana for at least 1 year preceding ~~his~~ appointment, and must continue to reside within the state of Montana. Removal from the state *or conviction of a felony* vacates ~~his~~ *the* office and is equivalent to resignation."

Section 14. Section 1-5-403, MCA, is amended to read:

"**1-5-403. Term of office.** The term of office of a notary public is ~~3~~ *4* years from and after the date of ~~his commission~~ *commissioning.*"

Section 15. Section 1-5-404, MCA, is amended to read:

"**1-5-404. Revocation of commission.** Upon 10 days' notice, the ~~governor~~ *secretary of state* may revoke the commission of any notary public for ~~any~~ *just* cause ~~he may deem sufficient~~."

Section 16. Section 1-5-405, MCA, is amended to read:

"**1-5-405. Bond and commission.** Each notary public ~~must~~ *shall submit an application and* give an official bond in the sum of $5,000. The bond must be approved by the secretary of state. Upon the approval of the bond, *the payment of fees,* and the filing in the office of the secretary of state of the official oath of ~~such~~ *the* notary public, the ~~governor~~ *secretary of state* may issue a commission."

Section 17. Section 1-5-408, MCA, is amended to read:

"**1-5-408. Fees for filing commission and issuing certificates.** The secretary of state shall ~~receive for each certificate of official character issued, with seal attached, $2~~ *set by rule the fees for filing or issuing certificates. The fees must be commensurate with costs. The secretary of state shall use application forms soliciting the information required by this part.* The county clerk of any county in this state shall receive a fee as provided in 7-4-2631 for filing a copy of the commission and certifying to the official character."

Section 18. Section 1-5-415, MCA, is amended to read:

"**1-5-415. ~~Statewide jurisdiction~~ *Jurisdiction.*** ~~The jurisdiction of notaries public shall be coextensive with the boundaries of the state, irrespective of their place of residence within the state. Every~~ *A* person receiving a commission as notary public ~~shall have~~ *has* jurisdiction to perform ~~his~~ *the person's* official duties and acts in every county of the state of Montana *irrespective of the person's place of residence within the state. A notary public may perform notarial acts outside Montana pursuant to [section 5].*"

Section 19. Section 1-5-417, MCA, is amended to read:

"**1-5-417. Authority of notaries who are stockholders, officers, or employees of corporations.** It shall be lawful for any notary public who is a stockholder, director, officer, or employee of a bank or other corporation to take the acknowledgment of any party to any written instrument executed to or by such corporation, to administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation; provided, it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee where such notary is a party *individually* to such instrument~~, either individually~~ or *signs the instrument* as a representative of such bank or other corporation~~,~~ or to protest any negotiable instrument owned or held for collection by such bank or other corporation where such notary is individually a party to such instrument."

Section 20. Section 70-21-101, MCA, is amended to read:

"**70-21-101. Instrument defined — abstract.** For the purposes of Title 1, chapter 5~~, parts 1 through 3~~; part 2 of this chapter; and 70-21-310, the word instrument ~~shall include~~ *includes* an abstract of an instrument ~~which shall~~ *that must* be executed and acknowledged or proved by all parties executing the abstracted document and contains:

(1) the names and addresses of the parties ~~thereto~~ *to the instrument*;

(2) a description of the real property affected;

(3) a statement that this is an abstract of another document;

(4) a short statement of the effect of the document abstracted;

(5) the name and address of the person who will provide a full and complete copy of the document abstracted, without cost, upon request of any person."

Section 21. Section 70-21-203, MCA, is amended to read:

"**70-21-203. Acknowledgment of instruments required — exceptions.** Before an instrument can be recorded, unless it belongs to the class provided for in either ~~1-5-108, 1-5-109,~~ 70-21-205~~,~~ or 70-21-207, its execution must be*:*

(1) acknowledged by the person executing it or, if executed by a corporation, by its president, ~~vice-president~~ *vice president*, secretary or assistant secretary, or other person duly authorized by resolution by ~~such~~ *the* corporation executing the ~~same~~ *instrument* on behalf of the corporation*; or*

(2) proved by*:*

(a) a subscribing witness*; or*

(b) as provided in 1-5-302 and 1-5-303*; and*

(c) the acknowledgment or proof certified in the manner prescribed by Title 1, chapter 5~~, parts 1 through 3~~."

Section 22. **Repealer.** Sections 1-5-101, 1-5-102, 1-5-103, 1-5-104, 1-5-105, 1-5-106, 1-5-107, 1-5-108, 1-5-109, 1-5-110, 1-5-201, 1-5-202, 1-5-203, 1-5-204, 1-5-206, 1-5-207, 1-5-208, 70-20-106, and 70-20-107, MCA, are repealed.

Section 23. **Applicability.** [This act] applies to notarial acts performed on or after [the effective date of this act].

Approved March 25, 1993.

CHAPTER NO. 193

[SB 160]

AN ACT PROHIBITING DISCRIMINATION AGAINST AN EMPLOYEE FOR USE OF A LAWFUL PRODUCT DURING NONWORKING HOURS; AMENDING SECTION 39-2-903, MCA; AND PROVIDING FOR CIVIL DAMAGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Discrimination prohibited for use of lawful product during nonworking hours — exceptions.** (1) For purposes of this section, "lawful product" means a product that is legally consumed, used, or enjoyed and includes food, beverages, and tobacco.

(2) Except as provided in subsections (3) and (4), an employer may not refuse to employ or license and may not discriminate against an individual with respect to compensation, promotion, or the terms, conditions, or privileges of employment because the individual legally uses a lawful product off the employer's premises during nonworking hours.

(3) Subsection (2) does not apply to:

(a) use of a lawful product that:

(i) affects in any manner an individual's ability to perform job-related employment responsibilities or the safety of other employees; or

(ii) conflicts with a bona fide occupational qualification that is reasonably related to the individual's employment;

(b) an individual who, on a personal basis, has a professional service contract with an employer and the unique nature of the services provided authorizes the employer, as part of the service contract, to limit the use of certain products; or

(c) an employer that is a nonprofit organization that, as one of its primary purposes or objectives, discourages the use of one or more lawful products by the general public.

(4) An employer does not violate this section if the employer takes action based on the belief that the employer's actions are permissible under an established substance abuse or alcohol program or policy, professional contract, or collective bargaining agreement.

(5) An employer may offer, impose, or have in effect a health, disability, or life insurance policy that makes distinctions between employees for the type or price of coverage based on the employees' use of a product if:

(a) differential rates assessed against employees reflect actuarially justified differences in providing employee benefits;

(b) the employer provides an employee with written notice delineating the differential rates used by the employer's insurance carriers; and

(c) the distinctions in the type or price of coverage is not used to expand, limit, or curtail the rights or liabilities of a party in a civil cause of action.

Section 2. **Civil action limitation.** (1) Except as provided in subsection (2), an individual who is discharged, discriminated against, or denied employment in violation of [section 1] may file a civil action against an employer within 1 year of the alleged violation and the court may require any reasonable measure to correct the discriminatory practice and to rectify the harm, pecuniary or otherwise, to the person discriminated against and may allow reasonable attorney fees to the prevailing party.

(2) Prior to filing a civil action under subsection (1), an employee shall, within 120 days of the alleged violation, initiate any internal grievance procedure available. If a grievance procedure is not exhausted within 120 days, the employee may file a civil action.

Section 3. Section 39-2-903, MCA, is amended to read:

"**39-2-903. Definitions.** In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason. *The legal use of a lawful product by an individual off the employer's premises during nonworking hours is not a legitimate business reason, unless the employer acts within the provisions of [section 1(3) or (4)].*

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule."

Section 4. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 39, chapter 2, part 3, and the provisions of Title 39, chapter 2, part 3, apply to [sections 1 and 2].

Approved March 25, 1993.

CHAPTER NO. 194

[SB 307]

AN ACT REQUIRING EACH ELEMENTARY DISTRICT WITH THE SAME DISTRICT BOUNDARIES AS A HIGH SCHOOL DISTRICT TO ATTACH TO THE HIGH SCHOOL DISTRICT TO FORM A K-12 SCHOOL DISTRICT BY JULY 1, 1995; PROVIDING AN EXCEPTION TO PROTECT A SCHOOL DISTRICT RECEIVING PUBLIC LAW 81-874 FUNDING; AMENDING SECTION 20-6-701, MCA; REPEALING SECTION 20-6-712, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-701, MCA, is amended to read:

"20-6-701. K-12 school districts ~~allowed~~ *required* — definition — procedure for creation — *exception*. (1) ~~An~~ *Except as provided in subsection (4), by the school fiscal year beginning July 1, 1995, each* elementary district with the same district boundaries as a high school district ~~may~~ *shall* attach to the high school district for the purpose of establishing a K-12 school district.

(2) For the purposes of this title, unless the context clearly indicates otherwise, "K-12 school district" means a high school district with an elementary district that has been attached to the high school district under the procedures provided in this section, with the high school district remaining an organized district under the provisions of 20-6-101 and other provisions of law and the elementary district becoming an inactive district under the provisions of 20-6-101.

(3) The attachment of an elementary district to a high school district to form a K-12 school district must be conducted under the following procedure:

(a) ~~An attachment proposition may be introduced in the districts by either of the following methods:~~

~~(i) the trustees may~~ *The trustees of each district shall* pass a resolution requesting the county superintendent to order ~~an election to consider~~ an attachment ~~proposition~~ involving their districts~~; or~~

~~(ii) not less than 20% of the electors of the elementary district and the high school district who are qualified to vote under the provisions of 20-20-301 may petition the county superintendent, requesting an election to consider an attachment proposition involving their districts~~.

(b) ~~(i)~~ When the county superintendent receives a resolution ~~or a valid petition~~ from each of the districts ~~included in the attachment proposition~~, the county superintendent shall, within 10 days after receipt of the last resolution ~~or petition and as provided by 20-20-201, order the trustees of the districts included in the attachment proposition to call an attachment election in conjunction with a regular school election.~~

~~(ii) The proposition must include the assumption of the bonded indebtedness of the elementary district by the high school district.~~

~~(c) The districts shall call and conduct an election in the manner prescribed in this title for school elections.~~

~~(d) After the county superintendent receives the certificate of election provided for in 20-20-416 from the trustees of the districts included in an attachment proposition, the county superintendent shall determine if the attachment proposition has been approved in the districts. If the districts have approved the attachment proposition, the county superintendent shall, within 10 days after receipt of the certificate of election~~, order the attachment of the elementary district to the high school district to take effect on July 1 of the ensuing school fiscal year. Within 30 days of the order, the county superintendent shall send a copy of the order to the board of county commissioners, the trustees of the districts included in the attachment order, and the superintendent of public instruction.

(4) This section does not apply to a school district receiving Public Law 81-874 funding if creation of a K-12 district would result in the loss of Public Law 81-874 funding."

Section 2. **Repealer.** Section 20-6-712, MCA, is repealed.

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved March 25, 1993.

CHAPTER NO. 195

[SB 315]

AN ACT REVISING THE LAWS RELATING TO COMMERCIAL MOTOR VEHICLES AND COMMERCIAL MOTOR VEHICLE OPERATORS; PROVIDING FOR SUSPENSION OF A COMMERCIAL DRIVER'S LICENSE FOR INDIVIDUALS CONVICTED OF VIOLATING OUT-OF-SERVICE ORDERS; ADDING SCHOOL BUSES TO THE DEFINITION OF COMMERCIAL MOTOR VEHICLES; CHANGING REFERENCES IN MONTANA STATUTES FROM "COMMERCIAL VEHICLE OPERATOR'S ENDORSEMENT" TO "COMMERCIAL DRIVER'S LICENSE"; AND AMENDING SECTIONS 17-7-502, 20-10-103, 61-1-134, 61-1-135, 61-1-136, 61-5-106, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-117, 61-5-121, 61-5-201, 61-5-203, 61-5-204, 61-5-205, 61-5-206, 61-5-207, 61-5-208, 61-5-209, 61-5-210, 61-5-211, 61-5-212, 61-5-302, 61-5-306, 61-8-802, 61-8-803, 61-8-804, 61-8-805, 61-8-806, 61-8-808, 61-8-810, AND 61-8-811, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Suspension of commercial driver's license — operation of out-of-service vehicle.** (1) Upon receipt of information that a commercial motor vehicle operator has been convicted of a violation of operating a commercial motor vehicle that has been placed out of service, the department shall suspend the operator's commercial driver's license for 6 months for a first conviction and for 1 year for a second or subsequent conviction.

(2) A temporary or probationary commercial driver's license may not be issued while a commercial driver's license is suspended under subsection (1).

Section 2. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; ~~61-5-121;~~ 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 3. Section 20-10-103, MCA, is amended to read:

"**20-10-103. School bus driver qualifications.** Any driver of a school bus is qualified to drive a school bus ~~by compliance with the following requirements~~ *if the driver*:

(1) ~~he~~ is not less than 18 years of age;

(2) ~~he~~ is of good moral character;

(3) ~~he~~ is the holder of a *commercial* driver's license ~~with a commercial vehicle operator's endorsement~~;

(4) ~~he~~ has filed with the district a satisfactory medical examination report, on a form approved by the United States department of transportation or by the superintendent of public instruction, signed by any physician licensed in the United States or, if acceptable to an insurance carrier, any licensed physician;

(5) ~~he~~ has completed a basic first aid course and holds a valid basic first aid certificate from an authorized instructor. The issuance of the certificate is governed by rules established by the superintendent of public instruction, provided that the rules may suspend this requirement for a reasonable period of time if there has been an inadequate opportunity for securing the basic first aid course and certificate.

(6) ~~he~~ has complied with any other qualifications established by the board of public education; and

(7) ~~he~~ has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven, certifying compliance with the ~~several~~ driver qualifications enumerated in this section."

Section 4. Section 61-1-134, MCA, is amended to read:

"**61-1-134. Commercial motor vehicle defined — exceptions.** (1) "Commercial motor vehicle" means a motor vehicle used to transport passengers or property if the vehicle:

(a) has a gross vehicle weight of 26,001 pounds or more;

(b) is designed to transport more than 15 passengers, including the driver; ~~or~~

(c) is a school bus as defined in 20-10-101; or

~~(c)~~*(d)* is used to transport hazardous material.

(2) Commercial motor vehicles under this section do not include vehicles operated within the state of Montana that are:

(a) registered as paying the 16% gross weight fee under 61-10-206;

(b) used for firefighting and that are bearing Montana tax-exempt plates; or

(c) police emergency response and safety education units.

(3) Vehicles that are operated within the state of Montana by farmers or persons employed by farmers who are transporting farm products or farm supplies and that are operated within 150 miles of the farm headquarters are not considered commercial motor vehicles under this section."

Section 5. Section 61-1-135, MCA, is amended to read:

"**61-1-135. Commercial ~~vehicle operator's endorsement~~ *driver's license.*** "Commercial ~~vehicle operator's endorsement~~ *driver's license*" means

~~an endorsement to~~ a Montana driver's license that authorizes the licensee to operate a class of commercial motor vehicle."

Section 6. Section 61-1-136, MCA, is amended to read:

"**61-1-136. Driver's license.** "Driver's license" means any license or permit to operate a motor vehicle issued under or granted by the laws of this state, including:

(1) any temporary license or instruction permit;

(2) the privilege of any person to drive a motor vehicle, whether or not ~~such~~ *the* person holds a valid license;

(3) any nonresident's driving privilege;

(4) a motorcycle endorsement; and

(5) a commercial ~~vehicle operator's endorsement~~ *driver's license*."

Section 7. Section 61-5-106, MCA, is amended to read:

"**61-5-106. Instruction and traffic education permits and temporary licenses.** (1) ~~Any~~ *A* person satisfying the age requirements specified in 61-5-105(1) may apply to the department for an instruction permit. The department may in its discretion, after the applicant has successfully passed all parts of the examination other than the driving test, issue to the applicant an instruction permit ~~which~~ *that entitles* ~~shall entitle~~ the applicant, while having ~~such~~ *the* permit in ~~his~~ *the applicant's* immediate possession, to drive a motor vehicle upon the public highways for a period of 6 months when accompanied by a licensed driver who is occupying a seat beside the driver. In addition, the department may issue ~~such~~ an instruction permit to any person who is at least 14 1/2 years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction. ~~Any~~ *An* instruction permit ~~so issued shall~~ *must* be restricted to the operation of a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be further restricted to specific times ~~and/or~~ *or* areas.

(2) The department upon receiving proper application may in its discretion issue a traffic education permit effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the department even though the applicant has not reached the legal age to be eligible for a driver's license. ~~Such~~ *The* permit ~~shall~~ ~~entitle~~ *entitles* the permittee, when ~~he~~ *the permittee* has ~~such~~ a permit in ~~his~~ *the permittee's* immediate possession, to operate only on a designated highway or within a designated area a motor vehicle only when an approved instructor is occupying a seat beside the permittee or a motorcycle or quadricycle only when under the immediate and proximate supervision of an approved instructor.

(3) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting ~~him~~ *the applicant* to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to ~~such~~ *the* applicant's right to receive a driver's license. ~~Such~~ *The* permit must be in ~~his~~ *the permittee's* immediate possession

while operating a motor vehicle, and it ~~shall be~~ *is* invalid when the applicant's license has been issued or for good cause has been refused.

(4) The department may in its discretion issue a temporary commercial ~~vehicle operator's endorsement~~ *driver's license* to an applicant ~~for such an endorsement~~ permitting ~~him~~ *the applicant* to operate a commercial motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial ~~vehicle operator's endorsement~~ *driver's license.* ~~Such~~ *The* temporary ~~endorsement~~ *license* must be in ~~his~~ *the applicant's* immediate possession while operating a commercial motor vehicle and is invalid when the applicant's ~~endorsement~~ *license* has been issued or for good cause has been refused."

Section 8. Section 61-5-107, MCA, is amended to read:

"**61-5-107. Application for license, instruction permit, ~~commercial vehicle operator's endorsement,~~ or motorcycle endorsement.** (1) Every application for an instruction permit, driver's license, ~~commercial vehicle operator's endorsement,~~ or motorcycle endorsement ~~shall~~ *must* be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Every application ~~shall~~ *must* be accompanied by the proper fee, and payment of ~~such~~ *the* fee ~~shall entitle~~ *entitles* the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state ~~shall~~ *must* be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Every ~~such~~ application ~~shall~~ *must* state the full name, date of birth, sex, and residence address of the applicant, ~~and~~ *must* briefly describe the applicant, and ~~shall~~ *must* state whether the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country, and whether any ~~such~~ *commercial operator* license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for ~~such~~ suspension, revocation, or refusal.

(3) Whenever application is received from an applicant previously licensed by any other jurisdiction, the department shall request a copy of ~~such~~ *the* applicant's driving record from ~~such~~ *the* previous licensing jurisdiction. When received, ~~such~~ *the* driving records ~~shall~~ become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance."

Section 9. Section 61-5-110, MCA, is amended to read:

"**61-5-110. Examination of applicants.** (1) The department shall examine every applicant for a driver's license~~, commercial vehicle operator's endorsement,~~ or motorcycle endorsement, except as otherwise provided in this section. ~~Such~~ *The* examination ~~shall~~ *must* include a test of the applicant's eyesight, ~~his~~ *the applicant's* ability to read and understand highway signs regulating, warning, and directing traffic, ~~his~~ *the applicant's* knowledge of the traffic laws of this state, and ~~shall~~ *must* include an actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The examination for the commercial ~~vehicle operator's endorsement~~ *driver's license* may include additional items.

(2) Within 90 days of receipt of an application for a commercial ~~vehicle operator's endorsement~~ *driver's license*, the department shall give an examination ~~for endorsement~~ to the applicant in the county where the applicant resides.

(3) Except as otherwise provided by law, a resident who has a valid driver's license issued by another state may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees. A resident who obtains a Montana driver's license in this manner is exempt from the written examination and actual demonstration of the operation of a motor vehicle provided for in subsection (1) but is not exempt from the eyesight test or, in the case of commercial drivers, any examination required by federal regulations."

Section 10. Section 61-5-111, MCA, is amended to read:

"**61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements.** (1) The department ~~has authority to~~ *may* appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In those areas where the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may not appoint an agent. The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to every qualifying applicant. The license ~~shall~~ *must* contain a full-face photograph of the licensee in the size and form prescribed by the department, except as provided in subsection (4); a distinguishing number issued to the licensee; the full name, date of birth, residence address, and a brief description of the licensee; and either a facsimile of the signature of the licensee or a space upon which ~~he~~ *the licensee* shall write ~~his~~ *the licensee's* signature in pen and ink immediately upon receipt of the license. A license is not valid until it is signed by the licensee.

(2) (a) The department shall, when any person applies for renewal of a driver's license, test the applicant's eyesight and may also in the department's discretion have the applicant demonstrate ~~his~~ *the applicant's* physical ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle.

(b) In the case of *a* commercial ~~vehicle operator's endorsements~~ *driver's license*, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 3 months of the expiration of ~~his~~ *the person's* license.

(3) A license expires on the anniversary of the date of birth of the licensee 4 years or less after the date of issue.

(4) A license issued to a person under the age of 21 years must contain a photograph of the licensee's profile.

(5) Whenever the department issues an original license to a person under the age of 18 years, the license ~~shall~~ *must* be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months, when its records disclose that the licensee, subsequent to the issuance of ~~such~~ *the* license, has been guilty of careless or negligent driving. Upon renewal the department may, for any reasonable cause as shown by its records, designate the renewal of the license as provisional; otherwise, a license in usual form must be issued subject to other provisions of the laws of Montana.

(6) It is unlawful for any person to have in ~~his~~ *the person's* possession or under ~~his~~ *the person's* control more than one Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle until the holder ~~thereof~~ *of the license* has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle until the holder ~~thereof~~ *of the license* has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial ~~vehicle operator's endorsement~~ *driver's license*".

(7) Fees for driver's licenses are:

(a) driver's license, *except a commercial driver's license* — $4 per year or fraction ~~thereof~~ *of a year*;

(b) motorcycle endorsement — 50 cents per year or fraction ~~thereof~~ *of a year*;

(c) commercial ~~vehicle operator's endorsement~~ *driver's license*:

(i) interstate — $5 per year or fraction ~~thereof~~ *of a year*;

(ii) intrastate — $3.50 per year or fraction ~~thereof~~ *of a year.*

(8) A license designated as a chauffeur's license as of January 1, 1988, is valid as a commercial ~~vehicle operator's endorsement~~ *driver's license* until the expiration of the license.

(9) The holder of a chauffeur's license may convert ~~his~~ *the* chauffeur's license to a commercial ~~vehicle operator's endorsement~~ *driver's license* by paying the appropriate fee covering the remainder of the life of ~~his~~ *the* license and complying with the requirements established by the department.

(10) The holder of a valid chauffeur's license who is renewing and wishes to obtain a commercial ~~vehicle operator's endorsement~~ *driver's license* may do so upon paying the appropriate fees and complying with the requirements established by the department."

Section 11. Section 61-5-112, MCA, is amended to read:

"**61-5-112. Classification of commercial ~~vehicle operator's endorsements~~ *driver's license*.** The department upon issuing a ~~license with a~~ commercial ~~vehicle operator's endorsement~~ *driver's license* shall indicate ~~thereon~~ *on the license* the class of license ~~so~~ issued and shall appropriately examine each applicant according to the class ~~of endorsement~~ applied for and may impose ~~such~~ rules for ~~the~~ classification, examination, and use ~~thereof as~~ *that* it considers necessary for the safety and welfare of the traveling public."

Section 12. Section 61-5-117, MCA, is amended to read:

"**61-5-117. Rulemaking authority.** The department of justice may adopt rules to implement the issuance and enforcement of classified commercial ~~vehicle operator's endorsements~~ *driver's licenses* and hazardous materials endorsements."

Section 13. Section 61-5-121, MCA, is amended to read:

"**61-5-121.** *(Temporary)* **Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial ~~vehicle operator's endorsements~~ *driver's licenses* provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. ~~Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund.~~

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) Except as provided in subsection (3), if the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) Except as provided in subsection (3), if the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of 17.5% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) The amount of 53.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each commercial ~~vehicle operator's endorsement~~ *driver's license* fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial ~~vehicle operator's endorsements~~ *driver's licenses*, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, ~~he~~ *the county treasurer or agent* shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. ~~He~~ *The county treasurer or agent* shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial ~~vehicle operator's endorsements~~ *driver's licenses*, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g).

(3) On or before June 30, 1993, the balance in the driver's license collections account in the state special revenue fund collected pursuant to subsections (1)(b)(ii) and (1)(c)(ii) must be transferred to the general fund. *(Terminates July 1, 1993—sec. 7(1), Ch. 5, Sp. L. January 1992.)*

61-5-121. *(Effective July 1, 1993)* **Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial ~~vehicle operator's endorsements~~ *driver's licenses* provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. ~~Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund.~~

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the general fund.

(d) The amount of 17.5% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 53.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each commercial ~~vehicle operator's endorsement~~ *driver's license* fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial ~~vehicle operator's endorsements~~ *driver's licenses,* motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, ~~he~~ *the county treasurer or agent* shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. ~~He~~ *The county treasurer or agent* shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial ~~vehicle operator's endorsements~~ *driver's licenses,* motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

Section 14. Section 61-5-201, MCA, is amended to read:

"**61-5-201. Authority of department to cancel license ~~and endorsement~~.** (1) The department ~~is hereby authorized to~~ *may* cancel a driver's license ~~and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement~~ upon determining that the licensee was not entitled to the issuance or that since the issuance, ~~said~~ *the* licensee has become ineligible ~~(such ineligibility shall be~~ *as* determined pursuant to the provisions of 61-5-105~~)~~ or that ~~said~~ *the* licensee failed to give the required or correct information in ~~his~~ *the licensee's* application or committed any fraud in making ~~such~~ *the* application.

(2) Upon ~~such~~ cancellation, the licensee ~~must~~ *shall* surrender the *canceled* license ~~so canceled~~ to the department."

Section 15. Section 61-5-203, MCA, is amended to read:

"61-5-203. **Suspending privileges of nonresidents.** The privilege of driving a motor vehicle on the highways of this state given to a nonresident ~~shall be~~ *is* subject to suspension or revocation by the department in like manner and for like causes as a driver's license ~~and commercial vehicle operator's endorsement or just an endorsement~~ issued ~~hereunder~~ *under this chapter* may be suspended or revoked."

Section 16. Section 61-5-204, MCA, is amended to read:

"61-5-204. **Suspending resident's license upon conviction in another state.** The department ~~is authorized to~~ *may* suspend or revoke the driver's license ~~and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement~~ of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of the person in another jurisdiction of an offense in that jurisdiction which, if committed in this state, would be grounds for the suspension or revocation of the driver's license ~~or commercial vehicle operator's endorsement~~."

Section 17. Section 61-5-205, MCA, is amended to read:

"61-5-205. **Mandatory revocation of license upon proper authority.** The department upon proper authority shall revoke the driver's license~~, including the commercial vehicle operator's endorsement,~~ or the operating privilege of any driver upon receiving a record of the driver's conviction or forfeiture of bail not vacated of any of the following offenses, when the conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of alcohol or any drug or a combination ~~thereof~~ *of alcohol or drugs*, except as provided in 61-5-208, or operation of a motor vehicle by a person with a blood alcohol concentration of 0.10 or more;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

(5) perjury or the making of a false affidavit or statement under oath to the department under this chapter or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated upon three charges of reckless driving committed within a period of 12 months; or

(7) negligent vehicular assault as defined in 45-5-205."

Section 18. Section 61-5-206, MCA, is amended to read:

"61-5-206. **Authority of department to suspend license or driving privilege or issue probationary license.** (1) The department ~~is hereby authorized to~~ *may* suspend the driver's license~~, including the commercial vehicle operator's endorsement,~~ or driving privilege of a driver without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(a) has been involved as a driver in any accident resulting in the death or personal injury of another or serious property damage;

(b) has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(c) is an habitually reckless or negligent driver of a motor vehicle;

(d) is incompetent to drive a motor vehicle;

(e) has committed or permitted an unlawful or fraudulent use of ~~such~~ *the* license as specified in 61-5-302;

(f) has committed an offense in another state which if committed in this state would be grounds for suspension or revocation;

(g) has falsified ~~his~~ *the licensee's* date of birth on ~~his~~ *the* application for a driver's license;

(h) is under 21 years of age and has altered ~~his~~ *the licensee's* or another's driver's license or identification card to obtain alcohol; or

(i) has authorized another to use ~~his~~ *the licensee's* driver's license or identification card to obtain alcohol.

(2) However, the department may, in its discretion and in lieu of ~~such suspension of~~ *suspending the* license or driving privilege, issue a probationary license to a driver, without preliminary hearing, upon a showing by its records or other sufficient evidence that the licensee's driving record is such as would authorize suspension as provided in subsection (1) ~~hereof~~. Upon issuance of a probationary license, the licensee ~~shall be~~ *is* subject to the restrictions set forth ~~thereon~~ *in the probationary license.* The licensee's driving privilege may be suspended upon conviction or forfeiture of bail not vacated of any traffic violation during the period of ~~such~~ probation. The licensee shall surrender to the department all driver licenses ~~theretofore~~ *that have been* issued to ~~him~~ *the licensee* before ~~such~~ *the* probationary license ~~shall~~ *may* be issued. ~~His~~ *The licensee's* refusal or neglect to surrender ~~such~~ *the* licenses upon demand ~~shall be ground~~ *is grounds* for suspending all ~~such~~ licenses. Probationary licenses may be issued for a period not to exceed 12 months.

(3) Upon suspending the license of any person or upon placing ~~such~~ *the* person on probation, as ~~hereinbefore~~ *authorized* in this section ~~authorized~~, the department shall immediately notify the licensee in writing and upon ~~his~~ *the licensee's* request shall afford ~~him~~ *the licensee* an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of ~~such~~ *the* request in the county ~~wherein~~ *in which* the licensee resides unless the department and the licensee agree that ~~such~~ *the* hearing may be held in some other county. ~~Upon such~~ *At the* hearing the department through its ~~duly~~ authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. ~~Upon such~~ *At the* hearing, the department shall either rescind

its order of suspension or probation, or, *for* good cause ~~appearing therefor~~, may affirm, reduce, or extend the period of probation or suspension of ~~such~~ *the* license."

Section 19. Section 61-5-207, MCA, is amended to read:

"**61-5-207. Reexamination or investigation — when required.** The department, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed ~~or to have a commercial vehicle operator's endorsement,~~ may, based on information received, investigate the licensee's record, physical or mental condition, or need for a license or, upon written notice of at least 5 days to the licensee, require ~~him~~ *the licensee* to submit to an examination. Upon the conclusion of the investigation or examination the department shall take action as may be appropriate considering the facts reported or discovered and may suspend or revoke the *driver's* license ~~and commercial vehicle operator's endorsement or just the commercial vehicle operator's endorsement~~ of ~~such~~ *the* person or permit ~~him~~ *the person* to retain ~~such~~ *the* license or may issue a license subject to restrictions as permitted under 61-5-113. Refusal or neglect of the licensee to submit to ~~such~~ *the* investigation or examination ~~shall be ground~~ *is grounds* for suspension or revocation of ~~his~~ *the person's* license."

Section 20. Section 61-5-208, MCA, is amended to read:

"**61-5-208. Period of suspension or revocation.** (1) The department may not suspend or revoke a driver's license~~, commercial vehicle operator's endorsement,~~ or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) A person whose license~~, commercial vehicle operator's endorsement,~~ or privilege to drive a motor vehicle on the public highways has been suspended or revoked ~~is not entitled to~~ *may not* have the license, endorsement, or privilege renewed or restored unless the revocation was for a cause which has been removed~~,~~. ~~except that after~~ *After* the expiration of the period of the revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination ~~thereof~~ *of alcohol or drugs* or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the *driver's* license~~, including any commercial vehicle operator's endorsement,~~ or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license~~, commercial vehicle operator's endorsement,~~ or driving privilege of the person for a period of 1 year, except that if the 1-year period passes and the person has not completed an alcohol information course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both are completed.

(3) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(4) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the driver's license commences from date of conviction or forfeiture of bail.

(5) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in *61-8-811 and* subsection (2) *of this section.* ~~In addition, the department shall suspend the person's commercial vehicle operator's endorsement in accordance with the provisions of this title.~~"

Section 21. Section 61-5-209, MCA, is amended to read:

"**61-5-209. Surrender and return of license ~~or endorsement~~ upon suspension or revocation.** ~~The~~ *When the* department ~~upon suspending or revoking~~ *suspends or revokes* a license, ~~or commercial vehicle operator's endorsement~~ *it* shall require that ~~such~~ *the* license ~~shall~~ be surrendered to and be retained by the department except that at the end of the period of suspension, ~~such~~ *the surrendered* license ~~so surrendered shall~~ *must* be returned to the licensee."

Section 22. Section 61-5-210, MCA, is amended to read:

"**61-5-210. No operation under foreign license during suspension or revocation in this state.** ~~Any~~ *A* resident or nonresident whose license or right or privilege to operate a motor vehicle or commercial motor vehicle in this state has been suspended or revoked as provided in this chapter ~~shall~~ *may* not operate a motor vehicle or commercial motor vehicle in this state under a license, permit, or registration certificate issued by any other jurisdiction or otherwise during ~~such~~ *the* suspension or after ~~such~~ *the* revocation until a new license ~~or commercial vehicle operator's endorsement~~ is obtained ~~when and as permitted~~ under this chapter."

Section 23. Section 61-5-211, MCA, is amended to read:

"**61-5-211. Right of appeal to court.** ~~Any~~ *A* person denied a driver's license ~~or commercial motor vehicle operator's endorsement~~ or whose license ~~or endorsement~~ has been canceled, suspended, or revoked by the department except ~~where such~~ *when the* cancellation or revocation is mandatory under the provisions of this chapter ~~shall have the right to~~ *may* file a petition within 30 days ~~thereafter~~ *after the denial, cancellation, suspension, or revocation* for a hearing in the matter in the district court in the county ~~wherein such~~ *in which the* person ~~shall reside~~ *resides.* ~~Such~~ *The* court ~~is hereby vested with~~ *has* jurisdiction and it shall ~~be its duty to~~ set the matter for hearing upon 30 days' written notice to the department, and ~~thereupon to~~ *shall* take testimony and examine ~~into~~ the facts of the case and ~~to~~ determine whether the petitioner is entitled to a *driver's* license ~~or commercial vehicle operator's endorsement~~ or is subject to suspension, cancellation, or revocation of the license ~~or endorsement~~ under the provisions of this chapter."

Section 24. Section 61-5-212, MCA, is amended to read:

"**61-5-212. Driving while license suspended or revoked — penalty.** (1) ~~Any~~ *A* person who drives a motor vehicle or commercial motor vehicle on any public highway of this state at a time when ~~his~~ *the person's* privilege to do so is suspended or revoked in this state or any other state is guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than 2 days or more than 6 months and may be fined not more than $500.

(2) The department upon receiving a record of the conviction of any person under this section upon a charge of driving a vehicle while the person's *driver's* license ~~or commercial vehicle operator's endorsement~~ was suspended or revoked shall extend the period of suspension or revocation for an additional like period."

Section 25. Section 61-5-302, MCA, is amended to read:

"**61-5-302. Unlawful use of license or identification card.** It is a misdemeanor for ~~any~~ *a* person to:

(1) display or cause or permit to be displayed or have in ~~his~~ *the person's* possession ~~any~~ *a* canceled, revoked, suspended, fictitious, or altered driver's license or identification card;

(2) lend ~~his~~ *the person's* driver's license or identification card to any other person or knowingly permit its use by another;

(3) display or represent as one's own any driver's license or identification card not issued to ~~him~~ *the person*;

(4) fail or refuse to surrender to the department upon its lawful demand ~~any~~ *a* driver's license or identification card ~~which~~ *that* has been suspended, revoked, or canceled;

(5) use a false or fictitious name in ~~any~~ *an* application for a driver's license~~,~~ ~~commercial vehicle operator's endorsement,~~ or identification card or knowingly make a false statement or knowingly conceal a material fact or otherwise commit a fraud in ~~any such~~ *an* application; or

(6) permit any unlawful use of a driver's license or identification card issued to ~~him~~ *the person*."

Section 26. Section 61-5-306, MCA, is amended to read:

"**61-5-306. Renting motor vehicle to another.** (1) ~~No~~ *A* person ~~shall~~ *may not* rent a motor vehicle to any other person unless the latter person is ~~then duly~~ licensed ~~hereunder~~ *under this chapter* or, in the case of a nonresident, ~~then duly~~ licensed under the laws of the state or country of ~~his~~ *the person's* residence except a nonresident whose home state or country does not require that an operator be licensed.

(2) ~~No~~ *A* person ~~shall~~ *may not* rent a motor vehicle to another until ~~he~~ *the person* has inspected the driver's license of the ~~person to whom the vehicle is to be rented~~ *proposed renter* and compared and verified the signature ~~thereon~~ *on the license* with the signature of ~~such person~~ *the proposed renter* written in ~~his~~ *the person's* presence.

(3) ~~No~~ *A* person may *not* rent a *commercial* motor vehicle ~~which is defined as a commercial motor vehicle under this title~~ to another until ~~he~~ *the person* has

inspected the driver's license of ~~that person~~ *the proposed renter* and determined that the ~~person~~ *proposed renter* has a commercial ~~vehicle operator's endorsement~~ *driver's license.*

(4) Every person renting a motor vehicle to another shall keep a record of the registration number of the motor vehicle ~~so~~ rented, the name and address of the person to whom the vehicle is rented, and the number and expiration date of the license of ~~said latter person~~ *the renter.* The record ~~shall be~~ *is* open to inspection by any police officer or officer or employee of the department."

Section 27. Section 61-8-802, MCA, is amended to read:

"**61-8-802. Suspension of commercial ~~vehicle operator's endorsement~~ *driver's license* — disqualification.** (1) The department shall suspend the commercial ~~vehicle operator's endorsement~~ *driver's license* of any commercial operator if the department's records or information received from federal authorities shows that the person is disqualified under federal law.

(2) A commercial ~~vehicle operator's endorsement~~ *driver's license* suspended pursuant to this section remains suspended for the duration of the period of disqualification under federal regulations.

(3) A person whose commercial ~~vehicle operator's endorsement~~ *driver's license* is suspended under this section due to disqualification:

(a) may appeal the suspension as provided in 61-5-211; and

(b) may not operate a commercial vehicle until the suspension is lifted and ~~his~~ *the person's* commercial ~~vehicle operator's endorsement~~ *driver's license* is restored."

Section 28. Section 61-8-803, MCA, is amended to read:

"**61-8-803. Suspension of commercial ~~vehicle operator's endorsement~~ *driver's license* — serious traffic violations.** If a commercial motor vehicle operator's record shows that ~~he~~ *the operator* has been convicted of a serious traffic violation as defined in federal regulations, the department shall suspend the commercial ~~vehicle operator's endorsement~~ *driver's license*:

(1) for 60 days if the operator was convicted of two hazardous moving violations within 3 years; or

(2) for 120 days if the operator was convicted of three hazardous moving violations within 3 years."

Section 29. Section 61-8-804, MCA, is amended to read:

"**61-8-804. Suspension of commercial ~~vehicle operator's endorsement~~ *driver's license* — felony involving a controlled substance while driving a commercial vehicle.** If the department receives information that a commercial motor vehicle operator has been convicted of using a commercial motor vehicle in the commission of a felony involving the manufacture, distribution, or dispensing of a controlled substance, as defined by federal regulations, or a felony involving possession with intent to manufacture, distribute, or dispense a controlled substance, the department shall suspend ~~his~~ *the operator's* commercial ~~vehicle operator's endorsement~~ *driver's license* for life."

Section 30. Section 61-8-805, MCA, is amended to read:

"**61-8-805. Suspension for operating a commercial vehicle with alcohol concentration of 0.04 or more — hearing.** (1) A person whose alcohol concentration is 0.04 or more while ~~he~~ *the person* drives or is in actual physical control of a commercial motor vehicle is subject to the suspension of ~~his~~ *the person's* commercial ~~vehicle operator's endorsement~~ *driver's license.* If the department receives a sworn report from a peace officer that the person was operating a commercial motor vehicle while ~~his~~ *the person's* alcohol concentration was 0.04 or more, the department shall suspend the *person's commercial* driver's ~~commercial vehicle operator's endorsement~~ *license*:

(a) for 1 year, with no provision for a restricted probationary license or endorsement, upon receipt of the first report, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension must be for 3 years; and

(b) for life, with no provision for a restricted probationary license or endorsement, upon receipt of a second or subsequent report at any time as determined from the records of the department, unless a restricted license or endorsement is allowed by federal rules governing commercial drivers.

(2) A peace officer who determines that a commercial motor vehicle operator has any measured amount or detected presence of alcohol in ~~his~~ *the operator's* body while operating a commercial motor vehicle shall place the commercial motor vehicle operator out of service as mandated by federal regulations for 24 hours.

(3) The fact that any person charged with a violation of the provisions of subsection (1) is entitled to use alcohol under the laws of Montana is not a defense against any charge of violating the provisions of subsection (1).

(4) The department shall immediately notify in writing any person whose commercial ~~vehicle operator's endorsement~~ *driver's license* is suspended under this section. The person ~~has the right to~~ *may* file a petition within 30 days after the notice is given for a hearing in the matter in the district court in the county in which the finding of alcohol concentration was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county in which the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether the person was driving or had actual physical control of a commercial motor vehicle while ~~his~~ *the person's* alcohol concentration was 0.04 or more. The court shall determine whether the petitioner is entitled to a commercial ~~vehicle operator's endorsement~~ *driver's license* or is subject to suspension as provided in this section. The provisions of 61-8-404 apply to any proceedings under this section."

Section 31. Section 61-8-806, MCA, is amended to read:

"**61-8-806. Blood, breath, or urine tests of commercial vehicle operators — procedure — suspension.** (1) A person who operates a commercial motor vehicle upon the ways of this state open to the public is considered to have given consent, subject to the provisions of 61-8-401 and 61-8-805, to a test of ~~his~~ *the operator's* blood, breath, or urine for the purpose of determining any measured amount of alcohol in ~~his~~ *the operator's* body if ~~he~~ *the operator* is requested to submit to the test by a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a commercial motor vehicle upon the ways of this state open to the public while ~~his~~ *the person's* blood alcohol concentration was 0.04 or more. The peace officer may designate a blood, breath, or urine test to be administered.

(2) A person who is unconscious or who is otherwise incapable of refusal is considered not to have withdrawn the consent provided in subsection (1).

(3) If a commercial motor vehicle operator who is a resident of Montana refuses upon the request of a peace officer to submit to a test designated by the officer as provided in subsection (1), the test may not be given. On behalf of the department, the officer shall immediately seize the person's *commercial* driver's license ~~showing the commercial vehicle operator's endorsement~~ and forward the license to the department, along with a sworn report that ~~he~~ *the officer* had reasonable grounds to believe *that* the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while having an alcohol concentration of 0.04 or more and that the person had refused to submit to the test upon the request of the officer. Upon receipt of the report, the department shall suspend the license for a period provided in subsection (5).

(4) Upon seizure of a resident's *commercial* driver's license ~~showing a commercial vehicle operator's endorsement~~, the peace officer shall issue, on behalf of the department, a temporary *noncommercial* driving permit ~~without the commercial vehicle operator's endorsement~~. The temporary driving permit is valid for 72 hours after issuance.

(5) If a commercial motor vehicle operator refuses to submit to a test as provided in subsection (3), the department shall suspend ~~his~~ *the operator's* commercial ~~vehicle operator's endorsement~~ *driver's license*:

(a) upon first refusal, for 1 year, with no provision for a restricted probationary license or endorsement, except that if the offense occurred in a commercial motor vehicle transporting hazardous materials, the suspension for a first refusal must be for 3 years;

(b) upon a second or subsequent refusal at any time as determined from the records of the department, for life, with no provision for a restricted probationary license or endorsement unless allowed by federal rules governing commercial drivers.

(6) A nonresident commercial motor vehicle operator who refuses to submit to a test as provided in subsection (3) is subject to suspension by the department as provided in subsection (5) and must be given a temporary driving permit as provided in subsection (4)."

Section 32. Section 61-8-808, MCA, is amended to read:

"**61-8-808. Right of appeal of court.** The department shall immediately notify in writing any person whose commercial ~~vehicle operator's endorsement~~ *driver's license* has been suspended under the provisions of 61-8-806, and the person may, within 30 days after receipt of notification, file a petition for a hearing on the matter in the district court in the county where the person resides or in the district court in the county where the finding of refusal was made. The court has jurisdiction and shall set the matter for hearing upon 10 days' written notice to the county attorney of the county where the appeal is filed. The county attorney shall represent the state. The court shall take testimony and examine the facts of the case, except that the issue is limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle upon ways of this state open to the public while the person had a blood alcohol concentration of 0.04 or more, whether the person was ordered to submit to a test, and whether the person refused to submit to the test. The court shall determine whether the petitioner is entitled to a commercial ~~vehicle operator's endorsement~~ *driver's license* or is subject to suspension as provided in this part."

Section 33. Section 61-8-810, MCA, is amended to read:

"**61-8-810. Suspension of commercial ~~vehicle operator's endorsement~~ *driver's license* — felony involving a commercial motor vehicle.** Upon receipt of information that a commercial motor vehicle operator has been convicted of using a commercial motor vehicle in the commission of a felony, the department shall suspend the driver's commercial ~~vehicle operator's endorsement~~ *driver's license* as provided in 61-8-811."

Section 34. Section 61-8-811, MCA, is amended to read:

"**61-8-811. Suspension of commercial ~~vehicle operator's endorsement~~ *driver's license* — duration — second or subsequent offense.** Upon receiving notice pursuant to 61-5-208, 61-8-809, or 61-8-810, the department shall suspend an operator's commercial ~~vehicle operator's endorsement~~ *driver's license,* as follows:

(1) upon notice of a first conviction, for 1 year, with no provision for a probationary license, except that if the offense occurred while operating a commercial motor vehicle transporting hazardous material, the suspension must be for 3 years;

(2) upon notice of a second conviction, as determined from the records of the department, for life, with no provision for a restricted license ~~or endorsement~~ unless allowed by federal rules governing commercial drivers; and

(3) upon notice of a third conviction, an operator's commercial ~~vehicle endorsement~~ *driver's license* must be suspended for life and the operator is ineligible for reinstatement."

Section 35. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 61, chapter 8, part 8, and the provisions of Title 61, chapter 8, part 8, apply to [section 1].

Approved March 25, 1993.

CHAPTER NO. 196

[HB 123]

AN ACT REVISING THE PADDLEFISH ROE DONATION PROGRAM; REVISING THE RESTRICTION THAT ONLY ROE FROM PADDLEFISH

CAUGHT AT THE INTAKE FISHING ACCESS SITE IS ELIGIBLE FOR DONATION TO THE PROGRAM BY SPECIFYING A LONGER SECTION OF THE YELLOWSTONE RIVER; EXTENDING THE TERMINATION DATE APPLICABLE TO THE PROGRAM; AMENDING SECTION 87-4-601, MCA, AND SECTION 5, CHAPTER 409, LAWS OF 1989; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-601, MCA, is amended to read:

"**87-4-601.** *(Temporary)* **Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in subsections (2) and (3), a person may not, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn from any game fish.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish in private ponds by the owners of private ponds;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for propagation purposes;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under rules and regulations as the fish, wildlife, and parks commission may prescribe; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs.

(3) (a) A person issued a paddlefish tag under 87-2-306 who legally takes a paddlefish ~~at the Intake fishing access site north of Glendive~~ *from the Yellowstone River between the burlington northern railroad bridge at Glendive to the confluence of Cottonwood Creek and the Yellowstone River* during an authorized paddlefish season may donate the paddlefish roe, or eggs, to a Montana nonprofit corporation as specified in subsection (3)(b) for processing and marketing as caviar. ~~For purposes of this subsection, the Intake fishing access site means the area from the face of Intake dam downstream to the confluence of Cottonwood Creek and the Yellowstone River.~~ A paddlefish *may be* brought ~~into~~ *only to* the Intake fishing access site for ~~cleaning or~~ donation to the paddlefish roe donation program *and* must be a properly tagged, whole paddlefish. Roe separated from the paddlefish is not acceptable for donation to the program. A paddlefish intentionally cut in any manner to identify its sex is also unacceptable for donation to the program.

(b) The department shall develop rules for selecting one Montana nonprofit organization to accept paddlefish egg donations and process and market the eggs as caviar. The department shall also develop rules for the marketing and sale of caviar under this section.

(c) The department may enter into an agreement with the organization selected pursuant to the rules provided for in subsection (3)(b) specifying times, sites, and other conditions under which paddlefish eggs may be collected. The agreement must require the organization to maintain records of revenue collected and related expenses incurred and to make the records available to the department and the legislative auditor upon request.

(d) (i) ~~One-half~~ *Forty percent* of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, *and* marketing~~, and administration~~ must be deposited in a state special revenue fund established for the department. The fund and any interest earned on the fund must be used to benefit the paddlefish fishery, including fishing access, *administration*, improvements, habitat, and fisheries management, or to provide information to the public regarding fishing in eastern Montana, which could include the design and construction of interpretive displays.

(ii) ~~The other half~~ *Sixty percent* of the proceeds from the sale of paddlefish egg caviar products in excess of the costs of collection, processing, *and* marketing~~, and administration~~ must be paid to the nonprofit organization that processes and markets the caviar. *The nonprofit organization's administrative costs must be paid from its share of the proceeds.* An advisory committee must be appointed by the commission and consist of one member from the organization selected pursuant to the rules provided for in subsection (3)(b), two area local government representatives, and two representatives of area sportsmen. The advisory committee shall solicit and review historical, cultural, recreational, and fish and wildlife proposals and fund projects. The committee shall notify the commission of its actions. Proceeds may be used as seed money for grants. *(Terminates June 30, 1993—sec. 5, Ch. 409, L. 1989.)*

87-4-601. *(Effective July 1, 1993)* **Sale of fish or spawn unlawful — exceptions.** (1) Except as provided in subsection (2), no person may, for speculative purposes, for market, or for sale, in any way, catch any of the fish which in this title are classified as game fish or remove or cause to be removed the eggs or spawn of any such fish. No person may sell or offer for sale any of the game fish of this state as defined in this title or the eggs or spawn therefrom.

(2) The restrictions of subsection (1) do not apply to:

(a) the catching of fish in private ponds by the owners thereof;

(b) the taking of fish by state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the department to take eggs for such purposes;

(c) the catching of whitefish by the holder of a valid fishing license fishing with hook and line or rod in specified waters designated by rules and regulations of the department;

(d) the taking of whitefish by nets or traps in the Kootenai River and in its tributary streams within 1 mile of the Kootenai River, under such rules and regulations as the fish, wildlife, and parks commission may prescribe; or

(e) the sale by the department of fish eggs produced from brood stock owned by the department but determined to be in excess of the department's needs."

Section 2. Section 5, Chapter 409, Laws of 1989, is amended to read:

"Section 5. **Effective date — termination.** [This act] is effective July 1, 1989, and terminates June 30, ~~1993~~ *2003*."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 25, 1993.

CHAPTER NO. 197

[SB 372]

AN ACT REQUIRING THAT THE BOARD OF SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS ESTABLISH PROVISIONS BY RULE TO ACCOUNT FOR PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR LICENSURE AS A PROFESSIONAL COUNSELOR THROUGH A GRADUATE DEGREE OR LICENSURE FROM ANOTHER STATE; AMENDING SECTION 37-23-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it requires the board of social work examiners and professional counselors to adopt rules to provide an opportunity for persons who partially fulfill the requirements for licensure as a professional counselor to fulfill the requirements. It is the intent of the legislature that the board facilitate the licensure of those who have begun a course of education and experience as a professional counselor to meet the requirements of the board. It is not the intent of the legislature to allow a person without a graduate degree or a license from another state to circumvent the requirements for licensure.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-23-202, MCA, is amended to read:

"**37-23-202. Licensure requirements.** ~~(1) To be licensed on or before December 31, 1987, as a professional counselor under this chapter, an applicant must have satisfactorily completed:~~

~~(a) a planned graduate program of study that was primarily counseling in nature which resulted in an advanced degree in a counseling field from an institution accredited to offer such a degree program;~~

~~(b) 2,000 hours or more of postdegree work experience as a counselor in a hospital, school, agency, or other supervised setting;~~

~~(c) and passed an examination prepared and administered by:~~

~~(i) the board, based on a national examination approved by the board;~~

~~(ii) the national board of certified counselors; or~~

~~(iii) the national academy of certified clinical mental health counselors; and~~

~~(d) an application form and process prescribed by the board that includes submission of three letters of nomination from counselors or related professionals, each of whom holds a master's degree or higher and who can attest to the quality of the applicant's work.~~

~~(2)~~*(1)* ~~To be licensed after December 31, 1987, an~~ *An* applicant *for licensure* must have satisfactorily completed:

(a) a planned graduate program of ~~90 quarter~~ *60 semester* hours, primarily counseling in nature, ~~nine quarter~~ *6 semester* hours of which were earned in an advanced counseling practicum, which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) 2,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse ~~his~~ *the* application for licensure, attesting to the number of hours supervised.

(c) and passed an examination prepared and administered by:

(i) the board, based on a national examination approved by the board;

(ii) the national board of certified counselors; or

(iii) the national academy of certified clinical mental health counselors; and

(d) an application form and process prescribed by the board.

(2) The board shall provide by rule for licensure:

(a) of a person who possesses a minimum 45 semester hour graduate degree that is primarily related to counseling and that is from an institution accredited to offer a graduate program in counseling, by specifying the additional graduate credit hours necessary to fulfill the requirements of subsection (1)(a) in counseling courses in an approved program within a period of 5 years; and

(b) of a person who possesses a license or certification as a professional counselor from an agency located in another state whose requirements are less than the requirements of this chapter, by:

(i) crediting past clinical experience in psychotherapy and counseling; and

(ii) recommending additional education or experience necessary to fulfill the requirements of this chapter."

Section 2. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1993.

CHAPTER NO. 198

[SB 419]

AN ACT PROVIDING FOR THE UTILIZATION OF NONFILING INSURANCE IN LIEU OF FILING, RECORDING, OR OTHERWISE PERFECTING ANY TITLE OR LIEN OR FOR SECURING A LOAN TO THE EXTENT THAT THE PREMIUM FOR THE INSURANCE DOES NOT EXCEED THE FEES THAT WOULD OTHERWISE BE PAYABLE FOR FILING, RECORDING, OR RELEASING ANY SECURITY INTEREST; INCREASING TO $15 THE MAXIMUM DELINQUENCY CHARGE THAT MAY BE COLLECTED FOR DEFAULT IN PAYMENT OF AN INSTALLMENT DUE UNDER THE TERMS OF A RETAIL INSTALLMENT CONTRACT; DELETING THE REQUIREMENT THAT CERTAIN DOLLAR AMOUNTS SET FORTH IN SECTION 32-5-302, MCA, ARE SUBJECT TO CHANGE IN ACCORDANCE WITH THE CHANGES IN THE CONSUMER PRICE INDEX; AND AMENDING SECTIONS 31-1-202, 31-1-235, 32-5-301, AND 32-5-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-202, MCA, is amended to read:

"**31-1-202. Definitions.** (1) Unless the context requires otherwise, in this part the following definitions apply:

(a) "Cash sale price" means the price stated in a retail installment contract or in a sales slip or other memorandum furnished by a retail seller to a retail buyer under or in connection with a retail charge account agreement for which the seller would have sold or furnished to the buyer and the buyer would have bought or obtained from the seller the goods or services which are the subject matter of the retail installment transaction, if the sale had been a sale for cash. The cash sale price may include any taxes, registration, certificate of title, license, and official fees and cash sale prices for services, if any, and for accessories and their installation and for delivering, servicing, repairing, or improving the goods.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Finance charge" means the amount, as limited by 31-1-241, in addition to the principal balance, agreed upon between the buyer and the seller, to be paid by the buyer for the privilege of purchasing goods or services to be paid for by the buyer in one or more deferred installments.

(d) "Goods" means all chattels personal, including motor vehicles and merchandise certificates or coupons exchangeable for chattels personal but not including money or things in action. The term includes goods ~~which~~ *that,* at the time of the sale or subsequently, are to be so affixed to realty as to become a part ~~thereof~~ *of the realty,* whether or not severable from it.

(e) "Holder" means the retail seller of the goods or services under the retail installment contract or retail charge account agreement or a person who establishes and administers retail charge account agreements with retail buyers; the assignee, if the retail installment contract or the retail charge account agreement or the balance in the account under either has been sold or otherwise transferred; or any other person entitled to the rights of the retail seller under any retail installment contract or any retail charge account agreement.

(f) "Manufactured structure" means any structure, transportable in one or more sections, designed to be used as a single-family dwelling or commercial building with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air conditioning, and electrical systems contained ~~therein~~ *in the structure.*

(g) "Motor vehicle" means any new or used automobile, motorcycle, quadricycle, truck, trailer, semitrailer, truck tractor, and all vehicles with any power, other than muscular power, primarily designed or used to transport persons or property on a public highway, excepting, however, any vehicle which runs only on rails or tracks or in the air.

(h) "Official fees" means*:*

(i) the fees prescribed by law for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction*; or*

(ii) the premium for insurance in lieu of filing, recording, or otherwise perfecting any title or lien retained or taken by a seller in connection with a retail installment transaction to the extent that the premium does not exceed the fees that would otherwise be payable for filing, recording, or otherwise perfecting and releasing or satisfying any title or lien retained or taken by a seller in connection with a retail installment transaction.

(i) "Person" means an individual, partnership, corporation, association, and any other group, however organized.

(j) "Principal balance" means the cash sale price of the goods or services which are the subject matter of a retail installment transaction plus the amounts, if any, included in the sale, if a separate identified charge is made ~~therefor~~ and stated in the contract, for insurance and other benefits and official fees, minus the amount of the buyer's down payment in money or goods.

(k) "Recreational vehicle" means a vehicular type unit that either has its own motor power or is mounted on or drawn by another vehicle, primarily designed as temporary living quarters for recreational, camping, or travel use.

(l) "Retail buyer" or "buyer" means a person who buys goods or obtains services from a retail seller in a retail installment transaction and not for the purpose of resale.

(m) "Retail charge account agreement" means an instrument in writing prescribing the terms of retail installment transactions which may be made under it from time to time under which a retail seller gives to a retail buyer the privilege of using a credit card issued by the retail seller or any other person or other credit confirmation or identification for the purpose of purchasing goods or services from the retail seller, from the retail seller and any other person, or from a person licensed or franchised by the retail seller and under the terms of which a finance charge ~~as defined in this section~~ may be computed in relation to the buyer's average daily balance in the account during the billing cycle or the buyer's balance from time to time.

(n) "Retail installment contract" or "contract" means an agreement evidencing a retail installment transaction entered into in this state under which a buyer promises to pay in one or more deferred installments the time sale price of goods or services, or both. The term includes a chattel mortgage, conditional sales contract, and a contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation for its use a sum substantially equivalent to or in excess of its value and by which it is agreed that the bailee or lessee is bound to become, or for no further or a merely nominal consideration has the option of becoming, the owner of the goods upon full compliance with the provisions of the contract.

(o) "Retail installment transaction" means a written contract to sell or furnish, or the sale or furnishing of, goods or services by a retail seller to a retail buyer pursuant to a retail charge account agreement or under a retail installment contract.

(p) "Retail seller" or "seller" means a person who sells goods or furnishes services to a retail buyer in a written retail installment contract or written retail installment transaction.

(q) "Sales finance company" means a person engaged, in whole or in part, in the business of purchasing retail installment contracts from one or more sellers. The term includes but is not limited to a bank, trust company, investment company, or savings and loan association, if ~~so~~ engaged *in purchasing retail installment contracts*. The term does not include a person who makes only isolated purchases of retail installment contracts, which purchases are not being made in the course of repeated and successive purchases of retail installment contracts from the same seller.

(r) "Services" means work, labor, and services furnished in the delivery, installation, servicing, repair, or improvement of goods.

(s) "Time sale price" means the total of the cash sale price of the goods or services and the amount, if any, included for insurance and other benefits, if a separate identified charge is made ~~therefor~~ *for insurance and benefits*, and the amounts of the official fees and the finance charge.

(2) This part does not apply to the lending of money by banks or other lending institutions and securing loans by chattel mortgages of goods in the ordinary course of lending by those banks or other lending institutions. However, this part pertains to the extension of credit by those banks or other lending institutions under retail installment contracts or credit cards issued by those banks or other lending institutions."

Section 2. Section 31-1-235, MCA, is amended to read:

"**31-1-235. Delinquency fee.** The holder may collect a delinquency charge on each installment in default for a period not less than 10 days in an amount not in excess of 5% of each installment or ~~$5~~ *$15*, whichever is less, or, in lieu ~~thereof~~ *of the charge*, interest after maturity on each ~~such~~ installment not exceeding the highest lawful contract rate. In addition to ~~such~~ *a* delinquency charge, the contract may provide for the payment of attorneys' fees not exceeding 15% of the amount due and payable under ~~such~~ *the* contract ~~where such~~ *when the* contract is referred for collection to an attorney not a salaried employee of the holder of the contract and for court costs and actual and reasonable out-of-pocket expenses incurred in connection with ~~such~~ *the* delinquency."

Section 3. Section 32-5-301, MCA, is amended to read:

"**32-5-301. Charges, refunds, penalties, filing fees.** (1) Every licensee or holder of a supplementary license ~~hereunder~~ *under this part* may contract for and receive on any loan of money interest charges as provided under 31-1-112.

(2) Charges in *subsection* (1) ~~shall~~ *must* be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. ~~Said~~ *The* charges ~~shall~~ *must* be added to the principal of the loan and ~~shall~~ *may* not be discounted or deducted ~~therefrom~~ *from the principal* or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day ~~shall be~~ *is* considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges ~~which shall be~~ *that is* due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit ~~shall~~ *must* be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge which would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original terms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and ~~said~~ *that* amount may be charged *only* once ~~and no more~~.

(5) (a) The licensee may include in the principal amount of any loan*:*

(i) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan*; or*

(ii) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees that

would otherwise be payable for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan bona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(6) ~~No further~~ *Further* or other charges ~~shall~~ *may not* be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. ~~No~~ *A* licensee ~~shall~~ *may not* divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of the charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee ~~shall have no right to~~ *may not* collect or receive any charges.

(7) Subsections (2), (3), and (6) of this section apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis."

Section 4. Section 32-5-302, MCA, is amended to read:

"**32-5-302. Installment payment — contract period.** (1) ~~No~~ *A* licensee may *not* enter into any contract of loan:

(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making ~~such~~ *the* contract;

(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making; or

(c) for more than $1,000 to and including $2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 48 calendar months from the date of making.

(2) ~~Every~~ *Each* loan contract ~~shall require~~ *requires* payment of principal and charges in installments ~~which shall be~~ *that are* payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. ~~No~~ *An* installment contracted for may *not* be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for the number

of days in excess of 30 from the date of making may be added to the scheduled amount of the installments.

~~(3) The amounts of $300, $1,000, and $2,500 in subsection (1) are subject to change pursuant to the provisions of 32-5-104 on adjustment of dollar amounts.~~"

Approved March 26, 1993.

CHAPTER NO. 199

[SB 117]

AN ACT AUTHORIZING MEDIATION OF FAMILY LAW PROCEEDINGS; PROVIDING FOR SUBMITTING PROCEEDINGS TO MEDIATION; TOLLING AN APPLICABLE STATUTE OF LIMITATIONS DURING MEDIATION; PROVIDING CONFIDENTIALITY FOR MEDIATION PROCEEDINGS; PROVIDING FOR SUBMISSION OF MEDIATION AGREEMENTS TO THE COURT; PROVIDING REQUIREMENTS FOR MEDIATORS; AND AUTHORIZING COURTS TO ADOPT FEES FOR MEDIATION PROCEEDINGS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Family law mediation — exception.** (1) The district court may at any time consider the advisability of requiring the parties to a proceeding under this chapter to participate in the mediation of the case. Any party may request the court to order mediation. If the parties agree to mediation, the court may require the attendance of the parties or the representatives of the parties with authority to settle the case at the mediation sessions.

(2) The court may not authorize or permit continuation of mediated negotiations if the court has reason to suspect that one of the parties or a child of a party has been physically, sexually, or emotionally abused by the other party.

(3) The court shall appoint a mediator from the list maintained pursuant to [section 6]. By agreement of all parties, mediators not on the list may be appointed.

(4) The court may adopt rules to implement [sections 1 through 8].

Section 2. **Mediation proceeding — tolling of statute of limitations.** (1) The purpose of a mediation proceeding is to reduce the acrimony that may exist between the parties and to develop an agreement that is supportive of the best interests of a child involved in the proceeding.

(2) The mediator shall attempt to effect a settlement of the child custody, child support, visitation, maintenance, or property settlement dispute. The mediator may not use coercive measures to effect the settlement. The mediator may recommend that a party obtain assistance from other resources in the community.

(3) Subject to [section 1(1)], the mediator may exclude attorneys from the mediation sessions. The parties' attorneys may confer with the mediator prior to the mediation session and may review and approve any agreement.

(4) An applicable statute of limitations is tolled as to the participants during the period of mediation. The tolling commences on the date the parties agree in

writing to participate in the mediation or when the court orders mediation, whichever is later, and ends on the date the mediation is officially terminated by the mediator.

Section 3. **Proceedings — records — confidentiality.** Mediation proceedings must be conducted in private. All records of a mediation proceeding are confidential and may not be used in evidence in an action enumerated in [section 1]. Matters subject to the mediation proceeding are confidential. A mediator or a party to the mediation is not subject to compelled disclosure of any part of the mediation proceeding.

Section 4. **Mediator recommendation.** The mediator may, upon stipulation by the parties, recommend temporary orders to the court prior to the final decree.

Section 5. **Mediation agreement.** An agreement reached by the parties as a result of mediation must be discussed by the parties with their attorneys, if any, and the approved agreement may be submitted to the court. An agreement may not be submitted to the court if any party objects. The court may adopt the agreement.

Section 6. **Mediator list.** The district court shall establish and maintain a list of mediators available to assist parties in formally mediating disputes as provided in [sections 1 and 2]. The list of mediators must be maintained by the clerk of court. The clerk of court may accept the applications of individuals who meet the qualifications required under [section 7] and who seek placement on the mediator list. The applications must be presented to the court for review and approval. A mediator may be a member of the staff or contracted staff of a district court, probation department, mental health services agency, or private mediation service.

Section 7. **Mediator qualifications.** A mediator shall meet the following minimum qualifications:

(1) knowledge of the court system and the procedures used in family law matters;

(2) knowledge of other resources in the community to which the parties may be referred for assistance;

(3) if applicable, knowledge of child development, clinical issues relating to children, the effects of marriage dissolution on children, and child custody research; and

(4) knowledge of the mediation process.

Section 8. **Funding.** A court may establish a fee schedule for the costs of administering [sections 1 through 8]. The fees must be paid by the parties to the mediation proceeding.

Section 9. **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 40, chapter 4, and the provisions of Title 40, chapter 4, apply to [sections 1 through 8].

Approved March 25, 1993.

CHAPTER NO. 200

[SB 284]

AN ACT EXTENDING PERMIT AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ANY PERSON WHO INSTALLS, REPAIRS, MODIFIES, OR CLOSES AN UNDERGROUND STORAGE TANK SYSTEM; EXTENDING THE PERMIT OBLIGATION TO THE INSTALLATION, REPAIR, OR MODIFICATION OF EXTERNAL LEAK DETECTION DEVICES AND CATHODIC PROTECTION SYSTEMS; CLARIFYING THE APPLICABILITY OF UNDERGROUND STORAGE TANK LAW TO ALL PARTS OF UNDERGROUND STORAGE TANK SYSTEMS; AMENDING SECTIONS 75-11-202, 75-11-203, 75-11-204, 75-11-209, 75-11-210, 75-11-211, 75-11-212, 75-11-213, 75-11-217, 75-11-218, 75-11-220, AND 75-11-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of health and environmental sciences authority to adopt rules for all components of underground tank systems and because it delegates authority to the department to license persons who install, repair, or modify leak detection devices that are external to and not attached to underground storage tank systems, including persons who install, repair, or modify cathodic protection systems. The legislature intends that the department use this authority to require compliance with the department's rules for the proper installation and management of all components of underground storage tank systems.

The definition of underground storage tank is expanded to include the word "system", which will serve to make it clearer to the regulated community that all parts of underground storage tank systems, including piping, are subject to regulation.

The legislature intends to require licensed workers for installation, repair, modification, and closure work performed on all components of underground storage tank systems. The legislature also intends to extend the permitting requirements to all individuals who perform installation, repair, or modification of underground storage tank systems and to not limit compliance responsibility solely to owners and operators.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-202, MCA, is amended to read:

"**75-11-202. Findings and purpose.** (1) Leaking underground storage ~~tanks~~ *tank systems* have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation or closure requires specialized knowledge, training, and experience.

(2) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage ~~tanks~~ *tank systems*; to limit the conduct of these activities to persons with demonstrated competence,

training, and experience; and to assess fees to support state and local administration of permitting, licensing, and inspection activities."

Section 2. Section 75-11-203, MCA, is amended to read:

"**75-11-203. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) (a) "Installation" or "to install" means the placement of an underground storage tank *system*, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank *system* that store or convey regulated substances. Installation ~~also~~ includes repair or modification of an underground storage tank *system* through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. *Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.*

(b) The terms do not include~~:~~

~~(i)~~ the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank *system*~~;~~*.*

~~(ii) the installation of a leak detection device that is external to and not attached to the underground storage tank; or~~

~~(iii) the installation and maintenance of a cathodic protection system.~~

(5) "Installer" means an individual who ~~is engaged in the business of installation or closure of~~ *installs or closes* underground storage ~~tanks~~ *tank systems.*

(6) "License" means a license issued by the department under 75-11-210 to conduct the installation or closure of underground storage ~~tanks~~ *tank systems and the installation of leak detection devices or cathodic protection systems.*

(7) "Licensed installer" means an individual who holds a valid underground storage tank *system* installer license.

(8) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank *system.*

(9) "Owner" means a person who owns an underground storage tank *system* used for the storage, use, or dispensing of regulated substances.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(11) "Regulated substance" means a regulated substance as defined in 75-10-403.

(12) "Underground storage tank" *or "underground storage tank system"* means an underground storage tank, as defined in 75-10-403, *and, for purposes of this part, includes a leak detection device that is external to and not attached to an underground storage tank system.*"

Section 3. Section 75-11-204, MCA, is amended to read:

"**75-11-204. Rulemaking authority.** The department may adopt rules governing the installation and closure of underground storage ~~tanks~~ *tank systems*. Rules may include but are not limited to the following:

(1) the requirements for issuance, denial, renewal, modification, suspension, and revocation of permits for the installation and closure of underground storage ~~tanks~~ *tank systems*;

(2) the requirements for issuance, denial, renewal, modification, suspension, and revocation of licenses for underground storage tank *system* installers;

(3) the requirements for examination and training of underground storage tank *system* installers;

(4) the requirements for qualifications of inspectors, use of inspectors, and methods for conducting an inspection;

(5) a schedule of fees for obtaining licenses and license renewals by underground storage tank *system* installers;

(6) a schedule of fees for the review of applications for underground storage tank *system* permits;

(7) a schedule of fees for inspection of installations or closures; and

(8) the mechanism for remittance of inspection or permitting fees to local governments."

Section 4. Section 75-11-209, MCA, is amended to read:

"**75-11-209. Permits — requirement for licensed installer.** (1) ~~An owner or operator of an underground storage tank~~ *A person* may not install or close, or cause to be installed or closed, an underground storage tank *system* without a permit issued by the department as provided in 75-11-212.

(2) In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank *system* unless the installation or closure is:

(a) inspected by a department inspector or a designated local inspector as provided in 75-11-213; or

(b) exempt from the requirement for a licensed installer, as provided in 75-11-217."

Section 5. Section 75-11-210, MCA, is amended to read:

"**75-11-210. Licensing — interim licenses — regular licenses.** (1) An installer may not install or close an underground storage tank *system* unless ~~he~~ *that person* has a valid license issued by the department.

~~(2) From April 1, 1990, through September 30, 1990, the department shall grant an installer an interim license if the installer submits, on a form supplied by the department, information demonstrating competency and experience in the installation and closure of underground storage tanks. All interim licenses expire on October 1, 1990.~~

~~(3)~~*(2)* The department shall grant an installer a regular license~~, beginning October 1, 1990,~~ if the installer demonstrates competency and experience in the installation and closure of underground storage ~~tanks~~ *tank systems*, passes a written examination conducted by the department, and pays the license fee established by department rule.

~~(4)~~*(3)* The department shall conduct written examinations for the purpose of qualifying individuals to receive an underground storage tank *system* installer license. The department shall determine the times and locations of the examinations and shall provide public notice of the examinations.

~~(5)~~*(4)* An underground storage tank *system* installer license is valid for a period not to exceed 3 years and is subject to periodic renewal as prescribed by department rule.

~~(6)~~*(5)* As a condition of renewal, the department may require that an installer demonstrate continuing competency in the installation and closure of ~~tanks~~ *tank systems*.

~~(7)~~*(6)* An installer need not be a Montana resident to qualify for a license."

Section 6. Section 75-11-211, MCA, is amended to read:

"**75-11-211. Denial, modification, suspension, or revocation of license — grounds.** (1) The department may deny, modify, condition, suspend, or revoke a license if the installer:

(a) fails to achieve a passing grade on a written examination;

(b) fails to pay a license fee;

(c) commits fraud or deceit with respect to the license application;

(d) has had a similar license suspended or revoked in another state or territory; or

(e) violates any state or federal law, rule, permit, or order relating to the installation or closure of an underground storage tank *system*.

(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The installer may request a hearing before the board. If the board grants

a hearing, the hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act."

Section 7. Section 75-11-212, MCA, is amended to read:

"**75-11-212. Permits — application procedure — issuance.** (1) Before the installation or closure of an underground storage tank *system*, the owner or operator *or the owner's or operator's designated licensed underground storage tank installer or remover* shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the *underground storage* tank *system* installation or closure;

(b) the location of the *underground storage* tank *system* installation or closure;

(c) the type of construction of the *underground storage* tank *system*;

(d) the contents of the *underground storage* tank *system* being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank *system* or, if the owner or operator is not going to have the underground storage tank *system* installed or closed by a licensed installer, the estimated date for inspection by the department.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under 75-11-204(1), the department shall issue the permit."

Section 8. Section 75-11-213, MCA, is amended to read:

"**75-11-213. Inspection of installations and closures — fee.** (1) After being issued a permit, an owner or operator may obtain an inspection by the department in lieu of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the department of the date and location of the underground storage tank *system* installation or closure and shall establish with the department the time when an inspection may be conducted.

(2) An owner or operator may conduct an installation or closure under this section only if an inspector is present.

(3) An inspection fee must be paid by the owner or operator to the department to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.

(4) Department officials or local government officers, such as local health officers, sanitarians, local fire chiefs, or other persons designated or hired by the department, shall conduct inspections on behalf of the department.

(5) The department shall pay the person conducting an inspection on the department's behalf, as provided in subsection (4), from the underground storage tank *system* license and permit account established in 75-11-227 up to 80% of any fee collected by the department for the inspection. When an inspection is conducted by an officer of a county or city, the payment must be made by the department to the appropriate county or city treasurer. A county or city shall use payments received under this section only for costs incurred in conducting inspections under this section.

(6) A copy of an installation inspection report must be kept on file by the owner or operator for as long as the department may require by rule. A copy of a closure inspection report must be kept by the owner or operator for 3 years after the date of closure.

(7) The department may enter and inspect the premises or any appurtenant property of an owner or operator at any time to ensure compliance with laws or rules pertaining to underground storage ~~tanks~~ *tank systems*."

Section 9. Section 75-11-217, MCA, is amended to read:

"**75-11-217. Exemption.** The owner or operator of a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored shall obtain a permit for the installation or closure of the tank *system* but is not required to obtain the services of a licensed installer."

Section 10. Section 75-11-218, MCA, is amended to read:

"**75-11-218. Administrative enforcement.** (1) When the department believes that a person has violated this part, a rule adopted ~~thereunder~~ *under this part*, or a permit provision, it may serve written notice of the violation on the person or ~~his~~ *the person's* agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation or closure or an order to take necessary corrective action within a reasonable time as stated in the order. The notice and order may be signed and served by a department inspector if it is personally given to the person or to ~~his~~ *the person's* agent. Every other notice and order must be signed by the director of the department or ~~his~~ *the director's* deputy and must be served by certified mail upon the person or ~~his~~ *the person's* agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that ~~no~~ *a* violation has *not* occurred, it shall rescind the department's order.

(3) ~~Instead~~ *In addition to or instead* of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means."

Section 11. Section 75-11-220, MCA, is amended to read:

"**75-11-220. Imminent hazard.** Upon receipt of evidence that the installation or closure of an underground storage tank *system* may present an imminent and substantial danger to public health or the environment, the department may commence administrative or judicial proceedings to immediately abate the danger or to restrain, order, or enjoin any person from causing the danger. The department may take other judicial or administrative action as may be necessary."

Section 12. Section 75-11-224, MCA, is amended to read:

"**75-11-224. Criminal penalties.** (1) Any owner or operator who knowingly installs or closes an underground storage tank *system* without a permit and either an inspection or the use of the services of a licensed installer as required in 75-11-209; any installer who knowingly installs or closes an underground storage tank *system* without being licensed; or any person who knowingly makes any false statements or representations in any application, permit, report, licensing form, or other document filed or maintained as required by this part or required by rules adopted under this part is subject to a fine not to exceed $10,000 for each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy."

Section 13. **Applicability.** [This act] applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993.

Section 14. **Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1993.

CHAPTER NO. 201

[SB 319]

AN ACT EXEMPTING CONTAINER SITES FROM THE DEFINITION OF A SOLID WASTE MANAGEMENT SYSTEM; AMENDING SECTIONS 75-10-103, 75-10-112, AND 75-10-203, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-103, MCA, is amended to read:

"**75-10-103. Definitions.** Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Container site" means a solid waste management facility, generally open to the public, for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards.

~~(2)~~*(3)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(3)~~*(4)* "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

~~(4)~~*(5)* "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

~~(5)~~*(6)* "Front-end planning funds" means the money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

~~(6)~~*(7)* "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

~~(7)~~*(8)* "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity, whether organized for profit or not.

~~(8)~~*(9)* "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

~~(9)~~*(10)* "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

~~(10)~~*(11)* "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. *For the purposes of this definition, a container site is not a component of a solid waste management system.*

~~(11)~~*(12)* "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 2. Section 75-10-203, MCA, is amended to read:

"**75-10-203. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including ground water.

(4) "Household hazardous waste" means products commonly used in the home that due to corrosivity, ignitability, reactivity, toxicity, or other chemical or physical properties are dangerous to human health or the environment. Household hazardous waste includes but is not limited to cleaning, home maintenance, automobile, personal care, and yard maintenance products.

(5) "Household waste" means any solid waste derived from households, including single and multiple residences, hotels, and motels, crew quarters, and campgrounds and other public recreation and public land management facilities.

(6) "Municipal solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles.

(7) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(8) "Resource recovery" means the recovery of material or energy from solid waste.

(9) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(11) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

(12) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste. *For the purposes of this definition, a container site, as defined in 75-10-103, is not a component of a solid waste management system.*

(13) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(14) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(15) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it safer for transport, amenable for recovery, amenable for storage, or reduced in volume."

Section 3. Section 75-10-112, MCA, is amended to read:

"**75-10-112. Powers and duties of local government.** A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste plan and propose modifications to the state's solid waste plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system which the local government plans, designs, or constructs, for such consideration and upon such terms as are established by the local governments and consistent with the loan requirements as set forth in this part and rules;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the aforementioned powers;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a refuse disposal district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites."

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved March 26, 1993.

CHAPTER NO. 202

[SB 331]

AN ACT CLARIFYING THE PREFERRED PROVIDER AGREEMENTS ACT; PROVIDING FOR COMPETITION IN AWARDING PREFERRED PROVIDER AGREEMENTS; AMENDING SECTION 33-22-1704, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1704, MCA, is amended to read:

"33-22-1704. *(Temporary)* **Preferred provider agreements authorized.** (1) Notwithstanding any other provision of law to the contrary, a health care insurer may:

(a) enter into agreements with providers relating to health care services that may be rendered to insureds or subscribers on whose behalf the health care insurer is providing health care coverage, including preferred provider agreements relating to:

(i) the amounts an insured may be charged for services rendered; and

(ii) the amount and manner of payment to the provider; and

(b) issue or administer policies or subscriber contracts in this state that include incentives for the insured to use the services of a provider that has entered into an agreement with the insurer pursuant to subsection (1)(a).

(2) ~~A health care insurer shall establish terms and conditions to be met by providers wishing to enter into an agreement with the health care insurer under subsection (1)(a). These terms and conditions may not discriminate against or among providers. For the purposes of this subsection, price differences among hospitals or other institutional providers produced by a process of individual negotiation or by price differences among different geographical areas or different specialties do not constitute discrimination. A health care insurer may not deny a provider the right to enter into an agreement under subsection (1)(a) if the provider is willing to meet the terms and conditions established in that agreement.~~

~~(3)~~ A preferred provider agreement issued or delivered in this state may not unfairly deny health benefits for health care services covered.

(3) A preferred provider agreement entered into or renewed after [the effective date of this act] must provide each health care provider with the opportunity to participate on the basis of a competitive bid or offer. For each health care service that an insurer proposes to obtain for its insureds from a preferred provider in

the geographic area covered by the proposal, the insurer shall provide all known providers of the health care service in that area with an equal opportunity to submit a competitive bid or offer to become a preferred provider. Except as provided in subsection (5), the insurer shall issue a request for proposals and shall select the lowest cost bid or offer. If only one bid or offer is received, the insurer may enter into a preferred provider agreement with the health care provider.

(4) If a bid or an offer is not received in response to a request for proposals under subsection (3), the insurer may not establish a preferred provider agreement for that service in the geographic area except pursuant to a new request for proposals.

(5) An insurer may reserve the right in its request for proposals to reject bids or offers submitted in response to the request, including the lowest cost bid or offer. A bid or offer must be rejected in the manner established in the request for proposals. An insurer may not enter into a preferred provider agreement for a health care service except pursuant to a request for proposals. (Terminates July 1, 1993—sec. 3, Ch. 714, L. 1991.)

33-22-1704. *(Effective July 1, 1993)* **Preferred provider agreements authorized.** (1) Notwithstanding any other provision of law to the contrary, a health care insurer may:

(a) enter into agreements with providers relating to health care services that may be rendered to insureds or subscribers on whose behalf the health care insurer is providing health care coverage, including preferred provider agreements relating to:

(i) the amounts an insured may be charged for services rendered; and

(ii) the amount and manner of payment to the provider; and

(b) issue or administer policies or subscriber contracts in this state that include incentives for the insured to use the services of a provider that has entered into an agreement with the insurer pursuant to subsection (1)(a).

(2) A preferred provider agreement issued or delivered in this state may not unfairly deny health benefits for health care services covered.

(3) ~~This part does not require that an insurer negotiate or enter into agreements with any specific provider or class of providers.~~ *A preferred provider agreement entered into or renewed after [the effective date of this act] must provide each health care provider with the opportunity to participate on the basis of a competitive bid or offer. For each health care service that an insurer proposes to obtain for its insureds from a preferred provider in the geographic area covered by the proposal, the insurer shall provide all known providers of the health care service in that area with an equal opportunity to submit a competitive bid or offer to become a preferred provider. Except as provided in subsection (5), the insurer shall issue a request for proposals and shall select the lowest cost bid or offer. If only one bid or offer is received, the insurer may enter into a preferred provider agreement with the health care provider.*

(4) If a bid or an offer is not received in response to a request for proposals under subsection (3), the insurer may not establish a preferred provider agree-

ment for that service in the geographic area except pursuant to a new request for proposals.

(5) An insurer may reserve the right in its request for proposals to reject bids or offers submitted in response to the request, including the lowest cost bid or offer. A bid or offer must be rejected in the manner established in the request for proposals. An insurer may not enter into a preferred provider agreement for a health care service except pursuant to a request for proposals."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 26, 1993.

CHAPTER NO. 203

[SB 390]

AN ACT REQUIRING A PREMISES LICENSED FOR ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES TO BE SEPARATED BY WALLS FROM THE REST OF THE BUILDING IN WHICH IT IS LOCATED BUT PROVIDING THAT IT MAY HAVE INSIDE ACCESS IRRESPECTIVE OF THE TYPE OF BUSINESSES OR USES IN THE REST OF THE BUILDING; AND PROVIDING FOR COMPLIANCE BY EXISTING PREMISES WHEN AN ALTERATION TO THE PREMISES IS MADE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Suitable premises for licensed retail establishments.** (1) A licensed retailer may use a part of a building as premises licensed for on-premises consumption of alcoholic beverages. The premises must be separated from the rest of the building by permanent walls but may have inside access during lawful hours of operation to the rest of the building even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in which the alcoholic beverages are served.

(2) A licensee whose premises did not meet the requirements of this section on September 24, 1992, shall meet the requirements when an alteration to the premises has been completed and the department has approved the alteration. An alteration is any structural change in a premises. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an alteration under this section.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapters 1 through 6, and the provisions of Title 16, chapters 1 through 6, apply to [section 1].

Approved March 25, 1993.

CHAPTER NO. 204

[HB 230]

AN ACT AUTHORIZING A LOCAL GOVERNMENT TO CREATE A CASH OVER OR SHORT ACCOUNT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Long-short cash account.** A governing body of a county may create a cash over or short account consistent with accepted accounting practice.

Section 2. **Long-short cash account.** A governing body of a municipality may create a cash over or short account consistent with accepted accounting practice.

Section 3. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 22, and the provisions of Title 7, chapter 6, part 22, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 6, part 41, and the provisions of Title 7, chapter 6, part 41, apply to [section 2].

Approved March 29, 1993.

CHAPTER NO. 205

[HB 293]

AN ACT ELIMINATING THE REQUIREMENT THAT THE BOARD OF REGENTS CONTRACT ONLY WITH A NONPROFIT CORPORATION TO ADMINISTER THE LOANS GRANTED UNDER THE GUARANTEED STUDENT LOAN PROGRAM; AND AMENDING SECTIONS 20-26-1101, 20-26-1103, AND 20-26-1104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-26-1101, MCA, is amended to read:

"**20-26-1101. Definitions.** As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of regents of higher education.

(2) "Corporation" means the corporation designated by the board to administer student loans.

~~(2)~~*(3)* "Council" means the guaranteed student loan advisory council established in 2-15-1520.

~~(3)~~*(4)* "Eligible educational institution" means any institution approved by the United States commissioner of education as eligible to participate in the guaranteed student loan program pursuant to Title IV of the Higher Education Act of 1965, as amended.

~~(4)~~*(5)* "Guaranteed student loan program" means the program established by the board pursuant to this part.

~~(5) "Nonprofit corporation" means the private nonprofit corporation designated by the board to administer student loans.~~"

Section 2. Section 20-26-1103, MCA, is amended to read:

"**20-26-1103. Duties of the board.** In discharging its duties in relation to the guaranteed student loan program, the board shall:

(1) act as guarantor on loans of money, upon ~~such~~ terms and conditions as the board may prescribe, to assist persons attending or accepted for enrollment at an eligible educational institution to meet their educational expenses;

(2) approve financial or credit institutions, insurance companies, or other lenders as eligible lenders upon their meeting the standards established by the board for making guaranteed student loans;

(3) incur and discharge debts, including defaulted loan obligations that have been guaranteed by the board;

(4) make and execute agreements, contracts, and other instruments with any public or private person or agency, including the United States commissioner of education, for the administration of the guaranteed student loan program;

(5) contract with a ~~nonprofit~~ corporation for the operation of the guaranteed student loan program to provide loan approval processing, essential and special loan servicing, preclaims assistance, claim processing and collections, and other services that would promote lender participation and loan availability to students;

(6) perform any other duties necessary for the administration of the guaranteed student loan program."

Section 3. Section 20-26-1104, MCA, is amended to read:

"**20-26-1104. Student loan advisory council — duties.** The council shall:

(1) advise the board on policies, rules, and procedures necessary for accomplishing the provisions of this part;

(2) make recommendations to the board concerning the designation of a ~~nonprofit~~ corporation;

(3) monitor the ~~nonprofit~~ corporation to assure that both the students and lenders are adequately served; and

(4) advise on the adequacy and proper execution of any contracts entered into between the board and the ~~nonprofit~~ corporation."

Approved March 29, 1993.

CHAPTER NO. 206

[HB 414]

AN ACT AMENDING THE BONDING AUTHORITY FOR SOLID WASTE MANAGEMENT DISTRICTS; AMENDING SECTIONS 7-13-236 AND 7-13-308, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-236, MCA, is amended to read:

"**7-13-236. Revenue bonds and obligations.** (1) The commissioners may issue revenue bonds, including refunding bonds, or borrow money for the acquisition of property, construction of improvements, or purchase of equipment or to pay costs related to planning, designing, and financing a solid waste management system.

(2) Revenue bonds may be issued in a form and upon terms as provided in 7-7-2501.

(3) Bonds or loans may be payable from any revenue of the solid waste management district, including revenue from:

(a) service charges authorized in 7-13-233 ~~that are collected other than through tax notices and a lien upon property~~;

(b) grants or contributions from the state or federal government; or

(c) other sources."

Section 2. Section 7-13-308, MCA, is amended to read:

"**7-13-308. Revenue bonds and obligations.** (1) A joint district may borrow money for any purpose provided in this part and issue bonds, including refunding bonds, in a form and upon terms as it may determine, payable from any revenue of the joint district, including revenue from:

(a) service charges authorized in 7-13-307 ~~that are collected other than through tax notices and a lien upon property~~;

(b) grants or contributions from the state or federal government; or

(c) other sources.

(2) The bonds may be issued by resolution of the joint district without an election and without any limitation of the amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in any year on the bonds and on any then-outstanding bonds for which revenue from the same source or sources is pledged exceeds the amount of the revenue to be received in that year as estimated in the resolution authorizing the issuance of the bonds. The board shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenue from the pledged source in a year at least equal to the amount of the principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Except as otherwise provided in this part, bonds issued pursuant to this part by a joint district may be payable in principal and interest solely from revenues of the joint district and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by a joint district under this part are issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of any bond, the joint district may by resolution make and enter into any covenant, agreement, or indenture. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from any revenue referred to in this part prior to the payment of current costs of operation and maintenance of the solid waste management system."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved March 29, 1993.

CHAPTER NO. 207

[HB 538]

AN ACT CLARIFYING THAT A PROVIDER OF REGULATED TELECOMMUNICATIONS SERVICES MAY NOT, IN PROMOTIONAL OFFERINGS, COMBINE MONOPOLY SERVICES WITH COMPETITIVE SERVICES UNLESS AUTHORIZED BY THE PUBLIC SERVICE COMMISSION; AMENDING SECTION 69-3-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-305, MCA, is amended to read:

"**69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) A public utility may not:

(a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

(b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

(c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, ~~shall~~ *has* or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under 69-3-809. Additionally, a provider of regulated telecommunications service may offer, for a limited period of time, either rebates or reductions or waivers of installation charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing of services that remain fully tariffed requires advance approval of the

commission. ~~No~~ *A* promotional offering may *not* combine monopoly services with competitive services *unless authorized by the commission*. The commission may define the appropriate scope of promotions, rebates, and market trials, either by rule or in response to complaints. The commission may determine whether a particular sales activity under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

(5) A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1993.

CHAPTER NO. 208

[HB 247]

AN ACT REVISING THE DEADLINE FOR A STATE DISTRICT OFFICE CANDIDATE AND A POLITICAL PARTY OR INDEPENDENT COMMITTEE TO FILE CERTAIN REPORTS WITH THE COMMISSIONER OF POLITICAL PRACTICES; AND AMENDING SECTION 13-37-226, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-226, MCA, is amended to read:

"13-37-226. Time for filing reports. (1) Candidates for a state office filled by a statewide vote of all the electors of Montana and political committees that are organized to support or oppose a particular statewide candidate shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that the candidate expects to be on the ballot;

(b) on the 10th day of March and September in each year that an election is to be held and on the 15th and 5th days ~~next~~ preceding the date on which an election is held and within 24 hours after receiving a contribution of $500 or more if received between the 10th day before and the day of the election;

(c) not more than 20 days after the date of the election; and

(d) on the 10th day of March and September of each year following an election until the candidate or political committee files a closing report as specified in 13-37-228(3).

(2) Political committees organized to support or oppose a particular statewide ballot issue shall file reports:

(a) quarterly, due on the fifth day following a calendar quarter, beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue subject to a referendum is or is expected to be on the ballot;

(b) on the 10th day of March and on the 10th day of each subsequent month through September;

(c) on the 15th and 5th days preceding the date on which an election is held;

(d) within 24 hours after receiving a contribution of $500 or more if received between the 10th day before the election and the day of the election;

(e) within 20 days after the election; and

(f) on the 10th day of March and September of each year following an election until the political committee files a closing report as specified in 13-37-228(3).

(3) Candidates for a state district office, including but not limited to candidates for the legislature, public service commission, or district court judge, and political committees ~~which~~ *that* are specifically organized to support or oppose a particular state district candidate or issue shall file reports:

(a) on the ~~10th~~ *12th* day ~~next~~ preceding the date on which an election is held and within 24 hours after receiving a contribution of $100 or more if received between the ~~15th~~ *17th* day before and the day of the election;

(b) not more than 20 days after the date of the election; and

(c) whenever a candidate or political committee files ~~his or its~~ *a* closing report as specified in 13-37-228(3).

(4) Candidates for any other public office and political committees ~~which~~ *that* are specifically organized to support or oppose a particular local issue ~~shall be~~ *are* required to file the reports specified in subsection (3) only if the total amount of contributions received or the total amount of funds expended for all elections in a campaign, excluding the filing fee paid by the candidate, exceeds $500, except as provided in 13-37-206.

(5) For the purposes of this subsection, a committee ~~which~~ *that* is not specifically organized to support or oppose a particular candidate or ballot issue and ~~which~~ *that* receives contributions and makes expenditures in conjunction with an election is an independent committee. For the purpose of reporting, a political party committee is an independent committee. An independent committee shall file reports:

(a) on the ~~10th~~ *12th* day ~~next~~ preceding the date of an election in which it participates by making an expenditure;

(b) not more than 20 days after the date of the election in which it participates by making an expenditure; and

(c) a closing report at the close of each calendar year, on a date to be prescribed by the commissioner.

(6) The commissioner may promulgate rules regarding the extent to which organizations that are not primary political committees but are incidental political committees shall report their politically related activities in accordance with this chapter.

(7) All reports required by this section ~~shall~~ *must* be complete as of the fifth day before the date of filing as specified in 13-37-225(2) and subsections (1) through (6) of this section."

Approved March 29, 1993.

CHAPTER NO. 209

[HB 256]

AN ACT PROVIDING THAT A 100 PERCENT DISABLED VETERAN MAY PAY THE SAME FEE FOR ANY MILITARY-RELATED SPECIAL LICENSE PLATE FOR WHICH THE DISABLED VETERAN IS ELIGIBLE AS THE DISABLED VETERAN WOULD PAY FOR A DISABLED VETERAN'S LICENSE PLATE; AMENDING SECTIONS 49-4-302, 61-3-313, 61-3-332, 61-3-452, 61-3-453, 61-3-454, AND 61-3-504, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-302, MCA, is amended to read:

"**49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces.** (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or on private property available for public use.

(2) No vehicle other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing handicapped person's license plate or placard issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a handicapped person or one displaying a specially inscribed license plate issued under 61-3-332(10)(c)*(i)(A)* and conveying a 100% disabled veteran may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c)*(i)(A)* and parked in public places along public streets from any time limitation imposed upon parking in such area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for handicapped persons or permitholders on ways of this state open to the public as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for handicapped persons must be at least 13 feet wide.

(d) A parking space reserved for handicapped persons must be designated by a sign showing the international symbol of accessibility and indicating that a permit is required. The sign must be attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space."

Section 2. Section 61-3-313, MCA, is amended to read:

"**61-3-313. Vehicles subject to staggered registration.** For purposes of 61-3-313 through 61-3-316 "vehicle" means any motor vehicle as defined in 61-1-102 subject to annual registration in this state except:

(1) vehicles owned or leased and operated by the government of the United States, of the state of Montana, or its political subdivisions;

(2) mobile homes and motor homes;

(3) vehicles that are registered in accordance with or subject to 61-3-332(10)(c)*(i)(A)*, 61-3-411, or 61-3-421;

(4) trucks exceeding a licensed gross vehicle weight of 10,000 pounds;

(5) trailers, semitrailers, tractors, buses, motorcycles, quadricycles, and motor-driven cycles;

(6) special mobile equipment as defined in 61-1-104;

(7) motor vehicles registered as part of a fleet under 61-3-318."

Section 3. Section 61-3-332, MCA, is amended to read:

"**61-3-332.** *(Temporary)* **Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semi-trailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned thereto in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide non-removable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section~~, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date~~.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on ~~such~~ *the* license plates, and the word "Montana" and the year must be placed across the plates. ~~Such registration~~ *Registration* plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of ~~such~~ numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and ~~no~~ *a* year number may *not* be indicated ~~thereon~~ *on the plates* because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there must be placed on the number plates assigned thereto, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. ~~No~~ *A* registration or license fee may *not* be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, hand-

icapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued a special license plate with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue one set of national guard plates, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued a special license plate with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of one set of plates. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) *(i)* A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued*:*

(A) a special license plate under this section with a design or decal displaying the letters "DV"*; or*

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

~~(i)~~*(ii)* The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

~~(ii)~~*(iii)* Special license plates issued to a disabled veteran are not transferable to another person.

~~(iii)~~*(iv)* A disabled veteran is not entitled to a special *disabled veteran's* license plate for more than one vehicle.

~~(iv)~~*(v)* A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by ~~his~~ *the veteran's* service record, may upon application and presentation of proof be issued a special license plate with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) ~~Upon~~ *Except as provided in subsection (10)(c), upon* payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, for one motor vehicle only, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if ~~he~~ *the person* was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of proof, in a form prescribed by the department, of ~~his~~ *the person's* qualification under this subsection, there must be issued to each applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to qualified veterans. The plates must be placed or mounted on the vehicle owned by the veteran designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) ~~Each~~ *Except as provided in subsection (10)(c), a* veteran who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue fund to the credit of the department of military affairs to be appropriated by the legislature for construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person. *(Terminates July 1, 1996—sec. 4, Ch. 654, L. 1989.)*

61-3-332. *(Effective July 1, 1996)* **Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned thereto in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide non-removable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section~~, and it shall manufacture the newly designed number plates for issuance after January 1, 1991, to replace, at renewal as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date~~.

(4) In the case of motorcars and trucks, number plates must be of metal 6 inches wide and 12 inches in length. For number plates issued after 1976, the outline of the state of Montana must be used as a distinctive border on ~~such~~ *the* license plates, and the word "Montana" and the year must be placed across the bottom of the plates. ~~Such registration~~ *Registration* plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimen-

sions of ~~such~~ numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings in this section provided, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and ~~no~~ *a* year number may *not* be indicated ~~thereon~~ *on the plates* because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, irrigation districts organized under the laws of Montana and not operating for profit, and school districts and that are used and operated by officials and employees thereof in line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty, there must be placed on the number plates assigned thereto, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of the counties and those of the irrigation districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. ~~No~~ *A* registration or license fee may *not* be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55;

Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, handicapped persons, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued a special license plate with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue one set of national guard plates, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued a special license plate with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of one set of plates. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) *(i)* A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued*:*

(A) a special license plate under this section with a design or decal displaying the letters "DV"*; or*

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

~~(i)~~*(ii)* The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

~~(ii)~~*(iii)* Special license plates issued to a disabled veteran are not transferable to another person.

~~(iii)~~*(iv)* A disabled veteran is not entitled to a special *disabled veteran's* license plate for more than one vehicle.

~~(iv)~~*(v)* A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by ~~his~~ *the veteran's* service record, may upon application and presentation of proof be issued a special license plate with a design or decal displaying the words "ex-prisoner of war" or an abbreviation the department considers appropriate.

(e) ~~Upon~~ *Except as provided in subsection (10)(c), upon* payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, for one motor vehicle only, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if ~~he~~ *the person* was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of proof, in a form prescribed by the department, of ~~his~~ *the person's* qualification under this subsection, there must be issued to each applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to qualified veterans. The plates must be placed or mounted on the vehicle owned by the veteran designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) ~~Each~~ *Except as provided in subsection (10)(c), a* veteran who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue fund to the credit of the department of military affairs to be appropriated by the legislature for construction, operation, and maintenance of the state veterans' cemetery.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of the handicapped person."

Section 4. Section 61-3-452, MCA, is amended to read:

"**61-3-452. Disabled veterans' plates nontransferable.** The special license plates for disabled veterans issued pursuant to 61-3-332(10)(c)*(i)(A)* are not transferable."

Section 5. Section 61-3-453, MCA, is amended to read:

"**61-3-453. Disabled veterans' plates limited to one automobile or truck — personalized plates.** (1) A disabled veteran is not entitled to special license plates for disabled veterans under 61-3-332(10)(c)*(i)(A)* for more than one passenger automobile or one truck up to and including 1 ton GVW-rated capacity.

(2) Upon submitting the application provided for in 61-3-405 and payment of the $25 fee provided for in 61-3-406, a disabled veteran must receive personalized disabled veteran license plates."

Section 6. Section 61-3-454, MCA, is amended to read:

"**61-3-454. Special parking privilege.** A vehicle lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c)*(i)(A)* and conveying a 100% disabled veteran is entitled to the parking privileges allowed a handicapped person's vehicle under 49-4-302."

Section 7. Section 61-3-504, MCA, is amended to read:

"**61-3-504. Computation of tax.** (1) The amount of taxes on a motor vehicle, other than an automobile, truck having a rated capacity of 1 ton or less, motorcycle, quadricycle, motor home, travel trailer, camper, or mobile home, is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration.

(2) The amount of tax on an automobile or truck having a rated capacity of 1 ton or less, except for vehicles owned by disabled veterans qualifying for special license plates under 61-3-332(10)(c)*(i)(A)*, and on a motorcycle or quadricycle is 2% of the value determined under 61-3-503.

(3) The amount of tax on fleet vehicles subject to the provisions of 61-3-318 is 1% of the value determined under 61-3-503.

(4) For all taxable motor vehicles, the amount of tax is entered on the application form in a space provided therefor."

Section 8. **Effective date.** [This act] is effective January 1, 1994.

Approved March 29, 1993.

CHAPTER NO. 210

[HB 269]

AN ACT REVISING THE LAW CONCERNING A CHANGE IN THE HOLDER OF A GAMBLING OPERATOR'S LICENSE FOR A PREMISES WITH A VIDEO GAMBLING MACHINE; PROVIDING CONDITIONS UNDER WHICH THE PERMIT FOR THE MACHINE IS VALID FOR THE REMAINDER OF THE YEAR FOR WHICH IT WAS ISSUED; PROVIDING FOR A MACHINE TRANSFER PROCESSING FEE; AMENDING SECTION 23-5-612, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-612, MCA, is amended to read:

"**23-5-612. Machine permits — fee.** (1) The department, upon payment of the fee provided in subsection (2) and in conformance with rules adopted under this part, shall issue to the operator an annual permit for an approved video gambling machine.

(2) *(a)* The department shall charge an annual permit fee of $200 for each video gambling machine permit. The fee must be prorated on a quarterly basis but may not be prorated to allow a permit to expire before June 30. The department may not grant a refund if the video gambling machine ceases operation before the permit expires.

(b) If the person holding the gambling operator's license for the premises in which the machine is located changes during the first quarter of the permit year and the new operator has received an operator's license and if a machine transfer processing fee of $25 per machine is paid to the department, the permit remains valid for the remainder of the permit year.

(3) The department shall retain 50% of the total permit fee collected under subsection (2)*(a) and 100% of the machine transfer processing fee collected under subsection (2)(b)* for purposes of administering this part. The balance *of the fee collected under subsection (2)(a)* must be returned on a quarterly basis to the local government jurisdiction in which the gambling machine is located. The local government portion of the fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit in the local government treasury."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved March 29, 1993.

CHAPTER NO. 211

[HB 290]

AN ACT MAKING PERMANENT THE PERMIT SYSTEM FOR THE TRANSPORTATION OF SHEEP; REPEALING SECTION 4, CHAPTER 175, LAWS OF 1989; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 4, Chapter 175, Laws of 1989, is repealed.

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved March 29, 1993.

CHAPTER NO. 212

[HB 292]

AN ACT AUTHORIZING THE PUBLIC SERVICE COMMISSION TO ADOPT RULES IMPLEMENTING LAWS ON CONSTRUCTION STANDARDS FOR UTILITIES LINES AND FACILITIES; AUTHORIZING THE COMMISSION TO ADOPT RULES BASED ON THE NATIONAL ELECTRICAL SAFETY CODE; AND AMENDING SECTION 69-4-201, MCA.

STATEMENT OF INTENT

A statement of intent is needed for this bill because [section 1] authorizes the public service commission to adopt rules to implement and enforce Title 69, chapter 4, part 2, and to adopt by rule revised editions of the national electrical safety code. The legislature intends that the commission adopt revisions of the safety code. The commission may adopt procedural rules that it considers necessary or appropriate to implement and enforce Title 69, chapter 4, part 2.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4-201, MCA, is amended to read:

"**69-4-201. Application of national electrical safety code.** *(1)* The national electrical safety code standards ~~shall~~ govern all ~~future~~ construction involving wires for power, heat, light, telephone, telegraph, or signal transmission or reception. Except as provided in 69-4-203, electrical construction of overhead and underground electrical supply and communication lines in the state ~~shall~~ *must* be in conformity with the rules set forth in the national electrical safety code approved by the American national standards institute as published by the institute of electrical and electronic engineers. The national electrical safety code ~~shall furnish~~ *provides* construction standards and ~~shall~~ *must* be enforced by the ~~public service~~ commission. Proof of compliance with the requirements of an applicable national electrical safety code standard establishes due care in the defense of a negligence claim alleging a violation of that standard.

(2) The commission shall adopt rules to implement and enforce this part. The commission shall adopt by rule standards for electrical safety. The standards must be based on standards published in the most recent edition of the national electrical safety code."

Approved March 29, 1993.

CHAPTER NO. 213

[HB 295]

AN ACT ALLOWING LOCAL AUTHORITIES TO REDUCE SPEED LIMITS IN AREAS NEAR SENIOR CITIZEN CENTERS OR NEAR DESIGNATED CROSSWALKS THAT ARE CLOSE TO SENIOR CITIZEN CENTERS; AND AMENDING SECTION 61-8-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-310, MCA, is amended to read:

"**61-8-310. When local authorities may and shall alter limits.** (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit ~~thereon which~~ *that*:

(a) decreases the limit at an intersection;

(b) increases the limit within an urban district, but not to more than 55 miles per hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than 15 miles per hour; or

(d) decreases the limit in an area near a school, *a senior citizen center, as defined in 23-5-112,* or a designated crosswalk, as crosswalk is defined in 61-1-209, ~~near~~ *that is close to* a school *or a senior citizen center* to not less than 80%, rounded down to the nearest whole number evenly divisible by 5 but not less than 25 miles an hour, of the speed limit that would be set on the basis of an engineering and traffic investigation.

(2) A board of county commissioners may set limits as provided in subsection (1)(c) without an engineering and traffic investigation on a county road, as defined in 60-1-103.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit ~~thereon which~~ *on arterial streets that* may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions ~~thereof~~ *of federal-aid highways* in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309."

Approved March 29, 1993.

CHAPTER NO. 214

[HB 298]

AN ACT INCREASING FROM 30 DAYS TO 60 DAYS THE TIME WITHIN WHICH TO FILE AN APPEAL OF A DECISION OF THE STATE TAX APPEAL BOARD INVOLVING INDIVIDUAL INCOME TAX; AND AMENDING SECTION 15-30-148, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-148, MCA, is amended to read:

"**15-30-148. Judicial review.** (1) The determination of the state tax appeal board may be reviewed in the district court for Lewis and Clark County or the county in which the taxpayer resides or *in which the taxpayer's* ~~has his~~ principal office or place of business *is located* by a complaint filed by the taxpayer or the department within ~~30~~ *60* days after the receipt of notice of the determination. Proceedings for review ~~shall~~ *must* be otherwise as specified under the Montana Administrative Procedure Act.

(2) The remedies provided by this chapter for the collection of the tax ~~shall~~ *must* be stayed, and ~~no~~ *an* assessment, distraint, or proceedings in court for collection of the taxes may *not* be made, begun, or prosecuted until 90 days after ~~such~~ *the* court action is finally determined. From any determination of ~~such~~ *the* court, an appeal to the supreme court may be taken by either party."

Approved March 29, 1993.

CHAPTER NO. 215

[HB 304]

AN ACT CLARIFYING COMPENSATION FOR AN INSURANCE CONSULTANT; AMENDING SECTION 33-17-512, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-17-512, MCA, is amended to read:

"**33-17-512. Limitation on type of consideration.** A ~~person~~ licensed ~~as an~~ insurance consultant may not receive ~~any compensation, direct or indirect, as a result of the sale of insurance or annuities to or the use of securities or trusts in connection with pensions for a person to whom the licensee has performed a related consulting service for which he has received a fee or contracted to receive a fee~~ *a commission, service fee, brokerage fee, or other valuable consideration for the sale or service of a line of insurance, annuity, security, or pension trust if the consultant has received compensation from the client for consulting services on the same line of insurance, annuity, security, or pension trust sold or serviced* within the preceding 12 months."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1993.

CHAPTER NO. 216

[HB 306]

AN ACT CLARIFYING COUNTY MEMBERSHIP IN COUNTY TREASURERS' ASSOCIATIONS; AND AMENDING SECTION 7-5-2144, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2144, MCA, is amended to read:

"**7-5-2144. Membership in associations of county treasurers.** (1) County treasurers ~~are authorized and empowered to~~ *may* take out county membership in and ~~to~~ cooperate with associations and organizations of county treasurers of this state for the furtherance of good government and the protection of county interests. ~~Payment for membership in such associations or organizations shall be made from county funds in such amount as shall be approved by the board of county commissioners.~~

(2) All county treasurers of the various counties throughout the state ~~shall be~~ *are* allowed actual transportation expenses and per diem allowance for attendance ~~upon~~ *at* any general meeting of the Montana association of county treasurers held within the state not more often than once a year, and the proportionate expenses and charges against each county as a member of ~~such~~ *the* association ~~shall~~ *must* be paid by ~~such~~ *the* county."

Approved March 29, 1993.

CHAPTER NO. 217

[HB 363]

AN ACT EXTENDING THE PROVISION THAT STIPULATES THE DISTRIBUTION OF A PORTION OF THE LOCAL OPTION VEHICLE TAX TO THE COUNTIES AND MUNICIPALITIES; AMENDING SECTION 4, CHAPTER 749, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4, Chapter 749, Laws of 1991, is amended to read:

"Section 4. **Termination.** [This act] terminates June 30, ~~1993~~ *1995*."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 29, 1993.

CHAPTER NO. 218

[HB 371]

AN ACT REVISING EXAMINATION STANDARDS FOR LICENSED PUBLIC ACCOUNTANTS; AMENDING SECTION 37-50-304, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is included in this bill in order to provide a guideline on the portions of the accounting exam to be passed by those persons seeking to be licensed under the provisions of 37-50-304(2). At this point in time, it is contemplated that a person desiring to be licensed under 37-50-304(2) who holds a valid United States treasury card will be required to successfully complete the auditing (AUDIT) and the financial accounting and reporting (FARE) portions of the examination. A person without a valid United States treasury card would have to successfully complete an additional or third portion of the examination.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-50-304, MCA, is amended to read:

"37-50-304. **Public accountants — licensure without examination of former military personnel — examination otherwise required.** (1) Persons serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering this service held themselves out to the public as public accountants and who were engaged as principals in this state in the practice of public accounting as their principal occupation prior to service in the armed forces may register with the department within 6 months after the date of their separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) ~~A~~ *In order to be issued a license as a licensed public accountant, a* person who does not qualify under subsection (1) ~~must fulfill the following additional requirements as a prerequisite to the issuance of a license as a licensed public accountant:~~

~~(a) He must pass the written examination in accounting practice.~~

~~(b) He must also pass the written examination in either accounting theory or auditing or, instead of the examination in auditing or theory, he must be the holder of a United States treasury card which is in good standing at the time of his sitting for the examination in accounting practice~~ *shall successfully complete those portions of the examination provided for in 37-50-308 prescribed by the board by rule. The board may require successful completion of alternate portions of the examination for applicants holding valid United States treasury cards at the time of taking the examination.*

~~(3) The examinations referred to in subsection (2) shall be those prescribed for subjects under 37-50-308 and shall be conducted and graded by the same standards as those given to candidates for certified public accountant.~~"

Section 2. **Implementation.** The department of commerce may adopt rules implementing [this act] to be in place on January 1, 1994.

Section 3. **Effective dates.** (1) [Section 1] is effective January 1, 1994.

(2) [Section 2] and this section are effective on passage and approval.

Approved March 29, 1993.

CHAPTER NO. 219

[HB 381]

AN ACT REQUIRING PROOF OF FIREARMS COMPETENCY OR COMPLETION OF A HUNTER SAFETY COURSE BY CERTAIN MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS PRIOR TO ISSUANCE OF A HUNTING LICENSE UNDER THE ARMED FORCES' 30-DAY RESIDENCY EXCEPTION; AMENDING SECTIONS 87-2-102 AND 87-2-105, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-102, MCA, is amended to read:

"**87-2-102. Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions apply:

(1) Members of the regular armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United States who are assigned to active duty in Montana and their dependents, as defined in 15-30-113, who reside in their Montana household with them, after a period of 30 days within Montana, upon presenting assignment orders emanating from the proper unit commander *and a certificate of competency, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province,* are considered residents for the purpose of this chapter. The 30-day residence requirement is waived in time of war.

(2) A person who has been a resident of the state of Montana for a period of 6 months immediately prior to making application for a license is eligible to receive a resident hunting, fishing, or trapping license. A person is considered a resident if the person meets the following criteria:

(a) the person lives in Montana or has a fixed intent to return to this state when he leaves it;

(b) the person files Montana state income tax returns if required to file as a resident;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) the person does not use any resident hunting, fishing, or trapping privileges in another state or country during the time the resident Montana license is valid; and

(e) if the person registers to vote, the person registers only in Montana.

(3) Any enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(4) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (4).

(5) An unmarried minor whose parents, legal guardian, or custodial parent is a resident for purposes of this section is also considered a resident for purposes of this section."

Section 2. Section 87-2-105, MCA, is amended to read:

"**87-2-105. Safety instruction required.** (1) A hunting license may not be issued to a resident person under the age of 18 years unless ~~he~~ *the resident* presents to the person authorized to issue the license a certificate of competency as provided by this section.

(2) A hunting license may not be issued to a nonresident person under the age of 18 years unless ~~he~~ *the nonresident* presents to the person authorized to issue the license a certificate of competency, as provided in this section, or a certificate verifying that ~~he~~ *the nonresident* has successfully completed a course in the safe handling of firearms in any state or province.

(3) *A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the member or dependent presents to the person authorized to issue the license a certificate of competency, as provided in this section, or a certificate verifying that the member or dependent has successfully completed a hunter safety course in any state or province.*

(4) A bow and arrow license may not be issued to a resident or nonresident unless ~~he~~ *the resident or nonresident* presents to the person authorized to issue the license an archery license issued for a prior hunting season or a certificate of completion from the national bowhunter education foundation. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, the department shall notify the public regarding bow hunter education requirements. As part of those public information efforts, the department shall notify by mail all individuals who purchased a Class A-2 special bow and arrow license during the 1990-91 hunting season.

~~(4)~~*(5)* The department shall provide for a course of instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate as an instructor any person it finds to be competent to give instructions in the handling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of competency in the safe handling of firearms to a person successfully completing the course.

~~(5)~~*(6)* The department shall provide for a course of instruction from the national bowhunter education foundation and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give the national bowhunter education foundation instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion from the national bowhunter education foundation to any person successfully completing the course."

Section 3. **Effective date.** [This act] is effective March 1, 1994.

Approved March 29, 1993.

CHAPTER NO. 220

[HB 432]

AN ACT GENERALLY REVISING THE LAWS APPLICABLE TO THE LICENSING AND PRACTICES OF OUTFITTING AND GUIDING AND THE POWERS AND DUTIES OF THE BOARD OF OUTFITTERS; EXTENDING THE GENERAL TIME LIMITATION APPLICABLE TO PROSECUTION OF MISDEMEANOR OUTFITTER AND GUIDE VIOLATIONS; ESTABLISHING AN ADMINISTRATIVE PENALTY FOR OUTFITTER AND GUIDE VIOLATIONS; AMENDING SECTIONS 37-47-201, 37-47-301, 37-47-302, 37-47-303, 37-47-304, 37-47-305, 37-47-307, 37-47-308, 37-47-309, 37-47-310, 37-47-341, 37-47-343, 37-47-344, 37-47-402, 37-47-404, AND 45-1-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-47-201, MCA, is amended to read:

"**37-47-201. Powers and duties of board relating to outfitters and guides.** The board shall:

(1) prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet ~~shall~~ *must* be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current license year.

(2) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(4) establish outfitter standards and professional guide standards;

(5) adopt:

(a) rules of procedure;

(b) rules to administer and enforce this chapter, including but not limited to rules prescribing all requisite qualifications for licensure. These qualifications must include training, experience *in activities similar to the service to be provided*, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment.

(c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the health, safety, and welfare of those persons using the services of outfitters and for the protection of landowners, ~~and~~ the general public, *and outfitters' employees, agents, and representatives*;

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters and professional guides for due cause."

Section 2. Section 37-47-301, MCA, is amended to read:

"**37-47-301. License required — services performed — standards.** (1) ~~No~~ *A* person may *not* act as an outfitter or professional guide or advertise as an outfitter without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by any person, the outfitter shall keep and submit records as required by the ~~department~~ *board.*

(3) Outfitters, professional guides, and their employees may not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as outfitters or professional guides.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with environmental protection standards established for these lands.

(5) ~~An outfitter~~ *Outfitters* may not willfully and substantially misrepresent ~~his~~ *their* facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their employees, *agents, and representatives* shall take every reasonable measure to provide their advertised services to their clients.

(7) A person may not hold more than one Montana outfitter's license or hold an outfitter's license for more than one corporation, proprietorship, or partnership."

Section 3. Section 37-47-302, MCA, is amended to read:

"**37-47-302. Outfitter's qualifications.** Each applicant for and holder of an outfitter's license or any renewal ~~thereof~~ *of a license* shall meet the following qualifications:

(1) be a person of at least 18 years of age who is physically capable and mentally competent to perform ~~his~~ *the* duties ~~as~~ *of* an outfitter *as prescribed by the board*;

(2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and ~~his~~ *the outfitter's* clients (all equipment and facilities ~~shall be~~ *are* subject to inspection at all reasonable times and places by the board or its designated agent);

(3) be a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated ~~thereunder~~ *under those laws* as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution ~~thereof~~ *of the ecosystem*;

(4) have not been convicted or forfeited bond of $100 or more on more than one violation of *this chapter or* the fish and game laws or applicable regulations of any state or the United States within the past 5 years;

(5) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, professional guide's, or conservation license from the state of Montana;

(6) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

(7) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or professional guide during the ~~license year immediately~~ *2 years* preceding that for which the application is made;

(8) have not committed any negligent act or misconduct while acting as an outfitter or professional guide that caused a danger or unreasonable risk of danger to person or property of any client of ~~such~~ *the* outfitter or professional guide during the license year immediately preceding that for which the application is made;

(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. ~~No~~ *A* person may *not* apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony.

~~(10) have substantially complied with all board regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide.~~"

Section 4. Section 37-47-303, MCA, is amended to read:

"**37-47-303. Professional guide's qualifications.** (1) An applicant for a professional guide's license shall meet the following requirements:

(a) be a person of at least 18 years of age who is physically capable and mentally competent to perform ~~his~~ *the* duties ~~as~~ *of* a professional guide;

(b) be endorsed and recommended by an outfitter with a valid license;

(c) have not been convicted or forfeited bond of $100 or more on more than one violation of *this chapter or* the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;

(d) have not committed any gross negligent act or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;

(e) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. ~~No~~ *A* person may *not* apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony.

(2) A professional guide shall have been issued a valid wildlife conservation license."

Section 5. Section 37-47-304, MCA, is amended to read:

"**37-47-304. Application.** (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the board which shall include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of ~~his~~ *the applicant's* principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including years of experience as an outfitter or professional guide, knowledge of areas in which ~~he~~ *the applicant* has operated and intends to operate, and ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter by whom the professional guide is to be employed or retained as an independent contractor that the professional guide is in fact to be employed or retained as an independent contractor by ~~such~~ *the* outfitter and stating that the outfitter recommends the applicant for ~~his~~ *the applicant's* qualifications;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by ~~such~~ *the* applicant;

(g) a statement of the maximum number of guests to be taken at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands ~~he~~ *the applicant* will *provide services or* establish hunting camps.

(2) Applications for *an* outfitter's license ~~shall~~ *must* be in the name of an individual person only. Applications involving corporations, *proprietorships,* or partnerships ~~shall~~ *must* be made by one individual person who qualifies under the provisions of this part~~; any~~. *Any* license issued pursuant ~~thereto shall~~ *to this part must* be in the name of that person~~; and the~~. *The* license ~~shall~~ *must* specifically state that the ~~same~~ *license* is issued for the use and benefit of the named corporation, *proprietorship,* or partnership involved. Any revocation or suspension of ~~such~~ a license is binding upon the individual person and the *corporation, proprietorship, or* partnership ~~or corporation~~ for the use and benefit of which the license was originally issued.

(3) Application ~~shall~~ *must* be made to and filed with the board.

(4) Only one application for an outfitter's ~~or professional guide's~~ license may be made in any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308."

Section 6. Section 37-47-305, MCA, is amended to read:

"**37-47-305. Outfitter's examination.** Each applicant for an outfitter's license shall pass a standard examination administered by the board or its agent~~, which~~. *The* examination ~~shall~~ *must* require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing ~~such~~ *the* services. The examination ~~shall~~ *must* test the applicant's knowledge of subjects ~~which shall~~ *that* apply to the type of license applied for ~~in~~ *and may include* the following subjects:

(1) federal and state fish and game laws and regulations;

(2) practical woodsmanship;

(3) general knowledge of big game;

(4) field preparation of trophies;

(5) care of game meat;

(6) use of outfitter's gear as listed on the application;

(7) knowledge of area and terrain;

(8) knowledge of firearms;

(9) federal and state regulations as applicable to outfitting;

(10) first aid;

(11) boat safety;

(12) water safety;

(13) care and safety of livestock."

Section 7. Section 37-47-307, MCA, is amended to read:

"**37-47-307. Investigation of applicant — issuance or denial of license.** (1) The board shall investigate each applicant for an outfitter's or professional guide's license and determine ~~his~~ *the applicant's* qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications ~~herein~~ stated *in this section*. In the event that any application for license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses ~~shall~~ *must* be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter *and renewal deadlines and fees imposed by rule of the board*~~,~~ *and* completing an application for license renewal on a form provided by the board~~, and payment of the renewal fee, but is exempt from having to retake the written examination~~.

~~(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of $50 will be charged in addition to the regular resident or nonresident outfitter's license fee if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license.~~"

Section 8. Section 37-47-308, MCA, is amended to read:

"**37-47-308. Kinds of licenses.** (1) ~~After receipt of the application and when~~ *When* all the conditions ~~and requirements~~ of ~~this part~~ *licensure* have been satisfied, the board shall issue ~~either of the following licenses, depending upon its determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:~~

~~(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 37-47-101; or~~

~~(b) a special license authorizing him to perform only the function of outfitting listed on the license~~ *a license stating the outfitter or guide functions that the applicant is qualified and approved to perform.*

(2) The license ~~shall~~ *must* be in the form prescribed and ~~shall be~~ *is* valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license ~~shall~~ *must* be issued upon reapplication ~~thereof~~."

Section 9. Section 37-47-309, MCA, is amended to read:

"**37-47-309. Professional guide's license.** (1) For the purposes of this part, a person may serve as a professional guide under an outfitter's license, after submitting ~~his~~ *an* application with the proper license fee, until the license is issued or denied.

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of the endorsing outfitter and is valid only while the holder of ~~such~~ *the* license is employed or retained ~~as an independent contractor~~ by the endorsing outfitter."

Section 10. Section 37-47-310, MCA, is amended to read:

"**37-47-310. Transfer or amendment of outfitter's license.** (1) ~~No~~ *An* outfitter's license may *not* be transferred during any license year.

(2) An individual person may, upon proper showing, have ~~his~~ *that person's* outfitter's license amended to indicate that ~~he is holding~~ the license *is being held* for the use and benefit of a named *proprietorship,* partnership, or corporation.

(3) Subject to approval by the board, ~~the~~ *an* immediate ~~members~~ *member* of the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure ~~therefor~~ *of the business.*"

Section 11. Section 37-47-341, MCA, is amended to read:

"**37-47-341. Grounds for suspension or revocation of license.** Every license or right to apply for and hold ~~such~~ *the* license may be *denied,* suspended, or revoked upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(5) two convictions or bond forfeitures of $100 or more as to violations of the fish and game or outfitting laws or regulations of ~~the~~ *any* state ~~of Montana~~ or ~~of~~ the United States within the past 5 years;

(6) a substantial breach of any contract with any person ~~utilizing~~ *using* the services of the license holder provided that ~~such~~ *the* breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed ~~professional~~ guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or professional guide that causes an accident or injury to person or property of any client of ~~such~~ *the* outfitter or professional guide*; or*

(9) misconduct as defined by board rule."

Section 12. Section 37-47-343, MCA, is amended to read:

"37-47-343. **Appeal procedure.** Any person who feels aggrieved by ~~the denial of~~ *a final order of the board denying* issuance of, ~~a license or suspension or revocation of~~ *suspension of, or revocation of* a license as an outfitter or professional guide may ~~appeal to the district court of the county of his residence within 30 days after the date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the board, and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo, and upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the board or take such other action as the court may deem just and proper. If the board or the court has ordered a stay of any revocation or suspension and the board's revocation or suspension is thereafter sustained by the court, the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the board~~ *petition for judicial review as provided in Title 2, chapter 4, part 7.*"

Section 13. Section 37-47-344, MCA, is amended to read:

"37-47-344. **Penalties — disposition of fines.** (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding $500.

(2) A person who represents ~~himself~~ *to the public that the person is* ~~as~~ an outfitter or *who* purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than $200 and not more than ~~$500~~ *$1,000, up to 1 year in the county jail, or both. Each day of violation is a separate offense.* In addition, the person must be assessed *and pay to the board* the amount of all costs incurred by the board in investigating and preparing the case for trial *and all prosecution costs, including but not limited to witness, transportation, and per diem expenses.*

(3) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter. *All investigation, preparation, and trial costs paid under this section must be deposited in the state special revenue fund for the use of the board in enforcing the provisions of this chapter. The board may reimburse other agencies for costs reasonably incurred in the enforcement of this chapter.*

(4) A person convicted of engaging in outfitting without a license shall reimburse the full amount of any fees received to the person to whom illegal outfitter services were provided."

Section 14. **Administrative penalty.** The board may assess an administrative penalty of not more than $500 for each violation of this chapter or a rule adopted under this chapter, subject to the procedures set out in 37-47-342 and 37-47-343.

Section 15. Section 37-47-402, MCA, is amended to read:

"37-47-402. **Duties of outfitters and guides.** An outfitter or guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of ~~his~~ *the* ~~respective~~ profession while engaging in providing the services authorized to be performed by a licensed member of ~~his~~ *the* profession;

(2) comply with all standards adopted by rule by the ~~department of fish, wildlife, and parks~~ *board.*"

Section 16. Section 37-47-404, MCA, is amended to read:

"**37-47-404. Responsibility for violations of law.** (1) Any person accompanying a hunting or fishing party as an outfitter or agent or employee of ~~such~~ *the* outfitter ~~shall be~~ *is* equally responsible with any person or party employing ~~him~~ *the person* as an outfitter for any violation of fish and game laws~~;~~ ~~any such~~ *unless the violation is reported to a peace officer by the outfitter, agent, or employee and the outfitter, agent, or employee was not an active participant. An* outfitter or *agent or* employee of ~~such~~ *an* outfitter who ~~shall~~ willfully ~~fail to or refuse~~ *fails or refuses* to report any violation of fish and game laws ~~shall be~~ *is* liable to the penalties ~~as herein~~ provided *in this section.* If any professional guide ~~commits any violation of~~ *violates* the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter ~~then~~ employing ~~such~~ *the* guide, the outfitter is legally responsible for ~~such~~ *the* violation for all purposes under the laws or regulations if the outfitter fails to report ~~any such~~ *the* violation to *the* proper authority.

(2) *An outfitter or professional guide shall report any violation or suspected violation of fish and game laws that the outfitter or guide knows or reasonably should have known has been committed by the employees, agents, representatives, clients, or participants in the outfitting or guiding activity. The violation or suspected violation must be reported to a peace officer at the earliest possible opportunity.*

(3) ~~No~~ *A* person may *not* hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana."

Section 17. Section 45-1-205, MCA, is amended to read:

"**45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 may be commenced within 5 years after the victim reaches the age of 18 if the victim was less than 18 years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The ~~period~~ *periods* prescribed in subsection (2) ~~is~~ *are* extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination ~~thereof~~ *of minority or incompetency*;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not ~~himself~~ a party to the offense or, in the absence of ~~such~~ discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) ~~shall~~ *must* be extended in a prosecution for unlawful use of a computer, and prosecution ~~shall~~ *must* be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not ~~himself~~ a party to the offense or, in the absence of ~~such~~ discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) *The period prescribed in subsection (2)(b) is extended in a prosecution for misdemeanor violations of the laws regulating the activities of outfitters and guides under Title 37, chapter 47, and prosecution must be brought within 3 years after an offense is committed.*

(7) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

~~(7)~~*(8)* A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Section 18. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. **Codification instruction.** [Section 14] is intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [section 14].

Section 20. **Effective date.** [This act] is effective July 1, 1993.

Approved March 29, 1993.

CHAPTER NO. 221

[HB 499]

AN ACT REVISING THE BOARD OF BAR EXAMINERS; AND AMENDING SECTION 37-61-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-61-102, MCA, is amended to read:

"**37-61-102. Attorneys' examining board — appointment, quorum, and powers.** (1) The supreme court ~~is hereby authorized and empowered to~~ *shall* appoint ~~five~~ members of the bar of this state, in good standing, as an examining board to conduct and assist in conducting the examination of applicants for admission to the bar. *The board may not exceed seven members.* The court may release, dismiss, or remove any member of ~~said~~ *the* board and appoint other members ~~in his or their stead~~ at any time.

(2) A majority of ~~said~~ *the* board ~~shall constitute~~ *is* a quorum and ~~have the power to~~ *may* conduct examinations.

(3) The board shall perform ~~such~~ *the* duties and render ~~such~~ assistance in the examinations of applicants as ~~may be~~ prescribed by the court and ~~shall be~~ *is* governed and controlled by ~~such~~ *the* rules ~~as~~ *that* the court may prescribe. ~~It shall be optional with the supreme court to appoint said board or to require the assistance of said board when appointed.~~"

Approved March 29, 1993.

CHAPTER NO. 222

[HB 573]

AN ACT GENERALLY REVISING THE RESIDENTIAL LANDLORD AND TENANT LAWS; CHANGING DELIVERY OF NOTICE TO EXCLUDE REGISTERED MAIL; PROVIDING THAT ACCEPTANCE OF RENT OR DEPOSIT BY A LANDLORD CONSTITUTES DELIVERY OF POSSESSION OF THE DWELLING UNIT TO THE TENANT; DISALLOWING THE TRANSFER OF PREMISES DURING A TENANCY WITHOUT WRITTEN CONSENT BY A LANDLORD; PROHIBITING A TENANT FROM REMOVING A LOCK OR REPLACING OR ADDING A LOCK NOT SUPPLIED BY A LANDLORD WITHOUT PROVIDING A KEY TO THE LANDLORD; ALLOWING A TENANT TO OPERATE LIMITED BUSINESSES OR COTTAGE INDUSTRIES ON A PREMISES WITHIN REASONABLE RULES OF THE LANDLORD AND WITH THE LANDLORD'S WRITTEN CONSENT; PROVIDING THAT RULES AND REGULATIONS MUST BE APPLIED AND ENFORCED UNIFORMLY AND FAIRLY; ALLOWING A TENANT TO TERMINATE A RENTAL AGREEMENT ON THE LANDLORD'S FAILURE TO REMEDY A CASE OF EMERGENCY WITHIN 3 DAYS AFTER THE TENANT'S WRITTEN NOTICE; REQUIRING A TENANT TO HAVE REPAIRS MADE BY A QUALIFIED PERSON IN A CASE OF EMERGENCY; CLARIFYING A LANDLORD'S REMEDY FOR A TENANT'S NONCOMPLIANCE WITH A RENTAL AGREEMENT; PROVIDING A LANDLORD INJUNCTIVE RELIEF FOR A TENANT'S FAILURE TO PROVIDE THE LANDLORD WITH A KEY TO A LOCK NOT SUPPLIED BY THE LANDLORD; AND AMENDING SECTIONS 70-24-103, 70-24-108, 70-24-302, 70-24-312, 70-24-321, 70-24-401, 70-24-406, 70-24-422, AND 70-24-424, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-103, MCA, is amended to read:

"**70-24-103. General definitions.** Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" is an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant has reasonable apprehension of immediate danger to the tenant or others.

~~(2)~~*(3)* "Court" means the appropriate district court or the appropriate justice's court.

~~(3)~~*(4)* "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

~~(4)~~*(5)* "Good faith" means honesty in fact in the conduct of the transaction concerned.

~~(5)~~*(6)* "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part and also means a manager of the premises who fails to disclose ~~his~~ *a* managerial position.

~~(6)~~*(7)* "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

~~(7)~~*(8)* "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

~~(8)~~*(9)* "Person" includes an individual or organization.

~~(9)~~*(10)* "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances ~~therein~~ *in the structure,* and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

~~(10)~~*(11)* "Rent" means all payments to be made to the landlord under the rental agreement.

~~(11)~~*(12)* "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

~~(12)~~*(13)* "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.

~~(13)~~*(14)* "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

~~(14)~~*(15)* "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Section 2. Section 70-24-108, MCA, is amended to read:

"**70-24-108. What constitutes notice.** (1) A person has notice of a fact if:

(a) ~~he~~ *the person* has actual knowledge of it;

(b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed ~~by registered~~ *with a certificate of mailing* or *by* certified mail to ~~him~~ *the person* at the place held out by ~~him~~ *the person* as the place for receipt of the communication or, in the absence of ~~such~~ *a* designation, to ~~his last-known~~ *the person's last-known* address. *If notice is made with a certificate of mailing or by certified mail, service of the notice is considered to have been made upon the date 3 days after the date of mailing.*

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to ~~his~~ *the individual's* attention if the organization had exercised reasonable diligence."

Section 3. Section 70-24-302, MCA, is amended to read:

"**70-24-302. Landlord to deliver possession of dwelling unit.** *(1)* At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 70-24-303. A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship."

Section 4. **Transfer of premises by tenant.** (1) A tenant who vacates a dwelling unit during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

(2) The sale or rental of a mobile home located upon a rental lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.

(3) A mobile home owner who owns the mobile home but rents the lot space has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.

Section 5. Section 70-24-312, MCA, is amended to read:

"70-24-312. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or ~~his~~ *the landlord's* agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of ~~his~~ *the* intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 70-24-425 and 70-24-426(2); or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by this chapter."

Section 6. Section 70-24-321, MCA, is amended to read:

"70-24-321. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that ~~he~~ *the tenant* occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from ~~his~~ *the* dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct ~~himself~~ *oneself* and require other persons on the premises with ~~his~~ *the tenant's* consent to conduct themselves in a manner that will not disturb ~~his~~ *the tenant's* neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises including the living room, bedroom, kitchen, bathroom, and dining room in a reasonable manner considering the purposes for which they were designed and intended. *This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, provided the landlord has consented in writing. The landlord may not unreasonably withhold consent, provided that the limited business or cottage industry is operated within reasonable rules of the landlord.*

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so."

Section 7. Section 70-24-401, MCA, is amended to read:

"**70-24-401. Administration of remedies — enforcement.** (1) The remedies provided by this chapter ~~shall be so~~ *must be* administered *so* that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

(3) Rules and regulations that are not a part of this chapter and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced."

Section 8. Section 70-24-406, MCA, is amended to read:

"**70-24-406. Failure of landlord to maintain premises — tenant's remedies.** (1) Except as provided in this chapter, if there is a noncompliance with 70-24-303 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. *If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agree-*

ment, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate for a condition caused by ~~himself~~ *the tenant,* a member of ~~his~~ *the tenant's* family, or other persons on the premises with ~~his~~ *the tenant's* consent;

(b) make repairs ~~himself~~ that do not cost more than 1 month's rent and deduct the cost from the rent if ~~he~~ *the tenant* has given the landlord notice and ~~he~~ *the landlord* has not made the repairs within a reasonable time. *If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.*

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 70-24-303.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to chapter 25 of this title."

Section 9. Section 70-24-422, MCA, is amended to read:

"**70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction.** (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321 affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) (a) Except as provided in subsection (2)(b), if rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord

of nonpayment and ~~his~~ *the landlord's* intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(b) For a rental agreement involving a tenant who rents space to park a mobile home but who does not rent the mobile home, the notice period referred to in subsection (2)(a) is 15 days.

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the breach under the provisions of 70-24-321(2).

(4) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (5), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(5) Treble damages may not be recovered for the tenant's early termination of the tenancy.

(6) The landlord is not bound by this section in the event the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."

Section 10. Section 70-24-424, MCA, is amended to read:

"**70-24-424. Refusal of access — landlord's remedies.** *(1)* If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by 70-24-312(5), the landlord may either obtain injunctive relief or terminate the rental agreement."

Section 11. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 70, chapter 24, part 3, and the provisions of Title 70, chapter 24, part 3, apply to [section 4].

Approved March 29, 1993.

CHAPTER NO. 223

[HB 595]

AN ACT GIVING JUSTICE OF THE PEACE COURTS CONCURRENT JURISDICTION WITH DISTRICT COURTS OF FISH AND GAME VIOLATIONS THAT ARE PUNISHABLE BY A FINE EXCEEDING $1,000 OR IMPRISONMENT EXCEEDING 6 MONTHS, OR BOTH; PROVIDING FOR A CIVIL, RATHER THAN A CRIMINAL, RESTITUTION PENALTY; AND AMENDING SECTIONS 3-10-303 AND 87-5-721, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-303, MCA, is amended to read:

"**3-10-303. Criminal jurisdiction.** The justices' courts have jurisdiction of public offenses committed within the respective counties in which ~~such~~ *the* courts are established as follows:

(1) jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months, or both ~~such fine and imprisonment~~;

(2) jurisdiction of all *misdemeanor* violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both;

(3) concurrent jurisdiction with district courts of all misdemeanors punishable by a fine exceeding $500 or imprisonment exceeding 6 months, or both ~~such fine and imprisonment~~;

(4) concurrent jurisdiction with district courts of all misdemeanor violations of fish and game statutes punishable by a fine exceeding $1,000 or imprisonment exceeding 6 months, or both.

~~(4)~~*(5)* jurisdiction to act as examining and committing courts and for ~~such~~ *that* purpose to conduct preliminary hearings;

~~(5)~~*(6)* jurisdiction of all violations of Title 61, chapter 10; and

~~(6)~~*(7)* all misdemeanor violations of Title 81, chapter 8, part 2."

Section 2. Section 87-5-721, MCA, is amended to read:

"**87-5-721. Penalty — license and permit revocation and denial.** (1) Except as provided in subsection (2), a person who violates a provision of this part is guilty of a misdemeanor punishable as provided in 87-1-102, and the department, upon conviction of the person, shall revoke any license or permit issued by it under this title to the person and deny any application by the person for a license or permit under this title for a period not to exceed 2 years from the date of the conviction.

(2) A person who intentionally imports, introduces, or transplants fish in violation of this part:

(a) is guilty of a misdemeanor punishable by a fine of not less than $500 ~~and may be fined up to the amount necessary to eliminate or mitigate the effects of the violation~~ *or more than $1,000 or imprisonment for not more than 6 months, or both*; ~~and~~

(b) is civilly liable for the amount necessary to eliminate or mitigate the effects of the violation. The damages may be recovered on behalf of the public by the department or by the county attorney of the county in which the violation occurred, in a civil action in a court of competent jurisdiction. Money recovered by the department or a county attorney must be deposited in the state special revenue fund as provided in 87-1-601(1).

~~(b)~~*(c)* upon conviction or forfeiture of bond or bail, shall forfeit from the date of conviction or forfeiture any current hunting, fishing, or trapping license issued under this title and the privilege to hunt, fish, or trap in this state for not less than 24 months. If the time necessary to eliminate or mitigate the effects of the violation exceeds 24 months, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for more than 24 months. If the effects of the violation cannot be eliminated or mitigated, a person may be required to forfeit the privilege to hunt, fish, or trap in this state for the lifetime of that person."

Approved March 29, 1993.

CHAPTER NO. 224

[HB 621]

AN ACT REVISING THE METHOD OF RECOGNIZING DIFFERENCES IN RATES OF PAY WITH RESPECT TO ESTABLISHING WORKERS' COMPENSATION INSURANCE PREMIUMS FOR THE CONSTRUCTION INDUSTRY; AMENDING SECTION 39-71-2211, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2211, MCA, is amended to read:

"**39-71-2211. Premium rates for construction industry — filing required.** (1) With respect to each classification of risk in the construction industry under plan No. 2, the rating organization described in 33-16-1005 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at *one and one-half times* the Montana average weekly wage as reported by the department.

(3) The rating organization shall file a revenue neutral plan for new and renewed policies by July 1, 1992, for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation mutual insurance fund, plan No. 3, shall adopt the plan filed by the rating organization or adopt a credit scale plan that meets the requirements of this section."

Section 2. **Effective date.** [This act] is effective July 1, 1994.

Approved March 30, 1993.

CHAPTER NO. 225

[HB 171]

AN ACT AMENDING THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT TO COMPLY WITH FEDERAL LAW AND REGULATIONS; AMENDING THE DEFINITION OF "PROSPECTING"; EXPANDING THE AUTHORITY TO DENY A PERMIT ON FEDERAL LAND OR BASED ON CURRENT VIOLATIONS; PROHIBITING COAL MINING ON CERTAIN

FEDERAL LANDS; AND AMENDING SECTIONS 82-4-203, 82-4-226, AND 82-4-227, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-203, MCA, is amended to read:

"**82-4-203. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Abandoned" means an operation where no mineral is being produced and where the department determines that the operation will not continue or resume.

(2) "Alluvial valley floor" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities; but the term does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, and windblown deposits.

(3) "Aquifer" means any geologic formation or natural zone beneath the earth's surface that contains or stores water and transmits it from one point to another in quantities which permit or have the potential to permit economic development as a water source.

(4) "Area of land affected" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited and includes all land overlying any tunnels, shafts, or other excavations used to extract the mineral, lands affected by the construction of new railroad loops and roads or the improvement or use of existing railroad loops and roads to gain access and to haul the mineral, processing facilities at or near the mine site or other mine associated facilities, waste deposition areas, treatment ponds, and any other surface or subsurface disturbance associated with strip mining or underground mining, and all activities necessary and incident to the reclamation of such operations.

(5) "Bench" means the ledge, shelf, table, or terrace formed in the contour method of strip mining.

(6) "Board" means the board of land commissioners provided for in Article X, section 4, of the constitution of this state.

(7) "Coal conservation plan" means the planned course of conduct of a strip- or underground-mining operation to include plans for the removal and utilization of minable and marketable coal located within the area planned to be mined.

(8) "Coal preparation" means the chemical or physical processing of coal and its cleaning, concentrating, or other processing or preparation. The term does not mean the conversion of coal to another energy form or to a gaseous or liquid hydrocarbon, except for incidental amounts that do not leave the plant, nor does the term mean processing for other than commercial purposes.

(9) "Coal preparation plant" means a commercial facility where coal is subject to coal preparation. The term includes commercial facilities associated

with coal preparation activities but is not limited to loading buildings, water treatment facilities, water storage facilities, settling basins and impoundments, and coal processing and other waste disposal areas.

(10) "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

(11) "Contour strip mining" means that strip-mining method commonly carried out in areas of rough and hilly topography in which the coal or mineral seam outcrops along the side of the slope and entrance is made to the seam by excavating a bench or table cut at and along the site of the seam outcropping with the excavated overburden commonly being cast down the slope below the mineral seam and the operating bench.

(12) "Degree" means from the horizontal and in each case is subject to a tolerance of 5% error.

(13) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(14) "Failure to conserve coal" means the nonremoval or nonutilization of minable and marketable coal by an operation, provided that the nonremoval or nonutilization of minable and marketable coal in accordance with reclamation standards established by the department ~~shall~~ *may* not be considered failure to conserve coal.

(15) "Fill bench" means that portion of a bench or table which is formed by depositing overburden beyond or downslope from the cut section as formed in the contour method of strip mining.

(16) "Imminent danger to the health and safety of the public" means the existence of any condition or practice or any violation of a permit or other requirement of this part in a strip- or underground-coal-mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before ~~such~~ *the* condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not ~~expose himself or herself~~ *willingly be exposed* to the danger during the time necessary for abatement.

(17) "Marketable coal" means a minable coal that is economically feasible to mine and is fit for sale in the usual course of trade.

(18) "Method of operation" means the method or manner by which the cut, open pit, shaft, or excavation is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the minerals that affect the reclamation of the area of land affected.

(19) "Minable coal" means that coal which can be removed through strip- or underground-mining methods adaptable to the location that coal is being mined or is planned to be mined.

(20) "Mineral" means coal and uranium.

(21) "Operation" means all of the premises, facilities, railroad loops, roads, and equipment used in the process of producing and removing mineral from and reclaiming a designated strip-mine or underground-mine area, including coal preparation plants, and all activities, including excavation incident ~~thereto~~ *to operations*, or prospecting for the purpose of determining the location, quality, or quantity of a natural mineral deposit.

(22) "Operator" means a person engaged in strip mining or underground mining who removes or intends to remove more than 10,000 cubic yards of mineral or overburden or a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by mining within 12 consecutive calendar months in any one location or a person engaged in operating a coal preparation plant.

(23) "Overburden" means all of the earth and other materials ~~which~~ *that* lie above a natural mineral deposit and also means ~~such~~ *the* earth and other material after removal from their natural state in the process of mining.

(24) "Person" means a person, partnership, corporation, association, or other legal entity or any political subdivision or agency of the state or federal government.

(25) "Prime farmland" means that land previously prescribed by the United States secretary of agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface-layer composition, susceptibility to flooding, and erosion characteristics and which historically has been used for intensive agricultural purposes and as defined in the Federal Register.

(26) "Prospecting" means the removal of overburden, core drilling, construction of roads, or any other disturbance of the surface for the purpose of determining the location, quantity, or quality of a natural mineral deposit*;* ~~and, on areas designated unsuitable for coal mining pursuant to 82-4-227 and 82-4-228,~~ the gathering of surface or subsurface geologic, physical, or chemical data by mapping, trenching, geophysical, or other techniques necessary to determine the quality and quantity of overburden ~~and coal~~ in an area*;* ~~and~~ *or* the gathering of environmental data to establish the conditions of an area before beginning strip- or underground-coal-mining and reclamation operations under this part.

(27) "Reclamation" means backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, planting, revegetation, and other work to restore an area of land affected by strip mining or underground mining under a plan approved by the department.

(28) "Remining" means conducting surface coal mining and reclamation operations that affect previously mined areas (for example, the recovery of additional mineral from existing gob or tailings piles).

(29) "Strip mining" means any part of the process followed in the production of mineral by the opencut method, including mining by the auger method or any similar method ~~which~~ *that* penetrates a mineral deposit and removes mineral directly through a series of openings made by a machine ~~which~~ *that* enters the deposit from a surface excavation or any other mining method or process in

which the strata or overburden is removed or displaced in order to recover the mineral. For the purposes of this part only, strip mining also includes remining and coal preparation. The terms "remining" and "coal preparation" are not included in the definition of "strip mining" for purposes of Title 15, chapter 35, part 1.

(30) "Subsidence" means a vertically downward movement of overburden materials resulting from the actual mining of an underlying mineral deposit or associated underground excavations.

(31) "Surface owner" means a person who holds legal or equitable title to the land surface and whose principal place of residence is on the land or who personally conducts farming or ranching operations upon a farm or ranch unit to be directly affected by strip-mining operations or who receives directly a significant portion of ~~his~~ income, if any, from ~~such~~ farming or ranching operations or the state of Montana where the state owns the surface.

(32) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth that has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and that is necessary for the growth and regeneration of vegetation on the surface of the earth.

(33) "Underground mining" means any part of the process followed in the production of a mineral such that vertical or horizontal shafts, slopes, drifts, or incline planes connected with excavations penetrating the mineral stratum or strata are utilized and includes mining by in situ methods.

(34) "Unwarranted failure to comply" means the failure of a permittee to prevent the occurrence of any violation of ~~his~~ *a* permit or any requirement of this part due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of ~~such~~ *a* permit or this part due to indifference, lack of diligence, or lack of reasonable care.

(35) "Waiver" means any document ~~which~~ *that* demonstrates the clear intention to release rights in the surface estate for the purpose of permitting the extraction of subsurface minerals by strip-mining methods.

(36) "Written consent" means ~~such~~ *a* written statement ~~as is~~ executed by the owner of the surface estate, upon a form approved by the department, demonstrating that ~~such~~ *the* owner consents to entry of an operator for the purpose of conducting strip-mining operations and that ~~such~~ *the* consent is given only to ~~such~~ strip-mining and reclamation operations ~~which~~ *that* fully comply with the terms and requirements of this part."

Section 2. Section 82-4-226, MCA, is amended to read:

"**82-4-226. Prospecting permit.** (1) ~~On~~ *Except as provided in subsection (8)* ~~and after March 16, 1973~~, prospecting by any person on land not included in a valid strip-mining or underground-mining permit ~~shall be~~ *is* unlawful without possessing a valid prospecting permit issued by the department as provided in this section. ~~No~~ *A* prospecting permit ~~shall~~ *may not* be issued until the person submits an application, the application is examined, amended if necessary, and approved by the department, and adequate reclamation performance bond is posted, all of which prerequisites must be done in conformity with the requirements of this part.

(2) An application for a prospecting permit ~~shall~~ *must* be made in writing, notarized, and submitted to the department in duplicate upon forms prepared and furnished by it. The application ~~shall~~ *must* include among other things a prospecting map and a prospecting reclamation plan of substantially the same character as required for a surface-mining or underground-mining map and reclamation plan under this part. The department shall determine by rules the precise nature of ~~such~~ *the* required prospecting map and reclamation plan. Any applicant who intends to prospect by means of core drilling shall specify the location and number of holes to be drilled, methods to be used in sealing aquifers, and ~~such~~ other information as may be required by the department. The applicant ~~must~~ *shall* state what types of prospecting and excavating techniques will be employed on the affected land. The application shall also include any other or further information the department may require.

(3) The application ~~shall~~ *must* be accompanied by a fee of $100. This fee ~~shall~~ *must* be used as a credit toward the strip-mining or underground-mining permit fee provided by this part if the area covered by the prospecting permit becomes covered by a valid surface-mining or underground-mining permit obtained before or at the time the prospecting permit expires.

(4) Before the department gives final approval to the prospecting permit application, the applicant shall file with the department a reclamation and revegetation bond in a form and in an amount as determined in the same manner for strip-mining or underground-mining reclamation and revegetation bonds under this part.

(5) In the event that the holder of a prospecting permit desires to strip mine or underground mine the area covered by the prospecting permit and has fulfilled all the requirements for a strip-mining or underground-mining permit, the department may permit the postponement of the reclamation of the acreage prospected if that acreage is incorporated into the complete reclamation plan submitted with the application for a strip-mining or underground-mining permit. Any land actually affected by prospecting or excavating under a prospecting permit and not covered by the strip-mining or underground-mining reclamation plan ~~shall~~ *must* be promptly reclaimed.

(6) The prospecting permit ~~shall be~~ *is* valid for 1 year and ~~shall be~~ *is* subject to renewal, suspension, and revocation in the same manner as strip-mining or underground-mining permits under this part.

(7) The holder of the prospecting permit shall file with the department the same progress reports, maps, and revegetation progress reports as are required of strip-mining or underground-mining operators under this part.

(8) Prospecting that is not conducted in an area designated unsuitable for coal mining pursuant to 82-4-227 or 82-4-228 and that is not conducted for the purpose of determining the location, quality, or quantity of a natural mineral deposit is not subject to subsections (1) through (7). However, a person who conducts this prospecting shall file with the department a notice of intent to prospect, containing the information required by the department, before commencing prospecting operations. If this prospecting substantially disturbs the

natural land surface, it must be conducted in accordance with the performance standards of the department's rules regulating the conduct and reclamation of prospecting operations that remove coal. The department may inspect these prospecting and reclamation operations at any reasonable time."

Section 3. Section 82-4-227, MCA, is amended to read:

"**82-4-227. Refusal of permit.** (1) An application for a prospecting, strip-mining, or underground-mining permit or major revision ~~shall~~ *may* not be approved by the department unless, on the basis of the information set forth in the application, an onsite inspection, and an evaluation of the operation by the department, the applicant has affirmatively demonstrated that the requirements of this part and rules will be observed and that the proposed method of operation, backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, revegetation, or reclamation of the affected area can be carried out consistently with the purpose of this part. The applicant for a permit or major revision has the burden of establishing that ~~his~~ *the* application is in compliance with this part and the rules adopted under it.

(2) The department ~~shall~~ *may* not approve the application for a prospecting, strip-mining, or underground-mining permit where the area of land described in the application includes land having special, exceptional, critical, or unique characteristics or that mining or prospecting on that area would adversely affect the use, enjoyment, or fundamental character of neighboring land having special, exceptional, critical, or unique characteristics. For the purposes of this part, land is defined as having ~~such~~ *these* characteristics if it possesses special, exceptional, critical, or unique:

(a) biological productivity, the loss of which would jeopardize certain species of wildlife or domestic stock;

(b) ecological fragility, in the sense that the land, once adversely affected, could not return to its former ecological role in the reasonable foreseeable future;

(c) ecological importance, in the sense that the particular land has such a strong influence on the total ecosystem of which it is a part that even temporary effects felt by it could precipitate a system-wide reaction of unpredictable scope or dimensions; or

(d) scenic, historic, archaeologic, topographic, geologic, ethnologic, scientific, cultural, or recreational significance. (In applying this subsection, particular attention should be paid to the inadequate preservation previously accorded Plains Indian history and culture.)

(3) The department may not approve an application for a strip- or underground-coal-mining permit or major revision unless the application affirmatively demonstrates that:

(a) the assessment of the probable cumulative impact of all anticipated mining in the area on the hydrologic balance has been made by the department and the proposed operation ~~thereof~~ *of the mining operation* has been designed to prevent material damage to the hydrologic balance outside the permit area; and

(b) the proposed strip- or underground-coal-mining operation would not:

(i) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding undeveloped rangelands that are not significant to farming on alluvial valley floors and those lands as to which the regulatory authority finds that if the farming that will be interrupted, discontinued, or precluded is of such small acreage as to be of negligible impact on the farm's agricultural production; or

(ii) materially damage the quantity or quality of water in surface water or underground water systems that supply these valley floors in subsection (3)(b)(i).

(4) Subsection (3)(b) does not affect those strip- or underground-coal-mining operations that in the year preceding the enactment of Public Law 95-87 produced coal in commercial quantities and were located within or adjacent to alluvial valley floors or had obtained specific permit approval by the department to conduct strip- or underground-coal-mining operations within alluvial valley floors. If coal deposits are precluded from being mined under this subsection, the commissioner shall certify to the secretary of interior that the mineral owner or lessee may be eligible for participation in coal exchange programs pursuant to section 510(5) of Public Law 95-87.

(5) If the area proposed to be mined contains prime farmland, the department may not grant a permit to mine coal on the prime farmland unless it finds in writing that the applicant has the technological capability to restore the mined area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management and can meet the soil reconstruction standards of 82-4-232(3). Nothing in this subsection applies to any permit issued prior to August 3, 1977, or to any revisions or renewals thereof, or to any existing strip- or underground-mining operations for which a permit was issued prior to August 3, 1977.

(6) If the department finds that the overburden on any part of the area of land described in the application for a prospecting, strip-mining, or underground-mining permit is such that experience in the state with a similar type of operation upon land with similar overburden shows that substantial deposition of sediment in streambeds, subsidence, landslides, or water pollution cannot feasibly be prevented, the department shall delete that part of the land described in the application upon which the overburden exists. The burden is on the applicant to demonstrate that any area should not be deleted under this subsection.

(7) If the department finds that the operation will constitute a hazard to a dwelling house, public building, school, church, cemetery, commercial or institutional building, public road, stream, lake, or other public property, the department shall delete those areas from the prospecting, strip-mining, or underground-mining permit application before it can be approved. In no case may strip- or underground-coal-mining be allowed within 300 feet of any occupied dwelling, unless waived by the owner, nor within 300 feet of any public building, school, church, community, or institutional building, or public park; nor within 100 feet of a cemetery; nor within 100 feet of the outside right-of-way line of any public road, except where mine access roads or haulage roads join ~~such~~ *the* right-of-way line. The department may permit ~~such~~ *the* roads to be relocated or the area affected to lie within 100 feet of the road if, after public notice and opportunity for public hearing in the locality, a written finding is

made that the interests of the public and the landowners affected will be protected.

(8) No strip- or underground-mining may be conducted within 500 feet of active or abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners. The department shall permit an operator to mine near, through, or partially through an abandoned underground mine or closer to an active underground mine if:

(a) the nature, timing, and sequencing of specific strip-mine activities and specific underground-mine activities are jointly approved by the department and the regulatory authority concerned with the health and safety of underground miners; and

(b) ~~such~~ *the* operations will result in improved resource recovery, abatement of water pollution, or elimination of hazards to the health and safety of the public.

(9) The department may not approve an application for a strip- or underground-coal-mining operation if the area proposed to be mined is included within an area designated unsuitable for strip or underground coal mining or within an area under review for this designation under an administrative proceeding, unless in such an area as to which an administrative proceeding has commenced pursuant to this part, the operator making the permit application demonstrates that prior to January 1, 1977, ~~he~~ *the operator* made substantial legal and financial commitments in relation to the operation for which ~~he~~ *the operator* is applying for a permit.

(10) ~~No~~ *A* permit or major permit revision for a strip- or underground-coal-mining operation may *not* be issued unless the applicant has affirmatively demonstrated by its coal conservation plan that ~~no~~ failure to conserve coal will *not* occur. The department may require the applicant to submit any information it considers necessary for review of the coal conservation plan.

(11) Whenever information available to the department indicates that any strip- or underground-coal-mining operation owned or controlled by the applicant *or by any person who owns or controls the applicant* is currently in violation of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, or any law, rule, or regulation of the United States or of any department or agency in the United States pertaining to air or water environmental protection, the department ~~shall~~ *may* not issue a strip- or underground-coal-mining permit or ~~major revision~~ *amendment, other than an incidental boundary revision,* until the applicant submits proof that the violation has been corrected or is in the process of being corrected to the satisfaction of the administering agency.

(12) The department may not issue a strip- or underground-coal-mining permit or ~~major revision~~ *amendment, other than an incidental boundary revision,* to any applicant ~~which~~ *that* it finds, after an opportunity for hearing, owns or controls any strip- or underground-coal-mining operation ~~which~~ *that* has demonstrated a pattern of willful violations of Public Law 95-87, as amended, or any state law required by Public Law 95-87, as amended, of ~~such~~ a nature and duration and with ~~such~~ resulting irreparable damage to the environment to indicate an intent not to comply with the provisions of this part.

(13) Subject to valid existing rights, no strip- or underground-coal-mining operations except those ~~which~~ *that* existed as of August 3, 1977, may be conducted on ~~private~~ lands within the boundaries of units of the national park system, the national wildlife refuge systems, the national wilderness preservation system, the wild and scenic rivers system, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act, or national recreation areas designated by act of congress."

Approved March 30, 1993.

CHAPTER NO. 226

[HB 244]

AN ACT GENERALLY REVISING THE TEACHERS' RETIREMENT LAWS; PROVIDING FOR THE SPLITTING OF WITHDRAWN ACCUMULATED CONTRIBUTIONS TO PRESERVE TAX-DEFERRED STATUS; PROVIDING PROCEDURES TO DETERMINE DISABILITY; REVISING THE DISABILITY RETIREMENT ALLOWANCE; AMENDING SECTIONS 19-4-603, 19-4-901, AND 19-4-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-4-603, MCA, is amended to read:

"**19-4-603. Withdrawal of accumulated contributions —** ***options.*** Any inactive member electing to do so or any person whose membership terminates may withdraw ~~his~~ *the member's or person's* accumulated contributions from ~~his~~ *the* annuity account in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of subsection (1) or (3) of 19-4-303 may elect, without right of revocation, to withdraw ~~his~~ *the member's* accumulated contributions. If ~~he~~ *the member* does not withdraw ~~his~~ *the* accumulated contributions, ~~he~~ *the member* remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of 19-4-303(2) may withdraw ~~his~~ *the member's* accumulated contributions unless ~~he~~ *the member* returns to active membership.

(3) Any person whose membership terminates under the provisions of 19-4-304(4) may withdraw ~~his~~ *the person's* accumulated contributions.

(4) Upon written request, a terminating member may have the payment of the accumulated contributions split. The tax-deferred portion of the contributions may be paid directly to an individual retirement account or other qualified plan designated by the member, and the other portion must be paid directly to the terminating member. The board shall provide forms for making the written request. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the status of the amount."

Section 2. Section 19-4-901, MCA, is amended to read:

"**19-4-901. Eligibility for disability retirement — *determination by board.*** *(1)* Upon the application of a member or of ~~his~~ *the member's* employer for a disability retirement allowance, any member who has 5 or more years of creditable service and who has become disabled while being an active member may be retired by the retirement board the month immediately following the month in which ~~he terminates his~~ employment *is terminated*. In order for a member to be eligible for disability retirement, the retirement board ~~must~~ *shall* certify that ~~he~~ *the member* is mentally or physically incapacitated for the further performance of ~~his~~ *the member's* duties, that ~~his~~ *the* incapacity is likely to be permanent, and that ~~he~~ *the member* should be retired.

(2) In making a determination under subsection (1), the retirement board or its representative may:

(a) order examinations by a physician, psychologist, or vocational rehabilitation counselor;

(b) conduct hearings, administer oaths and affirmations, take depositions, and certify to official acts; and

(c) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records considered necessary as evidence in connection with a claim for disability retirement. The subpoenas issued under this subsection (c) are enforceable as provided in 2-4-104.

(3) The retirement board may secure and pay reasonable compensation for professional services and advice the board determines necessary to carry out the purposes of this part."

Section 3. Section 19-4-902, MCA, is amended to read:

"**19-4-902. Allowance for disability retirement.** ~~(1)~~ Upon retirement for disability, a member ~~shall~~ *must* receive ~~the superannuation allowance prescribed under part 8 of this chapter if he is eligible.~~

~~(2) If he is not eligible for the allowance prescribed under part 8 of this chapter, he shall receive~~ a disability retirement allowance ~~which consists of:~~

~~(a) an annuity which is the actuarial equivalent of his accumulated contributions at the time of retirement; and~~

~~(b) a pension which, together with his annuity, provides a total retirement allowance~~ equal to*:*

(1) one-sixtieth of ~~his~~ *the member's* average final compensation multiplied by the sum of the number of years of ~~his~~ creditable service, service transferred under 19-4-409, and additional service purchased under 19-4-412, if ~~such~~ *the* retirement allowance exceeds one-fourth of ~~his~~ *the member's* average final compensation; ~~otherwise,~~ *or*

(2) a pension ~~which~~ *that,* together with ~~his~~ *the member's* annuity, provides a total retirement allowance equal to one-fourth of ~~his~~ *the member's* average final compensation.

~~(3) No allowance under subsection (2) may exceed one-sixtieth of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.~~"

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved March 30, 1993.

CHAPTER NO. 227

[HB 250]

AN ACT CLARIFYING THAT AN OBJECTION TO A PROPERTY TAX CLASSIFICATION OR APPRAISAL MAY FIRST BE HEARD BY THE DEPARTMENT OF REVENUE; REVISING THE DEPARTMENT'S PROCESS FOR HANDLING AN OBJECTION; REVISING THE PROCEDURE FOR APPEALS TO THE COUNTY AND STATE TAX APPEAL BOARDS; AMENDING SECTIONS 15-1-303, 15-7-102, 15-15-102, AND 15-15-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-303, MCA, is amended to read:

"**15-1-303. Penalty for refusal to furnish information.** (1) If ~~any~~ *a* person ~~shall refuse~~ *refuses to allow* inspection of any books or records when requested by the department or its authorized agent or ~~shall refuse or neglect~~ *refuses or neglects* to furnish any information called for by the department in the performance of its official duties relating to the assessment and taxation of property, the department shall make ~~such~~ *a* determination and assessment of ~~his or its~~ *the* property as in its judgment appears to be just and equitable and may add to ~~its~~ *the* assessment ~~thus made~~ *an amount* not ~~more than~~ *to exceed* 20% ~~thereof~~ *of the assessment* as a penalty for ~~such~~ *the* refusal or neglect. The department shall immediately notify the person ~~so~~ assessed of its action, either by certified ~~or registered~~ mail or by personal service of ~~such~~ *the* notice.

(2) Upon receiving an assessment made pursuant to subsection (1), the taxpayer has the following remedies:

(a) Within 15 days after receipt of the assessment, ~~or by April 1, whichever is later, he~~ *the taxpayer* may request an informal conference with the agent of the department. At the conference, the taxpayer may present evidence in mitigation or extenuation of ~~his~~ *the* failure to supply the information requested by the department. Within 10 days after the conference, the agent of the department shall notify the taxpayer by certified mail whether the assessment will be modified. The department may modify the penalty if the taxpayer presents sufficient evidence in mitigation or extenuation of ~~his~~ *the* failure to supply the information sought by the department and if it finds that the taxpayer did not willfully refuse to supply the information.

(b) If the taxpayer is aggrieved as a result of the informal conference, ~~he~~ *the taxpayer* may appeal to the county tax appeal board within 20 days after receipt of the decision of the department. The county tax appeal board has the authority to modify the:

(i) assessment only if it finds that the assessment exceeds 100% of the value of the property specified in 15-8-111; and

(ii) penalty if the taxpayer presents by a preponderance of the evidence facts in mitigation or extenuation of ~~his~~ *the* failure to supply the information ~~which~~ *that* the department sought.

(c) If the county tax appeal board modifies a penalty pursuant to subsection (2)(b)(ii), it may not reduce the penalty to less than 20% of the assessment, or if the assessment is modified pursuant to subsection (2)(b)(i), to less than 20% of the modified assessment.

(3) Either party aggrieved as a result of the decision of the county tax appeal board may appeal to the state tax appeal board within ~~20~~ *30 calendar* days after receipt of the county tax appeal board's decision. When deciding an appeal brought under this subsection, the state tax appeal board ~~must~~ *shall* follow the provisions of subsections (2)(b) and (2)(c).

(4) Either party aggrieved as a result of the decision of the state tax appeal board may seek judicial review pursuant to 15-2-303."

Section 2. Section 15-7-102, MCA, is amended to read:

"**15-7-102. Notice of classification and appraisal to owners — appeals.** (1) ~~It shall be the duty of the~~ *The* department of revenue *shall,* through its agent as specified in subsection (2), ~~to cause to be mailed~~ *mail* to each owner ~~and~~ *or* purchaser under contract for deed a notice of the classification of the land owned or being purchased ~~by him~~ and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) The county assessor shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of ~~his~~ *the* property and of changes over the prior tax year.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of ~~his~~ *the* land or improvements, ~~he~~ *the owner* may ~~submit his~~ *request an assessment review by submitting an* objection in writing to the ~~department's agent~~ *department, on forms provided by the department for that purpose, within 15 days after receiving the notice of classification and appraisal from the department. The review must be conducted*

informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. ~~In an objection to the appraisal of the property~~ *As a part of the review,* the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer ~~as evidence of~~ *in support of the taxpayer's opinion as to* the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of ~~hearing and hear any testimony or other evidence that the taxpayer may desire to produce at that time and afford the opportunity to other interested persons to produce evidence at the hearing~~ *the review.* After the ~~hearing~~ *review,* the department shall determine the true and correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department ~~must~~ *shall* state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land ~~shall~~ *must* be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a ~~hearing~~ *review* as provided in subsection (3) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted ~~his~~ *an* objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. ~~Each county appraiser~~ *The department* shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved ~~at~~ *by* the classification ~~and/or the~~ *or* appraisal made by the department *after the review provided for in subsection (3),* ~~he shall have~~ *the property owner has* the right to *first* appeal to the county tax appeal board and then to the state tax appeal board, whose findings ~~shall be~~ *are* final subject to the right of review in the courts. *The appeal to the county tax appeal board must be filed within 15 days after notice of the department's determination is mailed to the taxpayer.* ~~The property owner may appeal the base valuation and the classification determination.~~ A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 3. Section 15-15-102, MCA, is amended to read:

"**15-15-102. Application for reduction in valuation.** ~~No reduction may be made in the~~ *The* valuation of property *may not be reduced by the county tax appeal board* unless *either* the ~~party affected~~ *taxpayer* or ~~his~~ *the taxpayer's* agent makes and files *a written application for reduction* with the county tax appeal board. *The application must be filed* on or before the first Monday in June or 15 days after receiving *either* a notice of classification and appraisal *or* *determination after review under 15-7-102(3)* from the department of revenue or its agent, whichever is later~~, a written application for reduction~~. *If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department.* The application ~~shall~~ *must* state the post-office address of the applicant, ~~shall~~ specifically describe the property involved, and ~~shall~~ state the facts upon which it is claimed the reduction should be made."

Section 4. Section 15-15-103, MCA, is amended to read:

"**15-15-103. Examination of applicant — failure to hear application.** (1) Before the county tax appeal board grants any application or makes any reduction applied for, it must examine on oath the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in 15-15-102, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be taken in shorthand or by stenotype or electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded, together with all exhibits, to the state tax appeal board. The date of hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, *the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The county treasurer shall enter the appraisal or classification sought in the application in the assessment book. An application is not automatically granted for the following appeals:* ~~except that~~

(a) those listed in 15-2-302~~,~~*; and*

(b) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current 60-day session ~~the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The county treasurer shall enter the appraisal or classification sought in the application in the assessment book~~."

Section 5. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to objections submitted under 15-7-102(3) after December 31, 1992.

Approved March 30, 1993.

CHAPTER NO. 228

[HB 279]

AN ACT ESTABLISHING REQUIREMENTS FOR LIQUOR AGENCY STORE FRANCHISE AGREEMENTS; PROVIDING PROCEDURES FOR AGENCY FRANCHISE AGREEMENT TERMINATION; AMENDING SECTIONS 16-1-106, 16-2-101, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency *franchise* agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Beer importer" means a person other than a brewer who imports malt beverages.

(6) "Brewer" means a person who produces malt beverages.

(7) "Department" means the department of revenue.

(8) "Immediate family" means a spouse, dependent children, or dependent parents.

(9) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(10) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(11) "Liquor" means an alcoholic beverage except beer and table wine.

(12) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared ~~therefrom~~ *from carbohydrates* and with or without other wholesome products suitable for human food consumption.

(13) "Package" means a container or receptacle used for holding an alcoholic beverage.

(14) "Posted price" means the retail price of liquor and table wine as fixed and determined by the department and in addition ~~thereto~~ an excise and license tax as provided in this code.

(15) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(16) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(17) "Rules" means rules published by the department pursuant to this code.

(18) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(19) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor and table wine.

(20) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, ~~and~~ which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(21) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of ~~such~~ *the* beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(22) "Table wine" means wine ~~as defined below which~~ *that* contains not more than 16% alcohol by volume.

(23) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(24) "Warehouse" means a building or structure located in Montana owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(25) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined ~~as above~~ *in this subsection* but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-2-101, MCA, is amended to read:

"16-2-101. Establishment and closure of state liquor stores — *agency franchise agreement* — kinds and prices of liquor and table wine. (1) (a) The department shall establish and maintain one or more stores, to be known as "state liquor stores", as the department finds feasible for the sale of liquor and table wine in accordance with the provisions of this code and the rules ~~made thereunder~~ *adopted under this code.*

(b) The department shall enter into an agency *franchise* agreement or employ the necessary help to operate ~~said~~ *the* stores and shall designate the duties to be performed by the agent or employees.

(c) Once established, a store ~~shall~~ *may* not be closed, converted to an agency store, or sold by the department unless:

(i) the store is returning less than a 10% profit to the state; or

(ii) the closure or sale is approved by the legislature.

(2) The department may from time to time fix the prices at which the various classes, varieties, and brands of liquor and table wine may be sold, and prices ~~shall~~ *must* be the same at all state stores.

(3) (a) State liquor stores must be considered for closure, conversion, or sale only when a store lease expires. Prior to the expiration of a lease, the department may conduct a financial profitability analysis using the criteria in subsection (1)(c)(i). In computing profit levels of state-operated stores, the costs of the licensing bureau and the legal and enforcement division, other than inspection costs directly attributable to liquor stores, may not be included as expenses. The revenue oversight committee must be informed of all plans for conversion, sale, or closure of state liquor stores.

(b) ~~No agency~~ *Agency* stores ~~shall~~ *may not* be located in or adjacent to grocery stores in communities with populations over 3,000. This provision is applicable only to agency agreements entered into after May 11, 1987.

(4) Agency stores must receive commissions based on adjusted gross sales as follows:

(a) a 10% commission for agencies in communities with less than 3,000 in population;

(b) a commission established by competitive bidding for agencies in communities with 3,000 or more in population.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and may be renewed every 10 years if the requirements of the agency franchise agreement have been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance throughout the term of the agency franchise agreement in an amount established by the department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from or in connection with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement;

(c) require the agent to provide performance security in an amount equal to the average monthly value of inventory at cost based on the most recent 12-month period of inventory value at the agency store location or, if a 12-month history is not available, the department's estimate of the average value; and

(d) specify the reasonable service and space requirements that the agent will provide throughout the term of the agency franchise agreement.

(6) The commission percentage that the department pays the agent under an agency franchise agreement may be reviewed every 5 years at the request of either party. If the agent concurs, the department may adjust the commission percentage to be paid during the remaining term of the agency franchise agreement to a commission percentage that is equal to the average commission percentage being paid agents with similar sales volumes if:

(a) the agent's commission percentage is less than the average; and

(b) all the requirements of the agency franchise agreement have been satisfactorily performed.

(7) The liability insurance and performance security requirements may be reviewed every 5 years at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the loss of state assets or from the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of insurance coverage may not be less than the minimum requirements of the department of administration.

(8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term and except for a commission percentage that may be negotiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.

(b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the department shall notify the agent of that determination.

(c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.

(d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.

(e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to be inadequate or not in the state's best interests. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the adjusted commission percentage is inadequate or not in the state's best interests. The department may, after the hearing, adjust the commission percentage if the agent shows that the commission percentage is inadequate or not in the best interests of the state. If the department increases the commission percentage rate, the department shall set forth its findings and conclusions in writing and inform the agent and the other persons who offered to enter into an agency agreement at the adjusted commission rate.

(9) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement or in the following cases:

(a) Except in the case of suspected theft or unauthorized use of state assets, the department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the agency franchise agreement termination and request a hearing within 30 days. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(b) If an agent is suspected of theft or unauthorized use of state assets, the department may terminate the agency franchise agreement and retrieve its assets immediately. If an agency franchise agreement is terminated, the agent may contest the agency franchise agreement termination and request a hearing within 30 days of the department's retrieval of assets. The agency store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(10) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(11) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

(12) An agency agreement in effect on [the effective date of this act] must be converted upon request of the agent and approval of the department to a 10-year agency franchise agreement pursuant to subsections (5) through (11) without competitive bids or proposals.

~~(5)~~*(13)* The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%."

Section 3. Section 18-4-313, MCA, is amended to read:

"**18-4-313. Contracts — terms, extensions, and time limits.** (1) Unless otherwise provided by law, ~~no~~ *a* contract, lease, or rental agreement for supplies or services may *not* be made for a longer period than 3 years; however, the department may contract for the lease or purchase of telecommunications equipment and systems, data processing equipment, *the department of revenue liquor agencies,* and the department of social and rehabilitation services medicaid management information system (MMIS) for a period not to exceed 10 years. A contract, lease, or rental agreement may be extended or renewed, notwithstanding the time limits stated in this section, if the terms of the extension or renewal, if any, are included in the solicitation and funds are available for the first fiscal period at the time of the agreement. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds ~~therefor~~ *for the fiscal periods.*

(2) Prior to the extension or renewal of a contract, it must be determined in writing that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

Section 4. **Continuity of existing agency agreements.** An existing agency agreement that terminates after [the effective date of this act] but before it is converted to an agency franchise agreement is automatically extended until an agency franchise agreement is signed or for 6 months from [the effective date of this act], whichever occurs first.

Section 5. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 16, chapter 2, part 1, and the provisions of Title 16, chapter 2, part 1, apply to [section 4].

Section 6. **Applicability.** [This act] applies to all agency franchise agreements entered into 6 months after [the effective date of this act].

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved March 30, 1993.

CHAPTER NO. 229

[HB 300]

AN ACT INCREASING THE TIME LIMIT FOR FILING FOR A REFUND OF THE TELEPHONE EXCHANGE ACCESS FEE FROM 2 YEARS TO 5 YEARS; AND AMENDING SECTION 10-4-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-4-205, MCA, is amended to read:

"**10-4-205. Refund to provider for excess payment of fee.** If the amount paid by a provider to the department of revenue exceeds the amount of fee owed, the department of revenue shall refund the amount of the excess payment, with interest ~~thereon~~ *on the excess payment* at the rate of 0.5% a month or fraction of a month from the date of payment of the excess until the date of the refund. ~~No~~ *A* refund may *not* be made to a provider who fails to claim the refund within ~~2~~ *5* years after the due date for filing of the return with respect to which the claim for refund relates."

Approved March 30, 1993.

CHAPTER NO. 230

[HB 309]

AN ACT ALLOWING PERSONS WITH INCOME GREATER THAN THE MEDICALLY NEEDY INCOME LEVEL TO QUALIFY FOR MEDICAID BY MAKING A CASH PAYMENT TO THE STATE; PROVIDING A RESOURCE TEST FOR PREGNANT WOMEN AND INFANTS; AMENDING SECTION 53-6-131, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-6-131, MCA, is amended to read:

"**53-6-131. Eligibility requirements.** (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.) or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if ~~he~~ *that person* were to apply for such assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, ~~he~~ *the person* would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the medically needy income level specified for federally aided categories of assistance and ~~his~~ *the person's* resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance~~,~~*:*

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance ~~and his~~ *or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and*

(B) has resources *that* are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The Montana medicaid program shall pay for the premiums necessary for participation in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare deductibles and coinsurance for a medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

(3) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(4) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(5) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), *and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.*

(6) A person described in subsection (5) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7)."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved March 30, 1993.

CHAPTER NO. 231

[HB 490]

AN ACT PROVIDING THAT THE STATE GASOLINE TAX IS IMPOSED UPON ALL GASOLINE IMPORTED INTO MONTANA; DEFINING "IMPORTER"; AND AMENDING SECTIONS 15-70-201, 15-70-202, 15-70-204, 15-70-209, AND 15-70-221, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-201, MCA, is amended to read:

"**15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation gasoline, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as herein provided for.

(3) "Aviation gasoline" means gasoline or any other liquid fuel by whatsoever name such liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all such gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks thereat or gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks thereat or gasoline imported into this state and placed in storage at refineries or pipeline terminals shall be deemed to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from such tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from such tanks, refinery, or terminal, such gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, shall be deemed to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) any exporter as defined in subsection (8);

(e) any dealer licensed as of January 1, 1969, except a dealer at an established airport;

(f) any person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation gasoline, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" includes and means to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of any gasoline shipped or transported into this state from point of origin without this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

~~(11)~~*(12)* "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

~~(12)~~*(13)* "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

~~(13)~~*(14)* "Use" includes and means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision thereof."

Section 2. Section 15-70-202, MCA, is amended to read:

"**15-70-202. License, fee, and security of gasoline distributors.** (1) All gasoline distributors, including exporters, as defined in 15-70-201~~(8)~~, *and a person who imports, as defined in 15-70-201,* prior to the commencement of doing business, shall file an application for a license with the department of transportation on forms prescribed and furnished by the department setting forth the information as may be requested by the department. Each distributor shall at the same time file security with the department in an amount to be determined by the department. However, the required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license ~~which shall continue~~ *that is* in force until surrendered or canceled.

(2) Any person who engages in the wholesale distribution of gasoline in this state exercising the option under 15-70-201(6)(c) shall pay an annual license fee of $200 ~~and upon renewal of the license shall pay an annual fee of $200~~.

(3) "Security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under ~~such~~ conditions as the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation."

Section 3. Section 15-70-204, MCA, is amended to read:

"**15-70-204. Gasoline license tax — rate.** (1) Every distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to 1 cent for each gallon of aviation gasoline, which ~~shall be~~ *is* allocated to the department of transportation as provided by 67-1-301, ~~as amended,~~ and 20 cents for each gallon of all other gasoline distributed by ~~him~~ *the distributor* within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported ~~shall~~ *may* not be included in the measure of the distributor's license tax *unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.*

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 4. Section 15-70-209, MCA, is amended to read:

"**15-70-209. Information reports — confidentiality.** (1) A person receiving gasoline, including every exporter, *importer,* common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships gasoline from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of $25 for each failure or refusal~~; however, if~~. *If* a person establishes to the satisfaction of the department that ~~his~~ *the* failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. Nothing in this section may be construed to prohibit:

(a) the delivery to a person or ~~his~~ *the person's* authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on motor fuels or the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or ~~his~~ *a* representative *of the officer* only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 5. Section 15-70-221, MCA, is amended to read:

"**15-70-221. Refund or credit authorized.** (1) ~~Any~~ *A* person who ~~shall purchase and use~~ *purchases and uses* any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, ~~or~~ *for* operating or propelling stationary gasoline engines~~,~~ *or* tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state ~~shall be~~ *is* allowed a refund of the amount of tax paid directly or indirectly on the gasoline so used. ~~Such~~ *The* refund ~~or drawback should in no instance~~ *may not* exceed the tax paid or to be paid to the state and ~~no~~ *a* refund ~~shall~~ *may not* be allowed ~~of~~ *for* that portion of the tax per gallon upon aviation gasoline allocated to the department of transportation by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously ~~shall be~~ *is* allowed a credit or refund of the amount of tax so paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline for which the distributor has *not* received ~~no~~ consideration from or on behalf of the purchaser. The distributor ~~shall~~ *must* have declared the accounts of the purchaser worthless and claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due on the collected amount must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) Any person who purchases and exports for sale, use, or consumption outside Montana any gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax so paid *unless the person is not licensed and is not paying the tax to the state the fuel is destined for.* ~~upon~~ *The credit or refund will be made upon* completion of the information reports required under 15-70-209 and presentation to the department of ~~such~~ other proof of delivery outside Montana as it may by rule require."

Approved March 30, 1993.

CHAPTER NO. 232

[HB 329]

AN ACT REVISING THE MANNER OF SELECTION AND THE DUTIES OF ELECTION JUDGES; AND AMENDING SECTIONS 13-4-102, 13-4-105, 13-4-201, AND 13-4-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-4-102, MCA, is amended to read:

"**13-4-102. Manner of choosing election judges.** (1) Election judges shall be chosen from lists of qualified registered electors for each precinct in the county, submitted at least 45 days before the primary election in even-numbered years by the county central committees of the political parties eligible to nominate candidates in the primary.

(2) The list of each party may contain more names than the number of election judges to be appointed. The names of those not appointed as election judges shall be given to the election administrator for use in making appointments to fill vacancies.

(3) Each board of election judges shall contain judges representing all parties that have submitted lists as provided in subsection (1). No more than a majority may be appointed from the list of one political party in each precinct. If any of the political parties entitled to do so fail to submit a list, the governing body shall, insofar as possible, appoint judges so that all parties eligible to participate in the primary are represented on each board.

(4) The election administrator shall make appointments to fill vacancies from the list provided for in subsection (2)~~, or if~~. *If* the list is insufficient~~, any qualified registered elector from the county may be appointed~~ *or if one or more of the eligible political parties fails to submit a list, the election administrator may randomly select, either by manual drawing or by computer, sufficient qualified registered electors in the county to fill election judge vacancies in all precincts.*

(5) An elector chosen to potentially serve as an election judge must be notified of selection at least 30 days before the primary election in even-numbered years. Each elector who agrees to serve as an election judge shall attend a training class conducted under 13-4-203 and shall continue to serve as assigned by the election administrator for 2 years."

Section 2. Section 13-4-105, MCA, is amended to read:

"**13-4-105. Oath of judges.** Before ~~votes are cast~~ *beginning service on each election day,* the election judges must take and subscribe the official oath prescribed by the constitution. The election judges may administer the oath to each other."

Section 3. Section 13-4-201, MCA, is amended to read:

"**13-4-201. Duties of chief election judge.** The chief election judge shall be responsible for the conduct of the proceedings in the polling place, shall assign duties to other members of the board of election judges, and, *if assigned to work through the close of the polls,* shall be responsible for the return *of or for arranging the return* of all ballots and election supplies to the election administrator."

Section 4. Section 13-4-207, MCA, is amended to read:

"**13-4-207. Judges to remain at polls — emergency provisions —** ***part-time service.*** (1) Election judges may not leave the premises on which the polling place is located during the hours they are assigned to work unless permission to leave is given by the chief election judge for that precinct. Permission may be granted only for illness or a family emergency.

(2) A chief election judge must obtain the permission of the election administrator to leave the polling place premises because of illness or an emergency. If the chief judge is excused, the election administrator shall appoint one of the other judges to act as chief election judge.

(3) The time of departure and reason for leaving shall be entered near the oath form subscribed by the election judge or on a form provided by the election administrator. The chief election judge shall sign the entry.

(4) The election administrator may appoint a judge to replace an excused judge.

(5) The election administrator may assign a judge or chief election judge to work less than a full polling day, but at least three judges, including a chief election judge, must be on duty during the time that the polls are open."

Approved March 31, 1993.

CHAPTER NO. 233

[HB 340]

AN ACT CREATING THE OFFENSE OF ATTEMPT TO PURCHASE AN INTOXICATING SUBSTANCE; PROVIDING A PENALTY; AND AMENDING SECTION 45-5-624, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-624, MCA, is amended to read:

"**45-5-624. Unlawful *attempt to purchase or* possession of an intoxicating substance — interference with sentence or court order.** (1) (a) A person under the age of 19 years commits the offense of possession of an intoxicating substance if ~~he~~ *the person* knowingly consumes or has in ~~his~~ *the person's* possession an intoxicating substance. The person need not be consuming or in possession of the intoxicating substance at the time of ~~his~~ arrest to violate this subsection.

(b) A person under the age of 21 commits the offense of possession of an intoxicating substance if ~~he~~ *the person* knowingly has in ~~his~~ *the person's* possession an alcoholic beverage, except as provided in 16-6-305 and except that ~~he~~ *a person* does not commit the offense if ~~he~~ *the person* consumes or gains possession of the beverage because it was lawfully supplied to ~~him~~ *the person* under 16-6-305 or when in the course of ~~his~~ employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall if the person:

(a) is less than 18 years of age, be fined not to exceed $50 and:

(i) have ~~his~~ *the person's* driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if ~~he~~ *the person* was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) be ordered to perform community service;

(iii) have ~~his~~ *the person's* driver's license suspended if convicted of a second or subsequent offense under this section; or

(iv) be sentenced to any combination of the penalties provided for in subsections (2)(a)(i) through (2)(a)(iii); or

(b) is 18 years of age or older, be fined an amount not to exceed $50 for a first offense, $100 for a second offense, and $200 for a third offense or be fined an amount not to exceed $300 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a fourth or subsequent offense and:

(i) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, all costs of ~~his~~ participation in a community-based substance abuse information course;

(ii) have ~~his~~ *the person's* driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if ~~he~~ *the person* was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to perform community service; or

(iv) be sentenced to any combination of the penalties provided for in subsections (2)(b)(i) through (2)(b)(iii).

(3) A person under the age of 21 commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed $50.

~~(3)~~*(4)* A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when ~~he~~ *the defendant* failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

~~(4)~~*(5)* A person commits the offense of interference with a sentence or court order if ~~he~~ *the person* purposely or knowingly causes ~~his~~ *a* child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both."

Section 2. **Presumption of legal age.** For purposes of this title and 45-5-623, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(1) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(2) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(3) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 16, chapter 3, part 3, and the provisions of Title 16, chapter 3, part 3, apply to [section 2].

Approved March 31, 1993.

CHAPTER NO. 234

[HB 373]

AN ACT PROVIDING A STATUTORY APPROPRIATION FOR CERTAIN AUDIT COSTS; AMENDING SECTIONS 5-13-403 AND 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-13-403, MCA, is amended to read:

"**5-13-403. Audit account — appropriation and expenditures.** All money for audits transferred to the legislative auditor as provided in 5-13-402 must be deposited in the state special revenue fund in the state treasury to the credit of the office of the legislative auditor. The money ~~so~~ deposited *that is in excess of general and pay plan appropriations* is ~~hereby~~ *statutorily* appropriated, *as provided in 17-7-502,* and may be expended by the legislative auditor to pay expenses incurred in auditing state agencies pursuant to an operational plan approved by the legislative audit committee."

Section 2. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; *5-13-403;* 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws

of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved March 31, 1993.

CHAPTER NO. 235

[HB 561]

AN ACT AMENDING THE MONTANA HUMAN RIGHTS ACT TO PROHIBIT DISCRIMINATION BY AN AGENT OF AN EMPLOYER; AND AMENDING SECTION 49-2-101, MCA.

WHEREAS, the employment discrimination provision of Montana law, commonly called the Montana Human Rights Act, Title 49, chapter 2, MCA, prohibits discriminatory acts by an employer; and

WHEREAS, the Montana Human Rights Act does not include an agent of an employer in the definition of employer; and

WHEREAS, certain discriminatory employment acts, including sexual harassment, may be committed by an agent of the employer, such as a supervisor; and

WHEREAS, under the present Montana Human Rights Act, a complainant has no remedy against an agent of an employer; and

WHEREAS, the federal counterpart of the employment discrimination provision of the Montana Human Rights Act, Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(b), does make the agent of an employer responsible for discriminatory acts committed by that agent.

THEREFORE, it is appropriate for the Legislature to amend the Montana Human Rights Act to make an agent of an employer responsible for discriminatory acts committed by that agent.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-2-101, MCA, is amended to read:

"**49-2-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment ~~therefor~~. It includes without limitation the right to incur and defer debt ~~which~~ *that* is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of ~~his~~ *the person's* business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons, *or an agent of the employer*, but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, ~~which~~ *that* is or will be used as the sleeping quarters of its occupants.

(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(13) "National origin" means ancestry.

(14) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(15) (a) "Physical or mental handicap" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental handicap includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(16) (a) "Public accommodation" means a place ~~which~~ *that* caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (16), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

(17) "Staff" or "commission staff" means the staff of the commission for human rights."

Approved March 31, 1993.

CHAPTER NO. 236

[HB 566]

AN ACT AUTHORIZING A SCHOOL DISTRICT TO WAIVE BONDING REQUIREMENTS FOR BUILDING OR CONSTRUCTION PROJECTS THAT COST LESS THAN $7,500; AMENDING SECTION 18-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-201, MCA, is amended to read:

"**18-2-201. Bonding requirements.** (1) Except as otherwise provided in 85-1-219 and subsections (4) ~~and (5)~~ *through (6)* of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body ~~shall contract~~ *contracts* with any person or corporation to do any work for the state, county, or municipality or other public body, city, town, or district, ~~such~~ *the* board, council, commission, trustees, or body shall require the corporation, person, or persons with whom ~~such~~ *the* contract is made to make, execute, and deliver to ~~such~~ *the* board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that ~~such~~ *the* corporation, person, or persons shall:

(a) faithfully perform all of the provisions of ~~such~~ *the* contract;

(b) pay all laborers, mechanics, subcontractors, and ~~materialmen~~ *material suppliers*; and

(c) pay all persons who ~~shall~~ supply ~~such~~ *the* corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for ~~the carrying on of such~~ *performing the* work.

(2) A copy of ~~such~~ *the* bond ~~shall~~ *must* be filed with the county clerk and recorder of the county ~~where such~~ *in which the* work is *to be* performed or *the* improvement *is to be* made or, if *the work is* to be performed *or the improvement is to be made* in more than one county, then with the county clerk of either county, except in cases of cities and towns, in which case ~~such~~ *the* bond ~~shall~~ *must* be filed with the city or town clerk ~~thereof~~.

(3) Notwithstanding the provisions of subsections (1) and (2) ~~above~~, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, ~~materialmen~~ *material suppliers*, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, or bank draft, drawn or issued by any banking corporation incorporated under the laws of the state of Montana or by a national banking association located in Montana; or

(c) certificates of deposit or money market certificates issued by any bank or savings and loan association licensed to do business in Montana.

(4) Notwithstanding the provisions of subsections (1) and (2) ~~above~~, any board, council, commission, trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu of a bond from a licensed surety company, accept a good and sufficient bond with two or more sureties acceptable to the governmental body.

(5) ~~The~~ *Except as provided in subsection (6), the* state or other governmental entity may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than $5,000.

(6) A school district may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than $7,500."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved March 31, 1993.

CHAPTER NO. 237

[HB 634]

AN ACT AUTHORIZING THE GOVERNOR TO CHOOSE AGENCIES FOR A PILOT PROJECT TO EXPLORE AND IMPLEMENT NEW MANAGEMENT STYLES AND ORGANIZATIONAL STRUCTURES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** (1) The purpose of the pilot projects outlined in [sections 1 through 3] is to encourage agencies to explore new management styles to determine the most effective and efficient method of management. The success of a particular management style may be measured in quantitative terms, such as money saved and units of work accomplished, or in qualitative terms, such as ease of administration and the morale and overall productivity of employees.

(2) The pilot projects must give the agency the opportunity to explore a different organizational structure below the division level in order to determine the most efficient and effective model by evaluating the size and structure of the work unit and the span of control.

Section 2. **Management evaluation pilot project — implementation — tracking.** (1) The governor shall choose a minimum of two agencies or parts of two agencies for a pilot project to examine the efficacy of using different management methods.

(2) The agencies shall review the current management methods and, in collaboration with the governor, implement new methods for trial purposes. Ideally, the agencies would presently be using different management methods.

(3) The following information must be documented by the agency during the course of the pilot project:

(a) the change to be implemented;

(b) the reasons for the change;

(c) the goal established at the outset of the project;

(d) the measures of success to be used in evaluation;

(e) the periodic evaluation of success or failure of the project; and

(f) the adjustments made to the project, the goals, and the measures of success in order to better meet the stated goals.

Section 3. **Organizational structure evaluation pilot project — implementation — tracking.** (1) The governor shall choose a minimum of two agencies or parts of two agencies, which may be the same agencies as selected under [section 2], for a pilot project to examine the efficacy of using a different organizational structure.

(2) The agencies shall review the current organizational structure that consists of divisions, bureaus, and sections and evaluate the size and structure of the work units and the span of control. The ideal span of control is five to eight persons, depending on the complexity level of the supervised tasks.

(3) The following information must be collected and evaluated by the agency:

(a) the reason for existence of the part of the organizational structure, such as a division, bureau, or section, and the possibility of restructuring;

(b) the size of the current staffing level of the work unit and any need for change;

(c) the need for the traditional hierarchy or the possibility of a different structuring of the work unit; and

(d) the span of control of the work unit and any changes necessary for a more efficient and effective use of resources.

(4) The agency shall, in collaboration with the governor, implement changes to the organizational structure for trial purposes. The following information must be documented by the agency during the course of the pilot project:

(a) the change to be implemented;

(b) the reasons for the change;

(c) the goal established at the outset of the project;

(d) the measures of success to be used in evaluation;

(e) the periodic evaluation of success or failure of the project; and

(f) the adjustments made to the project, the goals, and the measures of success in order to better meet the stated goals.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Section 5. **Termination.** [This act] terminates June 30, 1995.

Approved March 31, 1993.

CHAPTER NO. 238

[SB 46]

AN ACT GENERALLY REVISING THE LAW CONCERNING PARTNERSHIPS; REVISING PROVISIONS GOVERNING PARTNERSHIP PROPERTY; REVISING THE RELATIONSHIP BETWEEN PARTNERS AND PERSONS DEALING WITH THE PARTNERSHIP; REVISING THE RELATIONSHIP OF PARTNERS TO THE PARTNERSHIP AND TO OTHER PARTNERS; REVISING THE LAW CONCERNING TRANSFEREES AND CREDITORS OF

PARTNERS; PROVIDING FOR A PARTNER'S DISSOCIATION; REVISING THE LAW ON WINDING UP A PARTNERSHIP'S BUSINESS; PROVIDING FOR MERGERS AND CONSOLIDATIONS OF PARTNERSHIPS; AMENDING SECTIONS 31-2-106, 35-10-102, 35-10-103, 35-10-104, 35-10-105, 35-10-201, 35-10-202, 35-10-203, 35-10-301, 35-10-302, 35-10-303, 35-10-305, 35-10-307, 35-10-308, 35-10-309, 35-10-401, 35-10-402, 35-10-403, 35-10-405, 35-10-406, 35-10-505, 35-10-602, AND 35-10-609, MCA; AND REPEALING SECTIONS 35-10-303, 35-10-304, 35-10-306, 35-10-404, 35-10-501, 35-10-502, 35-10-503, 35-10-504, 35-10-507, 35-10-601, 35-10-603, 35-10-604, 35-10-605, 35-10-606, 35-10-607, 35-10-608, 35-10-610, 35-10-611, 35-10-612, 35-10-613, 35-10-614, AND 35-10-615, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-10-102, MCA, is amended to read:

"**35-10-102. Definitions.** In this chapter, the following definitions apply:

(1) ~~"Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvency act.~~

~~(2)~~ "Business" includes every trade, occupation, or profession.

~~(3) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.~~

~~(4) "Court" includes every court and judge having jurisdiction in the case.~~

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

(5) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

~~(5)~~*(6)* "Person" ~~includes individuals, partnerships, corporations, and other associations~~ *means an individual; corporation; business trust; estate; trust; partnership; association; joint venture; government; governmental subdivision, agency, or instrumentality; or any other legal or commercial entity.*

~~(6) "Real property" includes land and any interest or estate in land.~~

(7) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(8) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(9) "Statement" means a statement of partnership authority under [section 17], a statement of denial under [section 18], a statement of dissociation under [section 42], a statement of dissolution under [section 49], a statement of merger under [section 57], or an amendment or cancellation of the foregoing.

(10) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance."

Section 2. Section 35-10-103, MCA, is amended to read:

"**35-10-103. ~~Interpretation of knowledge~~ *Knowledge* and notice.** (1) A person ~~has "knowledge" of~~ *knows* a fact ~~within the meaning of this chapter not only when he~~ *if the person* has ~~actual~~ knowledge ~~thereof but also when he has knowledge of such other facts as in the circumstances show bad faith~~ *of it.*

(2) A person has ~~"~~notice~~"~~ of a fact ~~within the meaning of this chapter when~~ *if* the person ~~who claims the benefit of the notice~~:

(a) ~~states the fact to such person~~ *knows of it*; ~~or~~

(b) has received a notification of it; or

(c) has reason to know it exists from all of the facts known to that person at the time in question.

(3) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in the ordinary course of business, whether or not the other person learns of it.

(4) A person receives notification when it:

(a) comes to the person's attention; or

(b) ~~delivers through the mail or by other means of communication a written statement of the fact to such person or to a proper person at his~~ *is duly delivered at the person's* place of business or ~~residence~~ *at any other place held out by the person as a place for receiving communications.*

(5) Except as provided in subsection (6), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership but is not effective as such if the partner committed or consented to a fraud on the partnership."

Section 3. Section 35-10-104, MCA, is amended to read:

"**35-10-104.** ~~**Rules**~~ ***Uniformity* of *application and* construction.** ~~(1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.~~

~~(2) The law of estoppel shall apply under this chapter.~~

~~(3) The law of agency shall apply under this chapter.~~

~~(4)~~ This chapter ~~shall~~ *must* be ~~so interpreted~~ *applied* and construed ~~as~~ to ~~effect~~ *effectuate* its general purpose to make uniform the law *with respect to the subject of this chapter* ~~of those~~ *among* states ~~which enact~~ *enacting* it.

~~(5) This chapter shall not be construed so as to impair the obligations of any contract existing on July 1, 1947, or to affect any action or proceedings begun or right accrued before July 1, 1947.~~"

Section 4. **Effect of partnership agreement — nonwaivable provisions.** (1) Except as provided in subsection (2), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary the rights and duties under [section 6] except to eliminate the duty to provide copies of statements to all of the partners;

(b) unreasonably restrict a partner's right of access to books and records under 35-10-402(2);

(c) eliminate the duty of loyalty under 35-10-405(3);

(d) unreasonably reduce the duty of care under 35-10-405(4);

(e) eliminate the obligation of good faith and fair dealing under 35-10-405(5);

(f) vary the power to withdraw as a partner under [section 36(1)], except to require the notice to be in writing;

(g) vary the right to expulsion of a partner by a court in the events specified in [section 36(5)];

(h) vary the requirement to wind up the partnership business in cases specified in [section 44(4), (5), or (6)]; or

(i) restrict rights of third parties under this chapter.

Section 5. Section 35-10-105, MCA, is amended to read:

"**35-10-105.** ~~**Rules for cases not provided for in this chapter**~~ ***Supplemental principles of law.*** *(1)* ~~In any case not provided for in this chapter~~ *Unless displaced by a particular provision of this chapter,* the ~~rules~~ *principles* of law and equity~~, including the law merchant, shall govern~~ *supplement this chapter.*

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in 31-1-106."

Section 6. **Execution, filing, and recording of statements.** (1) A statement may be filed in the office of the secretary of state. A certified copy of a statement that is filed in an office in another state may be filed in the office of the secretary of state. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(2) A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement in the office of the secretary of state does not have the effect provided for recorded statements in this chapter.

(3) A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by this chapter. The statement must be in the English language. An individual who executes a statement as or on behalf of a partner or other person named as a partner in a statement shall state beneath or opposite the person's signature the person's name and the capacity in which the person signs. The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation under penalties of false swearing by each person executing the document that the facts stated are true.

(4) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(5) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(6) The secretary of state shall establish by rule fees for filing statements, issuing certificates, copying statements, priority handling, transmitting or filing facsimile copies, and providing computer-generated information. The fees must be reasonably related to the costs of processing the statements and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section. The secretary of state may adopt rules necessary to perform any duty required of the secretary of state by this chapter.

Section 7. **Facsimile filing — requirements — liability.** (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A facsimile copy is entitled to be filed under this section if it is:

(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and

(b) legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(5) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false document.

Section 8. **Filing with secretary of state.** (1) The original signed copy, together with a duplicate copy that may be either a signed, photocopied, or confirmed copy, of any statement filed pursuant to this chapter must be delivered to the secretary of state. If the secretary of state determines that the documents conform to the filing provisions of this chapter and all required filing fees have been paid, the secretary of state shall:

(a) endorse on each signed original and duplicate copy the word "filed" and the date and time of acceptance for filing;

(b) retain the signed original in the secretary of state's files; and

(c) return the duplicate copy to the person who filed it or the person's representative.

(2) The secretary of state may by rule prescribe and furnish forms or computer formats for any statement to be filed with the secretary of state under this chapter. If the secretary of state requires, the use of any forms or formats is mandatory.

(3) All partnerships filing statements pursuant to this chapter shall first register the business name as an assumed business name pursuant to Title 30, chapter 13, part 2.

Section 9. **Law governing internal affairs.** The law of the state in which a partnership has its chief executive office governs the partnership's internal affairs.

Section 10. **Partnership subject to amendment of repeal of chapter.** A partnership governed by this chapter is subject to any amendment or repeal of this chapter.

Section 11. Section 35-10-201, MCA, is amended to read:

"**35-10-201. Partnership ~~defined~~ *as entity*.** ~~(1)~~ A partnership is an ~~association of two or more persons to carry on as co-owners a business for profit~~ *entity*.

~~(2) But any association formed under any other statute of this state or any statute adopted by authority other than the authority of this state is not a partnership under this chapter unless such association would have been a partnership in this state prior to the adoption of this chapter. But this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.~~"

Section 12. Section 35-10-202, MCA, is amended to read:

"**35-10-202. ~~Rules for determining the existence~~ *Creation* of a partnership.** ~~In determining whether a partnership exists, these rules shall apply:~~

(1) Except as provided ~~by 35-10-308~~ *in subsection (2), the association of two or more* persons ~~who are not partners as to each other are not partners as to third persons~~ *to carry on as co-owners a business for profit creates a partnership, whether or not the persons intend to create a partnership.*

(2) An association created under a statute other than this chapter, a predecessor law, or a comparable law of another jurisdiction is not a partnership.

(3) In determining whether a partnership is created, the following rules apply:

~~(2)~~*(a)* Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not ~~of~~ *by* itself establish a partnership~~, whether such~~ *even if the* co-owners ~~do or do not~~ share ~~any~~ profits made by the use of the property.

~~(3)~~*(b)* The sharing of gross returns does not ~~of~~ *by* itself establish a partnership~~, whether or not~~ *even if* the persons sharing them have a joint or common right or interest in ~~any~~ property from which the returns are derived.

~~(4)~~*(c)* ~~The receipt by a~~ *A* person ~~of~~ *who receives* a share of the profits of a business is ~~prima facie evidence that such person is~~ *presumed to be* a partner in the business, ~~but no such inference shall be drawn if such~~ *unless the* profits were received in payment:

~~(a)~~*(i)* ~~as~~ *of* a debt by installments or otherwise;

~~(b)~~*(ii)* ~~as~~ *for services as an independent contractor or of* wages *or other compensation* ~~of~~ *to* an employee;

(iii) ~~or~~ *of* rent ~~to a landlord~~;

~~(c)~~*(iv)* ~~as~~ *of* an annuity ~~to~~ *or other retirement or health benefit to* a *beneficiary,* ~~surviving spouse or~~ representative, *or designee* of a deceased *or retired* partner;

~~(d)~~*(v)* ~~as~~ *of* interest *or of another charge* on a loan, ~~though~~ *even if* the amount of payment varies with the profits of the business, *including a direct or indirect* *present or future ownership of the collateral or rights to income, proceeds, or increase in value derived from the collateral; or*

~~(c)~~*(vi)* ~~as the consideration~~ for the sale of ~~a~~ *the* goodwill of a business or other property by installments or otherwise.

(4) Except as provided by 35-10-308, persons who are not partners as to each other are not partners as to other persons.

(5) A partnership created under this chapter is a general partnership, and the partners are general partners of the partnership."

Section 13. Section 35-10-203, MCA, is amended to read:

"35-10-203. Partnership property. ~~(1) All property originally brought into the partnership stock or subsequently acquired by purchase~~ *Property transferred to* or otherwise ~~on account of the~~ *acquired by a* partnership is ~~partnership~~ property *of the partnership and not of the partners individually.*

~~(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.~~

~~(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.~~

~~(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.~~"

Section 14. **When property is partnership property.** (1) Property is partnership property if acquired in the name of:

(a) the partnership; or

(b) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(2) Property is acquired in the name of the partnership by a transfer to:

(a) the partnership in its name; or

(b) one or more partners in their capacity as partners in the partnership if the name of the partnership is indicated in the instrument transferring title to the property.

(3) Property is presumed to be partnership property if purchased with partnership assets even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(4) Property acquired in the name of one or more of the partners without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets is presumed to be separate property even if used for partnership purposes.

Section 15. Section 35-10-301, MCA, is amended to read:

"35-10-301. Partner as agent of partnership ~~**— restrictions on partner's authority**~~**.** *Subject to the effect of a statement of partnership authority pursuant to [section 17]:*

(1) ~~Every~~ *each* partner is an agent of the partnership for the purpose of its business. ~~, and the~~ *An* act of ~~every~~ *a* partner, including the execution *of an instrument* in the partnership name ~~of any instrument~~, for apparently carrying on in the ~~usual way~~ *ordinary course of* the *partnership* business *or business* of the *kind carried on by the* partnership ~~of which he is a member~~ binds the partnership unless the partner ~~so acting~~ has ~~in fact~~ no authority to act for the partnership in the particular matter and the person with whom ~~he~~ *the partner* is dealing ~~has knowledge of the fact that he has no such~~ *knows or has received a notification that the partner lacks* authority.

(2) ~~An~~ *an* act of a partner ~~which~~ *that* is not apparently for ~~the~~ carrying on ~~of the business of~~ *in the ordinary course of* the partnership ~~in the usual way~~ *business or business of the kind carried on by the partnership* ~~does not bind~~ *binds* the partnership ~~unless~~ *only if the act was* authorized by the other partners.

~~(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:~~

~~(a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;~~

~~(b) dispose of the goodwill of the business;~~

~~(c) do any other act which would make it impossible to carry on the ordinary business of a partnership;~~

~~(d) confess a judgment;~~

~~(e) submit a partnership claim or liability to arbitration or reference.~~

~~(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.~~"

Section 16. Section 35-10-302, MCA, is amended to read:

"35-10-302. ~~**Conveyance of real**~~ ***Transfer of partnership*** **property** ~~**of the partnership**~~**.** (1) *Subject to the effect of a statement of partnership authority pursuant to [section 17]:*

(a) ~~Where title to real~~ *partnership* property ~~is~~ *held* in the *name of the* partnership ~~name, any partner~~ may ~~convey title to such property~~ *be transferred* by ~~a conveyance~~ *an instrument of transfer* executed *by a partner* in the partnership name*;*

(b) partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; and

(c) a~~, but the~~ partnership may recover ~~such~~ property ~~unless the partner's act binds~~ *transferred under this subsection if it proves that execution of the instrument of transfer did not bind* the partnership under ~~the provisions of~~ 35-10-301~~(1) or~~ unless ~~such~~ *the* property ~~has been conveyed~~ *was transferred* by the ~~grantee~~ *initial transferee* or a person claiming through ~~such grantee~~ *the initial transferee* to a ~~holder for~~ *subsequent transferee who gave* value without ~~knowledge~~ *having notice* that the ~~partner, in making the conveyance, has exceeded his~~ *person who executed the instrument of initial transfer lacked* authority *to bind the partnership.*

(2) ~~Where title to real~~ *partnership* property ~~is~~ *held* in the name of *one or more persons other than* the partnership~~, a conveyance executed by a partner in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1)~~ *without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership may be transferred free of any claims of the partnership or the partners by the persons in whose name the property is held to a transferee who gives value without having notice that it is partnership property.*

(3) ~~Where title to real property is in the name of one or more but not all the partners and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partner's act does not bind the partnership under the provisions of 35-10-301(1), unless the purchaser or his assignee is a holder for value without knowledge.~~

~~(4) Where the title to real property is in the name of one or more or all the partners or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name or in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).~~

~~(5) Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property.~~ *if a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document."*

Section 17. **Statement of partnership authority.** (1) A partnership may file a statement of partnership authority, which:

(a) must include:

(i) the name of the partnership;

(ii) the street address of its chief executive office and of one office in this state, if there is one;

(iii) the names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (2); and

(iv) the names of the partners authorized to execute an instrument transferring real property held in the name of the partnership; and

(b) may state the authority or limitations on the authority of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(2) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all the partners and make it available to any person on request for good cause shown.

(3) If a filed statement of partnership authority is executed pursuant to [section 6(5)] and states the name of the partnership but does not contain all of the other information required by subsection (1), the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5).

(4) Except as provided in subsection (7), a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary so long as and to the extent that a limitation on that authority is not contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(5) A person not a partner is considered to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(6) Except as provided in [sections 42 and 49] and subsection (5) of this section, a person not a partner is not considered to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(7) Unless canceled earlier, a filed statement of partnership authority is canceled by operation of law 5 years after the date on which the statement or the most recent amendment was filed with the secretary of state.

Section 18. **Statement of denial.** A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to [section 17(2)] may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority to the extent provided in [section 17(4) and (5)].

Section 19. Section 35-10-305, MCA, is amended to read:

"**35-10-305. Partnership liable for partner's ~~wrongful act~~ *actionable conduct*.** *(1)* ~~Where, by any~~ *A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a* wrongful act or omission *or other actionable conduct* of ~~any~~ *a* partner acting in the ordinary course of ~~the~~ business of the partnership or with the authority of ~~his copartners, loss or injury is caused to any person not being a partner in~~ the partnership ~~or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act~~.

(2) If, in the course of its business, a partnership receives money or property of a person not a partner and that money or property is misapplied by a partner while it is in the custody of the partnership, the partnership is liable for the loss."

Section 20. Section 35-10-307, MCA, is amended to read:

"**35-10-307. ~~Nature of partner's~~ *Partner's* liability.** All partners are liable~~:~~

~~(1)~~ jointly and severally for ~~everything chargeable to the partnership under 35-10-305 and 35-10-306;~~

~~(2) jointly for~~ all ~~other debts and~~ obligations of the partnership~~, but any partner may enter into a separate obligation to perform a partnership contract~~ *unless otherwise agreed by the claimant or provided by law."*

Section 21. **Action by and against partnership and partners.** (1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(4) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless:

(a) a judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) (i) an involuntary case under Title 11 of the United States Code has been commenced against the partnership and has not been dismissed within 60 days after commencement or the partnership has commenced a voluntary case under Title 11 of the United States Code and the case has not been dismissed; and

(ii) Title 11 of the United States Code permits a judgment creditor of a partner to levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership;

(c) the partner has agreed that the creditor need not exhaust partnership assets;

(d) a court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution within this state are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) liability is imposed on the partner by law or contract independent of the existence of the partnership.

(5) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under 35-10-308(1) or (2).

Section 22. Section 35-10-308, MCA, is amended to read:

"**35-10-308.** ~~**Partner by estoppel**~~ ***Purported partner.*** (1) ~~When~~ *If* a person, by words ~~spoken or written~~ or ~~by~~ conduct, ~~represents himself~~ *purports to be a partner* or consents to *being represented by* another ~~representing him to anyone~~ as a partner in ~~an existing~~ *a* partnership or with one or more persons not ~~actual~~ partners, ~~he~~ *the purported partner* is liable to ~~any such~~ *a* person to whom ~~such~~ *the* representation ~~has been~~ *is* made *if that person,* ~~who has~~ *relying* on the ~~faith of such~~ representation, ~~given credit to~~ *enters into a transaction with* the actual or ~~apparent~~ *purported* partnership. ~~, and if he has made such~~ *If the* representation, ~~or consented to its being~~ *either by the purported partner or by a person with the purported partner's consent, is* made in a public manner, ~~he~~ *the purported partner* is liable to ~~such~~ *a* person~~, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made~~ *who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant.* ~~When a~~ *If* partnership liability results, ~~he~~ *the purported partner* is liable as ~~though he~~ *if the purported partner* were ~~an actual member of the partnership~~ *a partner.* ~~When~~ *If* no partnership liability results, ~~he~~ *the purported partner* is liable jointly *and severally* with ~~the~~ *any* other ~~persons, if any, so~~ *person* consenting to the ~~contract or~~ representation ~~as to incur liability, otherwise separately~~.

(2) ~~When~~ *If* a person ~~has been~~ *is* thus represented to be a partner in an existing partnership or with one or more persons not ~~actual~~ partners, ~~he~~ *the purported partner* is an agent of ~~the~~ persons consenting to ~~such~~ *the* representation to bind them to the same extent and in the same manner as ~~though he~~ *if the purported partner* were a partner ~~in fact,~~ with respect to persons who ~~rely~~ *enter into transactions in reliance* upon the representation. ~~Where~~ *If* all *of* the ~~members~~ *partners* of the existing partnership consent to the representation, a partnership act or obligation results. ~~, but in all other cases it is the joint act or obligation of the person acting and the persons consenting~~ *If fewer than all of the partners of the existing partnership consent* to the representation, *the*

person acting and the partners consenting to the representation are jointly and severally liable.

(3) A person is not a partner in a partnership merely because the person is named by another in a statement of partnership authority.

(4) A person does not continue to be a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership."

Section 23. Section 35-10-309, MCA, is amended to read:

"**35-10-309. Liability of incoming partner.** A person admitted as a partner into ~~an existing~~ *a* partnership is liable for all ~~the~~ obligations of the partnership ~~arising~~ *incurred* before ~~his~~ *the person's* admission as ~~though he had been~~ *if the person were* a partner when ~~such~~ *the* obligations were incurred, ~~except that this~~ *but the* liability ~~shall~~ *may* be satisfied only out of partnership property."

Section 24. Section 35-10-401, MCA, is amended to read:

"**35-10-401. ~~Rules determining~~ *Partner's* rights and duties ~~of partners~~.** ~~The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:~~

(1) ~~Each~~ *A partnership shall establish an account for each* partner. ~~shall be repaid his contributions whether by way of capital or advances~~ *The partnership shall credit the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that the partner contributes* to the partnership ~~property~~ and *the partner's* share ~~equally in the~~ *of the partnership* profits. ~~and surplus remaining after all liabilities, including those to partners, are satisfied and must contribute towards the~~ *The partnership shall charge the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.*

(2) A partnership shall credit each partner's account with an equal share of the partnership profits. A partnership shall charge each partner with a share of the partnership losses, whether ~~of~~ capital or ~~otherwise~~ *operating,* ~~sustained by the partnership according to his~~ *in proportion to the partner's* share ~~in~~ *of* the profits.

~~(2)~~*(3)* ~~The~~ *A* partnership ~~must~~ *shall* indemnify ~~every~~ *each* partner ~~in respect of~~ *for* payments *reasonably* made and ~~personal~~ liabilities reasonably incurred by ~~him~~ *the partner* in the ordinary and proper conduct of ~~its~~ *the* business *of the partnership* or for the preservation of its business or property.

~~(3)~~*(4)* A *partnership shall repay a* partner who, in aid of the partnership, makes ~~any~~ *a* payment or advance beyond the amount of capital ~~which he~~ *the partner* agreed to contribute ~~shall be paid interest from the date of the payment or advance~~.

~~(4)~~*(5)* A *payment made by a* partner ~~shall receive interest on the capital contributed by him only~~ *that gives rise to a partnership obligation under* *subsection (3) or (4) constitutes a loan to the partnership. Interest accrues* from the date ~~when repayment should be made~~ *of the payment or advance.*

~~(5)~~*(6)* ~~All partners have~~ *Each partner has* equal rights in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property only on behalf of the partnership.

~~(6)~~*(8)* ~~No~~ *A* partner is *not* entitled to remuneration for ~~acting in~~ *services performed for* the partnership ~~business~~, except ~~that a surviving partner is entitled to~~ *for* reasonable compensation for ~~his~~ services *rendered* in winding up the *business of the* partnership ~~affairs~~.

~~(7)~~*(9)* ~~No~~ *A* person ~~can~~ *may* become a ~~member of a partnership without~~ *partner only with* the consent of all the partners.

~~(8)~~*(10)* ~~Any~~ *A* difference arising as to *a matter in the* ordinary ~~matters connected with the~~ *course of business of a* partnership ~~business~~ may be decided by a majority of the partners. ~~, but no~~ *An* act ~~in contravention of any~~ *outside the ordinary course of business of a partnership and an amendment to the partnership* agreement ~~between the partners~~ may be ~~done rightfully without~~ *undertaken only with* the consent of all the partners.

(11) This section does not affect the obligations of a partnership to other persons under 35-10-301."

Section 25. **Distributions in kind.** A partner has no right to receive and may not be required to accept a distribution in kind.

Section 26. Section 35-10-402, MCA, is amended to read:

"**35-10-402.** ~~**Partnership books — inspection rights**~~ ***Partner's right to information.*** *(1)* ~~The partnership books~~ *A partnership* shall ~~be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and~~ *keep its books and records, if any, at its chief executive office.*

(2) A partnership ~~every partner~~ shall ~~at all times have~~ *provide partners and their agents and attorneys* access to *its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to* ~~and may~~ inspect and copy ~~any of them~~ *books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished."*

Section 27. Section 35-10-403, MCA, is amended to read:

"**35-10-403. Duty of partners to render information.** ~~Partners shall render~~ *Each partner and the partnership,* on demand, *shall furnish* ~~true and full information of all things affecting the partnership~~ to ~~any~~ *a* partner ~~or~~ *and to* the legal representative of ~~any~~ *a* deceased partner or *of a* partner under legal disability, *to the extent just and reasonable, complete and accurate information concerning the partnership."*

Section 28. Section 35-10-405, MCA, is amended to read:

"35-10-405. ~~Partner accountable as a fiduciary for benefit derived without consent~~ ***General standards of partner's conduct.*** *(1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section.*

~~(1)~~*(2)* ~~Every partner must~~ *A partner's duty of loyalty to the partnership and the other partners is limited to the following:*

(a) to account to the partnership ~~for any benefit~~ and hold as trustee for it any ~~profits~~ *property, profit, or benefit* derived*:*

(i) by ~~him without the consent of the other partners from any transaction connected with the formation,~~ *the partner in the* conduct~~, or liquidation~~ *and winding up* of the partnership *business;* ~~or~~

(ii) from ~~any~~ *a* use *or appropriation* by ~~him~~ *the partner* of ~~its~~ *partnership* property~~.~~*; or*

(iii) from a use or appropriation of an opportunity without the consent of the other partners;

(b) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership without the consent of the other partners; and

(c) to refrain from competing with the partnership in the conduct of partnership business before the dissolution of the partnership without the consent of the other partners.

(3) A partner's duty of loyalty may not be eliminated by agreement, but the partners by agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable.

(4) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(5) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistent with the obligation of good faith and fair dealing. The obligation of good faith and fair dealing may not be eliminated by agreement, but the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable.

(6) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest. A partner may lend money to and transact other business with the partnership. The rights and obligations of a partner who lends money to or transacts business with the partnership are the same as those of a person who is not a partner, subject to other applicable law.

~~(2)~~*(7)* This section applies ~~also~~ to ~~the representatives of a deceased partner engaged in the liquidation of the affairs of~~ *a person winding up* the partnership *business* as the personal ~~representatives~~ *or legal representative* of the last surviving partner *as if the person were a partner.*"

Section 29. **Partner's liability to partnership.** A partner is liable to the partnership for a breach of the partnership agreement if there is a violation of a duty to the partnership that causes harm to the partnership.

Section 30. **Remedies of partnership and partners.** (1) A partnership may maintain an action against a partner for a breach of the partnership agreement or for the violation of a duty to the partnership that causes harm to the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to enforce:

(a) a right under the partnership agreement;

(b) a right under this chapter, including the partner's:

(i) rights under 35-10-401 through 35-10-403 and 35-10-405;

(ii) right on dissociation to have the partner's interest in the partnership purchased pursuant to [section 39] or enforce any other right under [sections 36 through 38] or [sections 39 through 43]; or

(iii) right to compel a dissolution and winding up of the partnership business under [section 44] or enforce any other right under [sections 44 and 45], 35-10-602, 35-10-609, and [sections 48 through 51]; or

(c) the rights and otherwise protect the interests of the partner, including rights and interests arising independent of the partnership relationship.

(3) The accrual of and any time limitation on a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 31. Section 35-10-406, MCA, is amended to read:

"**35-10-406. ~~Rights and duties of partners when~~ *Continuation of* partnership ~~continues~~ beyond ~~fixed~~ *definite* term *or particular undertaking*.** (1) ~~When~~ *If* a partnership for a ~~fixed~~ *definite* term or particular undertaking is continued *without an express agreement* after the ~~termination of such~~ *expiration of the* term or ~~particular~~ *completion of the* undertaking ~~without any express agreement~~, the rights and duties of the partners remain the same as they were at ~~such termination~~ *the expiration or completion*, so far as is consistent with a partnership at will.

(2) ~~A continuation of the business by~~ *If* the partners or ~~such~~ *those* of them ~~as~~ *who* habitually acted ~~therein~~ *in the business* during the term *or undertaking continue the business* without any settlement or liquidation of the partnership, ~~affairs~~ ~~is prima facie evidence of a continuation of the partnership~~ *they are presumed to have agreed that the business will not be wound up.*"

Section 32. **Partner's interest in partnership property not transferable.** A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred either voluntarily or involuntarily.

Section 33. **Partner's transferable interest in partnership.** The only transferable interest of a partner in the partnership is the partner's interest in distributions. The interest is personal property.

Section 34. **Transfer of partner's transferable interest.** (1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) is permissible;

(b) does not by itself cause a dissolution and winding up of the partnership business; and

(c) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning or an account of partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) to receive the net amount otherwise distributable to the transferor upon the dissolution and winding up of the partnership business; and

(c) to seek under [section 44(6)] a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to receive an accounting only from the date of the last account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(5) Until receipt of notice of a transfer, a partnership has no duty to give effect to the transferee's rights under this section.

Section 35. Section 35-10-505, MCA, is amended to read:

"**35-10-505. Partner's *transferable* interest subject to charging order.** (1) On ~~due~~ application ~~to a competent court~~ by ~~any~~ *a* judgment creditor of a partner *or partner's transferee,* ~~the~~ *a* court ~~which entered the judgment, order, or decree or any other court~~ *having jurisdiction* may charge the *transferable* interest of the debtor partner ~~with payment of the unsatisfied amount of such~~ *or transferee to satisfy the* judgment. ~~debt with interest thereon and~~ *The court* may ~~then or later~~ appoint a receiver of ~~his~~ *the debtor's* share of the ~~profits and of any other money~~ *distributions* due or to ~~fall~~ *become* due to ~~him~~ *the debtor* in respect of the partnership and make all other orders, directions, accounts, and inquiries ~~which~~ the debtor ~~partner~~ might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time and upon conditions it considers appropriate. The purchaser at the foreclosure sale has the rights of a transferee.

~~(2)~~*(3)* ~~The~~ *At any time before foreclosure, an* interest charged may be redeemed ~~at any time before foreclosure or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution~~:

(a) by the judgment debtor;

~~(a)~~*(b)* with ~~separate~~ property *other than partnership property*, by ~~any~~ one or more of the *other* partners; or

~~(b)~~*(c)* with partnership property, by ~~any~~ one or more of the *other* partners with the consent of all the partners whose interests are not so charged ~~or sold~~.

~~(3)~~*(4)* ~~Nothing in this~~ *This* chapter ~~shall be held to~~ *does not* deprive a partner of ~~his~~ *a* right~~, if any,~~ under the exemption laws ~~as regards his~~ *with respect to the partner's* interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership."

Section 36. **Events causing partner's dissociation.** A partner is dissociated from a partnership upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(a) it is unlawful to carry on the partnership business with that partner;

(b) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest that has not been foreclosed;

(c) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) a partnership that is a partner has been dissolved and its business is being wound up;

(5) the partner's expulsion by judicial decree, made on application by the partnership or another partner, because:

(a) the partner engaged in wrongful conduct that adversely and materially affected the partnership business;

(b) the partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under 35-10-405; or

(c) the partner engaged in conduct relating to the partnership business that made it not reasonably practicable to carry on the business in partnership with that partner;

(6) the partner:

(a) becoming a debtor in bankruptcy;

(b) executing an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property; or

(d) failing within 90 days after the appointment to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence or failing within 90 days after the expiration of a stay to have the appointment vacated;

(7) in the case of a partner who is an individual:

(a) the partner's death;

(b) the appointment of a guardian or general conservator for the partner; or

(c) a judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement;

(8) in the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee;

(9) in the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative; or

(10) termination of a partner who is not an individual, partnership, corporation, trust, or estate.

Section 37. **Partner's wrongful dissociation.** (1) A partner's dissociation is wrongful only if:

(a) it is in breach of an express provision of the partnership agreement; or

(b) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows the dissociation of another partner and results in a right to dissolve the partnership under [section 44(2)(a)];

(ii) the partner is expelled by judicial decree under [section 36(5)]; or

(iii) a partner, who is not an individual, a trust other than a business trust, or an estate, is expelled or otherwise dissociated because the entity willfully dissolved or terminated.

(2) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. That liability is in addition to any other liability of the partner to the partnership or to the other partners.

Section 38. **Effect of partner's dissociation.** (1) If a partner's dissociation results in a dissolution and winding up of the partnership business, [sections 44 and 45], 35-10-602, 35-10-609, and [sections 48 through 51] apply; otherwise [sections 39 through 43] apply.

(2) Upon a partner's dissociation:

(a) the partner's right to participate in the management and conduct of the partnership business terminates, except as provided in 35-10-609;

(b) the partner's duty of loyalty under 35-10-405(2)(c) terminates; and

(c) the partner's duty of loyalty under 35-10-405(2)(a) and (2)(b) and duty of care under 35-10-405(4) continue only with regard to matters arising or events occurring before the dissociation.

Section 39. **Purchase of dissociated partner's interest.** (1) If a partner is dissociated from a partnership without resulting in a dissolution and winding up of the partnership business under [section 44], the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subsection (2).

(2) (a) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under [section 51(2)] if on the date of dissociation the assets of the partnership were sold at a price equal to the greater of:

(i) the liquidation value; or

(ii) the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership were wound up as of that date.

(b) In either case, the selling price of the partnership assets must be determined on the basis of the amount that would be paid by a willing buyer to a willing seller, neither being under any compulsion to buy or sell, and with knowledge of all relevant facts. Interest must be paid from the date of dissociation to the date of payment.

(3) Damages for wrongful dissociation under [section 37(2)] and all other amounts owing, whether or not presently due, from the dissociated partner to

the partnership must be offset against the buyout price. Interest must be paid from the date the amount owed becomes due to the date of payment.

(4) A partnership shall indemnify a dissociated partner against all partnership liabilities incurred before the dissociation, except liabilities then unknown to the partnership, and against all partnership liabilities incurred after the dissociation, except liabilities incurred by an act of the dissociated partner under [section 40]. For purposes of this subsection, a liability not known to a partner other than the dissociated partner is not known to the partnership.

(5) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay or cause to be paid in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subsection (3).

(6) If a deferred payment is authorized under subsection (8), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subsection (3), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(7) The payment or tender required by subsection (5) or (6) must be accompanied by the following:

(a) a statement of partnership assets and liabilities as of the date of dissociation;

(b) the latest available partnership balance sheet and income statement, if any;

(c) an explanation of how the estimated amount of the payment was calculated; and

(d) written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine the buyout price, any offsets under subsection (3), or other terms of the obligation to purchase.

(8) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment must be adequately secured and bear interest.

(9) A dissociated partner may maintain an action against the partnership, pursuant to [section 30(2)(b)(ii)], to determine the buyout price of that partner's interest, any offsets under subsection (3), or other terms of the obligation to purchase. The action must be commenced within 120 days after the partnership has tendered payment or an offer to pay or within 1 year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subsection (3), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subsection (8), the

court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with the requirements of subsection (7).

Section 40. **Dissociated partner's power to bind partnership — liability to partnership.** (1) For 2 years after a partner dissociates without resulting in a dissolution and winding up of the partnership business, the partnership, including a surviving partnership under [sections 52 through 58], is bound by an act of the dissociated partner that would have bound the partnership under 35-10-301 before dissociation if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation; and

(c) is not considered to have had knowledge under [section 17(5)] or notice under [section 42].

(2) A dissociated partner is liable to the partnership for any loss caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation and for which the partnership is liable under subsection (1).

Section 41. **Dissociated partner's liability to other persons.** (1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership or a surviving partnership under [sections 52 through 58] within 2 years after the partner's dissociation only if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation; and

(c) is not considered to have had knowledge under [section 17(5)] or notice under [section 42].

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

Section 42. **Statement of dissociation.** (1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of [section 17(4) and (5)].

(3) For the purposes of 35-10-301 and [sections 40 and 41(2)], a person not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

Section 43. **Continued use of partnership name.** Continued use of a partnership name or a dissociated partner's name as part of the partnership by the partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

Section 44. **Events causing dissolution and winding up of partnership business.** Except as provided in [section 45], a partnership is dissolved and its business must be wound up only upon:

(1) receipt by a partnership at will of notice from a partner, other than a partner who is dissociated under [section 36(2) through (10)], of that partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) in a partnership for a definite term or particular undertaking:

(a) within 90 days after a partner's wrongful dissociation under [section 37] or a partner's dissociation by death or otherwise under [section 36(6) through (10)], receipt by the partnership of notice from another partner of that partner's express will to withdraw as a partner;

(b) the express will of all the partners; or

(c) the expiration of the term or the completion of the undertaking unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the expiration or completion does not result in the dissolution and winding up of the partnership business;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business unless all the partners agree to continue the business, in which case the partnership agreement is considered amended retroactively to provide that the event does not result in the dissolution and winding up of the partnership business;

(4) an event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section;

(5) a judicial decree, issued upon application by a partner, that:

(a) the economic purpose of the partnership is likely to be unreasonably frustrated;

(b) another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner; or

(c) it is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement; or

(6) a judicial decree, issued upon application by a transferee of a partner's transferable interest, that it is equitable to wind up the partnership business:

(a) if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer, after the expiration of the term or completion of the undertaking; or

(b) if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time.

Section 45. **Dissolution deferred ninety days.** (1) Except as provided in subsection (2), a partnership of more than two persons is not dissolved until 90 days after receipt by the partnership of notice from a partner under [section 44(1) or (2)(a)], and its business may be continued until that date as if no notice were received. Before that date, the partner who gave the notice may waive the right to have the partnership business wound up. If there is no waiver before that date, the partnership is dissolved and its business must be wound up.

(2) A partnership may be dissolved at any time during the 90-day period and its business wound up, by the express will of at least half of the other partners.

(3) After receipt by the partnership of notice from a partner under [section 44(1) or (2)(a)], the partner who gave the notice:

(a) has no rights in the management and conduct of the partnership business if it is continued under subsection (1) but may participate in winding up the business under 35-10-609 if the partnership is dissolved on or before the expiration of the 90-day period pursuant to subsection (1) or (2);

(b) is liable for obligations incurred during the period only to the extent a dissociated partner would be liable under [section 40(2) or 41(2)] but is not liable for contributions for and must be indemnified by the other partners against any partnership liability incurred by another partner to the extent the liability is not appropriate for winding up the partnership business; and

(c) must be credited with the partner's share of any profit earned during the period and may be charged with the partner's share of any loss incurred during the period but only to the extent of profits credited for the period.

Section 46. Section 35-10-602, MCA, is amended to read:

"**35-10-602. Partnership ~~not terminated by~~ *continues after* dissolution.** ~~On dissolution the~~ *A* partnership ~~is not terminated but~~ continues *after dissolution* until the winding up of ~~partnership affairs~~ *its business* is completed, *at which time the partnership is terminated.*"

Section 47. Section 35-10-609, MCA, is amended to read:

"**35-10-609. Right to wind up *partnership business*.** *(1)* ~~Unless otherwise agreed, the partners~~ *After dissolution, a partner* who ~~have~~ *has* not wrongfully ~~dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind~~ *dissociated may participate in winding* up ~~the partnership affairs~~ *the partnership's business, but on application of*~~. However,~~ any partner, ~~his~~ *partner's* legal representative, or ~~his assignee~~ *transferee, the district court,* ~~upon~~ *for good* cause ~~shown~~, may ~~obtain~~ *order judicial supervision of the* winding up ~~by the court~~.

(2) The legal representative of the last surviving partner may wind up a partnership's business.

(3) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time; prosecute and defend actions and proceedings, whether civil, criminal, or administrative; settle and close the partnership's business; dispose of and transfer the partnership's property; discharge the partnership's liabilities; distribute the assets of the partnership pursuant to [section 51]; settle disputes by mediation or arbitration; and perform other necessary acts."

Section 48. **Partner's power to bind partnership after dissolution.** Subject to [section 49], a partnership is bound by a partner's act after dissolution that:

(1) is appropriate for winding up the partnership business; or

(2) would have bound the partnership under 35-10-301 before dissolution if the other party to the transaction did not have notice of the dissolution.

Section 49. **Statement of dissolution.** (1) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership and that the partnership has dissolved and is winding up its business.

(2) A statement of dissolution cancels a filed statement of partnership authority for the purposes of [section 17(4)] and is a limitation on authority for the purposes of [section 17(5)].

(3) For the purposes of 35-10-301 and [section 48], a person not a partner is considered to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(4) After filing and, if appropriate, recording a statement of dissolution, the dissolved partnership may file and, if appropriate, record a statement of partnership authority that will operate with respect to a person not a partner as provided in [section 17(4) and (5)] in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

Section 50. **Partner's liability to other partners after dissolution.** (1) Except as provided in [section 45(3)(b)] and subsection (2) of this section, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under [section 48].

(2) A partner who, with knowledge of the winding up, incurs a partnership liability under [section 48(2)] by an act that is not appropriate for winding up

the partnership business is liable to the partnership for any loss caused to the partnership arising from the liability.

Section 51. **Settlement of accounts among partners.** (1) In winding up a partnership's business, the assets of the partnership must be applied to discharge its obligations to creditors, including partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions pursuant to subsection (2).

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to that partner's positive account balance. A partner shall contribute to the partnership an amount equal to that partner's negative balance.

(3) To the extent not taken into account in settling the accounts among partners pursuant to subsection (2), each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations. If a partner fails to contribute, the other partners shall contribute, in the proportions in which the partners share partnership losses, the additional amount necessary to satisfy the partnership obligations. A partner or a partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations.

(4) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(5) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

Section 52. **Conversion of partnership to limited partnership.** (1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership that satisfies the requirements of 35-12-601 and includes:

(a) a statement that the partnership was converted to a limited partnership from a partnership;

(b) its former name; and

(c) a statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(5) A partner who becomes a limited partner as a result of the conversion remains liable as a partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the partner is liable for an obligation incurred by the limited partnership within 90 days after the conversion takes effect. The partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in Title 35, chapter 12.

Section 53. **Conversion of limited partnership to partnership.** (1) A limited partnership may be converted to a partnership pursuant to this section.

(2) Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of a conversion of a limited partnership to a partnership must be approved by all the partners.

(3) After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership pursuant to 35-12-603.

(4) The conversion takes effect when the certificate of limited partnership is canceled.

(5) A limited partner who becomes a partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The limited partner is liable as a partner for an obligation of the partnership incurred after the conversion takes effect.

Section 54. **Effect of conversion — entity unchanged.** (1) A partnership or limited partnership that has been converted pursuant to [section 52 or 53] is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or limited partnership remains vested in the converted entity;

(b) all obligations of the converting partnership or limited partnership continue as obligations of the converted entity; and

(c) an action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.

Section 55. **Merger of partnerships.** (1) Pursuant to a plan of merger approved as provided in subsection (3), a partnership may be merged with one or more partnerships or limited partnerships.

(2) The plan of merger must set forth:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships will merge;

(c) whether the surviving entity is a partnership or a limited partnership and the status of each partner;

(d) the terms and conditions of the merger;

(e) the manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property in whole or part; and

(f) the street address of the surviving entity's chief executive office.

(3) The plan of merger must be approved:

(a) in the case of a partnership that is a party to the merger, by all the partners or a number or percentage specified for merger in the partnership agreement; and

(b) in the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such specifically applicable law, by all the partners, notwithstanding a provision to the contrary in the partnership agreement.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger takes effect on the latest of:

(a) the approval of the plan of merger by all parties to the merger, as provided in subsection (3);

(b) the filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(c) any effective date specified in the plan of merger.

Section 56. **Effect of merger.** (1) When a merger takes effect:

(a) every partnership or limited partnership that is a party to the merger other than the surviving entity ceases to exist;

(b) all property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;

(c) all obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and

(d) an action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding.

(2) The secretary of state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to

enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

(3) A partner of the surviving partnership or limited partnership is liable for:

(a) all obligations of a party to the merger for which the partner was personally liable before the merger;

(b) all other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of that entity; and

(c) all obligations of the surviving entity incurred after the merger takes effect.

(4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, the partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity in the manner provided in [section 51(3)] as if the merged party were dissolved.

(5) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under [section 39]. The surviving entity is bound under [section 40] by an act of a partner dissociated under this subsection, and the partner is liable under [section 41] for transactions entered into by the surviving entity after the merger takes effect.

Section 57. **Statement of merger.** (1) After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(2) A statement of merger must contain:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships were merged;

(c) the street address of the surviving entity's chief executive office and of an office in this state, if any; and

(d) whether the surviving entity is a partnership or limited partnership.

(3) Except as provided in subsection (4), for the purposes of 35-10-302, property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(4) For the purposes of 35-10-302, real property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.

(5) A filed and, if appropriate, recorded statement of merger that is executed and declared to be accurate pursuant to [section 6], that states the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger, and that states the name of the surviving entity but that does not contain all of the other information required by subsection (2) operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (3) and (4).

Section 58. **Nonexclusive.** [Sections 52 through 57] are not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

Section 59. Section 31-2-106, MCA, is amended to read:

"**31-2-106. Exempt property — bankruptcy proceeding.** ~~No~~ *An* individual may *not* exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, 19-21-212, Title 25, chapter 13, part 6, 33-7-522, 33-15-512 through 33-15-514, ~~35-10-502,~~ 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

(2) the individual's right to receive unemployment compensation and unemployment benefits; and

(3) the individual's right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy which exceeds 15% of the individual's gross income for that 1-year period, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;

(b) the benefit is paid on account of age or length of service; and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409)."

Section 60. **Repealer.** Sections 35-10-303, 35-10-304, 35-10-306, 35-10-404, 35-10-501, 35-10-502, 35-10-503, 35-10-504, 35-10-507, 35-10-601, 35-10-603, 35-10-604, 35-10-605, 35-10-606, 35-10-607, 35-10-608, 35-10-610, 35-10-611, 35-10-612, 35-10-613, 35-10-614, and 35-10-615, MCA, are repealed.

Section 61. **Codification instruction.** [Sections 4, 6 through 10, 14, 17, 18, 21, 25, 29, 30, 32 through 34, 36 through 45, and 48 through 58] are intended to be codified as an integral part of Title 35, chapter 10, and the provisions of Title 35, chapter 10, apply to [sections 4, 6 through 10, 14, 17, 18, 21, 25, 29, 30, 32 through 34, 36 through 45, and 48 through 58].

Section 62. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 63. **Application to existing relationships.** (1) Except as otherwise provided in this section, [this act] applies to all partnerships in existence on October 1, 1993, that were formed under Title 35, chapter 10, or any other predecessor law providing for the formation, operation, and liquidation of partnerships.

(2) [This act] does not impair the obligations of a contract existing on October 1, 1993, or affect an action or proceeding begun or right accrued before October 1, 1993.

(3) A judgment against a partnership or a partner in an action commenced before October 1, 1993, may be enforced in the same manner as a judgment rendered before October 1, 1993.

Approved April 1, 1993.

CHAPTER NO. 239

[SB 68]

AN ACT ELIMINATING THE TERMINATION OF THE LIMITATION ON GOVERNMENTAL TORT LIABILITY; AMENDING SECTION 9, CHAPTER 22, SPECIAL LAWS OF JUNE 1986; SECTION 1, CHAPTER 228, LAWS OF 1987; AND SECTION 1, CHAPTER 803, LAWS OF 1991; REPEALING SECTION 3, CHAPTER 22, SPECIAL LAWS OF JUNE 1986; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 9, Chapter 22, Special Laws of June 1986, is amended to read:

"Section 9. **Effective dates ~~— termination date~~.** This act is effective on passage and approval~~, except that section 3 is effective July 1, 1987~~. ~~Sections 1 and 2 of this act terminate on June 30, 1987.~~"

Section 2. Section 1, Chapter 228, Laws of 1987, is amended to read:

"Section 1. Section 9, Chapter 22, Special Laws of June 1986, is amended to read:

"Section 9. **Effective dates ~~— termination date~~.** This act is effective on passage and approval~~, except that section 3 is effective July 1, 1991~~. ~~Sections 1 and 2 of this act terminate on June 30, 1991.~~""

Section 3. Section 1, Chapter 803, Laws of 1991, is amended to read:

"Section 1. Section 1, Chapter 228, Laws of 1987, is amended to read:

"Section 1. Section 9, Chapter 22, Special Laws of June 1986, is amended to read:

"Section 9. **Effective dates ~~— termination date~~.** This act is effective on passage and approval~~, except that section 3 is effective July 1, 1991 1993~~. ~~Sections 1 and 2 of this act terminate on June 30, 1991 1993.~~"""

Section 4. **Repealer.** Section 3, Chapter 22, Special Laws of June 1986, is repealed.

Section 5. **Two-thirds vote.** Because [this act] amends and extends the effect of a statute imposing limited immunity on governmental entities, Article II, section 18, of the Montana constitution requires a two-thirds vote of the members of each house of the legislature for passage.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1993.

CHAPTER NO. 240

[SB 194]

AN ACT CLARIFYING THE RATES THAT PRERELEASE CENTER RESIDENTS ARE OBLIGATED TO PAY; PROVIDING A METHOD OF DETERMINING CRITERIA AND RATES; AND AMENDING SECTION 53-1-501, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of corrections and human services authority to adopt administrative rules. The department shall adopt rules that establish criteria and a procedure for determining ability to pay per diem rates for room, board, or services or for a combination of room, board, and services for persons committed to or placed in community corrections programs operated by the department. The department shall adopt rules and procedures for the establishment of rates and charges to residents in any community correctional program that is under contract with the department.

It is the intent of the legislature that the amount assessed by these programs be subject to the resident's ability to pay and that the department may not make an assessment that would place an undue financial burden on the resident.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-501, MCA, is amended to read:

"**53-1-501. Rates for board, ~~and~~ room, *and services* charged by the department.** *(1)* The department ~~of corrections and human services~~ shall establish ~~and charge reasonable rates for board and room~~ *per diem rates for room, board, and services* for persons *placed in or* committed to ~~any residential~~

a community correctional ~~programs~~ *program* operated by the department. ~~The department is directed to establish policies and rules to implement the charging of reasonable rates of board and room for such programs operated by the department.~~ *The department may adopt rules allowing it to order part of a person's employment income to be used to pay restitution, fines, and child or spousal support.*

(2) The department shall prescribe rules and procedures for the establishment of rates and charges to residents in any community correctional program that is under contract with the department and that provides room, board, or services or any combination of room, board, and services to residents of those facilities or programs. The amount assessed by these programs must be subject to the resident's ability to pay, based on the rates established as the basis for assessed charges, and subject to approval by the department."

Approved April 1, 1993.

CHAPTER NO. 241

[SB 199]

AN ACT EXTENDING THE TERMINATION DATE OF THE WILDLIFE HABITAT ACQUISITION PROGRAM; AND AMENDING SECTION 12, CHAPTER 598, LAWS OF 1987; AND SECTION 3, CHAPTER 319, LAWS OF 1991.

WHEREAS, the lease or purchase of land suitable for wildlife habitat and the acquisition of conservation easements to protect and enhance habitat are necessary; and

WHEREAS, the program instituted by the 1987 Legislature to allocate revenue from increased hunting license fees to fund the protection and enhancement of wildlife habitat has proved to be an effective and valuable tool in maintaining the quality of wildlife habitat in Montana; and

WHEREAS, it is in the interests of the people and the wildlife of the State of Montana to continue the wildlife habitat acquisition program on a permanent basis.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 12, Chapter 598, Laws of 1987, is amended to read:

"Section 12. **Effective date — termination date.** This act is effective March 1, 1988, and terminates March 1, ~~1994~~ *2006.*"

Section 2. Section 3, Chapter 319, Laws of 1991, is amended to read:

"Section 3. Section 12, Chapter 598, Laws of 1987, is amended to read:

"Section 12. **Effective date — termination date.** This act is effective March 1, 1988, and terminates March 1, ~~1994~~ *~~1996~~* *2006.*""

Approved April 1, 1993.

CHAPTER NO. 242

[SB 225]

AN ACT ADOPTING A STATE ENERGY POLICY GOAL STATEMENT; PROVIDING FOR AN ONGOING STATE ENERGY POLICY DEVELOPMENT PROCESS; PROVIDING FOR THE APPLICATION OF AN ENERGY POLICY ANALYSIS METHODOLOGY FOR ENERGY-RELATED LEGISLATION; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State energy policy goal statement.** (1) It is the policy of the state of Montana to promote energy conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens.

(2) In pursuing this goal, it is the policy of the state of Montana to:

(a) recognize that the state's energy system operates within the larger context of and is influenced by regional, national, and international energy markets; and

(b) maintain a continual process to review this energy policy statement and any future changes so that Montana's energy strategy will provide for a balance between a sustainable environment and a viable economy.

Section 2. **Definitions.** As used in [sections 3 and 4], the following definitions apply:

(1) "Council" means the environmental quality council established in 5-16-101.

(2) "Department" means the department of natural resources and conservation established in 2-15-3301.

Section 3. **Energy policy development process.** (1) The department and the council, in cooperation with the consumer counsel and the public service commission, shall maintain a continual process to develop the components of a comprehensive state energy policy.

(2) Because of limited state resources and the need to focus intensive effort on specific issues of importance, the development of a comprehensive state energy policy must occur on an incremental basis. As the need arises, the department, in cooperation with the appropriate state agencies and with extensive public involvement, shall identify and recommend to the council specific components of a state energy policy for development under the consensus process described in subsection (3).

(3) (a) Upon selection of a specific energy policy component, the council shall assign to a working group composed of representatives of the parties with a stake in that specific component the task of developing consensus recommendations for that component of state energy policy.

(b) The working group must include the broadest possible representation of stakeholders in the issues to be included within the specific component of state energy policy.

(c) Whenever possible, the working group shall use a consensus process to develop recommendations for a specific energy policy component to be submitted to the council. Recommendations that are not based upon consensus must be so noted by the working group. Upon consideration of the working group's recommendations, the council shall forward its recommendations to the legislature and to the appropriate state agencies for adoption.

(d) The department shall:

(i) provide staff support to the working group, including policy analysis, data gathering, research, technical analysis, and administrative support;

(ii) provide administrative coordination among the appropriate state agencies in the energy policy development process;

(iii) prepare reports for and make recommendations to the council; and

(iv) consult regularly with the council to coordinate each agency's activities.

(4) In carrying out their responsibilities under this section, the department and the council may contract with experts, consultants, and facilitators and may seek funding from a variety of private and public sources for technical and other assistance necessary to accomplish their responsibilities.

Section 4. **Application of energy policy analysis methodology for energy-related bills.** (1) All bills reported out of a committee of the legislature that would affect state energy policy, including the consumption, production, and conservation of the state's energy resources, may include an energy policy analysis that evaluates the costs and benefits of that bill.

(2) The analysis must include:

(a) an energy policy evaluation worksheet, which consists of:

(i) a description of the bill;

(ii) identification of the problems or issues addressed by the bill;

(iii) an explanation of the intent of the bill; and

(iv) an evaluation of the bill's effects on energy, the environment, and the economy, along with information on the fiscal effects, social effects, and the distribution of the potential effects among different income groups, sectors of the economy, and geographic areas; and

(b) an effects summary table that reviews the information provided in the energy policy evaluation worksheet in summary form.

(3) An energy policy analysis may also be requested on a bill, as allowed by the joint rules of the legislature, by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the sponsor, through the presiding officer.

(4) The department, in cooperation with other appropriate state or local agencies, shall prepare the energy policy analysis, within the limits of available resources, within 6 days or as soon as reasonably practicable.

Section 5. **Termination.** [Section 4] terminates on October 1, 1995.

Approved April 1, 1993.

CHAPTER NO. 243

[SB 269]

AN ACT PROVIDING FOR VOLUNTARY STATE TAX WITHHOLDING FROM FEDERAL ANNUITY PAYMENTS; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] grants rulemaking authority to the department of revenue to implement voluntary withholding for state income tax from federal annuity payments under federal law. The rules should conform to federal requirements and provide a way for residents to apply for withholding.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Voluntary state withholding from federal annuity — agreement with federal government.** (1) The director of revenue shall enter into an agreement with the federal office of personnel management to allow voluntary state tax withholding from federal annuity payments as provided in 5 U.S.C. 8345.

(2) The department of revenue may adopt administrative rules necessary to implement the federal agreement entered into under subsection (1) and to comply with federal laws and regulations for voluntary withholding from federal annuity payments.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [section 1].

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 1, 1993.

CHAPTER NO. 244

[SB 282]

AN ACT CLOSING THE JEFFERSON RIVER BASIN AND MADISON RIVER BASIN TO FURTHER CONSUMPTIVE APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER, CERTAIN STORAGE PROJECTS, AND DOMESTIC, MUNICIPAL, AND STOCK USES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** Unless the context requires otherwise, in [sections 1 and 2], the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

(3) "Jefferson River basin" means the drainage area of the Jefferson River and its tributaries above the confluence of the Jefferson and Missouri Rivers.

(4) "Madison River basin" means the drainage area of the Madison River and its tributaries above the confluence of the Madison and Jefferson Rivers.

(5) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

Section 2. **Basin closure — exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department or the board may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Jefferson River basin or Madison River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3).

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections 1 and 2].

Section 4. **Applicability.** [This act] applies to all applications received by the department of natural resources and conservation after [the effective date of this act].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 1, 1993.

CHAPTER NO. 245

[SB 322]

AN ACT ALLOWING THE DEPARTMENT OF TRANSPORTATION ACCESS TO CERTAIN INDIVIDUAL INCOME TAX INFORMATION IN ORDER TO DETERMINE WHETHER GASOLINE USE QUALIFIES AS AGRICULTURAL USE FOR THE PURPOSE OF OBTAINING A REFUND; AMENDING SECTIONS 15-30-303 AND 15-70-223, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-303, MCA, is amended to read:

"**15-30-303. Confidentiality of tax records.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter or any other information secured in the administration of this chapter. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) The officers charged with the custody of ~~such~~ *the* reports and returns ~~shall~~ *may* not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding to which the department is a party under the provisions of this chapter or any other taxing act or on behalf of any party to any action or proceedings under the provisions of this chapter or ~~such~~ other act when the reports or facts shown ~~thereby~~ are directly involved in ~~such~~ *the* action or proceedings, in either of which events the court may require the production of and may admit in evidence so much of ~~said~~ *the* reports or of the facts shown ~~thereby~~ as are pertinent to the action or proceedings and no more.

(3) ~~Nothing herein shall~~ *This section may not* be construed to prohibit:

(a) the delivery to a taxpayer or ~~his~~ *the taxpayer's* duly authorized representative of a certified copy of any return or report filed in connection with ~~his~~ *the* tax;

(b) the publication of statistics ~~so~~ classified ~~as~~ to prevent the identification of particular reports or returns and the items ~~thereof~~ *of the reports or returns*; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who ~~shall bring~~ *brings an* action to set aside or review the tax based ~~thereon~~ *on the report or return* or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 and 15-30-322.

(4) Reports and returns ~~shall~~ *must* be preserved for *at least* 3 years and ~~thereafter~~ until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) ~~of this section~~ shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year, or both, at the discretion of the court, and if the offender ~~be~~ *is* an officer or employee of the state, ~~he shall~~ *the offender must* be dismissed from office and ~~be~~ *is* incapable of holding any public office in this state for a period of 1 year ~~thereafter~~.

(6) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either ~~such~~ officer to inspect the return of income of any individual or may furnish to ~~such~~ *the* officer or ~~his~~ *the officer's* authorized representative an abstract of the return of income of any individual or supply ~~him~~ *the officer* with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any individual, but ~~such~~ *the* permission ~~shall~~ *must* be granted or ~~such~~ *the* information furnished to ~~such~~ *the* officer or ~~his~~ *the officer's* representative only if the statutes of the United States or of ~~such~~ *the* other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(7) ~~Further, notwithstanding~~ *Notwithstanding* any of the provisions of this section, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses; ~~and~~

(d) to the board of regents information required under 20-26-1111*; and*

(e) to the department of transportation the ratio of gross farm income to total gross income based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223, provided that notice to the applicant has been given as provided in 15-70-223. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns."

Section 2. Section 15-70-223, MCA, is amended to read:

"**15-70-223. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases.** (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use. *To ensure that the applicant's use qualifies as agricultural use, the depart-*

ment of transportation may request from the department of revenue information on the ratio of the applicant's gross farm income to total gross income, provided that the department of transportation gives notice to the applicant.

(2) For purposes of application for a refund under subsection (1), the department shall accept, as evidence of keylock or cardtrol purchases, a statement of the sale of gasoline with applicable tax that identifies the purchaser and that is signed by a licensed distributor or a person licensed under 15-70-203 from whom the gasoline was purchased.

(3) If any invoice or evidence is either lost or destroyed, the purchaser may support his claim for refund by submitting an affidavit relating the circumstances of such loss or destruction and by producing such other evidence as may be required by the department of transportation.

(4) An applicant whose use does not qualify as agricultural use may not estimate and must maintain records as required by 15-70-222."

Section 3. **Effective date — applicability.** [This act] is effective on passage and approval and applies to claims for refunds filed on or after [the effective date of this act].

Approved April 1, 1993.

CHAPTER NO. 246

[SB 411]

AN ACT REQUIRING A REAL ESTATE BROKER OPERATING UNDER A FRANCHISE AGREEMENT TO DISCLOSE THE TRADE NAME, IF ANY, BY WHICH THE OFFICE IS KNOWN; REQUIRING A BROKER WHO IS ALSO THE PRINCIPAL TO DISCLOSE THAT FACT IN ADVERTISING CONCERNING THE PROPERTY; AND AMENDING SECTION 37-51-321, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-321, MCA, is amended to read:

"**37-51-321. Revocation or suspension of license — initiation of proceedings — grounds.** *(1)* The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate ~~salesman~~ *salesperson*, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or ~~salesman~~ *salesperson* has been found guilty by a majority of the board of any of the following practices:

~~(1)~~*(a)* intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name ~~he~~ *the broker* does not incorporate ~~his~~ *the broker's* own name in the franchise name or logotype or does not conspicuously display, on ~~his~~ *the broker's* letterhead and other printed materials available to the public, a statement that ~~his~~ *the broker's* office is independently owned and operated *and the trade name, if any, by which the office is known.* The board may not adopt advertising standards more stringent than those set forth in this subsection.

~~(2)~~*(b)* making any false promises of a character likely to influence, persuade, or induce;

~~(3)~~*(c)* pursuing a continued and flagrant course of misrepresentation or making false promises through agents or ~~salesmen~~ *salespersons* or any medium of advertising or otherwise;

~~(4)~~*(d)* use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

~~(5)~~*(e)* failing to account for or to remit money coming into ~~his~~ *the broker's or salesperson's* possession belonging to others;

~~(6)~~*(f)* accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

~~(7)~~*(g)* acting in a dual capacity of broker and undisclosed principal in a transaction, *including failing to disclose in advertisements for real property the person's dual capacity as broker and principal*;

~~(8)~~*(h)* guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

~~(9)~~*(i)* offering real property for sale or lease without the knowledge and consent of the owner or ~~his~~ *the owner's* authorized agent or on terms other than those authorized by the owner or ~~his~~ *the owner's* authorized agent;

~~(10)~~*(j)* inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

~~(11)~~*(k)* accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which ~~he~~ *the broker or salesperson* has an undisclosed interest;

~~(12)~~*(l)* negotiating a sale, exchange, or lease of real property directly with an owner or lessee if ~~he~~ *the broker or salesperson* knows that the owner has a written, outstanding contract in connection with the property granting an exclusive agency to another broker;

~~(13)~~*(m)* soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

~~(14)~~*(n)* representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

~~(15)~~*(o)* failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

~~(16)~~*(p)* paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate ~~salesman~~ *salesperson* under this chapter;

~~(17)~~*(q)* intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

~~(18)~~*(r)* failing, if a ~~salesman~~ *salesperson,* to place, as soon after receipt as is practicably possible, in the custody of ~~his~~ *the salesperson's* registered broker, deposit money or other money entrusted to ~~him~~ *the salesperson* ~~as salesman~~ *in that capacity* by a person;

~~(19)~~*(s)* demonstrating ~~his~~ unworthiness or incompetency to act as a broker or ~~salesman~~ *salesperson*; or

~~(20)~~*(t)* conviction of a felony.

(2) (a) It is unlawful for a broker or salesperson to openly advertise property belonging to others, whether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of the date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by other brokers or salespersons who will cooperate with the selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1)."

Approved April 1, 1993.

CHAPTER NO. 247

[HB 337]

AN ACT CREATING A NONRESIDENT TEMPORARY-USE PERMIT FOR OFF-HIGHWAY VEHICLES; AND PROVIDING FOR A FEE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Nonresident temporary-use permits — use of fees.** (1) An off-highway vehicle that is owned by a nonresident and that is not registered in another state of the United States or in another country may not be operated by a person in Montana unless a nonresident temporary-use permit is obtained.

(2) The requirements pertaining to a nonresident temporary-use permit for an off-highway vehicle are as follows:

(a) Application for the issuance of the permit must be made at locations and upon forms prescribed by the department of fish, wildlife, and parks. The forms must include but are not limited to:

(i) the applicant's name and permanent address;

(ii) the make, model, year, and serial number of the off-highway vehicle; and

(iii) an affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $5, a nonresident off-highway vehicle temporary-use sticker must be issued. The sticker must be displayed in a conspicuous manner on the off-highway vehicle. The sticker is the temporary-use permit.

(3) The temporary-use permit is valid for the calendar year designated on the permit.

(4) The permit is not proof of ownership, and a certificate of ownership may not be issued.

(5) All money collected by payment of fees under this section must be transmitted to the state treasurer, who shall deposit the money in the account created under 23-2-804(3). The money collected by payment of fees under this section must be spent as follows:

(a) 40% to be used in administering this section; and

(b) 60% to be used to plan, develop, and implement a comprehensive program for appropriate off-highway vehicle recreation use.

(6) Failure to display the permit as required by this section or making false statements in obtaining the permit is a misdemeanor and is punishable by a fine of not less than $25 or more than $100. All fines collected under this section must be transmitted to the state treasurer, who shall deposit the money in the account created under 23-2-804(3). Fifty percent of this money and the interest earned on it must be used for off-highway vehicle safety and education. The remaining 50% of the money and the interest earned on it must be used for enforcement.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 23, chapter 2, part 8, and the provisions of Title 23, chapter 2, part 8, apply to [section 1].

Approved April 1, 1993.

CHAPTER NO. 248

[HB 534]

AN ACT CLARIFYING THAT WORKERS' COMPENSATION RATES AND RATING PLANS MUST BE DEVELOPED WITHOUT REGARD TO ANY DEDUCTIBLE PAID ON MEDICAL LOSSES; AMENDING SECTION 39-71-434, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-434, MCA, is amended to read:

"**39-71-434. Deductible insurance policy provision for medical benefits.** (1) In order to lower the amount an employer is required to pay to obtain workers' compensation insurance coverage under this chapter, a workers' compensation policy issued by the state compensation insurance fund under plan No. 3 or by a private insurer under plan No. 2 must offer a deductible for the medical, hospital, and related services allowed under 39-71-704. The medical deductible must be offered in amounts of at least $500.

(2) If the insured employer chooses to accept a medical deductible, the insured employer is liable for the amount of the deductible for the medical benefits paid for each otherwise compensable claim of work injury suffered by an employee.

(3) The insured employer shall contract with the insurer to have the insurer pay the entire cost of the covered medical benefits directly to the provider of medical or related services and then seek reimbursement from the insured employer for the deductible amount. The insurer is entitled to reimbursement only for medical, hospital, and related services allowed under 39-71-704, up to the amount of the deductible.

(4) If an insured employer who has contracted with an insurer for a medical deductible does not pay the medical deductible amount to the insurer through reimbursement, the amount paid by the insurer on the claim may be included as benefits paid in a determination of the insured employer's rate.

(5) If an insured employer chooses to accept a medical deductible, then for purposes of computing rates and rating plans, all medical losses incurred must be reported to the insurer without regard to the application of any medical deductible regardless of whether the employer or the insurer pays the losses."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved April 1, 1993.

CHAPTER NO. 249

[HB 577]

AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS CONCERNING CORPORATIONS; PROVIDING FOR MAILING OF CERTAIN NOTICES; AUTHORIZING DIFFERENT NAME DESIGNATIONS FOR FOREIGN CORPORATIONS; PROVIDING FOR THE EXTENSION OF DURATION OF A CORPORATION; AND AMENDING SECTIONS 35-1-115, 35-1-827, 35-1-937, 35-1-1039, 35-2-608, 35-2-833, AND 35-4-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-1-115, MCA, is amended to read:

"**35-1-115. General powers.** Unless its articles of incorporation provide otherwise, each corporation has perpetual duration and succession in its corporate name and, unless otherwise prohibited by law, has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, the power:

(1) to sue and be sued, complain, and defend in its corporate name;

(2) to have a corporate seal, which may be altered at will, and to use it or a facsimile of the seal by impressing or affixing it or in any other manner reproducing it;

(3) to make and amend bylaws, consistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(4) to purchase, receive, lease, or otherwise acquire and to own, hold, improve, use, and otherwise deal with real or personal property or any legal or equitable interest in property, wherever located;

(5) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) to purchase, receive, subscribe for, or otherwise acquire any other entity; to own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of any other entity; and to deal in and with shares or other interests in, or obligations of any other entity;

(7) to make contracts and guarantees; to incur liabilities; to borrow money; to issue its notes, bonds, and other obligations, which, *if authorized by the articles of incorporation,* may be convertible into or include the option to purchase other securities of the corporation; and to secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) to lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) to be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) to conduct its business, locate offices, and exercise the powers granted by this chapter in the state or out of the state;

(11) to elect directors and appoint officers, employees, and agents of the corporation; to define their duties; to fix their compensation; and to lend them money and credit;

(12) to pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) to make donations for the public welfare or for charitable, religious, scientific, or educational purposes and, in time of war, to make donations in aid of war activities;

(14) to transact any lawful business that will aid governmental policy; and

(15) to make payments or donations or to do any other act that is consistent with law and that furthers the business and affairs of the corporation."

Section 2. Section 35-1-827, MCA, is amended to read:

"**35-1-827. Right to dissent.** (1) A shareholder is entitled to dissent from and obtain payment of the fair value of ~~his~~ *the shareholder's* shares in the event of any of the following corporate actions:

(a) consummation of a plan of merger to which the corporation is a party if:

(i) shareholder approval is required for the merger by 35-1-815 or the articles of incorporation and the shareholder is entitled to vote on the merger; or

(ii) the corporation is a subsidiary that is merged with its parent corporation under 35-1-818;

(b) consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired if the shareholder is entitled to vote on the plan;

(c) consummation of a sale or exchange of all or substantially all of the property of the corporation other than in the usual and regular course of business if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(d) an amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:

(i) alters or abolishes a preferential right of the shares;

(ii) creates, alters, or abolishes a right in respect of redemption, including a provision with respect to a sinking fund for the redemption or repurchase of the shares;

(iii) alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;

(iv) excludes or limits the right of the shares to be voted on any matter or to ~~accumulate~~ *cumulate* votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or

(v) reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share ~~so~~ created is to be acquired for cash under 35-1-621; or

(e) any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and to obtain payment for their shares.

(2) A shareholder entitled to dissent and to obtain payment for ~~his~~ shares under 35-1-826 through 35-1-839 may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation."

Section 3. Section 35-1-937, MCA, is amended to read:

"**35-1-937. Unknown claims against dissolved corporation.** (1) Subject to ~~35-1-939~~ *35-1-936*, the dissolution of a corporation, including by the expiration of its term, does not take away or impair any remedy available to or against the corporation or its officers, directors, or shareholders for any claim or right, whether or not the claim or right existed or accrued prior to dissolution.

A proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers have power to take corporate or other action as appropriate to protect the remedy, right, or claim.

(2) A claim may be enforced under 35-1-936 or this section:

(a) against the dissolved corporation, to the extent of the undistributed assets; or

(b) if the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of ~~his~~ *the shareholder's* pro rata share of the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to ~~him~~ *the shareholder.*

(3) Subsections (1) and (2) apply to foreign corporations and their shareholders transacting business in this state for any claims otherwise arising or accruing under Montana law."

Section 4. Section 35-1-1039, MCA, is amended to read:

"**35-1-1039. Procedure for and effect of revocation.** (1) If the secretary of state determines that one or more grounds exist under 35-1-1038 for revocation of a certificate of authority, the secretary of state shall ~~serve~~ *mail to* the foreign corporation ~~with~~ *the* written notice of ~~his~~ *the* determination ~~pursuant to 35-1-1034~~.

(2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within 60 days after ~~service of~~ the notice is ~~perfected under 35-1-1034~~ *mailed,* the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and ~~serve~~ *mail* a copy ~~on~~ *to* the foreign corporation ~~pursuant to 35-1-1034~~.

(3) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(4) The secretary of state's revocation of a foreign corporation's certificate of authority appoints the secretary of state as the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the secretary of state under this subsection is service on the foreign corporation. Upon receipt of process, the secretary of state shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office~~;~~ or, if ~~no~~ *a* report or communication is *not* on file, in its application for a certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation."

Section 5. Section 35-2-608, MCA, is amended to read:

"**35-2-608. Approval of plan of merger.** (1) Subject to the limitations set forth in 35-2-609, ~~profit~~ *one or more nonprofit* corporations may merge into a business or nonprofit corporation if the plan of merger is approved as provided in 35-2-610.

(2) The plan of merger must set forth:

(a) the name of each corporation planning to merge and the name of the surviving corporation into which each plans to merge;

(b) the terms and conditions of the planned merger;

(c) the manner and basis, if any, of converting the memberships of each public benefit or religious corporation into memberships of the surviving corporation; and

(d) if the merger involves a mutual benefit corporation, the manner and basis, if any, of converting memberships of each merging corporation into memberships, obligations, or securities of the surviving or any other corporation or into cash or other property in whole or part.

(3) The plan of merger may set forth:

(a) any amendments to the articles of incorporation or bylaws of the surviving corporation to be effected by the planned merger; and

(b) other provisions relating to the planned merger."

Section 6. Section 35-2-833, MCA, is amended to read:

"**35-2-833. Procedure for and effect of revocation.** (1) The secretary of state, upon determining that one or more grounds exist under 35-2-832 for revocation of a certificate of authority, shall ~~serve~~ *mail to* the foreign corporation ~~with~~ written notice of that determination under 35-2-830.

(2) The attorney general, upon determining that one or more grounds exist under 35-2-832(2) for revocation of a certificate of authority, shall request the secretary of state to serve, and the secretary of state shall serve, the foreign corporation with written notice of that determination under 35-2-830.

(3) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the secretary of state or attorney general that each ground for revocation determined by the secretary of state or attorney general does not exist within 60 days after *mailing the notice or after* service of the notice is perfected under 35-2-830, the secretary of state may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that states the ground or grounds for revocation and the effective date of the revocation. The secretary of state shall file the original of the certificate and ~~serve~~ *mail* a copy ~~on~~ *to* the foreign corporation ~~under 35-2-830~~.

(4) The authority of a foreign corporation to transact business in this state ceases on the date shown on the certificate revoking its certificate of authority.

(5) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation."

Section 7. Section 35-4-206, MCA, is amended to read:

"**35-4-206. Corporate name.** The name of a domestic or foreign professional corporation:

(1) *(a) except as provided in subsection (1)(b),* must contain the words "professional corporation" or the abbreviation "P.C."; *unless*

(b) the name of a foreign corporation contains the words "professional services" or "P.S.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation."

Section 8. **Extension of duration of corporation.** If a corporation is dissolved by the expiration of its period of duration as stated in its articles of incorporation, the corporation may amend its articles of incorporation within 5 years from the stated date of expiration to extend its existence.

Section 9. **Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to [section 8].

Approved March 31, 1993.

CHAPTER NO. 250

[SB 63]

AN ACT GENERALLY REVISING THE SPECIAL IMPROVEMENT DISTRICT LAWS; ALLOWING THE CREATION OF A SPECIAL IMPROVEMENT DISTRICT FOR THE CONVERSION OF OVERHEAD UTILITIES; REVISING ASSESSMENT COSTS FOR UNDERGROUND PLACEMENT OF UTILITIES WITHIN A DISTRICT; CONFORMING THE SPECIAL IMPROVEMENT DISTRICT BID OPENING TIMELINE TO THE BID OPENING TIMELINE FOR MUNICIPAL PURCHASES AND FRANCHISES; AMENDING SECTIONS 7-12-2131, 7-12-4102, 7-12-4132, 7-12-4141, 69-4-311, AND 69-4-312, MCA; REPEALING SECTIONS 69-4-315, 69-4-316, 69-4-317, 69-4-318, 69-4-319, 69-4-320, 69-4-321, 69-4-322, 69-4-323, 69-4-324, 69-4-325, 69-4-326, 69-4-327, 69-4-328, 69-4-329, 69-4-330, 69-4-331, 69-4-332, AND 69-4-333, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2131, MCA, is amended to read:

"**7-12-2131. Bids for district work — *exception*.** (1) ~~The~~ *Except as provided in subsection (3), the* board of county commissioners may call for bids for proposals for several kinds or types of materials for any of the improvements proposed, reserving the right to select the kind ~~of~~ *or* type ~~or~~ *of* materials to be used in making any ~~or all~~ of ~~said~~ *the* improvements after the bids or proposals ~~therefor shall~~ have been opened, examined, and declared.

(2) All proposals or bids offered ~~shall~~ *must* be accompanied by bid security as provided for in Title 18, chapter 1, part 2. ~~Such~~ *The* proposals or bids ~~shall~~ *must* be delivered to the county clerk.

(3) If the proposed improvement is the conversion of overhead utilities to an underground location as provided for in 7-12-4102(2)(i), the work must be performed by the public utility responsible for the cost and feasibility report required under 69-4-313."

Section 2. Section 7-12-4102, MCA, is amended to read:

"**7-12-4102. Authorization for creation of special improvement districts.** (1) The city or town council has power to create special improvement districts, designating them by number; to extend the time for payment of assessments levied upon the districts for district improvements for a period not exceeding 20 years or, if refunding bonds are issued pursuant to 7-12-4194, for a period not exceeding 30 years; to make the assessments payable in installments; and to pay all expenses of whatever character incurred in making the improvements with special improvement warrants or bonds.

(2) Whenever the public interest or convenience requires, the city council may:

(a) create special improvement districts for acquiring by purchase, building, constructing, or maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(b) create special improvement districts for acquiring by purchase or building and constructing municipal swimming pools and other recreation facilities;

(c) create special improvement districts and order the whole or ~~any~~ *a* portion ~~or portions~~, either in length or width, of ~~any~~ one or more of the streets, avenues, alleys, or places or public ways of the city:

(i) graded or regraded to the official grade;

(ii) planked or replanked;

(iii) paved or repaved;

(iv) macadamized or remacadamized;

(v) graveled or regraveled;

(vi) piled or repiled;

(vii) capped or recapped;

(viii) surfaced or resurfaced;

(ix) oiled or reoiled;

(d) create special improvement districts and order the acquisition, construction, or reconstruction within the districts of:

(i) sidewalks, crosswalks, culverts, bridges, gutters, curbs, steps, parkings (including the planting of grassplots and setting out of trees);

(ii) sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connecting sewers, ditches, drains, conduits, channels, and other appurtenances;

(iii) waterworks, water mains, and extensions of water mains;

(iv) pipes, hydrants, hose connections for irrigating purposes;

(v) appliances for fire protection;

(vi) tunnels, viaducts, conduits, subways, breakwaters, levees, retaining walls, bulkheads, and walls of rock or other material to protect ~~the same~~ *them* from overflow or injury by water;

(vii) the opening of streets, avenues, and alleys and the planting of trees on the streets, avenues, and alleys;

(e) create special improvement districts and order the construction or reconstruction in, over, or through property or rights-of-way owned by the city of:

(i) tunnels, sewers, ditches, drains, conduits, and channels for sanitary and/or drainage purposes, with necessary outlets, cesspools, manholes, catchbasins, flush tanks, septic tanks, connection sewers, ditches, drains, conduits, channels, and other appurtenances;

(ii) pipes~~,~~ *and* hose connections for irrigating; hydrants and appliances for fire protection;

(iii) breakwaters, levees, retaining walls, and bulkheads; and

(iv) walls of rock or other material to protect the streets, avenues, lanes, alleys, courts, places, public ways, and other property in the city from overflow by water;

(f) create special improvement districts to make monetary advances or contributions to aid in the construction of additional natural gas and electric distribution lines and telecommunications facilities in order to extend those public utility services;

(g) create special improvement districts and order ~~any~~ work to be done that is considered necessary to improve the whole or ~~any~~ *a* portion of the streets, avenues, sidewalks, alleys, places, or public ways, property, or right-of-way of the city;

(h) create special improvement districts to acquire and improve by purchase, gift, bequest, lease, or other means land to be designated as public park or open-space land; ~~and~~

(i) create special improvement districts for the conversion of overhead utilities to underground locations in accordance with 69-4-311 through 69-4-314; and

~~(i)~~*(j)* maintain, preserve, and care for any ~~and all~~ of the improvements authorized in this section.

(3) The city governing body may order and create special improvement districts covering projects abutting the city limits and include properties outside the city where the special improvement district abuts and benefits that property. Property owners within the proposed district boundaries outside the city may not be included in the special improvement district if 40% of those property owners protest the creation of the special improvement district. The property outside the city must be treated in a similar manner as to improvements, notices, and assessments as the property inside the city limits. A joint resolution of the city and county must be passed agreeing to the terms of the special improvement district prior to passing the resolution of intention or the resolution creating the special improvement district. A copy of the resolution of intention and the resolution creating the special improvement district must be provided to the county commissioners upon the passage of the respective resolutions."

Section 3. Section 7-12-4132, MCA, is amended to read:

"**7-12-4132. Power to require underground placement of utilities within district.** (1) ~~It is provided that~~ *Unless the purpose of the special improvement district is the conversion of existing overhead utilities to an underground location,* the city council ~~shall have~~ *has* the same jurisdiction and powers as provided in 7-12-4102 and 7-12-4103 (before doing any of the work mentioned in this part) to require ~~any~~ *a* public service corporation or company, firm, or person occupying ~~such~~ *the* streets, avenues, or alleys, at their own expense and within a reasonable time to be fixed by the council, to place in an underground conduit, in ~~such~~ *a* manner as may be directed by the council, all wires; electric conduits; or telephone, telegraph, power, or power transmission lines or appurtenances ~~thereto~~ *to them* or appliances owned, held, or enjoyed in connection ~~therewith~~ *with them.*

(2) The whole cost so assessed ~~shall~~ *may* at no time exceed the ~~sum of $1.50 per lineal foot plus the cost of the pipe~~ *costs incurred.*"

Section 4. Section 7-12-4141, MCA, is amended to read:

"**7-12-4141. Bid for work — *exception.*** (1) ~~The~~ *Except as provided in subsection (4), the* city council may call for bids or proposals for several kinds and types of materials for ~~any~~ *the* improvements proposed to be made under this part and part 42, reserving the right to select the kind or type of material to be used in making ~~any such~~ *the* improvements after the bids or proposals ~~therefor shall~~ have been opened, examined, and declared.

(2) Notice inviting proposals and referring to the specifications on file ~~shall~~ *must* be published at least twice in a daily, semiweekly, or weekly newspaper published and circulated in ~~said~~ *the* city and designated by the council for that purpose, and in case there is no newspaper published in ~~said~~ *the* city, then it ~~shall~~ *must* be posted in at least three public places.

(3) The time fixed for the opening of bids ~~shall be~~ *may* not *be* less than ~~10~~ *5* days *or more than 12 days* from the time of the final publication of ~~said~~ *the* notice. *If the advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of the advertisement and the day set for opening bids.* ~~All~~ *The* proposals or bids offered ~~shall~~ *must* be accompanied by bid security as provided for in Title 18, chapter 1, part 2. ~~Said~~ *The* proposals or bids ~~shall~~ *must* be delivered to the clerk of the city council.

(4) If the proposed improvement is the conversion of overhead utilities to an underground location, the work must be performed by the public utility responsible for the cost and feasibility report required under 69-4-313."

Section 5. Section 69-4-311, MCA, is amended to read:

"**69-4-311. Authorization to create special improvement districts.** (1) The governing body of ~~every~~ *a* county is ~~hereby~~ authorized and empowered to create special improvement districts under ~~this part~~ *Title 7, chapter 12, part 21, and this part,* within the unincorporated portion of ~~such~~ *the* county. The governing body of ~~every~~ *a* city ~~and~~ *or* town is ~~hereby~~ authorized and empowered to create special improvement districts under ~~this part~~ *Title 7, chapter 12, parts 41 and 42, and this part,* within its territorial limits. ~~Said~~ *The* special improvement districts ~~shall~~ *must* provide for the conversion of existing overhead electrical and communication facilities to underground locations and the construction, reconstruction, or relocation of any other electric or communication facilities ~~which~~ *that* may be incidental ~~thereto~~ *to the conversion*~~, pursuant to the provisions of this part~~.

(2) ~~Any such~~ *A* special improvement district ~~shall~~ *must* include an area having a frontage of not less than 1,000 feet upon a public street, road, highway, or utilities easement along which overhead electric or communication facilities are located."

Section 6. Section 69-4-312, MCA, is amended to read:

"**69-4-312. Procedure to initiate creation of district — resolution for feasibility study.** (1) ~~Any~~ *A* governing body, on its own initiative or upon a petition signed by at least 60% of the property owners owning at least 60% of the assessable land of ~~any~~ *a* proposed district requesting the creation of a special improvement district, as provided for in this part, may pass a resolution at ~~any~~ *a* regular or special meeting, declaring that it finds that the special improvement district is in the public interest. The governing body shall make a finding that the formation of the special improvement district, for the purposes set out in this part, will promote the public convenience, necessity, and welfare.

(2) The resolution ~~shall~~ *must* state that the costs and expenses will be levied and assessed upon the property benefited and further request that each public utility serving ~~such~~ *the* area by overhead electric or communication facilities shall, within 120 days after the receipt of the resolution, make a study of the cost of conversion of its facilities in ~~such~~ *the* area to underground service. The report of ~~said~~ *the* study ~~shall~~ *must* be provided to the governing body and made available for inspection in the office of the governing body and each public utility. *The governing body may not pass a resolution of intention to create a special improvement district until it has received the report.* The resolution of the governing body ~~shall~~ *must* require that each public utility be provided with the name and address of the owner of each parcel or lot within the proposed improvement district, if known, and if not known, the description of the property and ~~such~~ other matters as may be required by the public utilities in order to perform the work involved in the cost study. The resolution ~~shall~~ *must* further state the area in square feet of each lot or parcel within the proposed conversion service area."

Section 7. **Repealer.** Sections 69-4-315, 69-4-316, 69-4-317, 69-4-318, 69-4-319, 69-4-320, 69-4-321, 69-4-322, 69-4-323, 69-4-324, 69-4-325, 69-4-326, 69-4-327, 69-4-328, 69-4-329, 69-4-330, 69-4-331, 69-4-332, and 69-4-333, MCA, are repealed.

Section 8. **Effective date.** [This act] is effective July 1, 1993.

Approved March 31, 1993

CHAPTER NO. 251

[SB 103]

AN ACT DECREASING THE AMOUNT THAT MUNICIPALITIES ARE REQUIRED TO PAY INJURED POLICE OFFICERS FROM THE DIFFERENCE BETWEEN GROSS SALARY AND THE AMOUNT OF WORKERS' COMPENSATION BENEFITS TO THE DIFFERENCE BETWEEN NET SALARY AND THE AMOUNT OF WORKERS' COMPENSATION BENEFITS; AND AMENDING SECTION 7-32-4132, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-4132, MCA, is amended to read:

"**7-32-4132. Payment of partial salary amount of officer injured in performance of duty.** *(1)* A member of a municipal law enforcement agency of a first- or second-class municipality who is injured in the performance of ~~his~~ *the member's* duties ~~so as to necessitate~~ *and who requires* medical or other remedial treatment ~~and render him~~ *for injuries that render the member* unable to perform ~~his~~ *the member's* duties ~~shall~~ *must* be paid by the municipality ~~by which he is employed~~ the difference between ~~his full~~ *the member's net* salary, *following adjustments for income taxes and pension contributions,* and the amount ~~he receives~~ *received* from workers' compensation until ~~his~~ *the* disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever ~~shall~~ *occurs* first ~~occur~~.

(2) To qualify for the partial salary payment provided for in subsection (1), the member of the law enforcement agency must be unable to perform the member's duties as a result of the injury."

Approved March 31, 1993.

CHAPTER NO. 252

[SB 124]

AN ACT ELIMINATING CERTAIN PROVISIONS OF THE FINDERS OF PROPERTY LAW; AND REPEALING SECTIONS 70-5-203, 70-5-204, 70-5-205, 70-5-206, 70-5-207, 70-5-208, AND 70-5-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 70-5-203, 70-5-204, 70-5-205, 70-5-206, 70-5-207, 70-5-208, and 70-5-209, MCA, are repealed.

Approved March 31, 1993.

CHAPTER NO. 253

[SB 149]

AN ACT REMOVING THE REQUIREMENT THAT A COUNTY COMMISSION ESTABLISH, MAINTAIN, DISCONTINUE, OR ABANDON A COUNTY ROAD WHEN PETITIONED BY FREEHOLDERS; AND AMENDING SECTION 7-14-2103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2103, MCA, is amended to read:

"**7-14-2103. Duties of county commissioners concerning county roads.** (1) Each board of county commissioners has general supervision over the county roads within the county.

(2) Each board ~~shall~~ *may* survey, view, lay out, record, open, work, and maintain county roads ~~which~~ *that* are petitioned for by freeholders. Guideposts ~~shall~~ *must* be erected.

(3) Each board ~~shall~~ *may* discontinue or abandon county roads when freeholders properly petition ~~therefor~~ *for discontinuance or abandonment.*"

Approved March 31, 1993.

CHAPTER NO. 254

[SB 244]

AN ACT ALLOWING A COUNTY OR A MUNICIPALITY TO ISSUE REVENUE BONDS TO FINANCE COMMUNITY-BASED FACILITIES FOR THE DEVELOPMENTALLY DISABLED; AND AMENDING SECTION 90-5-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-5-101, MCA, is amended to read:

"**90-5-101. Definition of terms.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(4) "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

(5) "Institution of higher education" means any private nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

(6) "Mortgage" means a mortgage or deed of trust or other security device.

(7) "Municipality" means any incorporated city or town in the state.

(8) "Project" means any land; any building or other improvement; and any other real or personal properties ~~deemed~~ *considered* necessary in connection ~~therewith~~ *with the improvement*, whether or not now in existence, which ~~shall~~ *must* be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, *community-based facilities for individuals who are developmentally disabled as defined in 53-20-102,* or medical facilities; higher education facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; and any combination of these projects."

Approved March 31, 1993.

CHAPTER NO. 255

[SB 275]

AN ACT PROVIDING THAT A PERSON WHO INITIATES A STREAMBED MODIFICATION PROJECT WITHOUT CONSENT IS SUBJECT TO A CIVIL PENALTY OR A CRIMINAL PENALTY; AND AMENDING SECTION 75-7-123, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7-123, MCA, is amended to read:

"**75-7-123. Initiating project without consent — ~~penalty~~ *penalties* — restoration.** Any person initiating a project without written consent of the supervisors is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $500 *or by a civil penalty of not less than $25 or more than $500* for each day that person continues to physically alter or modify the stream, and in addition, that person shall restore, at the discretion of the court, the damaged stream, as recommended by the team and approved by the supervisors, to as near its prior condition as possible."

Approved March 31, 1993.

CHAPTER NO. 256

[SB 325]

AN ACT CLARIFYING THE INTEREST THAT IS SUBJECT TO THE BENEFICIAL USE TAX; AND AMENDING SECTION 15-24-1204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1204, MCA, is amended to read:

"**15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes.** The tax imposed upon ~~such~~ *the* possession or other beneficial use of tax-exempt property ~~shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof, provided that there shall be~~ *is on the separate private interest in the tax-exempt property. There is* credited against the tax ~~so~~ imposed upon the beneficial use of property owned by the federal government the amount of payments ~~which~~ *that* are made in lieu of taxes."

Approved March 31, 1993.

CHAPTER NO. 257

[SB 350]

AN ACT INCREASING THE MAXIMUM ADMINISTRATIVE FEE THAT MAY BE CHARGED BY AN IRRIGATION DISTRICT; CLARIFYING THAT THE ADMINISTRATIVE FEE IS IN ADDITION TO THE ANNUAL TAX LEVY; AMENDING SECTIONS 85-7-2103 AND 85-7-2104, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the development of subdivided farm units has greatly increased irrigation district costs to administer water, including the costs of splitting irrigated acres, establishing and operating new land and water accounts, revising maps and assessment lists, administering water in brief duration to multiple users who share a common point of delivery, instructing small tract landowners on policies and procedures, and settling disputes related to water delivery and accounting; and

WHEREAS, the $25 maximum administrative charge on irrigated property is not enough to make the delivery of water to a small acreage economically feasible; and

WHEREAS, the $25 maximum administrative charge was established in 1979, with no consideration given to the future rate of inflation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-2103, MCA, is amended to read:

"**85-7-2103. All irrigable lands chargeable alike.** (1) All irrigable lands in each irrigation district and all lands in each subdistrict of the district, except those lands that are included within the district because of the exchange or substitution of water under the provisions of 85-7-1912, shall pay at the same rate for all purposes for which the lands are charged, except as otherwise provided by law. There may be an administrative charge of $5 to ~~$25~~ *$75* against each separately owned tract of land regardless of its size, as provided in 85-7-2104. *The administrative charge is in addition to the annual tax levied under 85-7-2104.*

(2) Whenever water used for the irrigation of any lands within an irrigation district or subdistrict is obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation ~~shall~~ *must* be apportioned and levied upon the lands lying under the ditch or ditches running from that particular elevation, in a manner ~~as may be~~ determined fair and equitable by the board of commissioners after considering the facts in each case. This apportionment must be made by the board of commissioners and included each year in the assessment provided for by 85-7-2104. The amount of the assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different elevations, must be determined by the board in a manner and upon notice to the persons interested in the district or subdistrict as the board in its rules may provide.

(3) Whenever a contract has been made with the United States, the lands within the district or of a subdistrict if the contract substantially benefits the subdistrict, whether originally included or later annexed to the district or subdistrict, ~~shall~~ *must* pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued under the reclamation laws and in compliance with any contracts made by the United States with the owners of the lands and in compliance with the contract between the districts and the United States.

(4) Whenever a contract has been made with the state of Montana, the lands within the district or of a subdistrict if the contract substantially benefits the subdistrict, whether originally included or later annexed to the district or subdistrict, ~~shall~~ *must* pay in accordance with state laws and public notices and

rules issued under the laws and in compliance with any contract made by the state with the owners of the lands and in compliance with the contract between the district and the state.

(5) Whenever the works necessary for the completed project are constructed progressively over a period of years and whenever a portion of the lands within the district are or can be irrigated 1 year or more before the completion of the entire project, those lands irrigated or that can be irrigated through the built portion of the project ~~shall~~ *must* pay for the cost of operating that portion of the project serving them with irrigation water and *must* also ~~shall~~ pay the portion of the interest charges as its irrigable area bears to the irrigable area of the entire project.

(6) Whenever lands have appurtenant ~~thereto~~ *to the land* a partial water right or partial rights in a system of irrigation other than that of the district or subdistrict, the amounts payable must be equitably apportioned.

(7) Whenever the owners of a portion of the lands within an irrigation district choose to install a gravity system to irrigate those lands, the cost of constructing the gravity system must be apportioned among and levied upon the lands irrigated by the gravity system in a manner determined to be equitable by the board. The levy must be included each year in the assessment charged under 85-7-2104."

Section 2. Section 85-7-2104, MCA, is amended to read:

"**85-7-2104. Annual tax levy — apportionment when tracts divided.** (1) (a) On or before the second Monday in July each year, the board of commissioners of each irrigation district organized under parts 1 and 15 shall ascertain:

(i) the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs; and

(ii) the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) of land in the district, that portion of the respective total amounts to be raised which the total irrigable area of any tract or lot bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district ~~must be~~ *is* assessed and required to pay the same amount as every other acre of irrigable land ~~therein~~ *in the district,* unless otherwise specifically provided by the board. The board may *also* charge ~~$5 to $25 against each separately owned tract of land, regardless of its size~~ *the administrative charge authorized in 85-7-2103(1).*

(c) Indebtedness under subsection (1) includes debt incurred under any contract between the district and the United States but excludes any indebtedness incurred by the district on behalf of a subdistrict.

(2) (a) On or before the second Monday in July each year, the board of commissioners of each irrigation district organized under parts 1 and 15 for which a subdistrict has been created pursuant to 85-7-404 shall determine the total amount to be raised that year for interest and principal payments on the outstanding bonded or other indebtedness of the district incurred on behalf of the subdistrict.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the subdistrict, the portion of the total amount to be raised apportioned according to the ratio of the total irrigable area of the tract or lot to the total irrigable area of the lands in the subdistrict, so that each acre of irrigable land in the subdistrict is assessed and required to pay the same amount as every other acre of irrigable land in the subdistrict, unless otherwise specifically provided by the board. The board may *also* charge ~~$5 to $25 against each separately owned tract or lot of land, regardless of its size~~ *the administrative charge authorized in 85-7-2103(1).*

(3) In the event that the ownership of any 40-acre tract or other subdivision of land in the district or subdistrict is divided after a special tax or assessment against the land has been levied, each of the owners of a tract or subdivision is entitled to have the special tax or assessment equitably apportioned to and against the divisions of the tract or subdivision, so that each owner is enabled to pay a special tax or assessment against ~~his~~ *the owner's* portion of the tract or subdivision and have the land discharged from the lien. ~~In no event shall the~~ *The* charge against any separately owned tract of land *may not* be less than $5."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 1, 1993.

CHAPTER NO. 258

[SB 361]

AN ACT PROVIDING FOR A CIVIL REMEDY FOR A PERSON CHARGED EXCESS INTEREST OR AN EXCESS CHARGE BY A PAWNBROKER OR JUNK DEALER; PROVIDING FOR RECOVERY OF REASONABLE ATTORNEY FEES AND AN AMOUNT DOUBLE THE EXCESS CHARGE; AMENDING SECTION 31-1-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-401, MCA, is amended to read:

"**31-1-401. Interest pawnbrokers may receive** — ***civil enforcement.*** *(1)* ~~No~~ *A* person may *not* carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for loans at any rate of interest above 10% a year without first obtaining a license. A pawnbroker or junk dealer or ~~his~~ *the pawnbroker's or junk dealer's* employees or agents may not charge *a fee of* more than ~~3% a month for interest, commission, discount, storage, and caring for property pledged~~ *25% of the amount of the loan for a 30-day period. The fee for extending a pawn agreement for 30 days may not exceed 25% of the amount of* *the loan. For purposes of this section, a fee includes all costs or fees charged, including but not limited to interest, commission, discount, storage, care of property, and purchase option.*

(2) The taking, receiving, reserving, or charging of a fee greater than that allowed under subsection (1) is considered a forfeiture of a sum double the amount of the fee for storage or caring that was agreed to be paid.

(3) (a) When a rate or charge greater than that provided for in subsection (1) has been paid, the person by whom it has been paid may recover from the pawnbroker or junk dealer reasonable attorney fees and an amount double the amount of the fee paid.

(b) An action under this section must be brought within 2 years after the payment of the fee. Before a suit may be brought, the party bringing suit shall make written demand for return of the fee paid."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Section 3. **Applicability.** [This act] is applicable to all loans made after [the effective date of this act].

Approved March 31, 1993.

CHAPTER NO. 259

[SB 173]

AN ACT PROVIDING FOR THE PAYMENT OF PUBLIC RETIREMENT BENEFITS TO ALTERNATE PAYEES PURSUANT TO FAMILY LAW ORDERS; AND AMENDING SECTIONS 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, AND 19-13-1004, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] grants rulemaking authority to the public employees' retirement board or the teachers' retirement board. [Section 1] provides for the assignment and payment of retirement system benefits to alternate payees but differs from federal qualified domestic relations orders. Alternate payees will not be eligible to receive payments that could not otherwise be paid by the retirement system.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Alternate payees — family law orders.** (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, or 13 [this title]; and

(b) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(5) A family law order may only provide for payment to an alternate payee as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount per month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system allows for that option.

(6) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

Section 2. Section 19-3-105, MCA, is amended to read:

"**19-3-105. Exemption from taxes and legal process.** ~~The~~ *Except as provided in [section 1], the* right of a person to a retirement allowance or any other benefit under this chapter and the money in the fund created under this chapter are not:

(1) subject to execution, garnishment, attachment, or any other process;

(2) subject to state, county, or municipal taxes except for:

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund paid under 19-3-703 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-3-701; or

(3) assignable except as in this chapter specifically provided."

Section 3. Section 19-4-706, MCA, is amended to read:

"**19-4-706. Exemption from taxation and legal process.** ~~The~~ *Except as provided in [section 1], the* pensions, annuities, or any other benefits accrued or accruing to any person under the provisions of the retirement system and the accumulated contributions and cash and securities in the various funds of the retirement system are:

(1) exempted from any state, county, or municipal tax of the state of Montana except for:

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a withdrawal paid under 19-4-603 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-4-602;

(2) not subject to execution, garnishment, attachment by trustee process or otherwise, in law or equity, or any other process; and

(3) unassignable except as specifically provided in this chapter."

Section 4. Section 19-5-704, MCA, is amended to read:

"**19-5-704. Exemption from taxes and legal process — exception.** (1) ~~Money~~ *Except as provided in [section 1], money* received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these except refunds paid under 19-5-403 of the member's contributions picked up by an employer after June 30, 1991, as provided in 19-5-402, is exempt from levy, sale, garnishment, attachment, or any other process and is unassignable except as specifically provided in 19-5-705.

(2) The first $3,600 or the amount determined pursuant to 15-30-111(2)(c)(ii) received under this chapter is exempt from state, county, or municipal taxation."

Section 5. Section 19-6-705, MCA, is amended to read:

"**19-6-705. Exemption from taxes and legal process.** ~~Any~~ *Except as provided in [section 1],* money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

(1) exempt from any state, county, or municipal tax except for:

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund paid under 19-6-403 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-6-402;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-6-706."

Section 6. Section 19-7-705, MCA, is amended to read:

"**19-7-705. Exemption from taxes and legal process.** ~~Any~~ *Except as provided in [section 1],* money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

(1) exempt from any state, county, or municipal tax except for:

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund paid under 19-7-304 of a member's contributions picked up by an employer after June 30, 1985, as provided in 19-7-403;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-7-706."

Section 7. Section 19-8-805, MCA, is amended to read:

"**19-8-805. Exemption from taxes and legal process.** ~~Any~~ *Except as provided in [section 1],* money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these is:

(1) exempt from any state, county, or municipal tax except for:

(a) a retirement allowance received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund paid under 19-8-503 of the member's contributions picked up by an employer after June 30, 1985, as provided in 19-8-502;

(2) exempt from levy, sale, garnishment, attachment, or any other process; and

(3) unassignable except as specifically provided in 19-8-806."

Section 8. Section 19-9-1006, MCA, is amended to read:

"**19-9-1006. Protection from legal process — nonassignability.** Except as provided in *[section 1] and* this chapter, the benefits payable ~~hereunder~~ *under this chapter* are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process and ~~no~~ *a* member, beneficiary, or survivor may *not* alienate, anticipate, commute, pledge, encumber, assign, or sell any of ~~such~~ *the* benefits."

Section 9. Section 19-13-1004, MCA, is amended to read:

"**19-13-1004. Protection from legal process — unassignability.** ~~The~~ *Except as provided in [section 1], the* benefits payable under this chapter are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process. ~~No~~ *A* member, beneficiary, or survivor may *not* alienate, anticipate, commute, pledge, encumber, assign, or sell any of ~~such~~ *the* benefits."

Section 10. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, and 13, and the provisions of Title 19, chapter 3, 4, 5, 6, 7, 8, 9, 12, and 13, apply to [section 1].

Section 11. **Coordination instruction.** If Senate Bill No. 385 is passed and approved, [section 1] is to be codified only as an integral part of the general retirement provisions and the bracketed language in [section 1] replaces the references to the enumerated chapters of Title 19.

Approved April 2, 1993.

CHAPTER NO. 260

[SB 272]

AN ACT REVISING THE HIGHWAY INFORMATION SIGNS LAWS; ALLOWING SIX BUSINESS SIGNS TO BE DISPLAYED ON SPECIFIC INFORMATION SIGNS; ESTABLISHING A PRIORITY FOR BUSINESSES IDENTIFIED ON A TOURIST-ORIENTED DIRECTIONAL SIGN; AMENDING SECTIONS 60-5-512 AND 60-5-522, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-5-512, MCA, is amended to read:

"**60-5-512. Specific information signs — number of business signs — distances.** (1) The number of specific information signs permitted is limited to one for each type of motorist service along an approach to an interchange or intersection.

(2) ~~No more~~ *More* than six business signs may *not* be displayed on a "GAS", ~~specific information sign, and no more than four business signs may be displayed on a~~ "FOOD", "LODGING", or "CAMPING" specific information sign. Except as provided in subsection (3), ~~no~~ *a* business may *not* be allowed more than one business sign on the same specific information sign.

(3) In areas where there are only one or two qualified businesses available for each of two or more types of motorist services, business signs for two types

of services may be displayed by a business on the same specific information sign. ~~No more~~ *More* than two business signs for each type of service may *not* be displayed in combination on a specific information sign.

(4) To qualify for business identification on a specific information sign, a motorist service facility shall meet the eligibility criteria established in 60-5-514 and may not be located more than 3 miles from the interstate highway. However, if ~~no~~ eligible services are *not* located within the 3-mile limit, the distance limits may be increased in 3-mile increments until either an eligible service or 15 miles is reached."

Section 2. Section 60-5-522, MCA, is amended to read:

"60-5-522. **Business eligibility — criteria — restrictions.** (1) To be eligible for business identification on a tourist-oriented directional sign, a business establishment shall meet the following standards for a business, service, or activity:

(a) Gas, food, lodging, and camping services must:

(i) be licensed and approved by the state and local agencies regulating the particular type of business;

(ii) provide an acceptable level of service to the public;

(iii) be in continuous operation at least 8 hours a day, 5 days a week, including Saturday or Sunday; and

(iv) have a telephone and restroom facilities available for public use.

(b) Recreation services must:

(i) be licensed and approved by state and local agencies as required by law;

(ii) provide to families and the public activities of interest in which people participate for purposes of physical exercise, collective amusement, or enjoyment of nature. Such activities may include hiking, golfing, skiing, boating, swimming, picnicking, fishing, and horseback riding.

(c) Tourist services must:

(i) be licensed as required by law;

(ii) be open to the public at least 8 hours a day, 5 days a week, including Saturday or Sunday, during the normal tourist season; and

(iii) provide a natural, recreational, historical, cultural, educational, or entertainment activity or a unique or unusual commercial or nonprofit activity, from which the major portion of income or visitors is derived during normal business seasons from motorists not residing in the immediate area of the activity.

(2) Priority under subsection (1)(a) must be given to businesses that are in continuous operation for 12 months a year.

~~(2)~~*(3)* (a) Each business identified on a tourist-oriented directional sign shall provide assurance of its conformity with all applicable laws concerning the provision of public accommodations without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

(b) If a business violates any of these laws, it loses eligibility for business identification on a tourist-oriented directional sign.

~~(3)~~*(4)* ~~No~~ *A* business that owns any outdoor advertising structure in violation of the provisions of Title 75, chapter 15, part 1, may *not* be eligible for business identification on a tourist-oriented directional sign for 1 year after the illegal outdoor advertising structure is removed unless the owner voluntarily removes it within 45 days of receiving notification under 75-15-131."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 2, 1993.

CHAPTER NO. 261

[HB 650]

AN ACT ALLOWING INVESTIGATORS EMPLOYED BY THE DEPARTMENT OF JUSTICE ON JULY 1, 1993, TO TRANSFER THEIR MEMBERSHIP FROM THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO THE SHERIFFS' RETIREMENT SYSTEM; REQUIRING THAT INVESTIGATORS HIRED AFTER JULY 1, 1993, BECOME MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM; AMENDING SECTIONS 19-7-101, 19-7-301, 19-7-302, AND 19-7-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Transfer of membership — qualification of previous service.** A person who elects to become a member of the sheriffs' retirement system pursuant to 19-7-301 may transfer the member's creditable service in the public employees' retirement system into the sheriffs' retirement system under the provisions of 19-7-309.

Section 2. Section 19-7-101, MCA, is amended to read:

"**19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Account" means the Montana sheriffs' retirement pension trust fund administered by the board.

(2) "Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest.

(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(4) "Beneficiary" means a person who is nominated by the member in a witnessed document filed with the board.

(5) "Board" means the public employees' retirement board.

(6) "Creditable service" means the aggregate of all of a member's current and prior service.

(7) "Death benefit" means a monthly annuity or lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.

(8) "Final salary" means the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total salary earned divided by the number of years served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.

(9) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

~~(9)~~*(10)* "Member" means any person who has accumulated deductions in the account to ~~his~~ *the person's* credit.

~~(10)~~*(11)* "Member's annuity" means payments for life derived from contributions made by the member while employed.

~~(11)~~*(12)* "Membership service" means service for which an amount is deducted from the salary of a member and paid into the account.

~~(12)~~*(13)* "Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana.

~~(13)~~*(14)* "Retired ~~sheriff~~ *member*" means a person receiving a retirement allowance under this chapter.

~~(14)~~*(15)* "Retirement allowance" means the state annuity plus the member's annuity.

~~(15)~~*(16)* "Service" means employment as a sheriff.

~~(16)~~*(17)* "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

~~(17)~~*(18)* "State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.

~~(18)~~*(19)* "Vested retirement" means a retirement not for cause and before retirement age."

Section 3. Section 19-7-301, MCA, is amended to read:

"**19-7-301. Membership — exclusions — allowance reduction.** (1) Every sheriff is required to become a member of the sheriffs' retirement system ~~on July 1, 1974,~~ unless ~~he~~ *the sheriff* was ~~previously~~ a member of the public employees' retirement system *on July 1, 1974*, in which case ~~he~~ *the sheriff* may at ~~his~~ *the sheriff's* option become a member of the sheriffs' retirement system.

(2) An investigator is required to become a member of the sheriffs' retirement system unless the investigator was a member of the public employees' retirement system on July 1, 1993, in which case the investigator has the option of becoming a member of the sheriffs' retirement system.

(3) All sheriffs *and investigators* who become members of the sheriffs' retirement system must remain members so long as actively employed in ~~such~~ *that* capacity, except as provided in subsection ~~(2)~~ *(4)*.

~~(2)~~*(4)* A retired ~~sheriff~~ *member* who is employed ~~as a sheriff~~ *in a position covered by the retirement system* after retirement for less than 60 working days in a calendar year is excluded from membership. The retirement allowance of a retired ~~sheriff~~ *member* so employed must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year."

Section 4. Section 19-7-302, MCA, is amended to read:

"**19-7-302. Ineligibility for membership in public employees' retirement system.** (1) After July 1, 1974, ~~no~~ *a* sheriff is *not* eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs, except as provided in 19-7-301.

(2) After July 1, 1993, an investigator is not eligible to become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to investigators, except as provided in 19-7-301.

~~(2)~~*(3)* ~~No~~ *A* provision of this chapter is *not* to be construed as to deny any sheriff *or investigator* any benefits accrued under provisions of the public employees' retirement system prior to ~~July 1, 1974~~ *membership in this retirement system*."

Section 5. Section 19-7-404, MCA, is amended to read:

"**19-7-404. ~~Counties'~~ *Employer* contributions.** (1) The ~~various counties of Montana~~ *employer* shall pay monthly 7.67% of each ~~sheriff's~~ *member's* gross salary into the retirement account created by this chapter.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may budget, levy, and collect annually a special tax on the assessable property within the county that is sufficient to raise the amount of revenue needed to meet the county's obligation. This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county."

Section 6. **Codification instruction — code commissioner instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 19, chapter 7, part 3, and the provisions of Title 19, chapter 7, part 3, apply to [section 1].

(2) In each section in Title 19, chapter 7, the code commissioner shall change the term "sheriff" to "member" wherever the term is found, unless the context requires otherwise.

Section 7. **Effective date.** [This act] is effective July 1, 1993.

Approved March 31, 1993.

CHAPTER NO. 262

[SB 125]

AN ACT GENERALLY REVISING THE LAW REGARDING CRIMINAL PROCEDURE; INCREASING THE AMOUNT OF GUARANTEED ARREST BOND CERTIFICATES; ELIMINATING THE USE OF SEALED AFFIDAVITS IN SUPPORT OF A MOTION TO FILE A CHARGE OR WARRANT; PROVIDING FOR THE WRITTEN ACKNOWLEDGEMENT OF INFORMATION FOR A GUILTY PLEA; REQUIRING THE KEEPING OF A LIST OF PERSONS TO WHOM SUBPOENAS ARE ISSUED; CLARIFYING THE DISCLOSURE REQUIREMENTS REGARDING INFORMANTS; EXPANDING THE USE OF VICTIM IMPACT STATEMENTS; CODIFYING THE NOTICE REQUIREMENTS FOR THE DISCLOSURE OF THE INTENDED USE OF EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS; AMENDING SECTIONS 46-1-202, 46-4-306, 46-5-101, 46-6-201, 46-6-210, 46-6-312, 46-8-113, 46-8-115, 46-8-201, 46-9-201, 46-9-412, 46-9-505, 46-10-202, 46-11-110, 46-11-302, 46-11-332, 46-11-401, 46-11-405, 46-11-601, 46-11-701, 46-12-210, 46-12-211, 46-13-108, 46-13-110, 46-13-202, 46-13-203, 46-13-210, 46-14-312, 46-15-101, 46-15-116, 46-15-201, 46-15-202, 46-15-322, 46-15-323, 46-15-324, 46-16-116, 46-16-122, 46-16-130, 46-17-311, 46-18-111, 46-18-112, 46-18-117, 46-18-201, 46-18-202, 46-18-203, AND 46-18-222, MCA; AND REPEALING SECTIONS 46-10-201, 46-16-107, 46-17-101, 46-17-103, 46-17-204, 46-17-205, 46-17-211, AND 46-17-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-1-202, MCA, is amended to read:

"**46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(2) "Arrest" means taking a person into custody in the manner authorized by law.

(3) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(4) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

~~(6) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise.~~

~~(7)~~*(6)* "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

~~(8)~~*(7)* "Court" means a place where justice is judicially administered and includes the judge of the court.

~~(9)~~*(8)* "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

~~(10)~~*(9)* "Judge" means a person who is vested by law with the power to perform judicial functions.

~~(11)~~*(10)* "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

~~(12)~~*(11)* "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

~~(13)~~*(12)* "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

~~(14)~~*(13)* "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

~~(15)~~*(14)* "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

~~(16)~~*(15)* "Parole" means the release to the community of a prisoner by a decision of the board of pardons prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and the supervision of the department of corrections and human services.

~~(17)~~*(16)* "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

~~(18)~~*(17)* "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

~~(19)~~*(18)* "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

~~(20)~~*(19)* "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

~~(21)~~*(20)* "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections and human services upon direction of the court.

~~(22)~~*(21)* "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

~~(23)~~*(22)* "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

~~(24)~~*(23)* "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

~~(25)~~*(24)* "Sentence" means the judicial disposition of a criminal proceeding upon a plea, verdict, or finding of guilty.

~~(26)~~*(25)* "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

~~(27)~~*(26)* "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

~~(28)~~*(27)* "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

~~(29)~~*(28)* "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

~~(30)~~*(29)* "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

~~(31)~~*(30)* "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators."

Section 2. Section 46-4-306, MCA, is amended to read:

"**46-4-306. Applicability of other laws — costs.** (1) The fees and mileage of witnesses subpoenaed pursuant to this part are the same as those required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, ~~and~~ the appropriate county shall bear all costs, including the cost of service, when the application for the subpoena is made by a county attorney, *and the appropriate city shall bear all costs, including the cost of service, when the application for the subpoena is made by a city attorney.*

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part, including the provisions of 46-15-112, 46-15-113, and 46-15-120.

(3) Each investigative cost, including testing of evidence and persons, must be borne by the governmental entity whose action created the cost, unless another governmental entity agrees to or by law is required to bear the cost."

Section 3. Section 46-5-101, MCA, is amended to read:

"**46-5-101. Searches and seizures — when authorized.** A search of a person, object, or place may be made and evidence, contraband, and persons may be seized in accordance with Title 46 when a search is made:

(1) by the authority of a search warrant; or

(2) in accordance with *judicially* recognized exceptions to the warrant requirement."

Section 4. Section 46-6-201, MCA, is amended to read:

"**46-6-201. Issuance of arrest warrant upon complaint.** ~~(1) A complaint, as the basis of an arrest warrant, shall be in writing.~~

~~(2) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine upon oath the complainant and may also examine any witnesses.~~

~~(3)~~ If it appears from the contents of the complaint and the examination of the complainant and *from the examination of* other witnesses *or affidavits*, if any, that there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. The court, in its discretion, may issue a summons instead of a warrant. Upon the request of the ~~county attorney~~ *prosecutor*, the court shall issue a summons instead of a warrant. More than one warrant or summons may issue on the same complaint."

Section 5. Section 46-6-210, MCA, is amended to read:

"**46-6-210. Arrest by peace officer.** A peace officer may arrest a person when the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds:

(1) that a warrant for the person's arrest has been issued in this state, except that *unless otherwise provided by law,* a warrant for violation of a city ordinance may not be acted upon unless the person is located within the limits of the city in which the violation is alleged to have occurred; or

(2) that a felony warrant for the person's arrest has been issued in another jurisdiction."

Section 6. Section 46-6-312, MCA, is amended to read:

"**46-6-312. Manner of arrest without warrant.** A peace officer ~~or person~~ making an arrest without a warrant shall inform the person to be arrested of the officer's authority, of the intention to arrest that person, and of the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission, after an escape, or when the giving of the information will imperil the arrest."

Section 7. Section 46-8-113, MCA, is amended to read:

"**46-8-113. Payment for court-appointed counsel by defendant.** (1) The court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under the sentence imposed as provided in Title 46.

(2) Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel in the criminal proceeding.

(3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs ~~and who is able to but refuses or fails to pay those costs~~ may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment."

Section 8. Section 46-8-115, MCA, is amended to read:

"**46-8-115. Effect of nonpayment.** (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment of the costs or of any installment, the court on motion of the ~~county attorney~~ *prosecutor* or on its own motion may require ~~him~~ *the defendant* to show cause why the default should not be treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant's appearance.

(2) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may find that the default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel must be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or

of each installment, or revoking the order for payment of the unpaid portion of the costs in whole or in part.

(5) A default in the payment of costs or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected."

Section 9. Section 46-8-201, MCA, is amended to read:

"**46-8-201. Remuneration of appointed counsel.** (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney must be paid for the services a sum as a ~~district court~~ judge or justice of the state supreme court certifies to be a reasonable compensation and be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the state, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; or

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency."

Section 10. Section 46-9-201, MCA, is amended to read:

"**46-9-201. Who may admit to bail.** A judge may admit to bail any defendant properly appearing before ~~him~~ *the judge* in a bail proceeding. When bound over to any court or judge having jurisdiction of the offense charged, bail must be continued provided that the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, a judge before whom the trial was had or a judge having the power to issue a writ of habeas corpus may admit the defendant to bail. For purposes of this section, a defendant's appearance before a judge may be either by physical appearance before the court or by two-way electronic audio-video communication as provided in ~~46-9-115~~ *46-9-206.*"

Section 11. Section 46-9-412, MCA, is amended to read:

"**46-9-412. Guaranteed arrest bond certificates.** (1) A domestic or foreign surety company that has qualified to transact surety business in this state may, in any year, become surety in an amount not exceeding ~~$500~~ *$1,000* with respect to any guaranteed arrest bond certificates issued in the year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking to become surety.

(2) The form of the undertaking must be prescribed by the commissioner of insurance and must include those matters required by 46-9-401."

Section 12. Section 46-9-505, MCA, is amended to read:

"**46-9-505. Issuance of arrest warrant — redetermining bail.** (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of ~~such~~ *the* failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person ~~at liberty on bail or on his own recognizance~~.

(2) On verified application by the ~~state~~ *prosecutor* setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) Upon the arrest, the defendant ~~shall~~ *must* be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311."

Section 13. Section 46-10-202, MCA, is amended to read:

"**46-10-202. Presentation of evidence.** (1) The defendant may not enter a plea. The judge shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against the defendant and may introduce evidence in the defendant's own behalf. For purposes of this section, a preliminary examination conducted by the use of two-way electronic audio-video communication that allows all of the participants to be observed and heard by all other participants and that allows the defendant to cross-examine witnesses is considered to be an examination of a witness in the presence of the defendant. Two-way electronic ~~audio-visual~~ *audio-video* communication may not be used unless the defendant's counsel is physically present with ~~his client~~ *the defendant,* unless this requirement is waived by the defendant.

(2) During the examination of a witness or when the defendant is making a statement or testifying, the judge may, and on the request of the defendant or state shall, exclude all other witnesses. The judge may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(3) An objection to evidence on the ground that it has been acquired by unlawful means is not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in 46-13-302.

(4) For purposes of a hearing under this chapter, a defendant may, in the discretion of the court, appear before the court either by physical appearance or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and ~~his~~ *the defendant's* counsel, if any, can communicate privately, and so that the defendant and ~~his~~ *the defendant's* counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that ~~his~~ counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge

may order a defendant's physical appearance in court for a preliminary examination."

Section 14. Section 46-11-110, MCA, is amended to read:

"**46-11-110. Filing complaint.** ~~(1)~~ When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine the ~~complainant~~ *sworn complaint* ~~and~~ *or* any affidavits, if filed, to determine whether *probable cause exists to allow the filing of* a charge ~~may be filed~~.

~~(2) If it appears from an affidavit filed with the charge or from testimony of the complainant that there is probable cause to believe that an offense has been committed and that the person against whom the charge is made has committed it, the court shall issue a summons or an arrest warrant.~~"

Section 15. Section 46-11-302, MCA, is amended to read:

"**46-11-302. Challenges to grand jury or grand jurors.** (1) The ~~county attorney or attorney general~~ *prosecutor* may challenge the panel of a grand jury on the ground that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges must be made before the administration of the oath of the jurors, may be oral or in writing, and must be tried and decided by the court.

(2) At any time for cause shown, the district court may excuse or discharge a juror either temporarily or permanently, and in the latter event, the court may impanel another person in place of the juror discharged.

(3) A motion to dismiss the indictment may be based on the ground that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment may not be dismissed on the ground that one or more members are not legally qualified if it appears from the record kept pursuant to this part that eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment."

Section 16. Section 46-11-332, MCA, is amended to read:

"**46-11-332. Presenting the indictment.** (1) An indictment, when found by the grand jury, must be signed by and presented by the foreman to the district court in the presence of the grand jury and must be filed with the clerk. The district court shall then issue ~~a~~ *an arrest* warrant or summons for the defendant.

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge."

Section 17. Section 46-11-401, MCA, is amended to read:

"**46-11-401. Form of charge.** (1) The charge must be in writing and in the name of the state or the appropriate municipality and must specify the ~~district~~ court in which the charge is filed. The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

(2) If the charge is by information or indictment, it must include endorsed on the information or indictment the names of the witnesses for the state, if known.

(3) If the charge is by complaint, it must be signed on oath *by a peace officer,* by a person having knowledge of the facts, or by the prosecutor.

(4) If the charge is by information, it must be signed by the prosecutor. If the charge is by indictment, it must be signed by the foreman of the grand jury.

(5) The ~~district~~ court, on motion of the defendant, may strike surplusage from the indictment or information.

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant."

Section 18. Section 46-11-405, MCA, is amended to read:

"**46-11-405. Discharge of codefendant.** (1) When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the ~~county attorney~~ *prosecutor,* direct any defendant to be discharged so that ~~he~~ *the defendant* may be a witness for the ~~state~~ *prosecution.*

(2) When two or more persons are included in the same indictment or information and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to *require the defendant to* put ~~him~~ on ~~his~~ *a* defense, the court must order ~~him~~ *that defendant* to be discharged before the evidence is closed *so* that ~~he~~ *the discharged defendant* may be a witness for ~~his~~ *the* codefendant."

Section 19. Section 46-11-601, MCA, is amended to read:

"**46-11-601. Recognizance by or deposition of witness.** (1) If the defendant is held to answer after a preliminary examination, ~~or~~ after the defendant has waived a preliminary examination, ~~or~~ after the district court has granted leave to file an information, or after an indictment has been returned, the judge may:

(a) require any material witness for the state or defendant to enter into a written undertaking to appear at the trial; and

(b) provide for the forfeiture of a sum certain in the event the witness does not appear at the trial.

(2) Any witness who refuses to enter into a written undertaking may be remanded to custody but ~~shall~~ *may* not be held longer than is necessary to take ~~his~~ *the witness's* deposition. After the deposition is taken, the witness must be immediately discharged.

(3) ~~Such~~ *The* deposition must be taken in the presence of the ~~county attorney~~ *prosecutor* and the defendant and ~~his~~ *the defendant's* counsel unless

either the ~~county attorney~~ *prosecutor* or the defendant and ~~his~~ *the defendant's* counsel fail to attend after reasonable notice of the time and place set for taking the deposition."

Section 20. Section 46-11-701, MCA, is amended to read:

"**46-11-701. Pretrial proceedings — exclusion of public and sealing of records.** (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a *hearing on a* motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means.

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the trial or earlier if consistent with trial fairness.

(5) When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant's right to a fair trial, the document or portion of the document must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness.

~~(6) An affidavit filed in support of a motion for leave to file a charge or warrant must be sealed unless the judge determines that disclosure of the information in the affidavit is required to protect the health, safety, or welfare of the public.~~"

Section 21. Section 46-12-210, MCA, is amended to read:

"**46-12-210. Advice to defendant.** *(1)* Before accepting a plea of guilty, the court shall determine that the defendant understands the following:

~~(1)~~(a) (i) the nature of the charge for which the plea is offered;

~~(b)~~*(ii)* the mandatory minimum penalty provided by law, if any;

~~(c)~~*(iii)* the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and

~~(d)~~*(iv)* when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;

~~(2)~~*(b)* if the defendant is not represented by an attorney, the fact that ~~he~~ *the defendant* has the right to be represented by an attorney at every stage of the proceeding ~~against him~~ and that, if necessary, one will be appointed to represent the defendant;

~~(3)~~*(c)* that the defendant has the right:

~~(a)~~*(i)* to plead not guilty or to persist in that plea if it has already been made;

~~(b)~~*(ii)* to be tried by a jury and at the trial has the right to the assistance of counsel;

~~(c)~~*(iii)* to confront and cross-examine witnesses against the defendant; and

~~(d)~~*(iv)* not to be compelled to reveal personally incriminating information;

~~(4)~~*(d)* that if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

~~(5)~~*(e)* that if the defendant's plea of guilty is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial; and

~~(6)~~*(f)* that if the defendant is not a United States citizen, a guilty plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1)."

Section 22. Section 46-12-211, MCA, is amended to read:

"**46-12-211. Plea agreement procedure.** (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

(b) agree that a specific sentence is the appropriate disposition of the case; or

(c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) If a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there

has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects ~~the~~ *a* plea agreement *of the type specified in subsection (1)(a) or (1)(b)*, the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement."

Section 23. Section 46-13-108, MCA, is amended to read:

"**46-13-108. Notice by prosecutor seeking persistent felony offender status.** (1) Except for good cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender, notice of that fact must be given at or before the omnibus hearing pursuant to ~~46-13-101~~ *46-13-110.*

(2) The notice must specify the alleged prior convictions and may not be made known to the jury before the verdict is returned except as allowed by the Montana Rules of Evidence.

(3) If the defendant objects to the allegations contained in the notice, the judge shall conduct a hearing to determine if the allegations in the notice are true.

(4) The hearing must be held before the judge alone. If the judge finds any allegations of the prior convictions are true, the accused must be sentenced as provided by law.

(5) The notice must be filed and sealed until the time of trial or until a plea of guilty is given by the defendant."

Section 24. Section 46-13-110, MCA, is amended to read:

"**46-13-110. Omnibus hearing.** (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210 and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking ~~enhanced punishment~~ *persistent felony offender status,* ~~46-13-503~~ *46-13-108*;

(h) notice of other crimes, wrongs, or acts, ~~46-13-503~~ *[section 47]*;

(i) motion to suppress, 46-13-301 and 46-13-302;

(j) motion to dismiss, 46-13-401 and 46-13-402;

(k) motion for change of place of trial, 46-13-203 through 46-13-205;

(l) reasonableness of bail, Title 46, chapter 9; and

(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary."

Section 25. Section 46-13-202, MCA, is amended to read:

"**46-13-202. Motion for continuance.** (1) The defendant or the ~~state~~ *prosecutor* may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(3) All motions for continuance are addressed to the discretion of the trial court and ~~shall~~ *must* be considered in the light of the diligence shown on the part of the movant. This section ~~shall~~ *must* be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the ~~state~~ *prosecution* to a speedy trial."

Section 26. Section 46-13-203, MCA, is amended to read:

"**46-13-203. Change of place of trial for prejudice.** (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in the county.

(2) If the *district* court determines that there exists in the county in which the prosecution is pending such prejudice that a fair trial cannot be had, the *district* court shall:

(a) transfer the cause to any other county in which a fair trial may be had;

(b) direct that a jury be selected in any county where a fair trial may be had and then returned to the county where the prosecution is pending to try the case; or

(c) take any other action designed to ensure that a fair trial may be had."

Section 27. Section 46-13-210, MCA, is amended to read:

"**46-13-210. Trial of indictments, informations, complaints, or defendants together.** The court may order two or more indictments, informations, complaints, or defendants to be tried together if the interests of justice require and the charges or defendants could have been joined in a single indictment, information, or complaint as provided for in ~~46-12-213, 46-15-322, and 46-15-323~~ *46-11-404*."

Section 28. Section 46-14-312, MCA, is amended to read:

"**46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders ~~him~~ *the defendant* unable to appreciate the criminality of ~~his~~ *the defendant's* conduct or to conform ~~his~~ *the defendant's* conduct to the requirements of law; or

(c) the defendant suffers from a mental disease or defect that makes ~~him~~ *the defendant* a danger to ~~himself~~ *the defendant* or others, but either there is no treatment available for ~~his~~ *the* mental disease or defect or ~~he~~ *the defendant* refuses to cooperate with treatment.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Section 29. Section 46-15-101, MCA, is amended to read:

"**46-15-101. Subpoenas.** (1) After the filing of charges and upon the request of the prosecuting attorney, the defendant, or the defendant's attorney, the clerk of the court shall issue subpoenas with the name of the person to whom each subpoena is directed, commanding the person to appear and to give testimony. *The court shall maintain a list of the names of the persons to whom subpoenas are issued.*

(2) A subpoena must state the name of the court and the title, if any, of the proceeding and must command each person to whom it is directed to attend and give testimony at the time and place specified in the subpoena.

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive."

Section 30. Section 46-15-116, MCA, is amended to read:

"**46-15-116. Fees, costs, and expenses.** (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness shall receive the witness fee prescribed by Title 26, chapter 2, part 5. The court, on motion by either party, may allow additional fees for expert witnesses.

(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses and order the clerk of the court to pay the expenses from the *appropriate city or* county treasury.

(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by statutory enactment required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

(4) According to procedures required by the supreme court administrator, under 3-5-902, the clerk of the district court shall submit to the administrator a detailed statement containing a list of witnesses and the amount of expenses paid to each witness by the county. Upon receipt and verification of the statement, the administrator shall promptly reimburse the designated county for all or a portion of the witness expenses. The county shall deposit the amount reimbursed in its general fund *unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in the district court fund.*"

Section 31. Section 46-15-201, MCA, is amended to read:

"**46-15-201. When depositions may be taken.** (1) In district or municipal court cases, a deposition may be taken if it appears that a prospective witness:

(a) is likely to be either unable to attend or otherwise prevented from attending a trial or hearing;

(b) is likely to be absent from the state at the time of the trial or hearing; or

(c) is unwilling to provide relevant information to a requesting party and the witness's testimony is material and necessary in order to prevent a failure of justice. The ~~district~~ court shall, upon motion of any party and proper notice, order that the testimony of the witness be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be introduced at the time the deposition is taken.

(2) The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the ~~district~~ court, taking into account the convenience of the parties and of the witness.

(3) If the defendant is charged with a felony and it appears upon the affidavit of counsel for a party that good cause exists to believe that a witness will not respond to a subpoena and the administration of justice requires, any district judge may issue an arrest warrant commanding the arrest of a material witness. The arrest warrant must further order a deposition to be taken without unnecessary delay. A person may not be imprisoned for the purpose of securing testimony in any criminal proceeding longer than is necessary to take the person's deposition."

Section 32. Section 46-15-202, MCA, is amended to read:

"**46-15-202. Procedure for taking depositions.** (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice must state the name and address of each person to be examined. On motion of the party upon whom the notice is served, the *municipal or* district court for cause shown may extend or shorten the time or change the place for taking the deposition.

(2) A deposition must be taken in the manner provided in civil actions. The ~~district~~ court, upon request, may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. However, a deposition may not be taken of a party defendant without ~~his~~ *the defendant's* consent, and the scope and manner of examination and cross-examination must be restricted as would be allowed in the trial itself.

(3) The deposition must be filed with the ~~district~~ court making the order and held until the trial. Either party shall make available to the other party~~,~~ or the other party's counsel~~,~~ for examination and use at the taking of the deposition any relevant, nonprivileged statement of the witness being deposed that is in the possession of either party.

(4) Objections to deposition testimony or evidence or parts of the testimony or evidence may be reserved for subsequent determination by the ~~district~~ court.

(5) Unless a defendant in custody has waived, in writing, the right to be present at the taking of a deposition, the officer having custody of the defendant must be notified of the time and place set for the deposition. The officer having custody shall produce the defendant and keep the defendant in the presence of a witness during the deposition.

(6) A defendant not in custody who fails to appear, without good cause, at the taking of a deposition after being notified of the time and place set for the deposition will be considered to have waived the right to be present as provided in 46-16-122. The waiver includes a waiver of any objection to the taking and use of the deposition based upon that right.

(7) Whenever a deposition is taken at the instance of the prosecution or whenever a deposition is taken at the instance of a defendant who is unable to bear the expense of taking a deposition, the ~~district~~ court shall direct that the expense of travel and subsistence of the defendant and the defendant's counsel for attendance at the examination and the cost of the transcript of the deposition be paid by the *city for a municipal court proceeding or by the* state *for a district court proceeding.*"

Section 33. Section 46-15-322, MCA, is amended to read:

"**46-15-322. Disclosure by prosecution.** (1) Upon request, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within the prosecutor's possession or control:

(a) the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the ~~case-in-chief~~ *case in chief*;

(b) all written or oral statements of the defendant and of any person who will be tried with the defendant;

(c) all written reports or statements of experts who have personally examined the defendant or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons;

(d) all papers, documents, photographs, or tangible objects that the prosecutor may use at trial or that were obtained from or purportedly belong to the defendant; and

(e) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.

(2) At the same time, the prosecutor shall inform the defendant of, and make available to the defendant for examination and reproduction, any written or recorded material or information within the prosecutor's control regarding:

(a) whether there has been any electronic surveillance of any conversations to which the defendant was a party;

(b) whether an investigative subpoena has been executed in connection with the case; and

(c) whether the case has involved an informant and, if so, the informant's identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence *and 46-15-324(3)*.

(3) The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under subsection (1)(d).

(4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of the prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case.

(5) Upon motion showing that the defendant has substantial need in the preparation of the case for additional material or information not otherwise provided for and that the defendant is unable, without undue hardship, to obtain the substantial equivalent by other means, the court, in its discretion, may order any person to make it available to the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The prosecutor may not be required to prepare or disclose summaries of witnesses' testimony.

(6) The prosecutor shall furnish to the defendant no later than 5 days before trial or at a later time as the court may for good cause permit, together with their statements, a list of the names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses to evidence of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity or the defense that the defendant did not have a particular state of mind that is an element of the offense charged."

Section 34. Section 46-15-323, MCA, is amended to read:

"**46-15-323. Disclosure by defendant.** (1) At any time after the filing in district court of an indictment or information, the defendant, in connection with the particular crime charged, shall upon written request of the prosecutor and approval of the court:

(a) appear in a lineup;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of ~~his~~ hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions;

(g) provide handwriting samples; or

(h) submit to a reasonable physical or medical inspection; however, the inspection does not include psychiatric or psychological examination.

(2) Within 10 days after the omnibus hearing in ~~district~~ court or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity.

(3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist or psychologist or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written

notice of the defendant's intention to introduce evidence at trial of the defense that due to a mental disease or defect, the defendant did not have a particular state of mind that is an essential element of the offense charged.

(4) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them, *including all reports and statements* concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless ~~he~~ *the defendant* intends to use the privileged report or statement, or the witness who made it, at trial.

(5) Prior to trial the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses and disclose their reports or statements as required by this section. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list and the witness's report or statement has been disclosed as required by this section, except for good cause shown.

(6) Within 10 days after the omnibus hearing in ~~district~~ court or at a later time as the court may for good cause permit, the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense ~~case-in-chief~~ *case in chief*, together with their statements;

(b) the names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case; and

(c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(7) The defendant's obligation under this section extends to material and information within the possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

(8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of the case for additional material or information not otherwise provided for, that the prosecutor is unable, without undue hardship, to obtain the substantial equivalent by other means, and that disclosure of the material or information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person to make the material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony."

Section 35. Section 46-15-324, MCA, is amended to read:

"**46-15-324. Materials not subject to disclosure.** (1) Except as provided in this section, disclosure is not required for the superseded notes or work product of the prosecuting or defense attorney.

(2) If exculpatory information is contained in the superseded notes or work product of the prosecution, that information must be disclosed.

(3) Disclosure of the existence of an informant or the identity of an informant who will not be called to testify is not required if:

(a) disclosure would result in substantial risk to the informant or to the informant's operational effectiveness; and

(b) the failure to disclose will not infringe the constitutional rights of the accused."

Section 36. Section 46-16-116, MCA, is amended to read:

"**46-16-116. Peremptory challenges.** (1) Each defendant is allowed eight peremptory challenges in capital cases and six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information.

(2) If the indictment or information charges a capital offense as well as lesser offenses in separate counts, the maximum number of challenges is eight.

(3) The state is allowed the same number of peremptory challenges as all of the defendants.

(4) In a criminal case tried before a six-person jury, the ~~state~~ *prosecution* and all the defendants are allowed three peremptory challenges each.

(5) When the parties in a criminal case in the district court agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed."

Section 37. Section 46-16-122, MCA, is amended to read:

"**46-16-122. Absence of defendant from trial.** (1) In a misdemeanor case, if the defendant fails to appear in person, either at the time set for the trial or at any time during the course of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the court shall proceed with the trial unless good cause for continuance exists.

(2) If the defendant's counsel is not authorized to act on the defendant's behalf as provided in subsection (1) or if the defendant is not represented by counsel, the court, in its discretion, may do one or more of the following:

(a) order a continuance;

(b) order bail forfeited;

(c) issue ~~a bench~~ *an arrest* warrant; or

(d) proceed with the trial after finding that the defendant had knowledge of the trial date and is voluntarily absent.

(3) After the trial of a felony offense has commenced in the defendant's presence, the absence of the defendant during the trial may not prevent the trial from continuing up to and including the return of a verdict if the defendant:

(a) has been removed from the courtroom for disruptive behavior after receiving a warning that removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on with the defendant in the courtroom; or

(b) is voluntarily absent and the offense is not one that is punishable by death.

(4) Nothing in this section limits the right of the court to order the defendant to be personally present at the trial for purposes of identification unless defense counsel stipulates to the issue of identity."

Section 38. Section 46-16-130, MCA, is amended to read:

"**46-16-130. Pretrial diversion.** (1) *(a)* ~~The~~ *Prior to the filing of a charge, the* prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

~~(a)~~*(i)* that the defendant may not commit any offense;

~~(b)~~*(ii)* that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

~~(c)~~*(iii)* that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

~~(d)~~*(iv)* that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

~~(e)~~*(v)* any other reasonable conditions.

~~(2)~~*(b)* The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

~~(3)~~*(c)* The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

~~(4)~~*(d)* The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court."

Section 39. Section 46-17-311, MCA, is amended to read:

"**46-17-311. Appeal from justices', municipal, and city courts.** (1) Except for cases in which legal issues are preserved for appeal pursuant to

46-12-204, all cases on appeal from a justice's~~, municipal,~~ or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases. *An appeal from a municipal court to the district court is governed by 3-6-110.*

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date the order complained of is given. The prosecution may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court."

Section 40. Section 46-18-111, MCA, is amended to read:

"**46-18-111. Presentence investigation — when required.** (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor. ~~The~~ *If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years of age when the offense was committed, the* investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified under guidelines established by the department of corrections and human services. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the *district* court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the ~~department of commerce~~ *supreme court administrator* under Title 3, chapter 5, part 9.

(2) If the *district* court finds that the record contains information sufficient to enable the meaningful exercise of discretion during sentencing, the defendant may waive a presentence investigation and report. Both the finding and the defendant's waiver must be made in open court on the record."

Section 41. Section 46-18-112, MCA, is amended to read:

"**46-18-112. Content of presentence investigation report.** (1) Whenever an investigation is required, the probation officer shall promptly inquire into and report upon:

(a) the defendant's characteristics, circumstances, needs, and potentialities;

(b) the defendant's criminal record and social history;

(c) the circumstances of the offense;

(d) the time of the defendant's detention for the offenses charged; and

(e) ~~except in capital cases in which the death penalty may be imposed,~~ the harm caused, as a result of the offense, to the victim, the victim's immediate family, and the community.

(2) All local and state mental and correctional institutions, courts, and law enforcement agencies shall furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal record and other relevant information.

(3) The court may, in its discretion, require that the presentence investigation report include a physical and mental examination of the defendant.

(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and make a restitution report to the court as provided by law."

Section 42. Section 46-18-117, MCA, is amended to read:

"**46-18-117. Correction of sentence.** The court may correct an ~~illegal~~ *erroneous* sentence or disposition at any time and may correct a sentence imposed in an illegal manner within 120 days after the sentence is imposed or after remand from an appellate court."

Section 43. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of the above.

(b) suspend execution of sentence *for a period* up to the maximum sentence allowed *or for a period of 6 months, whichever is greater,* for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or a women's correctional facility, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 44. Section 46-18-202, MCA, is amended to read:

"**46-18-202. Additional restrictions on sentence.** (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 ~~which~~ *that* it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of ~~his~~ *the defendant's* owning or carrying a dangerous weapon;

(c) restrictions on ~~his~~ *the defendant's* freedom of association;

(d) restrictions on ~~his~~ *the defendant's* freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving ~~his~~ *that* term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in ~~subsections (1) and (2)~~ *subsection (1)(a)*.

(4) When the district court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition."

Section 45. Section 46-18-203, MCA, is amended to read:

"**46-18-203. Revocation of suspended or deferred sentence.** (1) Upon the filing of a petition for revocation~~, accompanied by an affidavit~~ showing probable cause that the defendant has violated any condition of a sentence or any condition of a deferred imposition of sentence, the court may issue an order for a hearing on revocation. The order must require the defendant to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the defendant personally. The court may also issue an arrest warrant directing any peace officer or a probation officer to arrest the defendant and bring the defendant before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the defendant must be brought before the court, and the defendant must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the defendant's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the defendant admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the defendant, and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the defendant for the purposes of this subsection (b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the defendant may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the defendant's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) If the court finds that the defendant has violated the terms and conditions of the suspended or deferred sentence, the court may:

(a) continue the suspended or deferred sentence without a change in conditions;

(b) continue the suspended sentence with modified or additional terms and conditions;

(c) revoke the suspension of sentence and require the defendant to serve either the sentence imposed or any lesser sentence; or

(d) if the sentence was deferred, impose any sentence that might have been originally imposed.

(8) If the court finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the defendant, if in custody, immediately released."

Section 46. Section 46-18-222, MCA, is amended to read:

"**46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.** All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by ~~subsections (4), (5), and (6) of~~ 46-18-201*(4) through (6)*, 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which ~~he~~ *the defendant* is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which ~~he~~ *the defendant* is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which ~~he~~ *the defendant* is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor;

(5) ~~where applicable~~ *in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime*, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the court determines that treatment of the defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the ultimate protection of society, in which case the court shall include in its judgment a statement of the reasons for its determination."

Section 47. **Notice by prosecutor of other crimes, wrongs, or acts.** (1) Except for good cause shown, if the prosecutor intends to use evidence of other crimes, wrongs, or acts pursuant to Rule 404(b), Montana Rules of Evidence, notice must be given at or before the omnibus hearing held pursuant to 46-13-110.

(2) The notice must specify the other crimes, wrongs, or acts and must include a statement as to the purpose for which the evidence is to be offered.

(3) The notice must be filed and sealed until the time of trial or until a plea of guilty is entered by the defendant.

Section 48. **Codification instruction.** [Section 47] is intended to be codified as an integral part of Title 46, chapter 13, part 1, and the provisions of Title 46, chapter 13, part 1, apply to [section 47].

Section 49. **Repealer.** Sections 46-10-201, 46-16-107, 46-17-101, 46-17-103, 46-17-204, 46-17-205, 46-17-211, and 46-17-301, MCA, are repealed.

Approved April 2, 1993.

CHAPTER NO. 263

[SB 190]

AN ACT ALLOWING A RURAL ELECTRIC OR TELEPHONE COOPERATIVE TO USE UNCLAIMED PATRONAGE REFUNDS FOR EDUCATIONAL PURPOSES; PROVIDING AN EXEMPTION TO THE UNIFORM UNCLAIMED PROPERTY ACT; AND AMENDING SECTIONS 35-18-316, 70-9-203, 70-9-301, 70-9-309, AND 72-14-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-18-316, MCA, is amended to read:

"**35-18-316. Refunds to members — *retention of unclaimed refunds.*** (1) ~~Revenues~~ *Revenue* of a cooperative for any fiscal year ~~shall~~ *must*, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during ~~such~~ *the* fiscal year, whenever ~~such~~ *the* ~~revenues exceed~~ *revenue exceeds* the amount ~~thereof~~ necessary to:

(a) defray expenses of the cooperative and of the operation and maintenance of its facilities during ~~such~~ *the* fiscal year;

(b) pay interest and principal obligations of the cooperative coming due in ~~such~~ *the* fiscal year;

(c) finance or provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital;

(e) provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of ~~such~~ *the* indebtedness in an amount not less than the total of the interest and principal payments ~~in respect thereof~~ required to be made during the next ~~following~~ fiscal year; and

(f) provide a fund, which ~~shall~~ *may* be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative.

(2) Nothing ~~herein~~ contained *in this section* ~~shall~~ *may* be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the ~~same shall become~~ *payment becomes* due.

(3) A cooperative shall, upon the action of the board of trustees, retain patronage refunds allocated to its members that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Refunds retained by the cooperative must be used for educational purposes."

Section 2. Section 70-9-203, MCA, is amended to read:

"**70-9-203. Deposits and refunds held by utility.** *(1)* The following funds held or owing by any utility are presumed abandoned:

~~(1)~~*(a)* any deposit made by a subscriber with a utility to secure payment for or any sum paid in advance for utility services to be furnished in this state, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled ~~thereto~~ *to it* for more than 5 years after the termination of the services for which the deposit or advance payment was made;

~~(2)~~*(b)* any sum ~~which~~ *that* a utility has been ordered to refund and ~~which~~ *that* was received for utility services rendered in this state, together with any interest ~~thereon~~, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled ~~thereto~~ *to it* for more than 5 years after the date it became payable in accordance with the final determination or order providing for the refund~~.~~*; and*

(c) a patronage refund made to a member of a rural electric or telephone cooperative organized under Title 35, chapter 18, that has remained unclaimed by the person appearing on the records of the cooperative entitled to it for more than 5 years.

(2) The unclaimed funds provided for in subsection (1)(c) are not subject to or governed by any other provisions of parts 1 through 3 of this chapter. They must be used by the rural electric or telephone cooperative for educational purposes."

Section 3. Section 70-9-301, MCA, is amended to read:

"**70-9-301. Report of abandoned property — duty to prevent abandonment prior to filing.** (1) ~~Every~~ *Except as provided in 70-9-203(2), a* person holding money or other property, tangible or intangible, presumed abandoned under parts 1 through 3 shall report the property to the department as provided in this part.

(2) The report must be verified and must include:

(a) except with respect to travelers' checks and money orders, the name, if known, and *the* last-known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of $25 or more presumed abandoned under parts 1 through 3;

(b) in case of unclaimed money of life insurance corporations, the full name of the insured or annuitant and ~~his~~ *the* last-known address according to the life insurance corporation's records;

(c) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. Items less than $25 of value each may be reported in aggregate.

(d) the date when the property became payable, demandable, or returnable and the date of the last transaction with the owner with respect to the property; and

(e) other information ~~which~~ *that* the department prescribes by rule as necessary for the administration of parts 1 through 3.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner or if the ~~holder~~ *holder's name* has changed ~~his name~~ while holding the property, ~~he~~ *the holder* shall file with ~~his~~ *the* report all prior known names and addresses of each holder of the property.

(4) The report must be filed before November 1 every year as of the preceding June 30, but the reports of life insurance corporations, banking and financial organizations, and cooperatives must be filed before May 1 of each year as of the preceding December 31. The department may postpone the reporting date upon written request by any person required to file a report. The department shall furnish forms for this report.

(5) Not more than 120 days before filing the report required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under parts 1 through 3 shall send written notice to the apparent owner at ~~his~~ *the* last-known address informing ~~him~~ *the apparent owner* that the holder is in possession of property subject to this chapter if:

(a) the holder has in ~~his~~ *the holder's* records an address for the apparent owner ~~which~~ *that* the holder's records do not disclose to be inaccurate;

(b) the claim of the apparent owner is not barred by the statute of limitations; and

(c) the property has a value of $100 or more.

(6) Verification if made by a partnership must be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer."

Section 4. Section 70-9-309, MCA, is amended to read:

"**70-9-309. Deposit of ~~moneys~~ *money* — record — deduction of costs.** (1) ~~All~~ *Except for patronage refunds retained under 35-18-316, all* ~~moneys~~ *money* received under parts 1 through 3, including the proceeds from the sale of abandoned property under 70-9-308, ~~shall forthwith~~ *must* be *immediately* deposited by the department of revenue with the state treasurer for credit to the public school nonexpendable trust fund of the state, except that the state treasurer shall retain in the agency fund an amount not exceeding $25,000 from which ~~he~~ *the treasurer* shall make prompt payment of claims allowed by the department as ~~hereinafter~~ provided *in this section.*

(2) Before making the deposit, the department shall record the name and ~~last known~~ *last-known* address of each person appearing from the holders'

reports to be entitled to the abandoned property and of the name and ~~last known~~ *last-known* address of each insured person or annuitant and, with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due. The record ~~shall~~ *must* be available for public inspection at all reasonable business hours.

(3) Before making any deposit to the credit of the public school nonexpendable trust fund, the department may deduct:

(a) any costs in connection with sale of abandoned property;

(b) any costs of mailing and publication in connection with any abandoned property; and

(c) reasonable service charges."

Section 5. Section 72-14-102, MCA, is amended to read:

"**72-14-102. When title to escheated property vests in state.** *(1)* Whenever the title to any property, either real or personal or mixed, fails for any reason, including want of heirs or next of kin, ~~such~~ *the* title vests in the state of Montana immediately upon the death of the owner without an inquest or other similar proceeding and there is no presumption that ~~such~~ *the* owner died leaving heirs or next of kin.

(2) This chapter does not apply to any rural electric or telephone cooperative organized under Title 35, chapter 18, if the board of trustees of the cooperative has acted to retain patronage refunds that are made by the cooperative to a member or former member and that remain unclaimed for 5 years, as provided in 70-9-203."

Approved April 2, 1993.

CHAPTER NO. 264

[SB 214]

AN ACT PROHIBITING THE VANDALIZING OF CAVES; PROHIBITING THE DISTURBANCE, DESTRUCTION, OR REMOVAL OF CAVE MATERIALS, PLANT LIFE, AND ANIMAL LIFE; PROHIBITING THE SALE OF SPELEOTHEMS AND SPELEOGENS; EXEMPTING A CAVE OWNER AND THE OWNER'S AUTHORIZED AGENTS FROM CERTAIN LIABILITY CONNECTED WITH USE OF A CAVE; PROVIDING A PENALTY; AND AMENDING SECTION 70-16-301, MCA.

WHEREAS, caves are uncommon geologic phenomena; and

WHEREAS, minerals deposited in caves may be rare and occur in unique forms of great beauty that are irreplaceable if destroyed; and

WHEREAS, archaeological resources of significant cultural, scientific, and historic value also occur in caves and are irreplaceable; and

WHEREAS, organisms that live in caves are unusual, limited in number, and could become threatened and endangered species in the absence of protection; and

WHEREAS, caves are a natural conduit for ground water flow, are highly subject to pollution, and thus have far-reaching effects transcending property boundaries.

THEREFORE, the Legislature finds it appropriate to protect these unique natural and cultural cave resources.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 7 and 9] may be cited as "The Montana Cave Conservation Act".

Section 2. **Definitions.** As used in [sections 1 through 7 and 9], the following definitions apply:

(1) "Cave" means any geologically formed void or cavity beneath the surface of the earth or within a cliff or ledge, including but not limited to natural subsurface water and drainage systems, whether or not a natural entrance is present. The term does not include a mine, tunnel, aqueduct, or human-made excavation but does include any natural structure that is commonly known as a cavern, sinkhole, pit, grotto, or rock shelter and that communicates with a subterranean passage or drainage system.

(2) "Cave life" means any life form that occurs in, uses, visits, or inhabits a cave.

(3) "Gate" means a structure or device located to limit or prohibit access or entry to a cave.

(4) "Material" means all or part of any archaeological, cultural, paleontological, biological, or historical item or artifact found in a cave, including but not limited to any petroglyph, pictograph, pottery, basketwork, fossil, human remains, or animal remains.

(5) "Owner" means any person or public or private agency that has the right to possession of a cave.

(6) "Person" means an individual, partnership, firm, association, trust, corporation, or other legal entity.

(7) "Speleogen" means the surrounding natural earth or bedrock in which a cave is formed, including but not limited to clastic sediments, walls, floors, ceiling, and other related structural and geological features.

(8) "Speleothem" means a natural mineral formation or deposit occurring in a cave, including but not limited to formations known as stalagmite, stalactite, helectite, shield, anthodite, gypsum flower and needle, angel's hair, soda straw, drapery, bacon, cave pearl, popcorn, rimstone dam, column, palette, and flowstone. A speleothem is commonly composed of calcite, gypsum, epsomite, aragonite, celestite, or other similar mineral.

Section 3. **Vandalism of cave unlawful.** (1) Except as provided in subsection (2), a person may not purposely or knowingly:

(a) carve, write, mark upon, break, crack, burn, or remove or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or material found in a cave, whether attached or broken, including speleothems, speleogens, and sedimentary deposits;

(b) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to a cave;

(c) remove, deface, or tamper with a sign stating that a cave is posted or citing provisions of [sections 1 through 7 and 9]; or

(d) disturb or alter in any way the natural condition of a cave.

(2) The provisions of subsection (1) do not apply to a cave owner or the owner's authorized agent, officer, employee, or designated representative who undertakes work to improve or control physical access to the cave.

Section 4. **Disturbance of cave life unlawful.** A person may not purposely or knowingly remove, kill, harm, or otherwise interfere with cave life, except for health or safety reasons or when the act is a minimal disturbance or for removal of organisms for recognized scientific inquiry. Gates at the entrance or at any point within a cave must be of open construction to allow unimpeded passage of air, insects, bats, and other cave life.

Section 5. **Pollution of and burning harmful substances in cave unlawful.** (1) A person may not purposely or knowingly store, dump, litter, dispose of, or otherwise place in a cave any refuse, garbage, dead animal, sewage, or toxic substance harmful to cave life or human life.

(2) A person may not burn in a cave any substance that produces smoke or gas that is or may be harmful to cave life. The use of a carbide lamp that produces acetylene gas is permitted.

Section 6. **Sale of speleothems and speleogens unlawful.** A person may not sell, offer for sale, or export for sale any speleothem or speleogen.

Section 7. **Conditions of owner liability.** The liability of the owner of a cave or the owner's authorized agent, officer, employee, or designated representative acting within the scope of authority is restricted pursuant to 70-16-302.

Section 8. Section 70-16-301, MCA, is amended to read:

"**70-16-301. Recreational purposes defined.** "Recreational purposes", as used ~~herein~~ *in this part*, ~~shall include~~ *includes* hunting, fishing, swimming, boating, water skiing, camping, picnicking, pleasure driving, winter sports, hiking, touring or viewing cultural and historical sites and monuments, *spelunking*, or other pleasure expeditions."

Section 9. **Penalty.** A person convicted of violating any provision of [sections 1 through 7] is subject to a fine of not less than $500 or more than $2,000, imprisonment in the county jail for not more than 60 days, or both.

Section 10. **Codification instruction.** [Sections 1 through 7 and 9] are intended to be codified as an integral part of Title 23, chapter 2, and the provisions of Title 23, chapter 2, apply to [sections 1 through 7 and 9].

Approved March 31, 1993.

CHAPTER NO. 265

[SB 385]

AN ACT GENERALLY REVISING AND RECODIFYING THE PUBLIC EMPLOYEES', THE JUDGES', THE HIGHWAY PATROL OFFICERS', THE SHERIFFS', THE GAME WARDENS', THE MUNICIPAL POLICE OFFICERS', AND THE FIREFIGHTERS' UNIFIED RETIREMENT SYSTEMS; AMENDING SECTIONS 17-7-502, 19-3-103, 19-3-104, 19-3-105, 19-3-107, 19-3-201, 19-3-203, 19-3-204, 19-3-301, 19-3-304, 19-3-305, 19-3-306, 19-3-401, 19-3-403, 19-3-404, 19-3-405, 19-3-406, 19-3-501, 19-3-502, 19-3-503, 19-3-504, 19-3-505, 19-3-508, 19-3-509, 19-3-510, 19-3-511, 19-3-512, 19-3-513, 19-3-601, 19-3-602, 19-3-603, 19-3-604, 19-3-605, 19-3-606, 19-3-701, 19-3-702, 19-3-703, 19-3-704, 19-3-801, 19-3-802, 19-3-805, 19-3-901, 19-3-902, 19-3-903, 19-3-904, 19-3-905, 19-3-906, 19-3-907, 19-3-1002, 19-3-1005, 19-3-1006, 19-3-1007, 19-3-1008, 19-3-1101, 19-3-1102, 19-3-1103, 19-3-1104, 19-3-1105, 19-3-1106, 19-3-1109, 19-3-1110, 19-3-1111, 19-3-1201, 19-3-1202, 19-3-1203, 19-3-1204, 19-3-1205, 19-3-1301, 19-3-1302, 19-3-1304, 19-3-1305, 19-3-1401, 19-3-1402, 19-3-1403, 19-5-101, 19-5-102, 19-5-103, 19-5-104, 19-5-301, 19-5-401, 19-5-402, 19-5-403, 19-5-404, 19-5-501, 19-5-502, 19-5-503, 19-5-601, 19-5-603, 19-5-604, 19-5-611, 19-5-612, 19-5-701, 19-6-101, 19-6-102, 19-6-301, 19-6-304, 19-6-305, 19-6-306, 19-6-401, 19-6-402, 19-6-403, 19-6-404, 19-6-501, 19-6-502, 19-6-503, 19-6-505, 19-6-601, 19-6-603, 19-6-604, 19-6-612, 19-6-707, 19-6-709, 19-7-101, 19-7-102, 19-7-103, 19-7-301, 19-7-302, 19-7-308, 19-7-309, 19-7-310, 19-7-311, 19-7-402, 19-7-403, 19-7-404, 19-7-501, 19-7-502, 19-7-503, 19-7-504, 19-7-601, 19-7-604, 19-7-612, 19-7-701, 19-7-708, 19-7-709, 19-7-710, 19-8-101, 19-8-102, 19-8-301, 19-8-302, 19-8-304, 19-8-306, 19-8-307, 19-8-501, 19-8-502, 19-8-504, 19-8-601, 19-8-603, 19-8-604, 19-8-701, 19-8-703, 19-8-704, 19-8-712, 19-8-801, 19-8-808, 19-8-809, 19-8-810, 19-8-816, 19-9-103, 19-9-104, 19-9-105, 19-9-106, 19-9-107, 19-9-301, 19-9-401, 19-9-403, 19-9-405, 19-9-503, 19-9-601, 19-9-702, 19-9-703, 19-9-705, 19-9-706, 19-9-801, 19-9-804, 19-9-902, 19-9-903, 19-9-904, 19-9-905, 19-9-911, 19-9-912, 19-9-1004, 19-9-1007, 19-13-103, 19-13-104, 19-13-105, 19-13-107, 19-13-108, 19-13-110, 19-13-201, 19-13-301, 19-13-302, 19-13-403, 19-13-404, 19-13-503, 19-13-506, 19-13-601, 19-13-604, 19-13-605, 19-13-607, 19-13-701, 19-13-704, 19-13-802, 19-13-803, 19-13-804, 19-13-805, 19-13-902, 19-13-903, 19-13-1006, 19-13-1007, 19-13-1009, 31-2-106, AND 44-1-518, MCA; REPEALING SECTIONS 19-3-102, 19-3-307, 19-3-506, 19-3-804, 19-3-1001, 19-3-1003, 19-3-1004, 19-3-1107, 19-3-1108, 19-5-201, 19-5-202, 19-5-302, 19-5-303, 19-5-304, 19-5-405, 19-5-406, 19-5-407, 19-5-408, 19-5-602, 19-5-702, 19-5-703, 19-5-704, 19-5-705, 19-5-706, 19-6-103, 19-6-104, 19-6-201, 19-6-202, 19-6-203, 19-6-302, 19-6-303, 19-6-405, 19-6-406, 19-6-407, 19-6-408, 19-6-409, 19-6-506, 19-6-602, 19-6-611, 19-6-702, 19-6-703, 19-6-704, 19-6-705, 19-6-706, 19-6-708, 19-7-104, 19-7-201, 19-7-202, 19-7-303, 19-7-304, 19-7-306, 19-7-307, 19-7-401, 19-7-405, 19-7-406, 19-7-407, 19-7-408, 19-7-409, 19-7-602, 19-7-611, 19-7-702, 19-7-703, 19-7-704, 19-7-705, 19-7-706, 19-7-707, 19-8-103, 19-8-104, 19-8-201, 19-8-202, 19-8-203, 19-8-303, 19-8-305, 19-8-401, 19-8-402, 19-8-403, 19-8-404, 19-8-405, 19-8-406, 19-8-503, 19-8-505, 19-8-702, 19-8-711, 19-8-802, 19-8-803, 19-8-804, 19-8-805, 19-8-806, 19-8-807, 19-9-108, 19-9-201, 19-9-202, 19-9-203, 19-9-303, 19-9-304, 19-9-305, 19-9-402, 19-9-501, 19-9-502, 19-9-504, 19-9-505, 19-9-602, 19-9-603, 19-9-604, 19-9-701, 19-9-707, 19-9-802, 19-9-901, 19-9-1001, 19-9-1002, 19-9-1003, 19-9-1005, 19-9-1006, 19-9-1008, 19-9-1011, 19-9-1012, 19-13-106, 19-13-109, 19-13-202, 19-13-203, 19-13-204, 19-13-303, 19-13-304, 19-13-305, 19-13-401, 19-13-402, 19-13-501, 19-13-502, 19-13-504, 19-13-505, 19-13-602, 19-13-603, 19-13-608, 19-13-609, 19-13-801, 19-13-901, 19-13-1001, 19-13-1002, 19-13-1003, 19-13-1004, 19-13-1005, AND 19-13-1008, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** This chapter may be cited as "The Public Employees' Retirement Act".

Section 2. **Applicability.** This chapter applies to the provisions and administration of the retirement systems under chapters 3, 5 through 9, and 13 of this title.

Section 3. Section 19-3-104, MCA, is amended to read:

"**19-3-104. Definitions.** Unless the context requires otherwise, ~~in~~ *for each of the retirement systems subject to* this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the *regular and any additional* contributions ~~standing to the credit of a member's individual account~~ *made by a member in a system,* together with the regular interest ~~thereon~~ *on the contributions.*

(2) "Active member" means a member who is an employee of an employer and who is making the required contributions to the system based on the member's compensation paid by the employer.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

~~(2)~~*(4)* "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

~~(3)~~*(6)* "Actuary" means the actuary retained by the board in accordance with 19-3-305.

~~(4)~~*(7)* "Additional contributions" means contributions *made* by ~~members~~ *a member* ~~under the provisions of 19-3-702~~ *to purchase various types of optional service credit as allowed by the applicable retirement system.*

~~(5)~~*(8)* "Annuity" means *equal and fixed* payments for life ~~derived from contributions made by a member as provided in this chapter~~ *that are the actuarial equivalent of a lump-sum payment under a retirement system and as* *such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.*

~~(6) "Beneficiary" means the person so designated pursuant to part 13 of this chapter.~~

~~(7)~~*(9)* "Benefit" means the *service or disability* retirement ~~allowance,~~ *or* survivorship ~~allowance, death~~ benefit~~, or refund of accumulated contributions~~ provided by ~~this chapter~~ *a system.*

~~(8)~~*(10)* "Board" means the public employees' retirement board provided for in 2-15-1009.

~~(9) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislature of Montana for any year shall be considered to be that portion of the product of the daily compensation for such position multiplied by 360 upon which such member elects to pay normal contributions during the year.~~

(11) "Contingent annuitant" means a person designated to receive a continuing annuity after the death of a retired member.

~~(10) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.~~

~~(11)~~*(12)* "~~Creditable~~ *Credited* service" *or "service credit"* means the ~~aggregate of membership service and prior service~~ *periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.*

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member to receive any survivorship benefits or lump-sum payments upon the death of the member, including annuities derived from the benefits or payments.

~~(12)~~*(15)* "Disability" ~~and "incapacity for performance of duty", referred to herein as a basis of retirement, mean~~ *means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The* disability *must be incurred while the member is an active member and must be one* of permanent duration or ~~disability~~ of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Division" means the public employees' retirement division of the department of administration.

~~(13)~~*(17)* "Employee" means ~~any~~ *a* person who is employed by an employer in any capacity ~~whatever~~ and whose salary is paid ~~either by warrant of~~ *by* the employer ~~or from the fees or income of any department or agency of the employer. "Employee" means further any person considered such pursuant to 19-3-402~~.

~~(14)~~*(18)* "Employer" means ~~the state of Montana, its university system or any of the colleges, schools, components, or units thereof for the purposes of this chapter, or any political subdivision or governmental entity which has con-~~

~~tracted to come into the system~~ *a governmental entity participating in a retirement system enumerated in [section 2] on behalf of its eligible employees.*

~~(15) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to 19-3-801 and from contracting employers pursuant to the contracts between them and the board.~~

~~(16) "Final compensation", except as provided in 19-3-907, means a member's highest average annual compensation during any 3 consecutive years of membership service. Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.~~

~~(17)~~*(19)* "Fiscal year" means any year commencing with July 1 and ending *the following* June 30 ~~next following~~.

~~(18) "Head of department" means the head of any department, institution, or branch of the state service which directly pays salaries out of its income or which prepares, approves, and submits salary statements of its employees to the department of administration, state auditor, and state treasurer for payment.~~

(20) "Inactive member" means a member who has terminated service with an employer and has not withdrawn the member's accumulated contributions from the retirement system.

~~(19)~~*(21)* "Member" means any person ~~included in the membership of the~~ *with accumulated contributions and service credited with a* retirement system ~~set forth in 19-3-401 and not excluded in 19-3-402, 19-3-403, or 19-3-406~~ *or receiving a retirement benefit on account of the person's previous service credited in a retirement system.*

~~(20)~~*(22)* "Membership service" *or "years of service"* means *the periods of* service ~~with respect to which normal contributions and employer contributions are paid. A member of the legislature of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to subsection (9) of this section~~ *that are used to determine eligibility for retirement or other benefits.*

~~(21) "Normal contributions" means contributions required from members under this chapter and any optional contributions made under the provisions of 19-3-502 and 19-3-704.~~

(23) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a system.

~~(22)~~*(24)* "Pension" means payments for life derived from contributions *to a system* made from ~~the~~ ~~state-controlled~~ *state- or employer-controlled* funds ~~or, in the case of members from contracting employers, from the funds of such contracting employers, as provided in this chapter~~.

~~(23) "Prior service" means all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of Montana.~~

(25) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

(26) "Regular contributions" means contributions required from members under a retirement system.

~~(24)~~*(27)* "Regular interest" means interest at the rate set from time to time by the board.

~~(25)~~*(28)* "Retirement" *or "retired"* means ~~withdrawal~~ *the status of a member who has terminated* from ~~active~~ service with a retirement ~~allowance granted under the provisions of this chapter~~ *benefit under a retirement system.*

~~(26)~~*(29)* "Retirement ~~allowance~~ *benefit*" means the periodic benefit payable following service, early, or disability retirement *under a retirement system.*

~~(27) "Retirement fund" means the public employees' retirement system pension trust fund.~~

~~(28)~~*(30)* "Retirement system" means ~~the public employees' retirement system created by this chapter~~ *one of the public employee retirement systems enumerated in [section 2].*

~~(29)~~*(31)* "Service" means employment of an employee~~, except as provided in 19-3-501 and 19-3-502~~ *in a position covered by a retirement system.*

(32) "Supplemental cost" means an element of the total actuarial cost of a system arising from benefits payable for service performed prior to the inception of the system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

~~(30)~~*(33)* "Survivorship ~~allowance~~ *benefit*" means payments for life to the beneficiary of a deceased member ~~as provided in part 12 of this chapter~~ *who died while in service under a retirement system.*

(34) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(35) "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

~~(31)~~*(36)* "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

Section 4. Section 19-3-301, MCA, is amended to read:

"**19-3-301. Location of board — quorum — officers and employees.** (1) The board shall maintain its office in the city of Helena.

(2) A quorum of the board ~~shall be~~ *is* three members.

(3) The board shall elect one of its members ~~president~~ *presiding officer*. The board may appoint a committee of one or more of its members ~~which shall have authority~~ to perform routine acts, such as retirement of members and fixing of retirement ~~allowances~~ *benefits*, approval of death claims, and correction of records necessary in the administration of the ~~system~~ *systems* in accordance with the provisions of ~~this chapter~~ *chapters 3, 5 through 9, 12, 13, and 15 of this title* and *in accordance with the* rules of the board. The attorney general ~~shall be~~ *is* the legal counsel for the board.

~~(4) The department of administration shall appoint and fix the compensation of the administrator and other necessary employees.~~"

Section 5. Section 19-3-304, MCA, is amended to read:

"**19-3-304. Powers and duties of board.** *(1) The board shall administer the provisions of the chapters enumerated in [section 2].*

~~(1)~~*(2)* The board may establish ~~such~~ rules ~~as~~ it ~~deems~~ *considers* proper for the administration and operation of the retirement ~~system~~ *systems* and enforcement of ~~this chapter, subject to its limitation~~ *the chapters under which each retirement system is established.*

(3) The board shall establish ~~those~~ uniform rules as are necessary to determine *service* credit for fractional years of service.

~~(2)~~*(4)* The board shall determine who are employees within the meaning of ~~this chapter~~ *each retirement system*. The board ~~shall be~~ *is* the sole authority ~~under this chapter~~ as to the conditions under which persons may become members of and receive benefits under the retirement ~~system~~ *systems.*

(5) The board shall determine and may modify ~~allowances for service and disability under this chapter~~ *retirement benefits under the retirement systems.*

(6) ~~All~~ *In matters of board discretion under the systems, the board shall treat all* persons in similar circumstances ~~shall be treated alike~~ *in a uniform and nondiscriminatory manner.*

~~(3)~~*(7)* The board shall maintain ~~such~~ records and accounts it determines necessary for the administration of ~~this chapter~~ *the retirement systems.*

~~(4)~~*(8)* Upon the basis of the findings of the actuary pursuant to 19-3-305, the board shall adopt ~~those~~ actuarial tables and ~~those~~ rates of regular interest it determines appropriate ~~to comply with the provisions of this chapter~~ *for the administration of the retirement systems.*"

Section 6. **Appointment and compensation of administrative staff.** The department shall appoint and fix the compensation of an administrator and other necessary employees to assist the board in administering the retirement systems.

Section 7. Section 19-3-305, MCA, is amended to read:

"19-3-305. Employment of actuary — biennial investigation and valuation. *(1)* The board shall retain~~, on a full-time basis,~~ a competent actuary who is ~~a~~ *an enrolled* member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary ~~shall be~~ *is* the technical advisor of the board on matters regarding the operation of the ~~system~~ *retirement systems.*

(2) ~~Biennially he shall make an~~ *The board shall require the actuary to make a biennial* actuarial investigation into the suitability of the actuarial tables used by the ~~system~~ *retirement systems* and an actuarial valuation of the assets and liabilities of the retirement ~~system~~ *systems.* ~~From time to time, he shall also determine the rate of interest being earned on the retirement fund. He shall report his findings to the board.~~

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to the retirement system, must be calculated as that level percentage of members' salaries that will actuarially fund benefits payable under a retirement system as those benefits accrue in the future.

(4) The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement system, must be calculated as that level percentage of members' salaries that will amortize the unfunded actuarial liabilities of the retirement system over a reasonable period of time, not to exceed 30 years, as determined by the board.

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems."

Section 8. Section 19-5-611, MCA, is amended to read:

"19-5-611. Determination *of disability* by board. *(1)* The board shall determine whether a member has become disabled. In the discharge of its duty regarding ~~such~~ determinations, the board, any member ~~thereof~~ *of the board,* or any ~~duly~~ authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement. ~~The board shall secure medical services and advice necessary to carry out the purposes of this part and shall pay compensation for those medical services and advice.~~

(2) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement."

Section 9. Section 19-3-306, MCA, is amended to read:

"19-3-306. Report by ~~department of administration~~ *division* to governor. As soon as practical after the close of each fiscal year, the ~~department of administration~~ *division* shall file with the governor a report of its work for that fiscal year. The report ~~shall~~ *must* include a statement as to the accumulated cash and securities in the ~~retirement fund~~ *pension trust funds* as certified by the state treasurer and the board of investments. The report ~~shall~~

must also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of ~~the~~ *each* system."

Section 10. Section 19-3-805, MCA, is amended to read:

"**19-3-805. Administrative expenses.** (1) The legislature finds that proper administration of the ~~retirement fund~~ *pension trust funds* benefits both employers and members and continues to benefit members after retirement.

(2) ~~Effective July 1, 1986, the~~ *The* administrative expenses of the retirement systems administered by the board must be paid from the ~~income~~ *investment* earnings on the ~~retirement~~ *pension trust* fund *of the public employees' retirement system,* except as provided in subsection (3). ~~The~~ *Before the fiscal yearend closing, the* board shall compute the administrative expenses attributable to each retirement system administered by the board *for the immediately preceding fiscal year* and transfer that amount from ~~the~~ *each* retirement system's pension trust fund to the ~~retirement~~ *pension trust* fund *of the public employees' retirement system.*

(3) ~~In addition to the contributions elsewhere provided in this chapter, on~~ *On* January 1 of each year, each employer *under the public employees' retirement system* shall contribute on behalf of each member then in its ~~employ~~ *service* a membership fee of $1 *in addition to other required contributions.* The appropriation of these fees, together with other ~~moneys~~ *money* appropriated for that purpose, ~~shall~~ *must* be used for the purpose of defraying the administrative expense of *chapters 3, 5 through 9, 13, and* this chapter.

(4) Any request for an increase ~~of~~ *in* spending authority for administrative expenses requires a budget amendment and is subject to Title 17, chapter 7, part 4.

(5) The board may assess and the division may collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering chapter 8 of this title."

Section 11. **Pension trust funds established.** A pension trust fund is established and maintained for each retirement system subject to this chapter as enumerated in [section 2].

Section 12. **Statutory appropriation of payments from pension trust funds.** Assets of the pension trust funds are statutorily appropriated, as provided in 17-7-502, to the division for payment of benefits and refunds to eligible recipients and for paying the necessary administrative and investment expenses of the retirement systems, subject to the specific provisions of chapters 3, 5 through 9, and 13 of this title.

Section 13. Section 19-3-601, MCA, is amended to read:

"**19-3-601. Management of ~~fund~~ *pension trust funds.*** The ~~retirement fund shall~~ *pension trust funds must* be managed as follows:

(1) The board is the trustee of all ~~moneys~~ *money* collected for the retirement ~~system~~ *systems* and has exclusive control of the administration of the ~~fund~~ *pension trust funds* except as otherwise provided by law.

(2) The department ~~of administration~~ shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) The state treasurer is custodian of the ~~retirement fund~~ *pension trust funds,* subject to the exclusive control of the board ~~as to the~~ *for* administration ~~thereof~~ and the board of investments ~~as to~~ *for* the investment ~~thereof~~ *of the funds.*"

Section 14. Section 19-3-602, MCA, is amended to read:

"19-3-602. Investment of ~~fund~~ ***pension trust funds.*** (1) The ~~fund~~ *pension trust funds of the retirement systems* must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the ~~fund~~ *pension trust funds* must be paid into the ~~fund~~ *appropriate pension trust funds* as received.

(3) The pension trust funds may be commingled for investment purposes, but separate accounts must be maintained for each system."

Section 15. Section 19-3-603, MCA, is amended to read:

"19-3-603. Restrictions on use of ~~fund~~ ***funds.*** (1) Except as ~~herein~~ provided *in this section,* ~~no~~ *a* member ~~and no~~ *or an* employee of the department ~~of administration~~ *or the board of investments* may *not*:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing ~~therefrom~~ *from the pension trust funds*;

(b) directly or indirectly, for ~~himself~~ *the member or employee* or as an agent or partner of others, borrow ~~any of its~~ *from the pension trust* funds or deposits;

(c) in any manner use the ~~same~~ *pension trust funds* except to make ~~such~~ current and necessary payments ~~as~~ *that* are authorized by the ~~department~~ *division*; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the ~~retirement system~~ *pension trust funds.*

(2) The assets of the retirement ~~system~~ *systems* may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board."

Section 16. Section 19-3-802, MCA, is amended to read:

"19-3-802. Payment of contributions by ~~state agencies~~ ***employers*** **— accompanying reports — penalty.** (1) At a time prescribed by the rules of the board, each ~~agency of the state~~ *employer* shall remit to the ~~public employees' retirement system~~ *division* all contributions required of ~~each~~ *the* employer and its employees under *retirement systems subject to* this chapter on the basis of *covered* compensation paid during the previous pay period~~, including any contributions payable with respect to members absent in the armed forces of the United States~~.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rate of 9% a year or $10 a day, whichever is greater~~, from the appropriation account of the reporting agency by submission of a claim to the state treasurer~~. The board may, in its discretion, waive the ~~interest~~ penalty. *The collection may be made by either:*

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) Employers shall submit reports of their covered payroll and contributions remitted as the board requires by rule.

(4) The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death. The chief administrative officer shall furnish additional information concerning the members that the board may require in the administration of the retirement systems, including the services of the employer's office and departments that the board may request in connection with claims by members for benefits under the retirement systems."

Section 17. Section 19-3-605, MCA, is amended to read:

"**19-3-605. Transfer between funds.** Any *pension trust* fund out of which payments are made under the provisions of this ~~chapter~~ *title* may be reimbursed to the extent of ~~such~~ *the* payments by transfer of a sufficient sum for the reimbursement from another *pension trust* fund or funds under the control of the ~~same disbursing officer~~ *division*. The ~~disbursing officer~~ *division* shall certify to the department ~~of administration~~ the amounts to be ~~thus~~ transferred and the funds from and to which the transfer is to be made, and the ~~department~~ *division* shall ~~thereupon~~ make the transfer as directed in the certificate."

Section 18. Section 19-3-406, MCA, is amended to read:

"**19-3-406. Termination of membership.** If ~~any part of~~ a member's accumulated ~~normal~~ contributions ~~is~~ *under a retirement system are* refunded ~~pursuant to 19-3-703~~, ~~he~~ *the person* ceases to be a member *of that system,* ~~and~~ all ~~membership~~ *the person's* service ~~to his credit~~ is canceled, *and the person relinquishes claim to any benefits payable to members of the retirement system.* ~~Any person who is retired ceases to be a member.~~"

Section 19. Section 19-3-703, MCA, is amended to read:

"**19-3-703. Refund of member's contributions on termination of service.** (1) Except as provided in this section, any member whose service has been discontinued, ~~by~~ other than *by* death or retirement, ~~shall~~ *must* be paid ~~his~~ *the member's* accumulated contributions at ~~his~~ *the member's* request.

(2) Upon ~~qualification for any other benefit under this chapter, a member having any accumulated contributions standing to his credit in the retirement fund shall receive the benefit based upon the creditable service during which such contributions were made~~ *the written request of a terminating member, the*

division shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) of the eligible portion of a refund of the member's accumulated contributions. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The terminating member shall designate the eligible retirement plan on forms provided by the division. Amounts of the member's accumulated contributions that are not eligible for direct rollover distribution must be paid to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution.

(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of ~~his~~ *the member's* accumulated contributions if after a previous discontinuance of service ~~he~~ *the member* withdrew all or part of ~~his~~ *the member's* contributions and failed to redeposit ~~such~~ *the* withdrawn amount in the ~~retirement~~ *pension trust* fund ~~as provided in 19-3-704~~.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the ~~department of administration~~ *division* to make ~~such~~ *the* direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.

(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written request."

Section 20. Section 19-3-704, MCA, is amended to read:

"**19-3-704. Reinstatement after withdrawal of contributions.** (1) Except as otherwise provided in this section, any person who again becomes a member subsequent to the refund of ~~his~~ *the person's* accumulated ~~normal~~ contributions after a termination of previous membership is considered a new member without credit for any previous membership service. ~~He~~ *The person* may reinstate that membership service by redepositing the sum of the accumulated ~~normal~~ contributions ~~which~~ *that* were refunded to ~~him~~ *the person* at the last termination of ~~his~~ *the person's* membership plus the interest ~~which~~ *that* would have been credited to ~~his~~ *the person's* ~~account~~ *accumulated contributions* had the refund not taken place. If ~~he~~ *the person* makes this redeposit, ~~his membership shall be the same as if unbroken by such last termination~~ *the service credits previously canceled must be reinstated.*

(2) Regardless of whether this redeposit is made, the documents held by the retirement system as executed by the member prior to termination of membership ~~shall~~ *must* be held by the system for the same purposes as prior to termination, and beneficiaries nominated in the documents ~~shall~~ continue unchanged until changed as provided ~~herein~~ *in this section.*"

Section 21. **Service credit.** Subject to the provisions of chapters 3, 5 through 9, and 13 of this title, a member must receive 1 month of service credit for each full month of service under rules adopted by the board. Service credits must be used in calculating a retirement or survivorship benefit.

Section 22. **Membership service.** A member must receive membership service for all periods of service, regardless of hours worked or compensation received during that service. The service must be used to determine:

(1) whether a member is vested;

(2) when the member is eligible for early or normal service retirement or disability retirement; or

(3) the eligibility of beneficiaries for survivorship benefits.

Section 23. Section 19-3-508, MCA, is amended to read:

"**19-3-508. No duplication of ~~allowance when there is more than one period~~ *benefits for same period* of service.** ~~There may not be any duplication of retirement allowances to a member or beneficiary due to there being more than one~~ *A* period of service of the member *may not be credited in more than one retirement system enumerated in [section 2] for purposes of calculation of retirement allowances.*"

Section 24. Section 19-3-702, MCA, is amended to read:

"**19-3-702. ~~Additional contributions~~ *Purchasing service credits* allowed.** Subject to the rules promulgated by the board, ~~any~~ *an eligible* member may elect to contribute ~~at rates in excess of those provided for in 19-3-701~~ *amounts in addition to the mandatory employee contributions required by the retirement system in which the member participates* for the purpose of ~~providing additional benefits, but the exercise of this privilege by a member shall not place on the state or contracting employer any additional financial obligation. The board, upon application, shall furnish to the member information concerning the nature and amount of additional benefits to be provided by additional contributions~~ *purchasing service credits as provided by the statutes governing the retirement system.*"

Section 25. Section 19-3-502, MCA, is amended to read:

"**19-3-502. Absence in military service.** (1) Any period of absence from ~~compensated employment with an employer~~ *service* for one of the following reasons, occurring either during a war involving the United States as a belligerent or during any other national emergency and 90 days ~~thereafter~~ *after the service,* is considered *membership* service *only* for the purpose of qualification for retirement and ~~death~~ *survivorship* benefits but not for calculation of ~~retirement benefits~~ *service credit:*

(a) by reason of having been ordered on duty with the armed forces of the United States;

(b) by reason of voluntary service in ~~said~~ *the armed* forces or on ships operated by or for the United States government; or

(c) by reason of direct assignment to the department of defense for duties pursuant to the national defense efforts where a leave of absence has been granted by the employer.

(2) Any member ~~so~~ absent ~~has the right to~~ *as provided in subsection (1) may* contribute to the retirement system, either during ~~his~~ *the member's* period of absence or upon ~~his~~ *the member's* return to service, at times and in the manner fixed by the board, amounts equal to the contributions ~~which~~ *that* would have been made by ~~him~~ *the member* to the system on the basis of ~~his~~ *the member's* compensation at the commencement of ~~his~~ *the member's* absence. If ~~he~~ *the member* does contribute, ~~he shall~~ *the member must* receive *service* credit ~~for service~~ for ~~such~~ *the* time in the same manner as if ~~he~~ *the member* had not been absent from service. Whenever a member elects to continue ~~his~~ *the member's* contributions, the employer shall ~~thereupon~~ contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

(3) Any member ~~so~~ absent *as provided in subsection (1)* loses the right to contribute under this section if ~~all of his~~ *the member's* accumulated ~~normal~~ contributions are refunded pursuant to 19-3-703."

Section 26. Section 19-3-1301, MCA, is amended to read:

"**19-3-1301. Designation of beneficiary.** ~~The~~ *In the absence of any statutorily designated persons, the* beneficiaries of a member ~~shall be such~~ *are the* natural persons, charitable organizations, or trusts for the benefit of natural living persons ~~as~~ *that* the member ~~shall designate in the appropriate written application~~ *designates on the membership card.* ~~A~~ *Unless otherwise provided by statute, a* member may revoke ~~such~~ *the* designation and name different beneficiaries by filing ~~written notice~~ *a new membership card* with the board."

Section 27. Section 19-3-1302, MCA, is amended to read:

"**19-3-1302. Effect of no designation.** (1) If ~~no~~ *a* living beneficiary, existing charitable organization, or natural living person who is the beneficiary of a trust is *not* designated, the estate of the member ~~shall be~~ *is* the *designated* beneficiary. If the estate would not be probated but for the amount due from the retirement system, all of the amount due, including retirement ~~allowances~~ *benefits* accrued but not received prior to death, ~~shall~~ *must* be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of ~~said~~ *the* survivor's estate, share and share alike.

(2) Payment ~~shall~~ *must* be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

(e) brothers and sisters; or

(f) nieces and nephews.

(3) ~~No~~ *A* payment ~~shall~~ *may not* be made to ~~persons~~ *a person* included in any of ~~said~~ *the* groups *listed in subsection (2)* if at the date of payment there ~~be~~ *is a* living ~~persons~~ *person* in any of the groups preceding ~~it~~ *the group of which the person is a member,* as listed. Payment ~~shall~~ *must* be made upon receipt from ~~said persons~~ *the person* of an affidavit, upon a form supplied by the retirement ~~board~~ *division,* that there are no living individuals in the groups preceding ~~it~~ *the group of which the person is a member* and that the estate of the deceased will not be probated.

(4) The payment ~~shall~~ *must* be in full and complete discharge and acquittance of the board and system on account of ~~said~~ *the member's* death."

Section 28. Section 19-3-1304, MCA, is amended to read:

"**19-3-1304. Payment to custodian of minor beneficiary.** (1) If any benefit from ~~the~~ *a* system is payable to a minor, the benefit must be paid to one of the following:

(a) a surviving parent, if any;

(b) a parent awarded custody of the minor in a divorce proceeding;

(c) a custodian designated under Title 72, chapter 26;

(d) a guardian appointed pursuant to Title 72, chapter 5, part 2; or

(e) a conservator appointed pursuant to Title 72, chapter 5, part 4.

(2) The payment ~~shall~~ *must* be in full and complete discharge and acquittance of the board and system on account of ~~said~~ *the* benefit. The person shall account to the minor for the money when the minor reaches the age of majority."

Section 29. Section 19-3-1305, MCA, is amended to read:

"**19-3-1305. Limitations on payment of benefits ~~if beneficiary causes~~ *to a person causing a* member's death *or disability.*** ~~(1)~~ If a ~~member's beneficiary~~ *person* is convicted of knowingly, purposely, or intentionally causing ~~the~~ *a* member's death *or disability,* ~~the beneficiary~~ *that person* ~~is~~ *may* not ~~entitled to~~ receive benefits ~~as the member's beneficiary, and, except as provided in subsection (2),~~ *or payments from a retirement system and* the benefits must be payable as *otherwise* provided in ~~19-3-1302~~ *statute.*

~~(2) In lieu of the payment of benefits as provided in subsection (1), the board may grant a survivorship allowance in the amount provided for in 19-3-1205 to the member's surviving next of kin other than the beneficiary who caused the member's death. Determination of the surviving next of kin must be made according to the order provided in 19-3-1302(2).~~"

Section 30. Section 19-3-1401, MCA, is amended to read:

"**19-3-1401. Estimate of ~~allowance~~ *benefit* when information incomplete.** If it ~~shall be~~ *is* impracticable for the board to determine from the records the length of service, the compensation, or the age of ~~any members~~ *a member* or if ~~any~~ *a* member refuses or fails to give the board a statement of ~~his~~ *the member's* state service, ~~his~~ compensation, or ~~his~~ age, the board may estimate, for the purposes of this ~~chapter~~ *title,* ~~such~~ *the* length of service, compensation, or age."

Section 31. Section 19-3-1402, MCA, is amended to read:

"**19-3-1402. Frequency of ~~allowance~~ *benefit* payments.** A retirement ~~allowance~~ *benefit* or survivorship ~~allowance~~ *benefit* granted under ~~the provisions of~~ *a retirement system subject to* this chapter ~~shall~~ *must* be payable in monthly installments, except that the board~~, at its discretion,~~ may *elect to* convert payments of ~~less than~~ *at least* $20 per ~~month~~ *year* to ~~larger periodic payments which are the actuarial equivalent of such smaller payments but which occur less frequently. If payments of at least $20 per year are not so payable, the payment may be commuted into~~ a single sum *of actuarial equivalent value.* A smaller pro rata amount may be paid for part of a month when the retirement ~~allowance~~ *benefit* ends before the last day of the month."

Section 32. Section 19-3-1403, MCA, is amended to read:

"**19-3-1403. Adjustment of errors in payments.** *(1)* If more or less than the correct amount of contribution required by *a retirement system subject to* this chapter ~~of a member, the state, or a contracting employer~~ is or has been paid, proper adjustment ~~shall~~ *must* be made in connection with the subsequent payments or ~~such~~ *the* adjustments may be made by direct cash payments between the member, state, or contracting employer in connection with whom the error was made and the board. ~~Adjustments to correct any other errors in payments to or by the board may be made in the same manner.~~

(2) If any fraudulent change or any inadvertent mistake in records results in any member, survivor, or beneficiary receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, survivor, or beneficiary in an equitable manner."

Section 33. Section 19-7-103, MCA, is amended to read:

"**19-7-103. Payments under workers' compensation.** All payments provided for in this chapter, except as *otherwise* provided ~~in 19-7-604~~, are in addition to any other benefits ~~now or hereafter~~ provided for under the Workers' Compensation Act of the state of Montana."

Section 34. Section 19-9-1004, MCA, is amended to read:

"**19-9-1004. ~~Board's authority to refuse to make payments~~ *Limitations on disability or survivorship benefits.*** ~~The~~ *If the board determines that a member's disability or death is proximately caused by the gross negligence, willful misconduct, or violation of the law by the member, the* board may revoke, ~~refuse to grant, or suspend a member's annuity for disability or death caused by wrongful conduct. If the disability causing a member to retire or the death of a member is directly and proximately caused by the member's immoral or intemperate conduct or gross negligence, the board may refuse to grant, revoke, or suspend the employer annuity~~ *suspend, or refuse to grant benefits except an annuity that is the actuarial equivalent of the member's accumulated contributions with regular interest to the day the benefit commences.*"

Section 35. Section 19-3-107, MCA, is amended to read:

"**19-3-107. Maximum benefit limitation.** ~~No~~ *A* monthly benefit paid under the retirement ~~system provided for in this chapter~~ *systems* may *not* exceed the annual limits on benefits as specified in section 415 of the Internal Revenue

Code of 1986 and adjusted annually by the commissioner of internal revenue ~~for calendar years 1988 and thereafter~~."

Section 36. Section 19-3-606, MCA, is amended to read:

"**19-3-606. Vesting of retirement ~~allowances~~ *benefits* upon termination of system.** Upon termination of ~~the~~ *a* retirement system, termination of employment of a substantial number of members ~~which~~ *that* would constitute a partial termination of the retirement system, or complete discontinuance of contributions to ~~the~~ *that* retirement system, the retirement ~~allowance~~ *benefit* accrued to each member directly affected by ~~such~~ *the* occurrence becomes fully vested and nonforfeitable to the extent funded."

Section 37. Section 19-3-604, MCA, is amended to read:

"**19-3-604. Transfer of dormant, ~~savings account~~ *nonvested member-accumulated contributions*.** The board may, in its discretion, transfer the ~~savings account~~ *accumulated contributions* of a *nonvested* member to the pension ~~accumulation~~ *trust* fund ~~if the account has been dormant~~ *of the system in which the member is participating if the member has not participated in the plan as an employee* for a period of 10 years. ~~No right~~ *Rights* of the member ~~shall~~ *may not* be jeopardized by ~~such~~ *the* transfer, and the ~~savings account shall~~ *accumulated contributions must* be transferred to the member's name upon subsequent ~~reentry to membership~~ *return to service or subsequent application for refund.*"

Section 38. Section 19-3-105, MCA, is amended to read:

"**19-3-105. Exemption from taxes and legal process.** The right of a person to ~~a retirement allowance or~~ any ~~other~~ benefit ~~under this chapter~~ *or payment from the retirement systems* and the money in the ~~fund created under this chapter are~~ *pension trust funds is* not:

(1) subject to execution, garnishment, attachment, or any other process;

(2) subject to state, county, or municipal taxes except for:

(a) a ~~retirement allowance~~ *benefit or annuity* received in excess of $3,600 or adjusted by an amount determined pursuant to 15-30-111(2)(c)(ii); or

(b) a refund ~~paid under 19-3-703~~ of a member's *regular* contributions picked up by an employer after June 30, 1985, as provided in 19-3-701, *19-5-402, 19-6-402, 19-7-403, 19-8-502, 19-9-601, or 19-13-601*; or

(3) assignable except as ~~in this chapter~~ specifically provided *in this chapter.*"

Section 39. **Compensation limit.** A retirement system subject to this chapter may not take into account compensation of a member in excess of the amount permitted in Internal Revenue Code section 401(a)(17).

Section 40. **Use of forfeitures.** A retirement system subject to this chapter may not apply forfeitures of benefits to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8).

Section 41. **Required distributions.** The benefits payable by the retirement systems subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) Benefits must begin by April 1 of the calendar year following the plan year in which the member reaches 70 ½ years of age or retires, whichever is later.

(2) The member's entire interest in the retirement system must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary.

(3) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution prior to the member's death.

(4) When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, payable over the life or life expectancy of the spouse, and that begins no later than the date the member would have reached 70 ½ years of age.

(5) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

Section 42. Section 19-5-104, MCA, is amended to read:

"**19-5-104. Penalty for fraud.** ~~(1) No~~ *A* person ~~shall~~ *who* knowingly ~~make any~~ *makes a* false statement or ~~shall falsify or permit~~ *who knowingly falsifies or permits* to be falsified any record ~~or records of the~~ *of a* retirement system ~~herein established~~ in ~~any~~ *an* attempt to defraud ~~such~~ *the* system~~.~~

~~(2) Any person violating any of the provisions of subsection (1) of this section shall be~~ *is* guilty of a misdemeanor ~~and upon conviction shall be sentenced to pay~~ *punishable by* a fine not exceeding $1,000 or ~~suffer~~ imprisonment not exceeding 1 year, or both~~, in the discretion of the court~~."

Section 43. Section 19-3-103, MCA, is amended to read:

"**19-3-103. Retirement system created.** A retirement system is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system. *The system is governed by the provisions of [sections 1 through 42] and this chapter.*"

Section 44. **Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer. Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a).

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(4) "Employer contributions" means payments to the pension trust fund pursuant to 19-3-801 from appropriations of the state of Montana and from contracting employers.

(5) "Final average salary", except as provided in 19-3-907, means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for sick leave and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

Section 45. Section 19-3-201, MCA, is amended to read:

"**19-3-201. Contracts with political subdivisions.** (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of ~~said~~ *the* contracting employer~~, subject to the provisions of this chapter~~. The contract may include any provisions ~~which~~ *that* are consistent with *[sections 1 through 42] and* this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract ~~shall be~~ *is* subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract ~~shall~~ *may* not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at ~~such~~ *the* election ~~shall~~ *must* include the summary of the retirement system as set forth in the resolution. The election ~~shall~~ *must* be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract ~~shall~~ *must* be by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, not less than 20 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting ~~thereon~~ *on the contract.*

(b) The contract ~~shall~~ *must* specify that all employees of the contracting employer or ~~such~~ groups of employees as agreed to between the board and the contracting employer ~~shall~~ *must* become members. The groups of employees to be included ~~shall~~ *must* be by departments, duties, ~~age,~~ or other similar classifications and not by individual employees. The board ~~shall have the right to~~ *may* disapprove any classification into groups if, in its opinion, ~~said~~ *the* classification affects adversely the interest of the retirement system. Membership in the retirement system ~~shall be~~ *is* compulsory for all employees included under the contract *and who are hired after the effective date of the contract.*

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

(3) The termination of the contract ~~shall be~~ *is* subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement coverage.

(b) All employees covered under the retirement system shall receive notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, not less than 20 days after the approval of the resolution by the employees, may adopt by a 2/3 majority a resolution terminating ~~PERS~~ coverage *under the system* effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency."

Section 46. Section 19-3-203, MCA, is amended to read:

"**19-3-203. Conversion of local or state retirement plan.** (1) ~~Should~~ *If* the legislative body of any city, county, or public agency having an existing retirement, pension, or annuity fund or system, ~~hereafter~~ referred to as the local system, ~~desire~~ *desires* to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in 19-3-201. However, the employees voting as provided in 19-3-201(2)(a) shall be limited to active members of the local system, and approval shall require an affirmative vote of two-thirds of ~~such~~ *the* employees.

(2) All active members of the local system shall become members of the retirement system and shall no longer be members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract ~~shall~~ *must* be continued and paid at their existing rates by the public employees' retirement system. The liability for ~~such~~ *the* pensions ~~shall~~ *must* be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system ~~shall~~ *must* be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of ~~said~~ *the* securities ~~shall~~ *must* be determined by the board.

(3) The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members

and the relative shares of the members as of that date. ~~Such~~ *The* shares ~~shall~~ *must* be charged to the employer and credited ~~to the respective individual accounts~~ *as accumulated contributions* of ~~such~~ *the* members in the public employees' retirement system and administered as if ~~said~~ *the* contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section ~~will~~ *must* be offset, with *regular* interest, against future required employer contributions. Any excess of employer charges over credits under this section ~~shall~~ *must* be payable by the contracting employer, with *regular* interest, on a monthly basis as specified in the contract."

Section 47. Section 19-3-204, MCA, is amended to read:

"**19-3-204. Tax levy to meet employer's obligations.** (1) If the required contributions to the retirement system exceed the funds available to a contracting employer from general revenue sources, the contracting employer may budget, levy, and collect annually a special tax upon the assessable property of the contracting employer in the number of cents per $100 of assessable property as is sufficient to raise the amount estimated by the legislative body to be required to provide sufficient revenue to meet the obligation of the contracting employer to the retirement system. The rate of taxation may be in addition to the annual rate of taxation allowed by law to be levied by the contracting employer.

(2) A person who is a member or *designated* beneficiary of the retirement system ~~on account~~ *because* of the participation of the contracting employer ~~has the right to~~ *may* maintain the appropriate action or proceeding to require the contracting employer to budget, levy, and collect the special tax authorized in subsection (1)."

Section 48. **Eligible employees.** Subject to [section 50], 19-3-403, and 19-3-402, eligible employees under the system who are not covered by a separate retirement system under this title include the following:

(1) any employee of the state of Montana, its university system or any of the colleges, schools, components, or units of the university system; and

(2) any employee of a contracting employer eligible to participate under the contract between the board and the contracting employer under 19-3-201.

Section 49. Section 19-3-401, MCA, is amended to read:

"**19-3-401. Membership — *inactive vested members — inactive nonvested members.*** (1) ~~All~~ *Except as otherwise provided in this chapter, all eligible* employees shall become members on the first day of *covered* employment. Each *eligible* employee shall file with the board ~~such~~ information affecting ~~his~~ *the employee's* status as a member of the retirement system as the board may require.

(2) ~~(a)~~ A member with at least 5 years of ~~creditable~~ *membership* service who terminates ~~covered employment~~ *service* and does not take a refund of ~~his~~ *the member's accumulated* contributions *is an inactive vested member and* retains the right to purchase service *and to receive a service retirement benefit* subject to the provisions of ~~part 5 of~~ this chapter.

~~(b) Upon reaching retirement age, a member becomes eligible to receive a retirement allowance under the provisions of 19-3-901 or 19-3-902.~~

(3) A member with less than 5 years of ~~creditable~~ *membership* service who terminates ~~covered employment~~ *service* and leaves ~~his~~ *the member's* accumulated contributions ~~on deposit~~ *in the pension trust fund* is *an inactive nonvested member and is* not eligible for any benefits ~~other than~~ *from the retirement system. An inactive nonvested member is eligible only for* a refund of ~~his~~ *the member's* accumulated contributions.

(4) Every employee who reenters service shall become a member unless ~~he~~ *the employee* has had an original election of exemption from membership and ~~his~~ *the employee's* service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership ~~will~~ *is* not ~~be~~ subject to the requirement regarding the break in service while continuing in ~~his~~ *the employee's* original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, ~~such a~~ *the* seasonal employee shall become a member of the retirement system upon reentry.

(5) Time during which an employee of a school district is absent from service during official vacation ~~shall be~~ *is* counted as service in determining eligibility for membership under this chapter."

Section 50. **Optional membership.** The following employees in covered employment may become members of the retirement system at their option at any time during their employment in a covered position by filing a membership card with the board:

(1) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(2) part-time employees serving in employment that does not exceed the equivalent of 120 working days in any fiscal year;

(3) employees directly appointed by the governor;

(4) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(5) the chief administrative officer of any city or county;

(6) employees of county hospitals or rest homes in the sixth- and seventh-class counties.

Section 51. Section 19-3-403, MCA, is amended to read:

"**19-3-403. Exclusions *from membership*.** The following persons may not become members of the retirement system:

~~(1) elective officers who have not filed with the board written requests to become members, except that a person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively exercises the option;~~

~~the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;~~

~~(2)~~*(1)* inmates of state institutions ~~who are allowed compensation for such service as they are able to perform~~;

~~(3)~~*(2)* persons in state institutions principally for the purpose of training, but who receive compensation;

~~(4)~~*(3)* independent contractors, unless there is a written contract ~~which~~ *that* specifies the creation of an employer-employee relationship for purposes of retirement coverage under ~~The Public Employees' Retirement System Act~~ *the retirement system*;

~~(5) employees serving in employment which does not exceed the equivalent of 120 working days in any fiscal year who have not filed with the board a written request to become members. A member so excluded from membership by this subsection may later become a member by otherwise becoming an employee or by written request after the initial date of exclusion. If he affirmatively exercises the option and pays the employee contribution plus interest, the contributions of the employer, because of his membership, shall be the same as they would have been had he not been so excluded plus accrued interest on all employer contributions from the date the contributions would have been made to the date of payment.~~

~~(6) employees in service on July 1, 1945, or prior thereto who filed with the board elections not to become members, except that a person so excluded from membership may become a member and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member by meeting the requirements prescribed in 19-3-505 and 19-3-506;~~

~~(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;~~

~~(8)~~*(4)* persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision ~~thereof~~ *of the state* and who are receiving credit in the other system for service~~;~~. ~~it being~~ *It is* the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and purchased pursuant to 19-3-503. A member of the retirement system who, because of ~~his~~ employment by the state, is required to become a member of any other system described in this subsection ~~shall be~~ *is* considered, solely for the purposes of making ~~normal~~ *regular* contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement ~~which~~ *that* includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system~~, and the payments or contributions in lieu of wages may not be considered a part of the employees' compensation for~~

~~purposes of computing the employer or employee contributions to the retirement system~~.

(b) For the purpose of this subsection ~~(8)~~*(4)*, persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee ~~as defined in this chapter~~ are not considered, because of ~~such~~ receipt, members of any other retirement or pension system.

~~(9)~~*(5)* court commissioners, *elected officials,* or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

~~(10) persons who become employees after they have reached their 60th birthday and have no creditable service in this system and who do not file with the board an election to become members;~~

~~(11) employees of county hospitals or county rest homes in the sixth- and seventh-class counties, unless they elect to file with the board an election in writing to become members;~~

~~(12) persons employed for 6 months or less by the legislature or the legislative council to perform work related to the legislative session who do not file with the board an election in writing to become members;~~

~~(13)~~*(6)* full-time students employed at and attending the same public elementary school, high school, vocational-technical center, or community college or any unit of the state university system, except that a person ~~so~~ excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive ~~credit~~ *credited service* for the excluded service under the provisions of 19-3-505~~;~~.

~~(14) the chief administrative officer of any city or county where the chief administrative officer has filed an election in writing with the board to be excluded from membership, this election to be filed no later than July 1, 1979, or 30 days after initial employment by a county or city, whichever is later.~~"

Section 52. Section 19-3-701, MCA, is amended to read:

"**19-3-701. Member's contribution to be deducted.** (1) On and ~~before June 30, 1989,~~ *after July 1, 1993,* the ~~normal~~ *regular* contribution of each member is ~~6% of his compensation. The normal contribution of each member increases to:~~

~~(a) 6.15% of his compensation on July 1, 1989;~~

~~(b) 6.30% of his compensation on July 1, 1990;~~

~~(c) 6.417% of his compensation on July 1, 1991;~~

~~(d) 6.55% of his compensation on July 1, 1992; and~~

~~(e)~~ 6.70% of ~~his~~ *the member's* compensation ~~on July 1, 1993~~.

(2) Payment of salaries or wages less the contribution ~~shall be~~ *is* full and complete discharge and acquittance of all claims and demands ~~whatsoever~~ for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions ~~which~~ *that* would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and ~~his~~ compensation ~~as defined in 19-3-104~~. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 53. Section 19-3-801, MCA, is amended to read:

"**19-3-801. Employer contribution rates** ~~**— actuarial determination.**~~ ~~(1)~~ Each employer shall contribute to the cost of benefits under the system. ~~The~~ *On and after July 1, 1993, the* amount of the employer contributions ~~shall be computed by applying to member's compensation the sum of the current service contribution rate and the unfunded liability contribution rate. The sum of these rates is 6.417% from July 1, 1983, to June 30, 1992. The sum of the rates increases to 6.55% on July 1, 1992, and to~~ *is* 6.70% ~~on July 1, 1993~~ *of each employer's covered payroll.*

~~(2) The actuary shall determine the current service contribution rate to be that level percentage of the present value of the future compensation of the average new member entering the system which equals the then present value of the excess of all prospective benefits in respect of such member over the member's own normal contributions.~~

~~(3) The actuary shall determine the minimum unfunded liability contribution rate to be that level percentage of the present value of the prospective compensation of all members for the 40-year period following the date of the determination which is equal to the unfunded liability on that date. The unfunded liability at any time is the excess of the present value of all future benefits payable in respect of all persons then entitled to benefits under the system over the sum of the retirement fund and the present values of the future current service contributions and normal contributions payable in respect of all such persons.~~"

Section 54. Section 19-3-405, MCA, is amended to read:

"**19-3-405. Refund of employer contribution made after termination.** Employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system, as provided in 19-3-403~~(8)~~*(4)*, ~~shall~~ *must* be repaid to the employer."

Section 55. Section 19-3-501, MCA, is amended to read:

"**19-3-501. Absence not included in ~~time of~~ service.** Except as *otherwise* provided in ~~19-3-502, 19-3-503, and 19-3-504~~ *this part*, time during which a member is absent from ~~compensated employment with an employer may not be allowed in computing~~ service *may not be included in the calculation of service credit.*"

Section 56. Section 19-3-503, MCA, is amended to read:

"**19-3-503. Election to qualify military service ~~for full credit~~.** (1) (a) A member with 10 years or more of ~~state~~ service ~~qualified under this chapter~~ *credits* may, at any time prior to retirement, make a written election with the board to ~~qualify~~ *purchase service credits for* all or any portion of ~~his~~ *the member's* active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, ~~for the purpose of calculating retirement benefits,~~ up to a maximum of 5 years, if ~~he~~ *the member* is not otherwise eligible to receive *service* credit for this same service pursuant to 19-3-502.

(b) To qualify this service ~~he must~~, *the member shall* contribute to the ~~retirement~~ *pension trust* fund the amount determined by the board to be due based on ~~his~~ *the member's* compensation and ~~normal~~ *regular* contribution rate as of ~~his~~ *the member's* 11th year and as many succeeding years as are required to qualify this service, with *regular* interest from the date ~~he~~ *the member* becomes eligible for this benefit to the date ~~he~~ *the member* contributes. ~~He~~ *The member* may not ~~qualify~~ *purchase* more of this service *credit* than ~~he~~ *the member* has ~~state~~ service *credits* in excess of 10 years.

(2) If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a ~~normal~~ *military* service retirement benefit, ~~he~~ *the member* may not qualify ~~his~~ *the member's* military service under subsection (1) ~~of this section~~. However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify ~~his~~ *the member's* active military service under subsection (1) ~~of this section~~ if ~~his~~ *the member's* active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the armed conflict, December 7, 1941, to August 15, 1945, is not more than 25% of the total sum of all years of military service including reserve and active duty time."

Section 57. Section 19-3-504, MCA, is amended to read:

"**19-3-504. Absence due to illness or injury.** (1) Time, not to exceed 5 years, during which a member is absent from service by reason of injury or illness determined within 1 year after the end of ~~such~~ *the* absence as arising out of and in the course of ~~his~~ *the member's* employment ~~shall be~~ *is* considered ~~as spent in~~ *membership* service ~~for the purpose of qualification for service retirement benefits under Title 19, chapter 3, part 9, or survivorship allowances under Title 19, chapter 3, part 12, but not for the calculation of such benefits~~. *However, the member may not earn service credits for this period* unless the member complies with subsections (2) through (4) ~~of this section~~, in which case the absence ~~shall be~~ *is* considered as time spent in service for both ~~the calculation and qualification of benefits~~ *service credits and membership credits.*

(2) (a) Any member absent because of an employment-related injury ~~which~~ *that* entitles ~~him~~ *the member* to workers' compensation payments may contribute to the retirement system, upon ~~his~~ *the member's* return to service, an amount equal to the contributions ~~which~~ *that* would have been made by ~~him~~ *the member* to the system on the basis of ~~his~~ *the member's* compensation at the commencement of ~~his~~ *the member's* absence plus *regular* interest accruing from 1 year from the date after ~~he~~ *the member* returns to covered ~~employment~~ *service* to the date ~~he~~ *the member* contributes for ~~his~~ *the* period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute an amount equal to what its employer contributions would have been had the member not been absent from service. In addition, the employer may contribute an amount equal to the interest accruing on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). *An employer electing to make a contribution shall do so for all employees similarly situated.* If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered ~~employment~~ *service*, a member ~~must~~ *shall* file with the board a written notice of ~~his~~ *the member's* intent to pay the contributions under subsection (2).

(4) Payment of the employee's contributions ~~which~~ *that* are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered ~~employment~~ *service.*

(5) A member ~~so absent~~ loses ~~his~~ *the* right to contribute *for an absence* under this section if all of ~~his~~ *the member's* accumulated ~~normal~~ contributions are refunded pursuant to 19-3-703."

Section 58. Section 19-3-505, MCA, is amended to read:

"19-3-505. Qualification of ~~service~~ *previous employment* with employer. (1) Subject to the provisions of this section, any person who has ~~service~~ *employment* with an employer ~~which~~ *that* is not ~~creditable~~ service may convert all or a portion of ~~such~~ *the* ~~service~~ *employment* to membership service by filing written notice ~~thereof~~ with the board.

(2) (a) The person ~~must~~ *shall* pay to the retirement system the sum of the amount ~~which he~~ *that the person* and ~~his~~ *the person's* employer would have contributed during the period of service ~~so~~ converted if the employer had ~~then~~ been an employer *covered by the retirement system* and the *regular* interest ~~which~~ *that* would have accumulated ~~thereon~~ *on the amount* to the time of ~~such~~

payment~~; provided that~~. *However,* the employer may pay the employer's portion, including accrued *regular* interest *as provided in subsection (2)(b).*

(b) The employer ~~must~~ *shall* establish a policy as to the *payment of* retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination ~~will be~~ *are* subject to the determination of the board. All successful appeals ~~will~~ obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing ~~such~~ *the* appeal with the board. Each appeal ~~will~~ *must* be heard on its individual merits and ~~will~~ *may* not bind the employer to pay all retroactive payments for all former and present employees.

(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board ~~will~~ *shall* determine the eligibility of all service credit requests ~~as prescribed in 19-3-304~~.

(4) Payment may be made in one sum at the time of filing notice or *by making additional contributions* on an installment basis before ~~termination of covered employment~~ *retirement*. Failure to make regular monthly payments in any month ~~where~~ *in which* the member receives ~~his~~ normal compensation ~~shall thereafter forfeit such~~ *forfeits the* person's right to make any further installment payments, unless permission is granted ~~to do so~~ by the board."

Section 59. Section 19-3-509, MCA, is amended to read:

"**19-3-509. Qualification of *other Montana public* service ~~from other Montana public retirement systems~~.** (1) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify *as service in this retirement system* all or any portion of ~~his creditable~~ *the member's* service *credit* in the highway patrol officers', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which ~~he~~ *the member* has received a refund of ~~his~~ membership contributions. To qualify this service, ~~he~~ *the member* ~~must~~ *shall* contribute to the ~~retirement~~ *pension trust* fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on ~~his compensation earned as a member of the former system and the normal contribution rate according to~~ the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the ~~administrator~~ *division* shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal *cost* contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by ~~his~~ *the member's*

former public employer. The board may grant service credit ~~subject to the provisions of 19-3-304(2)~~ upon contribution by the employee of the actuarial cost of granting this service in the public employees' retirement system, as determined by the board, based on the ~~employee's compensation earned during this period of service and the normal contribution rate according to the~~ most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 60. Section 19-3-510, MCA, is amended to read:

"**19-3-510. ~~Service~~ *Employment* in ~~the~~ United States government.** (1) A member who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may qualify ~~such~~ *the* federal ~~service~~ *employment* as ~~creditable~~ service in the ~~public employees'~~ retirement system under subsection (2) ~~of this section~~, provided that:

(a) the member has accrued 5 years or more of *membership* service in the ~~public employees'~~ retirement system; and

(b) the member returns to full-time ~~employment~~ *service* with the ~~prior~~ *former* state or local government employer for at least 1 year after completing ~~service~~ *employment* in the United States government.

(2) A member of the ~~public employees'~~ retirement system who is assigned to an agency of the United States government has the option to:

(a) continue ~~his~~ *the member's* payments into the ~~account~~ *pension trust fund*; or

(b) qualify ~~this service~~ *the period of federal employment* under ~~19-3-505~~ *this section* within 2 years after ~~his~~ return to ~~active status as a state or local government employee~~ *service under the retirement system*.

(3) Salary earned while on assignment to an agency of the United States government must be considered compensation for the purposes of the ~~public employees'~~ retirement system and may be included in the determination of final ~~compensation as defined in 19-3-104~~ *average salary*, provided that the final ~~compensation~~ *average salary* cannot exceed 100% of the member's highest annual compensation earned as a state or local government employee."

Section 61. Section 19-3-511, MCA, is amended to read:

"**19-3-511. Transfer of service credits from teachers' retirement system.** (1) A member may at any time before ~~his~~ retirement make a written election with the board to qualify in the public employees' retirement system all of ~~his creditable~~ *the member's* service in the teachers' retirement system. The amount that must be paid to the retirement system to qualify this service under this section is the sum of subsections (2) and (3).

(2) The teachers' retirement system shall transfer to the public employees' retirement system an amount equal to 72% of the amount determined in accordance with subsection (3).

(3) The employee shall pay an amount equal to ~~his~~ *the employee's* accumulated contributions at the time ~~he~~ *the employee* terminated active membership *with the teachers' retirement system*, as defined in 19-4-302, plus accrued interest from the date of termination until payment is received by the *public employees'* retirement system, based on the interest tables in use by the teachers' retirement system.

(4) The amount of ~~creditable~~ service *credit* granted in subsection (1) must be on a month-by-month basis. Military service credit transferred from the teachers' retirement system must be included in the 5-year maximum military service credit provided for in 19-3-503.

(5) Subject to the provisions of 19-3-304, the board is the sole authority in determining the amount of ~~creditable~~ service *credit* qualified under this section and the amount paid to the retirement system under subsections (2) and (3).

(6) If a member who has ~~creditable~~ service *credit* in the teachers' retirement system dies before ~~he~~ *the member* qualifies this service in the public employees' retirement system and if the service credits from both systems, when combined, entitle ~~his~~ *the member's designated* beneficiary to a ~~death~~ *survivorship* benefit, the payment of the ~~death~~ *survivorship* benefit is the liability of the public employees' retirement system. Before payment of the ~~death~~ *survivorship* benefit, the teachers' retirement board ~~must~~ *shall* transfer to the public employees' retirement system the contributions necessary to qualify this service in the public employees' retirement system as provided in subsections (2) and (3)."

Section 62. Section 19-3-512, MCA, is amended to read:

"**19-3-512. Qualification of service from other public retirement systems.** (1) A member with 5 or more years of ~~creditable~~ *membership* service in the public employees' retirement system may qualify:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which ~~he~~ *the member* received a refund of ~~his~~ *the member's* membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not qualify more than 5 years of service under this section. To qualify this service, a member shall:

(a) at any time before ~~his~~ retirement make a written election with the board to qualify the service; and

(b) contribute to the ~~retirement~~ *pension trust* fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on:

(i) ~~his~~ *the member's* compensation in ~~his~~ *the* sixth year of service covered under the public employees' retirement system; and

(ii) ~~the normal contribution rate according to~~ the most recent actuarial valuation.

(3) Contributions to qualify service under this section may be made in a lump-sum payment or *by making additional contributions* in installments as agreed upon by the member and the board.

(4) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-3-503.

(5) Service qualified under this section may not be used in calculating a member's retirement ~~allowance~~ *benefit* unless ~~his~~ *the member's* last 5 years of ~~creditable~~ service *credit* were earned under the public employees' retirement system. If a member's qualified service may not be used in calculating ~~his~~ *the member's* retirement ~~allowance~~ *benefit,* ~~he~~ *the member* may choose to~~:~~

~~(a)~~ receive a refund of the *accumulated* contributions made to qualify the service~~; or~~

~~(b) apply the contributions made to qualify the service under the provisions of 19-3-702~~."

Section 63. Section 19-3-513, MCA, is amended to read:

"**19-3-513. Election to purchase additional service.** (1) At any time before retirement, a person who became a member of the retirement system before July 1, 1989, and who has 5 years or more of membership service may make a written election with the board to purchase additional service *credit* for the purpose of calculating ~~his~~ *the member's* retirement ~~allowance~~ *benefit*. Except as provided in subsection (3), the member may purchase 1 year of additional service *credit* for each 5 years of membership service that ~~he~~ *the member* has qualified under the retirement system, up to a maximum of 5 years of additional service.

(2) For each year of service *credit* purchased under this section, a member shall contribute to the ~~retirement~~ *pension trust* fund an amount equal to ~~his normal~~ *the member's* compensation for the 12-month period immediately preceding the date ~~he~~ *the member* elects to purchase the service multiplied by the combined employee and employer contribution rates contained in 19-3-701 and 19-3-801 ~~in effect on and after July 1, 1993~~. Contributions may be made in a lump-sum payment or *by making additional contributions* in installments as agreed upon by the member and the board.

(3) (a) Except as provided in subsection (3)(b), after January 1, 1990, a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990.

(4) Service purchased under this section *is not membership service and* may not be used to qualify a member for service retirement."

Section 64. Section 19-3-907, MCA, is amended to read:

"**19-3-907. Participation by public administrators ~~— calculating benefit~~.** (1) A public administrator appointed or elected under 7-3-441 or 7-4-2203 who is paid on a fee basis and who elects membership in the retirement system must be granted ~~creditable~~ service *credit* on an annual basis. The member shall receive 1 full year of ~~creditable~~ service *credit* for each full year in which ~~he~~ *the member* serves in office.

(2) ~~For the purpose of calculating a retirement benefit under 19-3-904 or 19-3-1008 for a person who elects membership under subsection (1), "final compensation"~~ *"Final average salary"* means the member's highest average annual compensation during any ~~three~~ *3* calendar years in office for which ~~creditable~~ service *credit* has been granted."

Section 65. **Service credit for legislative members.** A member of the legislature of Montana must be credited with membership service for that portion of each year for which the member pays normal contributions.

Section 66. Section 19-3-901, MCA, is amended to read:

"**19-3-901. Eligibility for service retirement.** A member who has attained the age of 60 and ~~completed~~ *has* 5 years of ~~qualified~~ *membership* service is eligible for service retirement. A member who has attained age 65 while employed in a position covered by a public ~~employee~~ *employees'* retirement system is eligible for service retirement regardless of ~~his~~ *the member's* years of ~~creditable~~ *membership* service. A member who has ~~completed~~ 30 years or more of ~~creditable~~ *membership* service is eligible for service retirement regardless of ~~his~~ *the member's* age."

Section 67. Section 19-3-902, MCA, is amended to read:

"**19-3-902. Eligibility for early retirement.** A member who is not eligible for service retirement but has attained age 50 and ~~completed~~ *has* 5 years of ~~qualified~~ *membership* service is eligible for early retirement. A member who has completed 25 years or more of ~~state~~ *membership* service is eligible for early retirement."

Section 68. Section 19-3-903, MCA, is amended to read:

"**19-3-903. Time of commencement of ~~allowance~~ *benefit*.** (1) The board shall grant a retirement ~~allowance~~ *benefit* to any member who has fulfilled the eligibility requirements of 19-3-901 or 19-3-902, terminated covered ~~employment~~ *service*, and filed the appropriate written application.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), the retirement ~~allowance~~ *benefit* may commence on the first day of the month following the member's last day of membership service or, if requested by the ~~terminated~~ *inactive* member in writing, on the first day of ~~the~~ *a later* month following receipt of the written application.

(b) The retirement ~~allowance~~ *benefit* for an eligible ~~terminated~~ *inactive* member must commence no later than the first day of the month following the member's 60th birthday.

(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of ~~his~~ *the official's* term of office. An official electing this option may not earn *membership service,* service *credit,* or ~~salary credits~~ *compensation for purposes of calculating final average salary under the retirement system* in that month, and compensation earned in that month is not subject to employer or employee contributions."

Section 69. Section 19-3-904, MCA, is amended to read:

"**19-3-904. Amount of *service* retirement ~~allowance~~ *benefit*.** (1) The ~~annual~~ *monthly* amount of retirement ~~allowance~~ *benefit* payable to a member following ~~his~~ service retirement is the ~~sum~~ *greater* of ~~(a), (b), and (c)~~ *subsection (1)(a) or (1)(b)* as follows:

~~(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;~~

~~(b)~~*(a)* one fifty-sixth of ~~his~~ *the member's* final ~~compensation~~ *average salary* multiplied by the number of years of ~~his creditable~~ *the member's total* service *credit* ~~and additional service purchased under 19-3-513~~; *or*

~~(c)~~*(b)* ~~any retirement allowance payable under 19-3-905~~ *a monthly annuity that is the actuarial equivalent of double the member's accumulated regular contributions.*

(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, ~~his~~ *the member's* beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day ~~his~~ *the member's* retirement allowance commenced over the total of the retirement allowance payments made to the retired member."

Section 70. Section 19-3-905, MCA, is amended to read:

"**19-3-905. Adjustment of ~~allowance~~ *benefit* for certain members.** The ~~annual amount of~~ *minimum* retirement ~~allowance~~ *benefit* payable to a *vested* member ~~following his service retirement must be increased by the excess, if any, of the greater of (1) or (2), as follows, over 19-3-904(1)(b):~~

~~(1) the sum of a pension for prior service equal to one-sixtieth of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;~~

~~(2) if the member~~ *who has* attained age 70 in service~~, the lesser of $480 or one-half of his final compensation~~ *is an annuity of $40 per month.*"

Section 71. Section 19-3-906, MCA, is amended to read:

"**19-3-906. Early retirement ~~allowance~~ *benefit*.** (1) The ~~annual~~ amount of retirement ~~allowance~~ *benefit* payable to a member following ~~his~~ early retirement is the actuarial equivalent of the accrued portion of the service retirement ~~allowance which~~ *benefit that* would have been payable to ~~him~~ *the member* commencing at age 60 or upon completion of 30 years of ~~creditable~~ service *credit* pursuant to 19-3-904.

(2) The early retirement ~~allowance shall~~ *benefit must* be determined as prescribed in 19-3-904, with the exception that the ~~allowance~~ *benefit* must be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which ~~he~~ *the member* would have retired had ~~he~~ *the member* attained 60 years of age or had ~~he~~ *the member* completed 30 years of ~~creditable~~ *membership* service; and

(b) by 3/10 of 1% multiplied by the number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which ~~he~~ *the member* would have retired had ~~he~~ *the member* attained 60 years of age or had ~~he~~ *the member* completed 30 years of ~~creditable~~ *membership* service.

(3) The actuarial reduction provided for in this section must be adjusted for any additional service purchased under 19-3-513."

Section 72. Section 19-3-1002, MCA, is amended to read:

"**19-3-1002. Eligibility for disability retirement.** (1) Except as provided in subsections (2) and (3) ~~and 19-3-1004~~, a member *entering service prior to February 24, 1991,* who is not eligible for service or early retirement but has ~~completed~~ *at least* 5 years of ~~creditable~~ *membership* service and has become disabled while ~~in~~ *an* active ~~service, as defined in 19-3-1001~~ *member*~~,~~ is eligible for disability retirement, as provided in 19-3-1008(1).

(2) ~~A~~ *An active* member age 60 or older who has completed 5 years of ~~creditable~~ *membership* service and has had a duty-related accident forcing ~~him~~ *the member* to terminate ~~his~~ employment but who has not received or is ineligible to receive workers' compensation benefits under Title 39, chapter 71, for the duty-related accident may conditionally waive ~~his~~ *the member's* eligibility for a service retirement *in order* to be eligible for disability retirement. The waiver is effective only upon approval by the board of ~~his~~ *the member's* application for disability retirement. The board shall determine whether a member has become disabled ~~under the provisions of 19-3-1003~~. The board may request any information on file with the state compensation mutual insurance fund concerning any duty-related accident. If ~~no~~ information is *not* available, the board may request and the state fund shall provide an investigative report on the disabling accident.

(3) (a) A member ~~employed~~ *in service* on February 24, 1991, has a one-time election to be covered for disability purposes under the provisions of 19-3-1008(2). This election is irrevocable and must be made in writing by the member no later than December 31, 1991. Coverage under the provisions of 19-3-1008(2) commences on the date the completed election form is received by the board or its designated representative. To be eligible for disability benefits under the provisions of this part, a member must have completed 5 years of

~~creditable~~ *membership* service and must have become disabled while ~~in~~ *an* active ~~service, as defined in 19-3-1001~~ *member.*

(b) An individual becoming a member after February 24, 1991, who has completed 5 years of ~~creditable~~ *membership* service and has become disabled while ~~in~~ *an* active ~~service, as defined in 19-3-1001,~~ *member* is covered for disability purposes under the provisions of 19-3-1008(2)."

Section 73. Section 19-3-1005, MCA, is amended to read:

"**19-3-1005. Application for disability retirement ~~allowance~~ *benefit.*** The board shall grant a *disability* retirement ~~allowance~~ *benefit* to any member who has fulfilled the eligibility requirements of 19-3-1002 and ~~duly~~ filed the appropriate written application. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed or by any other person on behalf of the member, or the board upon its own motion may make the application. Application must be made within 4 ~~full~~ months after the member's discontinuance of service unless the member is disabled continuously from the date of discontinuance of service to the date of the application."

Section 74. Section 19-3-1006, MCA, is amended to read:

"**19-3-1006. Time of commencement of ~~allowance~~ *benefit.*** The retirement ~~allowance~~ *benefit* payable to a member who has become disabled ~~shall commence~~ *commences* on the day following the member's last day of ~~membership~~ service."

Section 75. Section 19-3-1007, MCA, is amended to read:

"**19-3-1007. ~~Allowance~~ *Benefit* for duty-related disability.** (1) The ~~annual amount of~~ retirement ~~allowance~~ *benefit* payable to a member eligible for disability retirement for duty-related reasons and granted prior to July 1, 1977, is 50% of ~~his~~ *the member's* final ~~compensation~~ *average salary.* ~~However, the annual amount of retirement allowance is 25% of final compensation for any period during which the member has been awarded workers' compensation, whether such compensation is received in periodic payments or in a lump sum. The annual amount of retirement allowance reverts to 50% of final compensation at the end of such period.~~

(2) Any retired member receiving a *disability* retirement ~~allowance~~ *benefit* on July 1, 1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, ~~will be~~ *is* subject to the provisions of this section after July 1, 1977."

Section 76. Section 19-3-1008, MCA, is amended to read:

"**19-3-1008. ~~Allowance~~ *Benefit* for disability.** (1) The ~~annual~~ *monthly* amount of *the* retirement ~~allowance~~ *benefit* payable to a member eligible for disability retirement under the provisions of 19-3-1002(1) is ~~the sum of (1)(a), (1)(b), and (1)(c) of this section as follows:~~

~~(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;~~

~~(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;~~

~~(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct, or violation of law on the part of the member, a pension which is~~ the greater of ~~(1)(c)(i) or (1)(c)(ii)~~ *subsection (1)(a) or (1)(b)* as follows:

~~(i) a pension which, together with the annuity provided under subsection (1)(b), shall make the retirement allowance equal to~~ *(a)* 90% of one fifty-sixth of ~~his~~ *the member's* final ~~compensation~~ *average salary* multiplied by ~~his~~ *the member's* years of ~~creditable~~ service *credit* ~~and~~, *including any* additional service purchased under 19-3-513; *or*

~~(ii)~~*(b)* a retirement ~~allowance~~ *benefit* equal to 25% of ~~his~~ *the member's* final ~~compensation~~ *average salary.*

(2) The ~~annual~~ *monthly* amount of retirement ~~allowance~~ *benefit* payable to a member eligible for disability retirement under the provisions of 19-3-1002(3) is a retirement ~~allowance~~ *benefit* equal to one fifty-sixth of ~~his~~ *the member's* final ~~compensation~~ *average salary* multiplied by ~~his~~ *the member's* years of ~~creditable~~ service *credit* ~~and~~, *including any* additional service purchased under 19-3-513.

~~(3) Except as provided in 19-3-1201, if a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1101, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member.~~

~~(4)~~*(3)* Subject to the provisions of part 11 of this chapter, a retired member receiving a *disability* retirement ~~allowance~~ *benefit* on February 24, 1991, who has previously been granted a disability retirement ~~allowance~~ *benefit* under the provisions of this section will continue to receive the monthly disability retirement ~~allowance~~ *benefit* as calculated prior to February 24, 1991, subject to any postretirement or cost-of-living increases granted by the legislature."

Section 77. Section 19-3-1102, MCA, is amended to read:

"19-3-1102. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, in its discretion, require ~~the recipient of a disability retirement allowance~~ *a disabled member* to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at ~~the place of residence of the recipient or another~~ *a* place mutually agreed upon *by the retired member and the board.* Upon the basis of the examination, the board shall determine whether the ~~recipient~~ *disabled member* is unable, by reason of physical or mental incapacity, to perform either the duties of the position held by ~~him~~ *the member* when ~~he~~ *the member* retired or the duties proposed to be assigned to ~~him~~ *the member.* If the board determines ~~that~~ the ~~recipient~~ *member* is not incapacitated or if the ~~recipient~~ *member* refuses to submit to *a* medical examination, ~~his~~ *the member's* retirement ~~allowance~~ *benefit* must be canceled.

(2) If the board determines that a ~~recipient of a disability retirement allowance~~ *disabled member* should no longer be subject to medical review, the board may grant ~~a~~ service retirement status to the ~~recipient~~ *member* without

recalculating ~~his~~ *the* monthly ~~allowance~~ *benefit.* The board shall notify the ~~recipient~~ *member* in writing as to the change in status. If the ~~recipient~~ *disabled member* disagrees with the board's determination, ~~he~~ *the member* may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A ~~recipient~~ *member* whose disability retirement ~~allowance~~ *benefit* is canceled because the board has determined that ~~he~~ *the member* is no longer incapacitated must be reinstated to the position held by ~~him~~ *the member* immediately before ~~his~~ *the member's* retirement or to a position in the same classification with duties within ~~his~~ *the member's* capacity if ~~he had been~~ *the member was* an employee of the state or of the university. If ~~he had been~~ *the member was* an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the *disability* retirement ~~allowance~~ *benefit* has been canceled and that the former employee is eligible for reinstatement to duty. The fact that ~~he~~ *the former employee* was retired for disability may not prejudice any right to reinstatement to duty that ~~he~~ *the former employee* may have or claim to have.

(4) If a ~~recipient~~ *member* whose disability retirement ~~allowance~~ *benefit* is canceled is not reemployed in a position subject to the retirement system, ~~his~~ *the member's* service is considered, for the purposes of 19-3-703, to have been discontinued coincident with the commencement of ~~his~~ *the member's* retirement ~~allowance~~ *benefit.*"

Section 78. Section 19-3-1201, MCA, is amended to read:

"**19-3-1201. Eligibility for death ~~benefits~~ *payments.*** Upon receipt of a written application filed with the board by a designated beneficiary, the board shall grant a death benefit to the *designated* beneficiary of any member ~~or former member~~ who dies ~~in any of the following statuses~~:

(1) while in service;

(2) within 6 months after the discontinuance of service but before retirement;

(3) while a recipient of a *disability* retirement ~~allowance because of disability~~ *benefit,* if ~~such allowance~~ *the benefit* has been in effect less than 6 months; *or*

(4) while disabled, ~~as defined in 19-3-1001,~~ if ~~he~~ *the member* has been continuously ~~so~~ disabled ~~from the~~ *since* discontinuance of ~~his~~ *the member's* service but is not receiving a *disability* retirement ~~allowance~~ *benefit* ~~because of the disability~~."

Section 79. Section 19-3-1202, MCA, is amended to read:

"**19-3-1202. Amount of *lump-sum* death ~~benefit~~ *payment.*** The amount of *payment to be made to those eligible for* death ~~benefit~~ *payments* is the sum of *subsections* (1), (2), and (3) as follows:

(1) the member's accumulated contributions;

(2) an amount equal to one-twelfth of the compensation received by the member during the last 12 months of ~~such~~ compensation multiplied by the

smaller of six or the number of years of ~~his creditable~~ *the member's* service *credit*; ~~provided, however, that this portion of the death benefit is not payable if the board receives a certification from the state compensation mutual insurance fund that it is paying compensation because the member's death resulted from injury or disease arising out of or in the course of employment;~~ and

(3) the accumulated *regular* interest on the amounts in subsections (1) and (2) ~~of this section~~ to the first day of the month in which the ~~benefit~~ *payment* is ~~paid~~ *made*."

Section 80. Section 19-3-1203, MCA, is amended to read:

"**19-3-1203. Election of optional death ~~benefit~~ *annuity*.** ~~A~~ *The designated beneficiary of a* member ~~or his beneficiary after his death~~ may elect to have the *lump-sum* death ~~benefit~~ *payment* paid in an actuarially equivalent form subject to ~~such~~ *the* rules ~~as~~ the board may adopt. Election of an optional death ~~benefit shall~~ *annuity must* be by written application. *The annuity payments are not subject to increases that may be granted to other monthly retirement benefits*."

Section 81. Section 19-3-1204, MCA, is amended to read:

"**19-3-1204. Survivorship ~~allowance~~ *benefit* elected by beneficiary.** (1) A *designated* beneficiary eligible to receive a *lump-sum* death ~~benefit~~ *payment* may elect, by written application, a survivorship ~~allowance~~ *benefit* instead, if all of the following conditions are met:

(a) The member on behalf of whom the death benefit is payable had completed 5 years of ~~creditable~~ *membership* service.

(b) The *designated* beneficiary is a natural person.

(c) The *designated* beneficiary elects the survivorship ~~allowance~~ *benefit* within 90 days of receipt of notice from the board that ~~he~~ *the designated beneficiary* is eligible to receive the *lump-sum* death ~~benefit~~ *payment*.

(2) (a) If the *designated* beneficiary is a minor, the custodian designated in 19-3-1304 may, on the minor's behalf, file a written application with the board.

(b) If ~~no~~ *an* application is *not* filed on the minor's behalf, the *designated* beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection (b), the survivorship ~~allowance~~ *benefit* provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed."

Section 82. Section 19-3-1205, MCA, is amended to read:

"**19-3-1205. Amount of survivorship ~~allowance~~ *benefit*.** The ~~annual amount of~~ survivorship ~~allowance~~ *benefit* payable to a member's *designated* beneficiary ~~shall be~~ *is* the actuarial equivalent of either:

(1) the accrued portion of the service retirement ~~allowance which~~ *benefit that* would have been payable to the member commencing at age 60 pursuant to 19-3-904, if ~~he~~ *the member* had not attained age 60 at the time of ~~his~~ death; or

(2) if the deceased member had attained age 60 or ~~completed~~ *earned* 30 years of service *credit* at the time of ~~his~~ death, the service retirement ~~allowance which~~ *benefit that* would have been payable to the member if ~~he~~ *the member* had retired immediately prior to ~~his~~ death."

Section 83. **Death payments to designated beneficiaries of retired members.** If a retired member receiving a regular retirement benefit dies without designating a contingent annuitant under 19-3-1101, the member's designated beneficiary must be paid the excess, if any, of the member's accumulated contributions on the day that the member's retirement benefit commenced over the total of the retirement benefit payments made to the retired member.

Section 84. Section 19-3-404, MCA, is amended to read:

"**19-3-404. Refund when *former* member dies after transferring to another system.** The accumulated contributions of a member who dies after becoming a member of any other system described in 19-3-403~~(8)~~*(4)* and before receiving ~~his~~ *the member's* accumulated contributions ~~shall~~ *must* be paid to the *designated* beneficiary ~~nominated by him to receive any death benefit payable under 19-3-1201~~."

Section 85. Section 19-3-1101, MCA, is amended to read:

"**19-3-1101. Optional ~~retirement allowance~~ *forms of benefits.*** (1) The retirement ~~allowance~~ *benefit* of a member *or the survivorship benefit of a designated beneficiary* who ~~so elects shall~~ *makes an election must* be converted, in lieu of all other benefits under this chapter, into an optional retirement ~~allowance which~~ *benefit that* is the actuarial equivalent of the ~~regular retirement allowance~~ *original benefit.* The optional retirement ~~allowance~~ *benefit* is ~~a reduced amount~~ *initially* payable during the member's *or designated beneficiary's* lifetime, with a subsequent benefit *to the contingent annuitant whom the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits,* as follows:

(a) ~~option~~ *Option* 2—a continuation of the reduced ~~retirement allowance~~ *amount after the death of the initial payee and payable* during the lifetime of ~~his~~ *the* named contingent annuitant;

(b) ~~option~~ *Option* 3—a continuation of one-half of the reduced ~~retirement allowance~~ *amount after the death of the initial payee and payable* during the lifetime of ~~his~~ *the* named contingent annuitant;

(c) ~~option~~ *Option* 4—~~such~~ *upon the initial payee's death,* other actuarially equivalent ~~benefit~~ *amounts* as may be approved by the board.

(2) Election of an optional retirement ~~allowance~~ *benefit* must be by written application filed prior to the first payment of the ~~regular retirement allowance~~ *benefit.*

(3) If ~~either the member~~ *a benefit recipient* or ~~his~~ *the recipient's* contingent annuitant dies before ~~the member has received~~ the first payment *has been made* under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date ~~his~~ *the member's* election or changed election of an optional retirement ~~allowance~~

benefit is received by the board, then the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written request to the board, a retired member who is receiving an optional retirement ~~allowance~~ *benefit* may designate a different contingent annuitant, select a different option, or convert ~~his~~ *the member's* optional retirement ~~allowance~~ *benefit* to a regular retirement ~~allowance~~ *benefit* if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement ~~allowance~~ *benefit* as part of the divorce settlement.

(b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement ~~allowance~~ *benefit* to reflect the change."

Section 86. Section 19-3-1104, MCA, is amended to read:

"**19-3-1104. Cancellation of *disability* retirement ~~allowance~~ *benefit* upon reemployment.** Any person receiving a retirement ~~allowance~~ *benefit* who becomes an employee ~~shall be~~ *is* considered reinstated *to service* from retirement, and ~~his~~ *the person's* retirement ~~allowance shall be~~ *benefit is* canceled."

Section 87. Section 19-3-1105, MCA, is amended to read:

"**19-3-1105. ~~Allowance~~ *Benefit* upon ~~a~~ second retirement.** (1) Upon retirement subsequent to a cancellation under 19-3-1104, a member shall ~~be entitled to~~ receive a recalculated benefit as provided in 19-3-904. ~~Such~~ *The* recalculated benefit ~~shall be~~ *is* based on ~~his~~ ~~creditable~~ service *credit* accumulated at the time of ~~his~~ *the member's* previous retirement plus any ~~creditable~~ service *credit* accumulated subsequent to ~~his~~ reemployment.

(2) Except as otherwise expressly provided by law, ~~he shall~~ *the member must* receive the benefit of provisions enacted subsequent to ~~his~~ initial retirement only if ~~he~~ *the member* accrues at least 2 years of ~~creditable~~ service *credit* subsequent to ~~his~~ reinstatement and then only with respect to ~~such creditable~~ *the* service *credit*."

Section 88. Section 19-3-1106, MCA, is amended to read:

"**19-3-1106. Limited reemployment — reduction of *service* retirement ~~allowance~~ *benefit* upon exceeding limits.** (1) A ~~person~~ *retired member* under 65 years of age receiving a service retirement ~~allowance, not as a beneficiary,~~ *benefit* may return to employment covered by the retirement system for a period not to exceed 600 hours in any calendar year *without returning to service and without any effect to the retiree's retirement benefit.* The retirement ~~allowance~~ *benefit* for any retiree exceeding this 600-hour limitation in any calendar year after retirement ~~will~~ *must* be reduced $1 for each $1 earned after working 600 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 600-hour limitation of subsection (1) or may earn an amount equal to 50% of ~~his~~ *the retiree's* current annual retirement benefits, whichever limitation provides the greater compensation to

the retiree, in any calendar year. Upon reaching the applicable limitation, the retiree's benefits must be reduced $1 for each $1 in other income earned in *covered service beyond the applicable limitation during* that calendar year.

(3) A retiree returning to employment covered by the retirement system shall report to the board the number of hours ~~he has~~ worked *by the retiree* and the gross compensation paid to ~~him~~ *the retiree* in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment."

Section 89. Section 19-3-1103, MCA, is amended to read:

"**19-3-1103. Disability ~~allowance~~ *benefit* reduced by earnings — change in retirement status.** (1) (a) ~~Should~~ *If* the recipient of a *disability* retirement ~~allowance because of disability engage~~ *benefit engages* in a gainful occupation during any month other than ~~as an employee as defined in 19-3-104~~ *in a position covered by the retirement system*, the amount of ~~his~~ *the recipient's* retirement ~~allowance~~ *benefit* for that month ~~shall~~ *must* be reduced to an amount ~~which~~ *that*, when added to the compensation earned by ~~him~~ *the recipient* in that occupation, ~~shall~~ *does* not exceed the amount of ~~his~~ *the recipient's* monthly compensation at the time of ~~his~~ *the recipient's* retirement.

(b) For the purpose of calculating a reduction under subsection (1)(a), the board, at the request of a recipient of a disability retirement ~~allowance~~ *benefit*, may adjust the recipient's monthly compensation *as it was* at the time of retirement by an inflationary factor if ~~he~~ *the recipient* has been receiving a disability retirement ~~allowance~~ *benefit* for more than 36 consecutive months.

(2) At the request of a recipient of a disability retirement ~~allowance~~ *benefit* who is age 60 or older, the board may grant service retirement status to the recipient without recalculating ~~his~~ *the recipient's* monthly ~~allowance~~ *benefit*.

(3) Benefit adjustments granted by the legislature may not be included in calculations required under this section."

Section 90. Section 19-3-1109, MCA, is amended to read:

"**19-3-1109. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a ~~member or beneficiary~~ *benefit recipient* is eligible to receive a postretirement adjustment as provided in 19-3-1111 if ~~he~~ *the person* is receiving a:

(a) service retirement ~~allowance~~ *benefit* and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or

(b) disability or survivorship ~~allowance~~ *benefit*.

(2) A ~~member or beneficiary~~ *benefit recipient* is ineligible to receive a postretirement adjustment under subsection (1) unless ~~he~~ *the recipient* has been receiving a monthly service, disability, or survivorship ~~allowance~~ *benefit* for at least 24 consecutive months on or before June 30 in the year the adjustment is made."

Section 91. Section 19-3-1110, MCA, is amended to read:

"**19-3-1110. Funding for postretirement adjustment — reserve fund.** (1) At the end of each fiscal year, the board shall determine the total investment income earned on the ~~retirement~~ *pension trust* fund for that fiscal year. From this amount, the board shall subtract the:

(a) actuarial amount required to fund the retirement system for the fiscal year; and

(b) retirement system's administrative and investment expenses for the fiscal year.

(2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of investment income earned on that portion of the ~~retirement~~ *pension trust* fund balance representing retired members.

(b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

(3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment to eligible ~~members or beneficiaries~~ *benefit recipients* under 19-3-1111.

(4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement adjustment of at least $1 under 19-3-1111, an adjustment may not be made in that calendar year.

(5) The amount available for payment of the postretirement ~~allowance~~ *adjustment* is limited to an amount that would provide a percentage increase in the average service, disability, or survivorship ~~allowance~~ *benefit* of all eligible ~~members~~ *benefit recipients,* when combined with the postretirement adjustment, that is equal to or less than the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers compiled by the bureau of labor statistics, United States department of labor, or its successor agency."

Section 92. Section 19-3-1111, MCA, is amended to read:

"**19-3-1111. Payment and amount of postretirement adjustment.** (1) Effective January 1 of each year that funds are available under 19-3-1110, a ~~member or beneficiary~~ *benefit recipient* eligible under 19-3-1109 ~~shall~~ *must* receive a postretirement adjustment in the form of a monthly benefit payable for life.

(2) The board shall calculate the amount of the postretirement ~~allowance~~ *adjustment* payable to an eligible ~~member or beneficiary~~ *benefit recipient* by:

(a) dividing the amount available under 19-3-1110(3) for payment of the postretirement ~~allowance~~ *adjustment* by the total accumulated years of service *credit* for all eligible ~~members and beneficiaries~~ *benefit recipients*;

(b) multiplying the quotient obtained in subsection (2)(a) by the *individual eligible* member's total ~~years of~~ service *credits*;

(c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly annuity from actuarial tables adopted by the board; and

(d) applying the provisions contained in subsections (3) and (4).

(3) If a member had elected to receive an optional retirement ~~allowance~~ *benefit*, the amount of ~~his~~ *the member's* postretirement ~~allowance~~ *adjustment* must be adjusted by the appropriate optional factor.

(4) If more than one ~~beneficiary~~ *contingent annuitant* is receiving a member's retirement ~~allowance~~ *benefit*, the postretirement adjustment must be divided in the same manner as the member's retirement ~~allowance~~ *benefit*."

Section 93. **Short title.** This chapter may be cited as the "Judges' Retirement Act".

Section 94. Section 19-5-102, MCA, is amended to read:

"**19-5-102.** ~~**Retirement**~~ ***Judges' retirement*** **system** ***established.*** There is a retirement system known as the ~~Montana~~ judges' retirement system, which is governed by the provisions of *[sections 1 through 42] and* this chapter."

Section 95. Section 19-5-101, MCA, is amended to read:

"**19-5-101. Definitions.** Unless a different meaning is plainly implied by the context, the following definitions apply in this chapter:

~~(1) "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.~~

~~(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.~~

~~(3) "Beneficiary" means the person whom the contributor nominates by written designation, witnessed and filed with the board.~~

~~(4) "Board" means the public employees' retirement board.~~

~~(5) "Contributor" means any person who has accumulated deductions in the fund standing to his credit.~~

(1) "Compensation" means remuneration as defined in 2-16-404, 3-5-211, and 3-7-222 paid to a member.

~~(6)~~*(2)* "~~Final~~ *Current* salary" means the ~~annual~~ current ~~salary~~ *compensation* for the office retired from.

~~(7) "Fund" means the Montana judges' retirement system pension trust fund.~~

~~(8)~~*(3)* "Involuntary retirement" means a retirement not for cause and before retirement age.

~~(9) "Member's annuity" means payments for life derived from contributions made by the contributor.~~

~~(10)~~*(4)* "Retired judge" means any judge or justice in receipt of a retirement ~~allowance~~ *benefit* under this chapter.

~~(11) "Retirement allowance" means the state annuity plus the member's annuity.~~

~~(12) "State annuity" means payments for life derived from contributions made by the state of Montana.~~"

Section 96. Section 19-5-103, MCA, is amended to read:

"**19-5-103. Call of retired judge for duty.** (1) Every judge or justice who has voluntarily retired after 8 years of service shall, if physically and mentally able, be subject to call by the supreme court or the chief justice ~~thereof~~ to aid and assist the supreme court, any district court, or any water court under ~~such~~ directions as the supreme court may give, including the examination of the facts, cases, and authorities cited, and the preparation of opinions for and on behalf of the supreme court, district court, or water court, or to serve as water judge. The opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of ~~such~~ *the* court. ~~Such~~ *The* court and ~~such~~ *the* retired judge or justice may, subject to any rule ~~which~~ *that* the supreme court may adopt, perform any and all duties preliminary to the final disposition of cases ~~insofar as~~ *that are* not inconsistent with the constitution of the state.

(2) ~~Such~~ *A* retired judge or justice, when called to service ~~as herein provided~~, ~~shall~~ *must* be reimbursed for ~~his~~ actual expenses, if any, in responding to ~~such~~ *the* call. In addition, for each day of service a retired justice or judge is entitled to receive compensation in an amount equal to one-twentieth of the monthly salary then currently applicable to the judicial position in which the service is rendered minus an amount equal to one-twentieth of the monthly retirement ~~allowance~~ *benefit* the retired justice or judge is receiving, if any, for each day of service rendered."

Section 97. Section 19-5-301, MCA, is amended to read:

"**19-5-301. Membership — *inactive vested members — inactive nonvested members.*** (1) ~~A~~ *Except for a* judge or justice who ~~was a member of the PERS prior to December 31, 1984, may elect~~ *elected in writing* to remain under ~~that system by notifying the public employees' retirement board in writing of the election~~ *the public employees' retirement system* on or before October 1, 1985~~.~~

~~(2) Every other~~, *a* judge of a district court, *a* justice of the supreme court, and the chief water judge provided for in 3-7-221 must be ~~a member~~ *members* of the Montana judges' retirement system.

(2) A judge pro tempore is not eligible for active membership in the retirement system.

(3) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(4) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust

fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 98. Section 19-5-401, MCA, is amended to read:

"**19-5-401. Payments into *pension trust* fund.** All appropriations made by the state of Montana, all contributions by members, and all interest on and increase of the investments and ~~moneys~~ *money* in the *pension trust* fund ~~shall~~ *must* be paid to the ~~public employees' retirement~~ division ~~of the department of administration~~, which shall credit the payments to the fund. These funds may be commingled with *other pension trust* funds of the ~~PERS~~ *division*, but separate accounts ~~shall~~ *must* be maintained for the ~~Montana~~ judges' retirement system."

Section 99. Section 19-5-402, MCA, is amended to read:

"**19-5-402. Member's contribution.** (1) ~~Every~~ *Each* member shall ~~be required to~~ contribute into the fund a sum equal to ~~6% of his monthly salary, except that a member elected or appointed to office after July 1, 1983, shall be required to contribute into the fund a sum equal to~~ 7% of ~~his~~ *the member's* monthly ~~salary~~ *compensation* beginning on the first day of ~~his~~ *the member's* term. ~~This sum shall be deducted from his salary and credited to his account in the fund.~~

(2) Each employer, pursuant to section 414(h)(2) of the Internal Revenue Code, as amended and applicable on July 1, 1991, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1991.

(3) The member's contribution picked up by the employer is the member's contribution for all purposes of the retirement system, except for the determination of a tax upon a distribution from the retirement system. The contributions must become part of the member's accumulated contributions but must be accounted for separately from the previously accumulated contributions.

(4) The member's contributions picked up by the employer are payable from the same source used to pay compensation to the member and must be included in the member's monthly compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 100. Section 19-5-403, MCA, is amended to read:

"**19-5-403. Refunds in case of resignation or discharge.** When a ~~contributor~~ *member* willingly resigns or is discharged for cause before becoming entitled to a retirement ~~allowance~~ *benefit*, the accumulated ~~deductions~~ *contributions* standing to ~~his~~ *the member's* credit must be paid to ~~him~~ *the member* upon the board's receipt of ~~his~~ *the member's* written application for a refund."

Section 101. Section 19-5-404, MCA, is amended to read:

"**19-5-404. Contributions by state.** (1) The state of Montana shall contribute monthly to the *pension trust* fund a sum equal to 6% of the ~~salary~~

compensation of each member. In addition, the clerk of each district court shall transmit 68% of certain filing fees as required under 25-1-201(2) and that portion of the fee for filing a petition for dissolution of marriage and a motion for substitution of a judge specified in 25-1-201(4) and (6) to the state, which shall first deposit in the *pension trust* fund an amount equal to 34.71% of the ~~salaries~~ *total compensation* paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 3-2-403 to the ~~public employees' retirement~~ division ~~of the department of administration~~ to be credited to the *pension trust* fund. ~~The money from court fees collected pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the supreme court for deposit in the judges' retirement fund.~~

(2) The state of Montana shall contribute monthly from the water development account in the state special revenue fund to the judges' ~~retirement~~ *pension trust* fund an amount equal to 34.71% of the ~~salary~~ *compensation* paid to the chief water court judge."

Section 102. Section 19-5-501, MCA, is amended to read:

"**19-5-501. Eligibility for service retirement.** (1) Any member who has ~~completed~~ at least 5 years ~~or more~~ *of membership* service and has reached the age of 65 may retire and receive the proportional retirement ~~allowances~~ *benefits* provided in 19-5-502.

(2) ~~No retirement allowances~~ *Retirement benefits* may *not* be approved by the board while the member is drawing full compensation as a judge or justice. However, ~~allowances~~ *benefits* may not be withheld for receiving compensation as a judge pro tempore."

Section 103. Section 19-5-502, MCA, is amended to read:

"**19-5-502. Service retirement ~~allowance~~ *benefit*.** Upon retirement from service, a member ~~shall~~ *must* receive a service retirement ~~allowance which shall consist of the state annuity plus the member's annuity. The member's annuity shall be the actuarial equivalent of his aggregate contributions at the time of retirement. The state annuity shall be in an amount which, when added to the member's annuity, will provide a total retirement allowance of~~ *benefit equal to* 3 1/3% per year of ~~his final~~ *the member's current* salary for the first 15 ~~years'~~ *years of credited* service and 1.785% per year for each ~~year's~~ *year of credited* service after 15 years."

Section 104. Section 19-5-503, MCA, is amended to read:

"**19-5-503. Involuntary retirement ~~allowance~~ *benefit*.** (1) If a ~~contributor~~ *member* is involuntarily discontinued from service after having completed 5 years of ~~total~~ *membership* service but before reaching retirement age, ~~he~~ *the member* shall, upon filing an application in the manner prescribed by the board, be paid ~~whichever of the following allowances that he elects:~~

~~(a) the full amount of his accumulated deductions; or~~

~~(b) a member's annuity~~ *an involuntary retirement benefit* of equivalent actuarial value to ~~his accumulated deductions, plus an annuity which is the~~

~~actuarial equivalent of the present value of the state annuity~~ *the service retirement benefit payable under 19-5-502* then standing to ~~his~~ *the member's* credit.

(2) If a ~~contributor~~ *member* elected or appointed to office prior to July 1, 1983, is involuntarily discontinued from service after having ~~completed~~ *earned at least* 12 years of ~~total~~ service *credit* but before reaching *service* retirement age, ~~he shall~~ *the member must,* upon filing an application in the manner prescribed by the board, be paid ~~whichever of the following allowances that he elects:~~

~~(a) the full amount of his accumulated deductions; or~~

~~(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus a state annuity in an amount which, when added to the member's annuity, will provide a total annuity equal to~~ the ~~allowance~~ *service retirement benefit* provided for in 19-5-502.

(3) If a ~~contributor~~ *member* elected or appointed to office after July 1, 1983, is involuntarily discontinued from service after having ~~completed~~ *earned at least* 12 years of ~~total~~ service *credit* but before reaching *service* retirement age, ~~he~~ *the member* may apply for and receive *an involuntary retirement benefit that is the actuarial equivalent of* benefits ~~under this chapter~~ pursuant to subsection (1)."

Section 105. Section 19-5-601, MCA, is amended to read:

"**19-5-601. Disability retirement ~~allowance~~ *benefit.*** In case of the ~~total~~ disability of a ~~contributor, permanent in character, regardless of length of service of the contributor~~ *member,* a disability retirement ~~allowance shall~~ *benefit must* be granted the ~~contributor~~ *member* in an amount ~~calculated on the actuarial equivalent of the member's annuity and the state annuity~~ *actuarially equivalent to the service retirement benefit* standing to ~~his~~ *the member's* credit at the time of ~~his~~ *the member's* disability retirement. If ~~such total~~ *the* disability is a direct result of any service to the Montana judiciary in *the* line of duty, ~~then such judge or justice who is totally and permanently disabled shall be retired on total retirement allowance of a minimum of~~ *the member must receive a benefit equal to* one-half of ~~his~~ *the member's* final *current* salary or the ~~allowance~~ *benefit* provided in 19-5-502, whichever is greater. ~~In the event of any disability not caused in the line of duty after attaining the age of 60 years, the maximum monthly payment shall be the retirement allowance as provided in 19-5-502.~~"

Section 106. Section 19-5-612, MCA, is amended to read:

"**19-5-612. Medical examination of disability retiree — cancellation of ~~allowance~~ *benefit.*** (1) The board, in its discretion, may require the recipient of a disability retirement ~~allowance~~ *benefit* to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by ~~him~~ *the recipient* when ~~he~~ *the recipient* was retired. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, ~~his~~ *the recipient's disability* retirement ~~allowance~~ *benefit* must be canceled.

(2) The cancellation of a *disability* retirement ~~allowance~~ *benefit* because a recipient is no longer incapacitated may not prejudice any right of the recipient to a retirement benefit other than a disability ~~allowance~~ *retirement benefit.*"

Section 107. Section 19-5-603, MCA, is amended to read:

"**19-5-603. Payments upon employment-related death.** If the board ~~shall find~~ *finds* that a ~~contributor~~ *member* died as a direct and proximate result of injury received in the course of ~~his employment~~ *the member's service,* a ~~retirement allowance shall~~ *survivorship benefit must* be paid to ~~his~~ *the member's designated* beneficiary. ~~Such retirement allowance shall consist of:~~

~~(1) a member's annuity which shall be the actuarial equivalent of the contributor's accumulated deductions standing to his credit; and~~

~~(2)~~ *The survivorship benefit is* the actuarial equivalent of ~~a state annuity which, when added to the member's annuity, will provide a total annuity equal to the allowance~~ *a member's retirement benefit* provided for in 19-5-502."

Section 108. Section 19-5-604, MCA, is amended to read:

"**19-5-604. Payments in case of death from other causes.** (1) If ~~the~~ *a* retired ~~judge or justice~~ *member who chose a regular retirement benefit* dies before receiving ~~in~~ payments *equal to* the present value of ~~his~~ *the* member's ~~annuity and the state annuity~~ *retirement benefit* as it was at the time of ~~his~~ *the member's* retirement, the balance ~~shall~~ *must* be paid to ~~his~~ *the member's designated* beneficiary *in a lump sum. At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.*

(2) If a member dies before reaching retirement age, ~~his~~ *the member's designated* beneficiary ~~shall be~~ *is* entitled to *a monthly survivorship benefit that is* the actuarial equivalent of the options as provided in 19-5-503."

Section 109. Section 19-5-701, MCA, is amended to read:

"**19-5-701. Optional ~~retirement allowance~~ *forms of benefits.*** (1) ~~A~~ *The retirement benefit of a* member or *the survivorship benefit of* a *designated* beneficiary ~~may elect one of the~~ *who so elects, must be converted, in lieu of all other benefits under this chapter, into an* optional retirement ~~allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.~~

~~(2) A member or a beneficiary may elect or, prior to the approval of a previous election, revoke or change the previous election and elect to receive~~ *benefit that is* the actuarial equivalent of ~~his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:~~ *the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit payable to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:*

(a) Option 2~~—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.~~ *a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;*

(b) Option 3~~—upon his death,~~ *a continuation of* one-half of ~~his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.~~ *the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;*

(c) Option 4—~~such~~ *upon the initial payee's death,* other ~~benefits will be paid, either to his beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been approved by the board~~ *actuarially equivalent amounts as may be approved by the board.*

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement."

Section 110. **Short title.** This chapter may be cited as "The Highway Patrol Officers' Retirement Act".

Section 111. Section 19-6-102, MCA, is amended to read:

"**19-6-102. ~~Retirement~~ *Highway patrol officers' retirement* system *established.*** There is a retirement system known as the ~~Montana~~ highway patrol officers' retirement system, which is governed by the provisions of *[sections 1 through 42] and* this chapter."

Section 112. Section 19-6-101, MCA, is amended to read:

"**19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

~~(1) "Account" means the Montana highway patrol officers' retirement pension trust fund.~~

~~(2) "Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon.~~

~~(3) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.~~

~~(4) "Beneficiary" means a surviving spouse or dependent child or, if there is no surviving spouse or dependent child, a person nominated to receive benefits under 19-6-602.~~

~~(5) "Board" means the public employees' retirement board provided for in 2-15-1009.~~

~~(6) "Department" means the public employees' retirement division of the department of administration.~~

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any deductions have been made and exclusive of maintenance, allowances, and expenses.

~~(7)~~*(2)* "Dependent child" means an unmarried child of a deceased retired ~~patrol officer~~ *member*, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

~~(8)~~*(3)* "Final *average* salary" means the average ~~annual~~ *monthly* compensation received by a member~~, before any deductions have been made and exclusive of maintenance, allowances, and expenses,~~ for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of ~~years~~ *months* served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of ~~employment~~ *service* may be used in the calculation of a retirement ~~allowance~~ *benefit* only to the extent that they are used to replace, on a ~~month-for-month~~ *month-for-month* basis, the normal compensation for a month or months included in the calculation of the final *average* salary. A lump-sum payment may not be added to a single month's compensation.

~~(9) "Member" means a person who has accumulated deductions in the account standing to his credit.~~

~~(10) "Member's annuity" means payments for life derived from contributions made by the member.~~

~~(11) "Retired patrol officer" means a person in receipt of a retirement allowance under this chapter.~~

~~(12) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol.~~

~~(13) "Retirement allowance" means the state annuity plus the member's annuity.~~

~~(14) "State annuity" means payments for life derived from contributions made by the state of Montana.~~

~~(15)~~*(4)* "Surviving spouse" means the spouse married to a retired ~~patrol officer~~ *member* at the time of the retired ~~patrol officer's~~ *member's* death.

(5) "Survivor" means a surviving spouse or dependent child of a member."

Section 113. Section 19-6-301, MCA, is amended to read:

"**19-6-301. Membership — *inactive vested members — inactive nonvested members.*** *(1)* All members of the Montana highway patrol, including the supervisor and assistant supervisors, must be members of the retirement system.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 114. Section 19-6-401, MCA, is amended to read:

"**19-6-401. Payments into ~~retirement~~ *pension trust* fund.** All appropriations made by the state, all contributions by members ~~of the Montana highway patrol~~, in the amount specified, all interest on and increase of the investments and money under this ~~account~~ *pension trust fund*, and a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121 must be paid to the ~~account~~ *pension trust fund*."

Section 115. Section 19-6-402, MCA, is amended to read:

"**19-6-402. Member's contribution.** (1) ~~Every~~ *Each* member shall ~~be required to~~ contribute into the ~~account~~ *pension trust fund* a sum equal to 9% of ~~his~~ *the member's* monthly ~~salary~~ *compensation*, which ~~sum shall~~ *must* be deposited to ~~his~~ *the member's* credit in the ~~account~~ *pension trust fund*.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions ~~which~~ *that* would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and ~~his~~ compensation as used to define ~~his~~ *the member's* final *average* salary in 19-6-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 116. Section 19-6-403, MCA, is amended to read:

"**19-6-403. Refund of member's contribution.** If a member willingly resigns or is discharged for cause before becoming entitled to a retirement ~~allowance~~ *benefit*, the accumulated ~~deductions~~ *contributions* standing to ~~his~~ *the member's* credit must be paid to ~~him~~ *the member* upon ~~his~~ *the member's* written application to the board."

Section 117. Section 19-6-404, MCA, is amended to read:

"**19-6-404. State's contribution.** The state of Montana shall annually contribute to the ~~account~~ *pension trust fund* an amount equal to 36.28% of the ~~salaries~~ *total compensation* paid to the ~~highway patrol officers who are covered by this account~~ *members* from the following sources:

(1) an amount equal to 26.10% of ~~salaries~~ *the total compensation of the members* is payable from the same source that is used to pay compensation to the members; and

(2) an amount equal to 10.18% of ~~salaries~~ *the total compensation of the members* is payable from a portion of the fees from driver's licenses and duplicate driver's licenses as provided in 61-5-121."

Section 118. Section 19-6-304, MCA, is amended to read:

"**19-6-304. Election to qualify military service ~~for full credit~~.** (1) A member with 15 years or more of service *credit* with the Montana highway patrol may, at any time prior to ~~his~~ retirement, make a written election with the ~~department~~ *division* to qualify all or any portion of ~~his~~ *the member's* active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if ~~he~~ *the member* is not otherwise eligible to receive *service* credit for this same service pursuant to ~~19-6-303~~ *19-3-502.*

(2) To qualify this service ~~he must~~ *the member shall* contribute to the account the amount determined by the ~~department~~ *division to be* due based on ~~his~~ *the member's* compensation and ~~normal~~ *regular* contribution rate as of ~~his~~ *the member's* 16th year and as many succeeding years as are required to qualify this service, with interest from the date ~~he~~ *the member* becomes eligible for this benefit to the date ~~he~~ *the member* contributes. ~~He~~ *The member* may not qualify more of this service than ~~he~~ *the member* has service with the Montana highway patrol in excess of 15 years."

Section 119. Section 19-6-305, MCA, is amended to read:

"**19-6-305. Qualification of ~~service from~~ other Montana public ~~retirement systems~~ *service*.** (1) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify all or any portion of ~~his creditable~~ *the member's* service in the public employees', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which ~~he~~ *the member* has received a refund of ~~his~~ *the member's* membership contributions. To qualify this service, ~~he must~~ *the member shall* contribute to the ~~retirement~~ *pension trust* fund the actuarial cost of granting the service *credit* in the highway patrol officers' retirement system, as determined by the board, based on ~~his compensation earned as a member of the former system and the~~

~~normal contribution rate according to~~ the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the ~~administrator~~ *division* shall transfer from the member's former retirement system to the highway patrol officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the highway patrol officers' retirement system, according to the most recent actuarial valuation~~, based on the salaries earned by the employee as a member of the former system~~.

(2) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide ~~salary~~ *compensation* and employment documentation certified by ~~his~~ *the member's* public employer. The board ~~may~~ *shall* grant service credit subject to ~~the provisions of 19-6-201~~ *rules adopted by the board* upon contribution by the employee of the actuarial cost of granting this service in the highway patrol officers' retirement system, as determined by the board, based on ~~the employee's compensation earned during this period of service and the normal contribution rate according to~~ the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This ~~service~~ *employment* may not be credited in more than one retirement system under Title 19."

Section 120. Section 19-6-306, MCA, is amended to read:

"**19-6-306. Election to qualify law enforcement service performed in another state.** (1) Except as provided in subsections (4) through (6), a member with 5 years or more of ~~creditable~~ *membership* service in the ~~highway patrol officers'~~ retirement system may qualify 1 year of out-of-state law enforcement employment for each year of ~~creditable~~ service *credit* under the ~~highway patrol officers'~~ retirement system, up to a maximum of 5 years, provided that ~~he~~ *the member* is not eligible to receive a retirement benefit for that out-of-state law enforcement employment.

(2) To qualify this service, a member shall:

(a) at any time before ~~his~~ *the member's* retirement, make a written election with the board to qualify the service; and

(b) contribute to the ~~retirement~~ *pension trust* fund the actuarial cost of granting the service in the ~~highway patrol officers'~~ retirement system, as determined by the board, based on:

(i) ~~his~~ *the member's* compensation for the 12 months immediately preceding the date of ~~his~~ *the member's* election to cover the service under the ~~highway patrol officers'~~ retirement system; and

(ii) the total contribution rate in effect at the time of purchase of service.

(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board.

(4) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-6-304.

(5) Service qualified under this section may not be used in calculating a member's retirement ~~allowance~~ *benefit* unless the last 5 years of ~~creditable~~ service *credit* were earned under the ~~highway patrol officers'~~ retirement system. If a member's qualified service may not be used in calculating ~~his~~ *the member's* retirement ~~allowance~~ *benefit,* ~~he~~ *the member* may choose to receive a refund of the contributions made to qualify the service.

(6) The combined total service qualified under this section and military service qualified under 19-6-304 may not exceed 5 years."

Section 121. Section 19-6-501, MCA, is amended to read:

"**19-6-501. Eligibility and application for service retirement ~~allowance~~ *benefit* — commencement of ~~allowance~~ *benefit.*** (1) (a) A member first employed by the Montana highway patrol on or before July 1, 1985, is eligible to receive a service retirement ~~allowance~~ *benefit* after completing 20 years or more of ~~creditable~~ *membership* service and terminating ~~covered employment~~ *service.*

(b) A member first employed by the Montana highway patrol after July 1, 1985, is eligible to receive a service retirement ~~allowance~~ *benefit* when ~~he~~ *the member* has reached age 50, completed 20 years or more of ~~creditable~~ *membership* service, and terminated ~~covered employment~~ *service.*

(2) A member eligible to receive a retirement ~~allowance~~ *benefit,* as provided in subsection (1), ~~must~~ *shall* apply in writing to the ~~department~~ *division.*

(3) (a) Except as provided in subsection (3)(b), the retirement ~~allowance~~ *benefit* may commence on the first day of the month following the member's last day of covered ~~employment~~ *service* or, if requested by the ~~terminated~~ *inactive* member in writing, on the first day of the month following receipt of the written application.

(b) The retirement ~~allowance~~ *benefit* for an eligible ~~terminated~~ member *who has terminated service* must commence no later than the first day of the month following the member's 60th birthday."

Section 122. Section 19-6-502, MCA, is amended to read:

"**19-6-502. Service retirement ~~allowance~~ *benefit.*** ~~(1)~~ Upon retirement from service, a member ~~shall~~ *must* receive a service retirement ~~allowance consisting of the state annuity plus the member's annuity.~~

~~(2) The amount of the service retirement allowance must equal~~ *benefit equal to* 2.5% of ~~his~~ *the member's* final *average* salary for each year of ~~creditable~~ service *credit.*"

Section 123. Section 19-6-503, MCA, is amended to read:

"**19-6-503. ~~Retirement allowance~~ *Early retirement benefit* for member discontinued from service other than for cause.** If a member is discontinued from service other than for cause after having completed 5 years of ~~total~~ *membership* service but before reaching retirement age, ~~he shall~~ *the member must,* upon filing a written application with the ~~department~~ *division,* be paid ~~whichever of the following allowances that he elects:~~

~~(1) the full amount of his accumulated deductions; or~~

~~(2) a member's annuity of equivalent actuarial~~ *an early retirement benefit that is of actuarial equivalent* value ~~to his accumulated deductions plus an annuity which is the actuarial equivalent of the present value of the state annuity~~ *to a service retirement* based on a retirement age of 60."

Section 124. Section 19-6-505, MCA, is amended to read:

"**19-6-505. Payment of retirement ~~allowance~~ *benefits*.** (1) The ~~department shall pay the~~ service retirement ~~allowance provided for in 19-6-502~~ *benefit must be paid* to the retired ~~patrol officer~~ *member* for the remainder of ~~his~~ *the member's* life.

(2) Upon the retired ~~patrol officer's~~ *member's* death, the ~~department shall pay the~~ retirement ~~allowance~~ *benefit must be paid* to the ~~patrol officer's~~ *member's* surviving spouse, if there is one.

(3) (a) If upon the retired ~~patrol officer's~~ *member's* death there is no surviving spouse or if the spouse dies, the ~~department shall pay the~~ retirement ~~allowance~~ *benefit must be paid* as provided in subsection (3)(c) to the retired ~~patrol officer's~~ *member's* child, if there is one, for as long as the child remains *a* dependent ~~as defined in 19-6-101~~ *child.*

(b) If there is more than one dependent child, the retirement ~~allowance~~ *benefit* must be paid as provided in subsection (3)(c) to the children collectively. When a child *is* no longer ~~qualifies as~~ *a* dependent ~~as defined in 19-6-101~~ *child,* the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made to the child's appointed guardian for the child's use.

(4) If upon the retired ~~patrol officer's~~ *member's* death there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in ~~19-6-602~~ *19-3-1301,* the ~~department shall pay to the~~ designated beneficiary *must be paid* an amount equal to the retired ~~patrol officer's~~ *member's* accumulated ~~deductions~~ *contributions* less any retirement benefits paid to the member before ~~his~~ *the member's* death.

(5) If the retired ~~patrol officer~~ *member* did not designate a beneficiary or if the beneficiary predeceased the retired patrol officer, the amount provided in subsection (4) must be paid to the ~~patrol officer's~~ *member's* estate."

Section 125. Section 19-6-601, MCA, is amended to read:

"19-6-601. Disability retirement ~~allowance~~ *benefit*. (1) In case of the ~~total~~ disability of a member, ~~permanent in character, regardless of the length of service of the member,~~ a disability retirement ~~allowance shall~~ *benefit must* be granted the member ~~in an amount calculated on~~ *that is* the actuarial equivalent of the ~~member's annuity and the state annuity~~ *service retirement benefit under 19-6-502* standing to ~~his~~ *the member's* credit at the time of ~~his~~ *the member's* disability retirement. If ~~such total~~ *the* disability is a direct result of any service to the Montana highway patrol in *the* line of duty, then ~~such patrol officer~~ *the member* who is ~~totally and permanently~~ disabled ~~shall~~ *must* be retired on ~~total~~ *a disability* retirement ~~allowance~~ *benefit* of one-half ~~his average~~ *the member's* final *average* salary regardless of ~~his~~ *the member's* length of service.

(2) Upon the death of a retired ~~patrol officer~~ *member* receiving a disability retirement ~~allowance~~ *benefit* as provided in subsection (1), the ~~allowance~~ *benefit* must be paid to ~~his~~ *the member's* surviving spouse or dependent child, if there is a spouse or child, in the same manner as provided for in ~~subsections (2) and (3) of~~ 19-6-505*(2) and (3)*."

Section 126. Section 19-6-612, MCA, is amended to read:

"19-6-612. Medical examination of disability retiree — cancellation of ~~allowance~~ *benefit*. (1) The board~~, in its discretion,~~ may require the recipient of a disability retirement ~~allowance~~ *benefit* to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine~~, by reason of physical or mental capacity,~~ whether the recipient can perform the duties of the position held by ~~him~~ *the recipient* when ~~he~~ *the recipient* retired. If the board determines that the recipient is not incapacitated, ~~his~~ *the recipient's* disability retirement ~~allowance~~ *benefit* must be canceled when ~~he~~ *the recipient* is offered a position under subsection (3). If the recipient refuses to submit to a medical examination, ~~his~~ *the recipient's disability* retirement ~~allowance~~ *benefit* must be canceled ~~when he is notified of the determination of the board~~.

(2) If the board determines that a recipient of a disability retirement ~~allowance~~ *benefit* should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating ~~his~~ *the recipient's* monthly ~~allowance~~ *benefit*. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, ~~he~~ *the recipient* may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A recipient whose *disability* retirement ~~allowance~~ *benefit* is canceled because the board has determined that ~~he~~ *the recipient* is no longer incapacitated must be reinstated to the position held by ~~him~~ *the recipient* immediately before ~~his~~ *the recipient's* retirement or to a position in the same classification within ~~his~~ *the recipient's* capacity, whichever is first open. The fact that ~~he~~ *the recipient* was retired for disability may not prejudice any right to reinstatement to duty that ~~he~~ *the recipient* may have or claim to have.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway

patrol. If the board's findings are upheld, the department *of justice* shall pay the cost of the review."

Section 127. Section 19-6-603, MCA, is amended to read:

"**19-6-603. ~~Payments upon~~ *Survivorship benefits* — employment-related death.** (1) If the board ~~shall find~~ *finds* that a member died as a direct and proximate result of injury received in the course of ~~his employment~~ *the member's service*, a ~~retirement allowance shall~~ *survivorship benefit must* be paid to ~~his~~ *the member's* surviving spouse~~,~~ *or* dependent child~~, or designated beneficiary~~ in the same manner as provided for in ~~subsections (2) through (4) of~~ 19-6-505*(2) through (4)*.

(2) ~~Such~~ *The* retirement ~~allowance~~ *benefit* ~~shall consist of:~~

~~(a) a member's annuity, which shall be the actuarial equivalent of the member's accumulated deductions standing to his credit; and~~

~~(b) the actuarial equivalent of a state annuity which, when added to the member's annuity, will provide a total annuity~~ *must* equal ~~to~~ 50% of the final *average* salary of the member~~, less the amount which is paid to a surviving spouse, dependent child, or designated beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable~~."

Section 128. Section 19-6-604, MCA, is amended to read:

"**19-6-604. ~~Payments upon~~ *Survivorship benefits* — death from other causes.** If a member dies before reaching retirement age, the ~~department shall pay to his~~ *member's* surviving spouse~~,~~ *or* dependent child~~, or designated beneficiary in the same manner as provided for in subsections (2) through (4) of 19-6-505~~ *must be paid a survivorship benefit that is* the actuarial equivalent of the ~~options as~~ *early retirement benefit* provided in 19-6-503, *in the same manner as provided for in 19-6-505.*"

Section 129. **Death payments in absence of survivors.** If upon the member's death before retirement there is no surviving spouse or dependent child and if the member had designated a beneficiary as provided in 19-3-1301, the designated beneficiary must be paid an amount equal to the member's accumulated contributions. If there is no designated beneficiary, death payments must be paid to the member's estate.

Section 130. Section 19-6-707, MCA, is amended to read:

"**19-6-707. Minimum monthly benefit ~~allowance~~.** (1) Subject to the limitations contained in subsection (2), the following retired ~~highway patrol officers~~ *members* and their ~~beneficiaries~~ *survivors* are eligible to receive a monthly benefit ~~allowance~~ of not less than 2% multiplied by the ~~patrol officer's creditable years of~~ *member's* service *credits* multiplied by the current base ~~salary~~ *compensation* received by a probationary highway patrol officer:

(a) a retired ~~patrol officer~~ *member* who is 55 years of age or older, except as provided in subsection (3), or ~~his beneficiary~~ *the member's survivor*, who is receiving a service retirement ~~allowance~~ *benefit*;

(b) a retired ~~patrol officer~~ *member*, or ~~his beneficiary~~ *the member's survivor*, who is receiving a disability retirement ~~allowance~~ *benefit*; and

(c) a ~~beneficiary receiving~~ *recipient of* a survivorship ~~allowance~~ *benefit*.

(2) (a) The maximum monthly benefit ~~allowance~~ paid under subsection (1) may not exceed 60% of the current base ~~salary~~ *compensation* of a probationary highway patrol officer.

(b) The annual increase in a monthly benefit ~~allowance~~ under subsection (1) may not exceed 5% of the current monthly benefit ~~allowance~~ paid to a retired ~~highway patrol officer~~ *member* or ~~his beneficiary~~ *the member's survivor*.

(3) A retired ~~patrol officer~~ *member* otherwise qualified under subsection (1)(a) who is employed in a position covered by a retirement system under Title 19~~, chapters 3 through 13,~~ is ineligible to receive the minimum monthly benefit ~~allowance~~ provided for in this section until ~~his employment~~ *the member's service* in the covered position is terminated."

Section 131. Section 19-6-709, MCA, is amended to read:

"**19-6-709. Supplemental benefits for certain retirees.** (1) In addition to any retirement ~~allowance~~ *benefit* payable under this chapter, a retired ~~patrol officer~~ *member* or a ~~beneficiary~~ *survivor* determined by the board to be eligible under subsection (2) ~~shall~~ *must* receive an annual lump-sum *benefit* payment beginning in September 1991 and each succeeding year as long as ~~he~~ *the member* remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, and must be:

(a) a retired ~~patrol officer~~ *member* who is 55 years of age or older and who has been receiving a service ~~allowance~~ *retirement benefit* for at least 5 years prior to the date of distribution;

(b) a ~~beneficiary~~ *survivor* of a ~~patrol officer~~ *member* who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability or survivorship ~~allowance~~ *benefit* under 19-6-601 or 19-6-603.

(3) A retired ~~patrol officer~~ *member* otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19~~, chapters 3 through 13,~~ is ineligible to receive any lump-sum *benefit* payments provided for in this section until ~~his employment~~ *the member's service* in the covered position is terminated. Upon termination of ~~his~~ *the member's* covered ~~employment~~ *service*, the ~~officer~~ *retired member* becomes eligible in the next fiscal year succeeding ~~his~~ *the member's* termination.

(4) (a) Twenty-five cents of each motor vehicle registration fee provided for in 61-3-321 must be deposited in the ~~highway patrol~~ *pension trust* fund at the end of each fiscal year. The fee is statutorily appropriated, as provided in 17-7-502, for payment of benefits to eligible recipients. The total funds must be distributed by the ~~department~~ *division* in lump-sum payments to eligible recipients along with their normal retirement ~~allowance~~ *benefit* payment.

(b) The lump-sum payment must be distributed proportionally to all eligible recipients based on ~~years of~~ service *credit* at the time of retirement, subject to the following:

(i) a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

(ii) any recipient of a service retirement ~~allowance~~ *benefit* exceeding the maximum monthly ~~allowance~~ *benefit* under 19-6-707(2)(a) must have ~~his years of~~ *the recipient's* service *credit* reduced 25% for the purposes of the distributions;

(iii) the maximum *annual increase in the* amount ~~available for payment~~ of supplemental benefits *paid to each individual* under this section after August 31, 1993, is ~~limited to an amount that will provide a percentage increase in the average supplemental benefit of all eligible members that is equal to~~ the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency. ~~The intent of this subsection is to limit each annual individual supplemental benefit payment to no more than the increase in the consumer price index for the previous calendar year.~~

(c) Any amount deposited in the ~~account, meaning the highway patrol officers' retirement~~ pension trust fund~~,~~ under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the ~~account~~ *retirement system*.

(5) Every 10 years following July 1, 1991, the ~~department~~ *division* shall review the size of the additional fee collected under 61-3-321(5) and deposited in the account in accordance with subsection (4)(a) and recommend to each legislature following the ~~department's~~ *division's* review any legislation necessary to reduce the fee to the minimum amount necessary to provide the supplemental benefits provided by this section."

Section 132. **Short title.** This chapter may be cited as "The Sheriffs' Retirement Act".

Section 133. Section 19-7-102, MCA, is amended to read:

"**19-7-102. Sheriffs' retirement system established.** A retirement system is established for Montana sheriffs, which ~~shall be~~ *is* known as the ~~"~~sheriffs' retirement system~~"~~. It ~~will be~~ *is* an actuarial reserve system for the payment of death, disability, and retirement benefits to sheriffs and to the beneficiaries of the sheriffs to provide for themselves and their dependents in the case of disability or death and upon retirement from active duty. *The system is governed by the provisions of [sections 1 through 42] and this chapter.*"

Section 134. Section 19-7-101, MCA, is amended to read:

"**19-7-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

~~(1) "Account" means the Montana sheriffs' retirement pension trust fund administered by the board.~~

~~(2) "Accumulated contributions" or "accumulated deductions" means the total amount deducted from the salary of a member during a period of membership service plus the total amount deducted during a period of prior service and transferred from the public employees' retirement system standing to the member's credit in the account, together with the accrued interest.~~

~~(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.~~

~~(4) "Beneficiary" means a person who is nominated by the member in a witnessed document filed with the board.~~

~~(5) "Board" means the public employees' retirement board.~~

~~(6) "Creditable service" means the aggregate of all of a member's current and prior service.~~

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any deductions are made and exclusive of maintenance, allowances, and expenses.

~~(7) "Death benefit" means a monthly annuity or lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.~~

~~(8)~~*(2)* "Final *average* salary" means the average ~~annual salary~~ *monthly compensation* received by a member~~, before any deductions are made and exclusive of maintenance, allowances, and expenses,~~ for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total ~~salary~~ *compensation* earned divided by the number of ~~years~~ *months* served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement ~~allowance~~ *benefit* only to the extent that they are used to replace, on a ~~month for month~~ *month-for-month* basis, the normal compensation for a month or months included in the calculation of the final *average* salary. A lump-sum payment may not be added to a single month's compensation.

~~(9) "Member" means any person who has accumulated deductions in the account to his credit.~~

~~(10) "Member's annuity" means payments for life derived from contributions made by the member while employed.~~

~~(11) "Membership service" means service for which an amount is deducted from the salary of a member and paid into the account.~~

~~(12) "Prior service" means service for which credit was granted by the public employees' retirement system of the state of Montana.~~

~~(13) "Retired sheriff" means a person receiving a retirement allowance under this chapter.~~

~~(14) "Retirement allowance" means the state annuity plus the member's annuity.~~

~~(15) "Service" means employment as a sheriff.~~

~~(16)~~*(3)* "Sheriff" means any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff.

~~(17) "State annuity" means payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to the account.~~

~~(18) "Vested retirement" means a retirement not for cause and before retirement age.~~"

Section 135. Section 19-7-301, MCA, is amended to read:

"**19-7-301. Membership — ~~exclusions — allowance reduction~~ *inactive vested members — inactive nonvested members.*** (1) Every sheriff is required to become a member of the sheriffs' retirement system ~~on July 1, 1974,~~ unless ~~he~~ *the sheriff* was previously a member of the public employees' retirement system *on July 1, 1974*, in which case ~~he~~ *the sheriff* may at ~~his~~ *the sheriff's* option become a member of the sheriffs' retirement system. All sheriffs who become members of the sheriffs' retirement system must remain members so long as *they are* actively employed in ~~such~~ *an eligible* capacity, except as provided in ~~subsection (2)~~ *[section 153]*.

(2) ~~A retired sheriff who is employed as a sheriff after retirement for less than 60 working days in a calendar year is excluded from membership. The retirement allowance of a retired sheriff so employed must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year.~~ *A member with at least 15 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.*

(3) A member with less than 15 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 136. Section 19-7-302, MCA, is amended to read:

"**19-7-302. Ineligibility for membership in public employees' retirement system.** (1) After July 1, 1974, ~~no~~ *a* sheriff ~~is eligible to~~ *may not* become a member of the public employees' retirement system and the provisions of The Public Employees' Retirement System Act do not apply to sheriffs~~, except as provided in 19-7-301~~.

(2) ~~No provision of this~~ *This* chapter ~~is to~~ *may not* be construed ~~as~~ to deny any sheriff any benefits accrued under provisions of the public employees' retirement system prior to July 1, 1974."

Section 137. Section 19-7-402, MCA, is amended to read:

"**19-7-402. Sources of money in the ~~account~~ *fund*.** The following money ~~shall~~ *must* be paid to the ~~board~~ *division*, which shall credit ~~such~~ *the* payments to the ~~sheriffs' retirement system account~~ *pension trust fund*:

~~(1) all accumulated deductions paid into the public employees' retirement system by any sheriff during any period of prior service, as defined in this chapter; plus~~

~~(2) all contributions paid into the public employees' retirement system coincident with such accumulated deductions by the state of Montana or any county or city;~~

~~(3)~~*(1)* all contributions by the various counties as required by this chapter;

~~(4)~~*(2)* all contributions by ~~sheriffs~~ *members* as ~~defined in~~ *required by* this chapter;

~~(5)~~*(3)* all interest on and increase of the investments and ~~moneys~~ *money* under this chapter; *and*

~~(6)~~*(4)* any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems."

Section 138. Section 19-7-403, MCA, is amended to read:

"**19-7-403. Members' contributions deducted.** (1) Every member shall ~~be required to~~ contribute into the ~~account~~ *pension trust fund* 7% of ~~his~~ *the member's* monthly ~~salary~~ *compensation*, which ~~shall~~ *must* be deposited to ~~his~~ *the member's* credit in the ~~account~~ *pension trust fund*.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions ~~which~~ *that* would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and ~~his~~ salary as used to define ~~his~~ *the member's* final *average* salary in 19-7-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 139. Section 19-7-404, MCA, is amended to read:

"**19-7-404. Counties' contributions.** (1) The various counties of Montana shall pay monthly 7.67% of each sheriff's gross ~~salary~~ *compensation* into the ~~retirement account~~ *pension trust fund* created by this chapter.

(2) If the required contribution to the retirement system exceeds the funds available to a county from general revenue sources, a county may budget, levy, and collect annually a special tax on the assessable property within the county

that is sufficient to raise the amount of revenue needed to meet the county's obligation. This tax may be in addition to the annual rate of taxation allowed by law to be levied by the county."

Section 140. Section 19-7-308, MCA, is amended to read:

"**19-7-308. ~~Service under~~ *Membership in* municipal police officers' retirement system prior to or following city-county consolidation — *payment of benefits by two systems.*** (1) A law enforcement officer who has not changed ~~his~~ employment but who has, because of a city-county consolidation, been transferred either from a city police force to a county sheriff's department or from a county sheriff's department to a city police force as a law enforcement officer is eligible for a service retirement benefit if ~~his~~ *the officer's* combined service in the sheriffs' retirement system and the municipal police officers' retirement system satisfies the minimum membership service requirement of the system to which ~~he~~ *the officer* last made contributions. A sheriff who has elected to continue membership in the public employees' retirement system under 19-7-301 may continue ~~his~~ *the* election. However, credit for service in the ~~PERS which~~ *public employees' retirement system that* has not been transferred prior to January 1, 1979, may not be transferred.

(2) Eligibility for and calculation of disability retirement, death benefits, and refund of contributions are governed by the provisions of the retirement system to which the officer last made contributions.

(3) The service retirement benefit of ~~an officer~~ *a member* described in subsection (1) ~~shall~~ *must* be calculated separately for each system based on the service credited under each system. The calculation for the sheriffs' retirement system portion of the benefit must include the appropriate reduction in the retirement ~~allowance~~ *benefit* for an optional retirement ~~allowance~~ *benefit* elected under 19-7-701. The final salary or final average salary for each calculation ~~shall~~ *must* be based on the highest ~~salary~~ *compensation* earned while a member of either system. Each system shall pay its proportionate share, based on the number of years of service credited, of the combined benefit. The combined benefit may not exceed 60% of the *member's* final salary or final average salary.

(4) Upon the death of ~~an officer~~ *a retired member* receiving a service retirement ~~allowance~~ *benefit* under this section, the ~~beneficiary and the continued~~ *survivor or contingent annuitant and the continuing* benefit must be determined separately for each system as follows:

(a) For the municipal police officers' retirement system portion of the benefit, the ~~officer's~~ surviving spouse~~, if there is one, shall, for as long as the spouse remains unmarried,~~ *must* receive ~~from the fund~~ a ~~sum~~ *benefit* equal to the municipal police officers' retirement system portion of the ~~officer's~~ service retirement ~~allowance~~ *benefit* as calculated at the time of ~~his~~ *the member's* retirement. If ~~the officer leaves one or more dependent children, then upon his death, if he~~ *the retired member* leaves no surviving spouse or upon the death ~~or remarriage~~ of the surviving spouse, the ~~officer's~~ *retired member's* surviving dependent child, or children collectively if there are more than one, shall receive the same monthly ~~payments~~ *benefits that* a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The ~~payments~~ *benefits* must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata ~~payments~~ *benefits* to that child must cease and be ~~made~~ *paid* to the remaining children until all the children are no longer dependent.

(b) For the sheriffs' retirement system portion of the benefit~~, the officer's beneficiary, designated under 19-7-602, shall receive~~:

(i) ~~an annuity~~ *the contingent annuitant must receive a continuing benefit* as determined under 19-7-701, if the ~~officer~~ *retired member* elected an optional retirement ~~allowance~~ *benefit*; or

(ii) if the ~~officer~~ *retired member* did not elect an optional retirement ~~allowance~~ *benefit*, any payment owed the ~~officer~~ *retired member*, including the excess, if any, of ~~his~~ *the retired member's* accumulated ~~deductions~~ *contributions* standing to ~~his~~ *the retired member's* credit at the time of retirement less payments made to the ~~officer~~ *retired member must be paid to the retired member's designated beneficiary.*"

Section 141. Section 19-7-309, MCA, is amended to read:

"**19-7-309. Qualification of ~~service from~~ other Montana public ~~retirement systems~~ *service.*** (1) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify all or any portion of ~~his creditable~~ *the member's* service in the public employees', highway patrol officers', firefighters' unified, game wardens', or municipal police officers' retirement system for which ~~he~~ *the member* has received a refund of ~~his~~ *the member's* membership contributions. To qualify this service, ~~he must~~ *the member shall* contribute to the ~~retirement~~ *pension trust* fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on ~~his compensation earned as a member of the former system and the normal contribution rate according to~~ the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the ~~administrator~~ *division* shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the ~~salaries~~ *compensation* earned by the employee as a member of the former system.

(2) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide ~~salary~~ *compensation* and employment documentation certified by ~~his~~ *the member's* public employer. The board ~~may~~ *shall* grant service credit ~~subject to the provisions of 19-7-201(2)~~ upon contribution by the employee of the actuarial cost of granting this service in the sheriffs' retirement system, as determined by the board, based on ~~the employee's compensation earned during this period of service and the normal contribution rate according to~~ the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 142. Section 19-7-310, MCA, is amended to read:

"**19-7-310. Election to qualify previous military service.** (1) A member with 15 years or more of service *credit* may, at any time prior to ~~his~~ retirement, make a written election with the board to qualify all or any portion of ~~his~~ *the member's* active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, except as provided in subsection (3), if ~~he~~ *the member* is not otherwise eligible to receive credit. To qualify military service, ~~he must~~ *the member shall* contribute to the account the actuarial cost of granting the service, to be determined by the board based on ~~his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, plus accrued interest. Interest accrues from the date on which the member has completed the number of service years in excess of 15 needed to qualify the military service to the date he contributes~~ *the most recent actuarial valuation of the system*. ~~He~~ *The member* may not qualify more of ~~his~~ *the member's* military service than ~~he~~ *the member* has service *credits* in the sheriffs' retirement system in excess of 15 years. Military service purchased under this section *is not membership service and* may not be used in determining eligibility for a service retirement *benefit*.

(2) If a member has retired from active duty in the armed forces of the United States with ~~normal service~~ *military* retirement benefits, ~~he~~ *the member* may not qualify ~~his~~ *the member's* military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify ~~his~~ *the member's* active military service under subsection (1) if ~~his~~ *the member's* active duty in the armed forces of the United States is not more than 25% of the total of all ~~his~~ *the member's* years of military service, including reserve and active duty time.

(3) The combined total purchase of additional years of service under the provisions of 19-7-311 and this section may not exceed 5 years."

Section 143. Section 19-7-311, MCA, is amended to read:

"**19-7-311. Election to purchase additional service.** (1) Except as provided in subsection (6), at any time before retirement, a member may make a written election with the board to purchase 1 additional year of service *credit* for every 5 years of ~~creditable~~ *membership* service.

(2) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.

(3) To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the ~~retirement~~ *pension trust* fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on~~:~~

~~(i) the member's compensation for the 12 months immediately preceding the date of his election to cover the service under the sheriffs' retirement system; and~~

~~(ii) the total contribution rate in effect at the time the service is purchased~~ *the most recent actuarial valuation of the system.*

(4) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board. Payments must be completed prior to retirement.

(5) Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify for the purchase of military service under 19-7-310.

(6) The combined total of additional years of service purchased under the provisions of 19-7-310 and this section may not exceed 5 years."

Section 144. Section 19-7-501, MCA, is amended to read:

"**19-7-501. Eligibility and application for service retirement — commencement of ~~allowance~~ *benefit*.** (1) (a) A member initially elected or appointed before July 1, 1989, who has completed at least 24 years of *membership* service may retire on a service retirement ~~allowance~~ *benefit.*

(b) A member initially elected or appointed on or after July 1, 1989, who has completed at least 24 years of *membership* service, reached the age of 50 years, and terminated ~~covered employment~~ *service* may retire on a service retirement ~~allowance~~ *benefit.*

(2) A member electing to retire shall apply in writing to the board.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), the retirement ~~allowance~~ *benefit* may commence on the first day of the month following the member's last day of ~~membership~~ service or, if requested by the ~~terminated~~ *inactive* member in writing, on the first day of the month following receipt of the written application.

(b) The retirement ~~allowance~~ *benefit* for an eligible ~~terminated~~ *inactive* member must commence no later than the first day of the month following the member's 65th birthday.

(c) If an elected official's term of office expires before the 15th day of the month, the official may elect to retire on the first day of the last month of ~~his~~ *the* term of office. An official electing this option may not earn service or ~~salary credits~~ *compensation for purposes of final average salary under the retirement system* in that month, and compensation earned in that month is not subject to employer or ~~employee~~ *member* contributions."

Section 145. Section 19-7-502, MCA, is amended to read:

"**19-7-502. Early retirement option.** ~~If a~~ *A* member ~~has served~~ *with* 15 years of ~~creditable~~ *membership* service ~~as a sheriff and~~ *who* has reached ~~the~~ age ~~of~~ 50 ~~years, he is granted the option and privilege of retiring, and in such case his~~ *may retire with an early* retirement ~~allowance~~ *benefit. The early retirement benefit* ~~shall~~ *must* be *calculated to be* the actuarial equivalent of ~~his~~ *the member's* retirement ~~allowance~~ *benefit* as otherwise accrued, based upon payment commencing when ~~he~~ *the member* would have completed 24 years of ~~creditable~~ *membership* service or reached age 60, whichever ~~is less~~ *event would have occurred first.*"

Section 146. Section 19-7-503, MCA, is amended to read:

"**19-7-503. Service retirement ~~allowance~~ *benefit*.** (1) The amount of any service retirement ~~allowance~~ *benefit* granted to a member with 24 years or less of ~~creditable~~ *membership* service ~~shall be~~ *is* 2.0834% of ~~his~~ *the member's* final *average* salary for each year of ~~creditable~~ service *credit*, up to a maximum of 50% of final *average* salary.

(2) The member's retirement ~~allowance~~ *benefit* ~~shall~~ *must* be increased for any member who contributes after 24 years of service *credit* by 1.35% of ~~his~~ *the member's* final *average* salary for each year of ~~creditable~~ service *credit* in excess of 24 years ~~of service~~, up to a maximum of 60% of ~~his~~ *the member's* final *average* salary.

(3) If a member dies after retirement and had not elected an optional retirement ~~allowance~~ *benefit* provided for in 19-7-701, ~~his~~ *the member's designated* beneficiary must be paid the excess, if any, of the member's accumulated contributions at the time of retirement less payments made to the retired member."

Section 147. Section 19-7-504, MCA, is amended to read:

"**19-7-504. Involuntary retirement ~~allowance~~ *benefit*.** If a member is involuntarily discontinued from service after having completed 5 years of ~~total~~ *membership* service but before reaching retirement age, ~~he~~ *the member* ~~shall~~ *must*, upon filing an application, be paid in one of the following ways:

(1) the full amount of ~~his~~ *the member's* accumulated ~~deductions~~ *contributions*; or

(2) a retirement ~~allowance~~ *benefit* beginning on ~~his~~ *the member's* 50th birthday, calculated under the provisions of 19-7-502."

Section 148. Section 19-7-601, MCA, is amended to read:

"**19-7-601. Disability retirement ~~allowance~~ *benefit*.** ~~(1)~~ In the case of the ~~permanent total~~ disability of ~~the~~ *a* member, regardless of the member's length of service, a disability retirement ~~allowance~~ *benefit* ~~shall~~ *must* be awarded to the member based on the actuarial equivalent of the member's ~~annuity and the state annuity~~ *service retirement benefit under 19-7-503* standing to ~~his~~ *the member's* credit at the time of ~~his~~ *the member's* disability retirement. If ~~such total permanent~~ *the* disability is a direct result of *the* member's service as a sheriff in the line of duty, then the member ~~shall~~ *must* be awarded ~~an allowance~~ *a benefit* of one-half of ~~his~~ *the member's* final *average* salary.

~~(2) "Total disability" means a disability of permanent duration or of extended or uncertain duration. The determination shall be made by the board on the basis of competent medical advice.~~"

Section 149. Section 19-7-612, MCA, is amended to read:

"**19-7-612. Medical examination of disability retiree — cancellation of ~~allowance~~ *benefit*.** (1) The board, in its discretion, may require the recipient of a disability retirement ~~allowance~~ *benefit* to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by ~~him~~ *the recipient* when ~~he~~ *the recipient* was retired. If the board determines that the recipient is not incapacitated, ~~his~~ *the recipient's* disability retirement ~~allowance~~ *benefit* must be canceled when ~~he~~ *the recipient* is offered a position under subsection (2). If the recipient refuses to submit to a medical examination, ~~his~~ *the recipient's disability* retirement ~~allowance~~ *benefit* must be canceled when ~~he~~ *the recipient* is notified of the determination of the board.

(2) A person other than an elected official whose *disability* retirement ~~allowance~~ *benefit* is canceled because ~~he~~ *the person* is no longer incapacitated ~~shall~~ *must* be reinstated to the position held by ~~him~~ *the person* immediately before ~~his~~ *the person's* retirement or to a position in the same classification within ~~his~~ *the person's* capacity, whichever is first open. The fact that ~~he~~ *the person* was retired for disability may not prejudice any right to reinstatement to duty which ~~he~~ *the person* may have or claim to have.

(3) The public body required to reinstate a person under subsection (2) may request a medical or psychological review as to the ability of the member to return to work as a member of the sheriff's department. If the board's findings are upheld, the public body shall pay the cost of the review."

Section 150. Section 19-7-604, MCA, is amended to read:

"**19-7-604. Payments in case of death before retirement.** ~~(1)~~ If a member dies before retirement, ~~his~~ *the member's designated* beneficiary is entitled to elect one of the following options for which the member qualified and the *designated* beneficiary qualifies:

~~(a)~~*(1)* a lump-sum payment of the accumulated ~~deductions~~ *contributions* standing to the member's credit at ~~his~~ *the member's* death;

~~(b)~~*(2)* a retirement ~~allowance~~ *benefit* based on 2% of the final *average* salary for each year of service *credit* up to a maximum of 25 years, reduced *on an* actuarially *equivalent basis* from age 65 or the date ~~he~~ *the member* would have completed 25 years of ~~creditable~~ *membership* service, whichever provides a larger retirement ~~allowance~~ *benefit*;

~~(c)~~*(3)* a retirement ~~allowance~~ *benefit* based on one-half of final *average* salary~~, reduced to 25% of final salary for the period of time the beneficiary receives workers' compensation,~~ if the board finds that the member died as a direct and proximate result of injuries received in the course of employment.

~~(2) On or before July 1, 1982, a beneficiary who is receiving a death benefit may elect a different option under subsection (1). Any change in options is subject to actuarial adjustments for benefits received prior to the change as determined by the board.~~"

Section 151. Section 19-7-701, MCA, is amended to read:

"**19-7-701. Optional** ~~**retirement allowance**~~ ***forms of benefits.*** (1) ~~A~~ *The retirement benefit of a* member or *the survivorship benefit of* a *designated* beneficiary ~~may elect one of the~~ *who so elects must be converted, in lieu of all other benefits under this chapter, into an* optional retirement ~~allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.~~

~~(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:~~ *benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:*

(a) Option 2~~—upon his death, the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.~~ *a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;*

(b) Option 3~~—upon his death,~~ *a continuation of* one-half of ~~the lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of retirement.~~ *the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;*

(c) Option 4—~~such~~ *upon the initial payee's death,* other ~~benefits will be paid, either to the beneficiary or to any other person that he nominated, as, together with the lesser retirement allowance , are the actuarial equivalent of his retirement allowance and have been~~ *actuarially equivalent amounts as may be* approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received

by the board, the election is void and the death is considered as that of a member before retirement."

Section 152. **Reemployment of a retired member.** (1) A retired member who returns to service for at least 60 working days in a calendar year is an active member of the system. Upon reinstatement as an active member, benefit payments must cease until subsequent retirement.

(2) A retired member who returns to service for less than 60 working days in a calendar year is excluded from membership. The retirement benefit of a retired sheriff employed in service must be reduced by $1 for each $3 earned in excess of $5,000 in a calendar year.

Section 153. Section 19-7-708, MCA, is amended to read:

"**19-7-708. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a ~~member or beneficiary~~ *benefit recipient* is eligible to receive a postretirement adjustment as provided in 19-7-710 if ~~he~~ *the recipient* is receiving a:

(a) service retirement ~~allowance~~ *benefit* and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or

(b) disability or survivorship ~~allowance~~ *benefit.*

(2) A ~~member or beneficiary~~ *benefit recipient* is ineligible to receive a postretirement adjustment under subsection (1) unless ~~he has been receiving a~~ *the* monthly service, disability, or survivorship ~~allowance~~ *benefit has been paid* for at least 24 consecutive months on or before June 30 in the year the adjustment is made."

Section 154. Section 19-7-709, MCA, is amended to read:

"**19-7-709. Funding for postretirement adjustment — reserve fund.** (1) At the end of each fiscal year, the board shall determine the total investment income earned on the ~~retirement~~ *pension trust* fund for that fiscal year. From this amount, the board shall subtract the:

(a) actuarial amount required to fund the retirement system for the fiscal year; and

(b) retirement system's administrative and investment expenses for the fiscal year.

(2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of investment income earned on that portion of the ~~retirement~~ *pension trust* fund balance representing retired members.

(b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

(3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment to eligible members or beneficiaries under 19-7-710.

(4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement adjustment of at least $1 under 19-7-710, an adjustment may not be made in that calendar year.

(5) The amount available for payment of the postretirement ~~allowance~~ *adjustment* is limited to an amount that would provide a percentage increase in the average service, disability, or survivorship ~~allowance~~ *benefit* of all eligible ~~members~~ *benefit recipients,* when combined with the postretirement adjustment, that is equal to or less than the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers compiled by the bureau of labor statistics, United States department of labor, or its successor agency."

Section 155. Section 19-7-710, MCA, is amended to read:

"**19-7-710. Payment and amount of postretirement adjustment.** (1) Effective January 1 of each year that funds are available under 19-7-709, a ~~member or beneficiary~~ *benefit recipient* eligible under 19-7-708 ~~shall~~ *must* receive a postretirement adjustment in the form of a monthly benefit payable for life.

(2) The board shall calculate the amount of the postretirement ~~allowance~~ *adjustment* payable to an eligible ~~member or beneficiary~~ *benefit recipient* by:

(a) dividing the amount available under 19-7-709(3) for payment of the postretirement ~~allowance~~ *adjustment* by the total accumulated years of service *credit* for all eligible ~~members and beneficiaries~~ *benefit recipients;*

(b) multiplying the quotient obtained in subsection (2)(a) by the ~~member's total years of~~ *individual eligible benefit recipient's* service *credits;*

(c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly annuity from actuarial tables adopted by the board; and

(d) applying the provisions contained in subsections (3) and (4).

(3) If a member had elected to receive an optional retirement ~~allowance~~ *benefit,* the amount of ~~his~~ postretirement ~~allowance~~ *adjustment* must be adjusted by the appropriate optional factor.

(4) If more than one ~~beneficiary~~ *contingent annuitant* is receiving a member's retirement ~~allowance~~ *benefit,* the postretirement adjustment must be divided in the same manner as the member's retirement ~~allowance~~ *benefit.*"

Section 156. **Short title.** This chapter may be cited as "The Game Wardens' Retirement Act".

Section 157. Section 19-8-102, MCA, is amended to read:

"**19-8-102. ~~Retirement~~ *Game wardens' retirement* system *established.*** There is a retirement system known as the ~~Montana~~ state game wardens' retirement system, which is governed by the provisions of *[sections 1 through 42] and* this chapter."

Section 158. Section 19-8-101, MCA, is amended to read:

"**19-8-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

~~(1) "Account" means the Montana state game wardens' retirement pension trust fund.~~

~~(2) "Accumulated deductions" or "accumulated contributions" means the sum of all contributions standing to the credit of a member's individual account together with the regular interest thereon.~~

~~(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.~~

~~(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, witnessed and filed with the board.~~

~~(5) "Board" means the public employees' retirement board.~~

~~(6) "Contributor" means any person who has accumulated deductions in the account standing to his credit.~~

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any deductions are made and exclusive of maintenance, allowances, and expenses.

~~(7)~~*(2)* "Final *average* salary" means the average ~~annual~~ *monthly* compensation received by a ~~contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses,~~ *member* for any 3 years of continuous service upon which contributions ~~have been~~ *were* made or, in the event a member has not served 3 years, the total ~~retirement~~ compensation earned divided by the number of ~~years~~ *months* served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement ~~allowance~~ *benefit* only to the extent that they are used to replace, on a ~~month for month~~ *month-for-month* basis, the normal compensation for a month or months included in the calculation of the final *average* salary. A lump-sum payment may not be added to a single month's compensation.

~~(8) "Member's annuity" means payments for life derived from contributions made by the contributor.~~

~~(9) "Retired state game warden" means any person in receipt of a retirement allowance under this chapter.~~

~~(10) "Retirement allowance" means the state annuity plus the member's annuity.~~

~~(11) "State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys.~~

~~(12)~~*(3)* "State game warden" means ~~all~~ *a* state fish and game ~~wardens~~ *warden* hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks ~~moneys~~ *money.*"

Section 159. Section 19-8-301, MCA, is amended to read:

"**19-8-301. Membership — *inactive vested members — inactive nonvested members.*** *(1)* Except as provided in 19-8-302, each state game warden~~, including all warden supervisory personnel, whose salary or compensation for services is paid out of the department of fish, wildlife, and parks moneys and~~ who is assigned to law enforcement in the department of fish, wildlife, and parks shall become a member of the retirement system when first becoming a state game warden. ~~Except as provided in 19-8-302, all~~ *All* state game wardens ~~shall be~~ *are* members of the retirement system so long as *they are* actively employed in that capacity.

(2) A member with at least 10 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 10 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 160. Section 19-8-302, MCA, is amended to read:

"**19-8-302. Ineligibility for public employees' retirement system — transfer of membership.** ~~(1) After July 1, 1963, no new state employee appointed as a state game warden will be eligible for membership in the public employees' retirement system, and the provisions of The Public Employees' Retirement System Act will not apply to state game wardens.~~

~~(2)~~*(1)* A person who is a member of the retirement system assigned to law enforcement who transfers to a position involving duties other than law enforcement in the department of fish, wildlife, and parks may retain membership in the retirement system by filing a written election of intent with the board no later than ~~August 1, 1977, or no later than~~ 30 days after transfer to the new position~~, whichever is later~~.

~~(3)~~*(2)* A person who is a member of the public employees' retirement system who transfers to a position as a state game warden may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election of intent with the board no later than ~~August 1, 1977, or no later than~~ 30 days after transfer to the new position~~, whichever is later~~."

Section 161. Section 19-8-501, MCA, is amended to read:

"**19-8-501. Contributions to the ~~retirement account~~ *pension trust fund.*** The following ~~shall~~ *must* be paid to the ~~board~~ *division* and ~~shall~~ *must* be credited ~~by the board~~ to the ~~account~~ *pension trust fund*:

(1) all contributions by the state from department of fish, wildlife, and parks ~~moneys~~ *money*;

(2) all contributions by the state game wardens; and

(3) all interest on and increase of the investments and ~~moneys~~ *money* in the ~~account~~ *pension trust fund.*"

Section 162. Section 19-8-502, MCA, is amended to read:

"**19-8-502. Member's contribution.** (1) Every member is required to contribute into the ~~account~~ *pension trust fund* a sum equal to 7.9% of ~~his~~ *the member's* monthly ~~salary~~ *compensation*, which sum ~~shall~~ *must* be deposited to ~~his~~ *the member's* credit in the ~~account~~ *pension trust fund.*

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions ~~which~~ *that* would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and ~~his~~ *the member's* compensation as used to define ~~his~~ *the member's* final *average* salary in 19-8-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 163. Section 19-8-504, MCA, is amended to read:

"**19-8-504. State's contribution.** Each month the state treasurer shall pay to the ~~account~~ *pension trust fund*, out of the department of fish, wildlife, and parks ~~moneys~~ *money*, a sum equal to 7.15% of the total of all members' salaries, and out of the ~~moneys~~ *money* collected as fines and forfeited bonds under the provisions of 87-1-601(1) through (5) or ~~moneys~~ *money* distributed under 3-10-601(4), all ~~such~~ collections ~~are statutorily appropriated~~ *must be paid* to the ~~account~~ *pension trust fund* until the unfunded liability in the ~~account~~ *pension trust fund* is ~~solvent~~ *paid* and a verification statement to that effect is given to the state treasurer by the board."

Section 164. Section 19-8-304, MCA, is amended to read:

"**19-8-304. ~~Military~~ *Election to qualify military* service.** ~~(1) A state game warden inducted into the armed forces of the United States has the option to:~~

~~(a) continue his payments into the account; or~~

~~(b) allow the board to make his payments for him during his military service, in which event he must repay the account the full amount of the payments within 2 years after his return to active state game warden status.~~

~~(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall receive credit for his service in the armed forces of the United States as if it were service as a state game warden.~~

~~(3)~~*(1)* A member with 15 years or more of ~~state~~ service *credit* qualified under this chapter may, at any time prior to retirement, make a written election with the board to qualify all or any portion of ~~his~~ *the member's* active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if ~~he~~ *the member* is not otherwise eligible to receive credit for this service ~~pursuant to subsections (1) and (2)~~.

~~(4)~~*(2)* To qualify this service ~~he~~ *the member* ~~must~~ *shall* contribute to the ~~retirement~~ *pension trust* fund the actuarial cost of granting the service, *based on the most recent actuarial valuation of the system as* determined by the board~~, based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes~~. ~~He~~ *The member* may not qualify more years of military service than ~~he~~ *the member* has years of ~~creditable state~~ service *credits* in excess of 15 years."

Section 165. Section 19-8-306, MCA, is amended to read:

"**19-8-306. Qualification of ~~service from~~ other Montana public ~~retirement systems~~** ***service.*** (1) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify all or any portion of ~~his creditable~~ *the member's* service *credit* in the public employees', highway patrol officers', firefighters' unified, sheriffs', or municipal police officers' retirement system for which ~~he~~ *the member* has received a refund of ~~his membership~~ *the member's accumulated* contributions. To qualify this service, ~~he~~ *the member* ~~must~~ *shall* contribute to the ~~retirement~~ *pension trust* fund the actuarial cost of granting the service in the game wardens' retirement system, as determined by the board, based on ~~his compensation earned as a member of the former system and the normal contribution rate according to~~ the most recent actuarial valuation *of the system* minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the ~~administrator~~ *division* shall transfer from the member's former retirement system to the game wardens' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by ~~his~~ *the member's* public employer. The board ~~may~~ *shall* grant service credit subject to ~~the provisions of 19-8-201~~ *rules adopted by the board* upon contribution by the employee of the actuarial cost of granting this service in the game wardens' retirement system, as determined by the board, based on ~~the employee's com-~~

~~pensation earned during this period of service and the normal contribution rate according to~~ the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 166. Section 19-8-307, MCA, is amended to read:

"**19-8-307. ~~Service~~ *Employment* in ~~the~~ United States government.** (1) A ~~state game warden~~ *member* who is assigned to an agency of the United States government under Title IV, the Intergovernmental Personnel Act of 1970, may qualify ~~such~~ *the* federal ~~service~~ *employment* in the ~~game wardens'~~ retirement system under subsection (2) of this section, provided that:

(a) the ~~warden~~ *member* has accumulated at least 5 years of *membership* service ~~in the game wardens' retirement system~~; and

(b) the ~~warden~~ *member* returns to full-time service ~~covered by the game wardens' retirement system~~ for at least 1 year after completing ~~service~~ *employment* in the United States government.

(2) A ~~state game warden~~ *member* who is assigned to an agency of the United States government has the option to:

(a) continue ~~his~~ *the member's* payments into the ~~account~~ *pension trust fund*; or

(b) ~~qualify this service by paying~~ *pay* an amount equal to the normal employer and employee contributions plus interest within 2 years after ~~his~~ *the member's* return to active state game warden status.

(3) ~~Salary~~ *Compensation* earned while on assignment to an agency of the United States government must be considered ~~salary~~ *compensation* for purposes of the ~~game wardens'~~ retirement system and may be included in the determination of final *average* salary ~~as defined in 19-8-101~~, provided that the final *average* salary cannot exceed 100% of the ~~warden's~~ *member's* highest ~~annual salary~~ *monthly compensation* earned as a state game warden."

Section 167. Section 19-8-601, MCA, is amended to read:

"**19-8-601. Time of retirement — commencement of ~~allowance~~ *benefit*.** (1) Any member in service who has completed at least 20 years of ~~creditable~~ *membership* service, reached the age of 50 years, and terminated ~~covered employment~~ *service* may retire ~~on~~ *with a* service retirement ~~allowance~~ *benefit* upon written application to the board.

(2) (a) Except as provided in subsection (2)(b), the retirement ~~allowance~~ *benefit* may commence on the first day of the month following the member's last day of ~~covered employment~~ *service* or, if requested by the ~~terminated~~ *inactive* member in writing, on the first day of the month following receipt of the written application.

(b) The retirement ~~allowance~~ *benefit* for an eligible ~~terminated~~ *inactive* member must commence no later than the first day of the month following the member's 60th birthday."

Section 168. Section 19-8-603, MCA, is amended to read:

"**19-8-603. Service retirement ~~allowance~~ *benefit*.** ~~(1) Upon retirement from service, the~~ *The* service retirement ~~allowance consists of the state annuity plus the member's annuity.~~

~~(2) Except as provided in 19-8-816, the amount of the retirement allowance must~~ *benefit is* equal *to* 2% of the member's final *average* salary for each year of ~~creditable~~ service *credit*."

Section 169. Section 19-8-604, MCA, is amended to read:

"**19-8-604. ~~Involuntary~~ *Early* retirement ~~allowance~~ *benefit*.** If a ~~contributor~~ *member* is ~~involuntarily~~ discontinued from service after having completed 10 years of ~~total~~ *membership* service but before reaching retirement age, ~~he~~ *the member* ~~shall~~ *must*, upon filing a written application with the board, be paid ~~in one of the following ways that he elects:~~

~~(1) the full amount of his accumulated deductions; or~~

~~(2)~~ a retirement ~~allowance~~ *benefit* beginning on ~~his~~ *the member's* 55th birthday calculated under the provisions of 19-8-603."

Section 170. Section 19-8-701, MCA, is amended to read:

"**19-8-701. Disability retirement ~~allowance~~ *benefit*.** (1) ~~If the total disability of a contributor is permanent in character, regardless of length of service of the contributor, a disability retirement allowance~~ *A member who is determined by the board to be disabled* ~~shall~~ *must* be granted ~~the contributor~~ *a disability retirement benefit* in an amount calculated on the actuarial equivalent of the ~~member's annuity and the state annuity~~ *service retirement benefit* standing to ~~his~~ *the member's* credit at the time of ~~his~~ *the member's* disability retirement~~, except as provided in 19-8-816~~.

(2) If the ~~total~~ disability is a direct result of any service to the department of fish, wildlife, and parks in line of duty and the ~~contributor~~ *member* has ~~had over~~ *at least* 10 years of *membership* service, the ~~state game warden~~ *member* who is ~~totally and permanently~~ disabled ~~shall~~ *must* be retired on ~~total~~ *a disability* retirement ~~allowance~~ *benefit* of one-half of ~~his~~ *the member's* final *average* salary~~, except as provided in 19-8-816~~."

Section 171. Section 19-8-712, MCA, is amended to read:

"**19-8-712. Medical examination of disability retiree — cancellation of ~~allowance~~ *benefit*.** (1) The board, in its discretion, may require the recipient of a disability retirement ~~allowance~~ *benefit* to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by ~~him~~ *the recipient* when ~~he~~ *the recipient* retired. If the board determines that the recipient is not incapacitated, ~~his~~ *the recipient's* disability retirement ~~allowance~~ *benefit* must be canceled when ~~he~~ *the recipient* is offered a position under subsection (3). If the recipient refuses to submit to a medical examination, ~~his~~ *the recipient's disability* retirement ~~allowance~~ *benefit* must be canceled when ~~he~~ *the recipient* is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement ~~allowance~~ *benefit* should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating ~~his~~ *the recipient's* monthly ~~allowance~~ *benefit*. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, ~~he~~ *the recipient* may request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) A recipient whose *disability* retirement ~~allowance~~ *benefit* is canceled because the board has determined that ~~he~~ *the recipient* is no longer incapacitated must be reinstated to the position held by ~~him~~ *the recipient* immediately before ~~his~~ *the recipient's* retirement or to a position in the same classification within ~~his~~ *the recipient's* capacity, whichever is first open. The fact that ~~he~~ *the recipient* was retired for disability may not prejudice any right to reinstatement to duty that ~~he~~ *the recipient* may have or claim to have.

(4) The department of fish, wildlife, and parks may request a medical or psychological review as to the ability of the recipient to return to work as a game warden. If the board's findings are upheld, the department of fish, wildlife, and parks shall pay the cost of the review."

Section 172. Section 19-8-703, MCA, is amended to read:

"**19-8-703. ~~Payments~~ *Benefits* upon employment-related death.** If the board finds that a ~~contributor~~ *member* died as a direct and proximate result of injury received in the course of ~~his employment~~ *the member's service*, a ~~retirement allowance~~ *monthly survivorship benefit* ~~shall~~ *must* be paid to ~~his~~ *the member's designated* beneficiary~~, consisting of:~~

~~(1) a member's annuity which is the actuarial equivalent of the contributor's accumulated deductions; and~~

~~(2) a state annuity which, when added to the member's annuity, will provide a total annuity~~ equal to 50% of the final *average* salary of the ~~contributor, except as provided in 19-8-816, less the amount which is paid to the beneficiary under the Workers' Compensation Act of the state of Montana during the period such compensation is paid or payable~~ *member*."

Section 173. Section 19-8-704, MCA, is amended to read:

"**19-8-704. ~~Payments upon death from other causes~~ *Postretirement death payments*.** ~~(1)~~ If a retired ~~state game warden~~ *member who has not chosen an optional retirement benefit under 19-8-801* dies before receiving ~~in payments~~ *an amount equal to* the present value of ~~his member's annuity and the state annuity~~ *the member's service retirement benefit under 19-8-603* as it was at the time of ~~his~~ *the member's* retirement, the balance ~~shall~~ *must* be paid to ~~his~~ *the member's designated* beneficiary *in a lump-sum payment. At the option of the designated beneficiary, the lump-sum payment may be annuitized and paid* *over the beneficiary's lifetime; however, the payment is not a benefit subject to increases.*

~~(2) If a member dies before reaching retirement age, his beneficiary shall be entitled to the actuarial equivalent of the options as provided in 19-8-604.~~"

Section 174. **Nonduty-related death of active member.** If a member dies before reaching retirement age, the member's designated beneficiary may choose either a lump-sum refund of the member's accumulated contributions or the actuarial equivalent of the early retirement benefit as provided in 19-8-604.

Section 175. Section 19-8-801, MCA, is amended to read:

"**19-8-801. Optional ~~retirement allowance~~ *forms of benefits.*** (1) ~~A~~ *The retirement benefit of a* member or *the survivorship benefit of* a *designated* beneficiary ~~may elect one of the~~ *who so elects must be converted in lieu of all other benefits under this chapter into an* optional retirement ~~allowances set forth in subsection (2) at any time before the first payment on account of any retirement allowance is made. If a member dies after retirement and within 30 days from the date upon which his election or changed election was received by the board, the election is void and the death will be considered as that of a member before retirement.~~

~~(2) A member or beneficiary may elect or, prior to the approval of a previous election, revoke or change a previous election and elect to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:~~ *benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:*

(a) Option 2~~—upon his death, his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.~~ *a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;*

(b) Option 3~~—upon his death,~~ *a continuation of* one-half of ~~his lesser retirement allowance will be continued throughout the life of and paid to the person that he nominated by written designation, duly executed and filed with the board at the time of his retirement.~~ *the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;*

(c) Option 4~~—such~~ *upon the initial payee's death,* other ~~benefits will be paid, either to the beneficiary or to any other person that he nominated, as together with the lesser retirement allowance are the actuarial equivalent of his retirement allowance and have been~~ *actuarially equivalent amounts as may be* approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement."

Section 176. Section 19-8-808, MCA, is amended to read:

"**19-8-808. Eligibility for postretirement adjustment.** (1) Except as provided in subsection (2), a ~~member or beneficiary~~ *benefit recipient* is eligible to receive a postretirement adjustment as provided in 19-8-810 if ~~he~~ *the recipient* is receiving a:

(a) service retirement ~~allowance~~ *benefit* and is 55 years of age or older on or before June 30 in the year that the postretirement adjustment is made; or

(b) disability or survivorship ~~allowance~~ *benefit.*

(2) A ~~member or beneficiary~~ *benefit recipient* is ineligible to receive a postretirement adjustment under subsection (1) unless ~~he has been receiving a~~ *the* monthly service, disability, or survivorship ~~allowance~~ *benefit has been paid* for at least 24 consecutive months on or before June 30 in the year the adjustment is made."

Section 177. Section 19-8-809, MCA, is amended to read:

"**19-8-809. Funding for postretirement adjustment — reserve fund.** (1) At the end of each fiscal year, the board shall determine the total investment income earned on the ~~retirement~~ *pension trust* fund for that fiscal year. From this amount, the board shall subtract the:

(a) actuarial amount required to fund the retirement system for the fiscal year; and

(b) retirement system's administrative and investment expenses for the fiscal year.

(2) (a) From the remainder obtained in subsection (1), the board shall calculate the amount of investment income earned on that portion of the ~~retirement~~ *pension trust* fund balance representing retired members.

(b) The board shall deposit the amount calculated in subsection (2)(a) in a reserve fund.

(3) Subject to the restrictions contained in subsections (4) and (5), the board shall annually use 90% of the amount in the reserve fund provided for in subsection (2)(b) to pay a postretirement adjustment to eligible ~~members or beneficiaries~~ *benefit recipients* under 19-8-810.

(4) If the amount in the reserve fund is insufficient to provide an average monthly postretirement adjustment of at least $1 under 19-8-810, an adjustment may not be made in that calendar year.

(5) The amount available for payment of the postretirement ~~allowance~~ *adjustment* is limited to an amount that would provide a percentage increase in the average service, disability, or survivorship ~~allowance~~ *benefit* of all eligible ~~members~~ *benefit recipients*, when combined with the postretirement adjustment, that is equal to or less than the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers compiled by the bureau of labor statistics, United States department of labor, or its successor agency."

Section 178. Section 19-8-810, MCA, is amended to read:

"**19-8-810. Payment and amount of postretirement adjustment.** (1) Effective January 1 of each year that funds are available under 19-8-809, a ~~member or beneficiary~~ *benefit recipient* eligible under 19-8-808 ~~shall~~ *must* receive a postretirement adjustment in the form of a monthly benefit payable for life.

(2) The board shall calculate the amount of the postretirement ~~allowance~~ *adjustment* payable to an eligible ~~member or beneficiary~~ *benefit recipient* by:

(a) dividing the amount available under 19-8-809(3) for payment of the postretirement ~~allowance~~ *adjustment* by the total accumulated years of service *credit* for all eligible ~~members and beneficiaries~~ *benefit recipients*;

(b) multiplying the quotient obtained in subsection (2)(a) by the ~~member's~~ *individual eligible benefit recipient's* ~~total years of~~ service *credits*;

(c) dividing the product obtained in subsection (2)(b) by a factor for calculating a monthly annuity from actuarial tables adopted by the board; and

(d) applying the provisions contained in subsections (3) and (4).

(3) If a member had elected to receive an optional retirement ~~allowance~~ *benefit*, the amount of ~~his~~ *the member's* postretirement ~~allowance~~ *adjustment* must be adjusted by the appropriate optional factor.

(4) If more than one ~~beneficiary~~ *contingent annuitant* is receiving a member's retirement ~~allowance~~ *benefit*, the postretirement adjustment must be divided in the same manner as the member's retirement ~~allowance~~ *benefit*."

Section 179. Section 19-8-816, MCA, is amended to read:

"**19-8-816. Minimum monthly ~~retirement allowance~~ *benefit*.** (1) The following members who retired before July 1, 1989, ~~or~~ *and* their *contingent annuitants or their designated* beneficiaries *receiving monthly survivorship benefits* are eligible to receive a minimum monthly ~~retirement allowance~~ *benefit* as provided in subsection (2):

(a) a member who is 55 years of age or older and who is receiving a service retirement ~~allowance~~ *benefit*, unless ~~he~~ *the member* is employed in a position covered by a retirement system under Title 19, chapters 3 through 13;

(b) a member who is receiving a disability retirement ~~allowance~~ *benefit*; and

(c) a *designated* beneficiary receiving a survivorship ~~allowance~~ *benefit or a contingent annuitant receiving a service or disability retirement benefit.*

(2) (a) Except as provided in subsection (2)(b), on July 1, 1989, the monthly ~~retirement allowance~~ *benefit* of a ~~member~~ *benefit recipient* eligible under subsection (1) may not be less than 2% of a probationary state game warden's base ~~salary~~ *compensation* on July 1, 1989, for each year of the member's ~~creditable~~ service *credits*.

(b) A monthly retirement ~~allowance~~ *benefit* increased under subsection (2)(a) may not exceed 60% of a probationary state game warden's base ~~salary~~ *compensation* on July 1, 1989."

Section 180. Section 19-9-103, MCA, is amended to read:

"**19-9-103. Municipal police officers' retirement system established.** A municipal police officers' retirement system is established, ~~and shall be~~ *which is* governed by the provisions of *[sections 1 through 42] and* this chapter."

Section 181. Section 19-9-104, MCA, is amended to read:

"**19-9-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

~~(1) "Administrator" means the public employees' retirement division of the department of administration.~~

~~(2) "Base salary" means the sum of the monthly compensations for each month in a given calendar year.~~

~~(3) "Board" means the retirement board described in 2-15-1009.~~

~~(4) "Credited service" means the aggregate of a member's prior service and membership service.~~

~~(5) "Death benefit" means a monthly annuity paid to a surviving spouse or dependent child or a lump-sum payment made to a beneficiary on behalf of a member who dies before retirement.~~

(1) "Compensation" means the remuneration, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, that a member receives as an active police officer.

~~(6)~~*(2)* "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

~~(7)~~*(3)* "Employer" means any city ~~which~~ *that* participated in a prior plan or ~~which~~ *that* elects to join this ~~plan~~ *retirement system* under 19-9-107.

~~(8) "Employer annuity" means monthly payments for life derived from employer and state contributions.~~

~~(9)~~*(4)* "Final average ~~salary~~ *compensation*" means the monthly compensation of a member, averaged over the last 36 months of his ~~active~~ service or, in the event ~~he~~ *a member* has not been a member that long, over the period of ~~his~~ membership.

~~(10) "Fund" means the pension trust fund in the treasury system designated for the use of the plan.~~

~~(11) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.~~

~~(12) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.~~

~~(13) "Member's annuity" means monthly payments for life derived from member contributions.~~

~~(14) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.~~

~~(15)~~*(5)* "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 10 years of ~~qualified~~ *membership* service.

~~(16) "Monthly compensation" means the wage, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.~~

~~(17)~~*(6)* Any reference to "municipality", "city", or "town" includes those jurisdictions ~~which~~ *that,* prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

~~(18) "Normal retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member completes 20 or more years of qualified service and has terminated employment as a police officer.~~

~~(19) "Plan" means the municipal police officers' retirement system created by this chapter.~~

~~(20) "Police officer" means a law enforcement officer employed by an employer.~~

~~(21)~~*(7)* "Prior plan" means the local police reserve or ~~retirement~~ *pension trust* fund of a city ~~which~~ *that* elects to join the ~~plan~~ *retirement system* under 19-9-107 ~~or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974~~.

~~(22) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.~~

~~(23) "Qualified service" means credited service plus any service purchased under the provisions of part 4 of this chapter.~~

~~(24) "Retirement allowance" means the employer annuity plus the member's annuity.~~

~~(25)~~*(8)* "Retirement date" means the date on which the first payment of the retirement, disability, or ~~survivor~~ *survivorship* benefits of a member or a ~~beneficiary~~ *survivor* is payable.

~~(26)~~*(9)* "Surviving spouse" means the spouse married to a member at the time of the member's death.

(10) "Survivor" means a surviving spouse or dependent child of the member.

~~(27) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer.~~"

Section 182. Section 19-9-105, MCA, is amended to read:

"**19-9-105. Transfer of assets and liabilities from prior plans.** All funds and obligations constituting the assets and liabilities of prior plans, regardless of their form or who holds them, ~~shall~~ *must* be transferred to the ~~account provided for in 19-9-501~~ *pension trust fund.* ~~The board shall ascertain the amounts to be apportioned to each account on April 19, 1977, and the state treasurer shall transfer such amounts to the appropriate accounts on July 1, 1977.~~"

Section 183. Section 19-9-106, MCA, is amended to read:

"**19-9-106. Effect on members of prior plans.** (1) All provisions of this ~~plan~~ *retirement system* are effective as to a member whose retirement date occurred prior to July 1, 1977, except *that* the amount and mode of payment of ~~such~~ *the* member's retirement ~~allowance~~ *benefit* ~~will~~ *must* remain unchanged.

(2) This chapter may not decrease the benefits of a member under a prior plan."

Section 184. Section 19-9-107, MCA, is amended to read:

"**19-9-107. Election to join ~~plan~~ *retirement system* — transfer of assets.** (1) Cities other than those participating in the statewide police reserve fund administered by the ~~department of administration~~ *board* in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the ~~plan~~ *retirement system* by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this ~~chapter~~ *retirement system.* Upon the enactment of ~~such~~ an ordinance, the provisions of this ~~chapter~~ *retirement system* become applicable to the city. Any city enacting ~~such~~ an *election* ordinance shall send a certified copy ~~thereof~~ *of the ordinance* to the board and shall, as soon as possible ~~thereafter~~, deposit ~~with the board~~ all cash and securities held by it in its local police reserve or retirement fund *into the municipal police officers' pension trust fund*. The value of the securities ~~shall~~ *must* be determined by the board.

(2) The trustees or other administrative head of the local ~~system~~ *plan* as of the effective date of the election shall certify the proportion, if any, of the funds of the ~~system~~ *plan* that represents the accumulated contributions of the active members and the relative shares of the members as of that date. ~~Such~~ *The* shares ~~shall~~ *must* be charged to the employer and credited to the respective ~~individual accounts of the~~ members in the ~~plan~~ *retirement system* and administered as if the contributions had been made during membership in the ~~plan~~ *retirement system*. Any excess of employer credits over charges under this section ~~will~~ *must* be offset, with interest, against future required employer contributions for a period determined by the ~~administrator~~ *board*. Any excess of employer charges over credits under this section are payable by the employer, with interest, for a period of 10 years or less as determined by the ~~administrator~~ *board*."

Section 185. Section 19-9-503, MCA, is amended to read:

"**19-9-503. Unfunded liabilities.** ~~(1) It is found and declared by the legislature that many cities operating under prior plans have excess and unfunded liabilities under such prior plans, which liabilities cannot be amortized by the percentage contributions set forth in 19-9-702 and 19-9-703.~~

~~(2) The administrator shall, on or before October 1, 1977, determine the excess and unfunded liability of each city which participates in the plan created by this chapter. The determination of the administrator, in the absence of fraud, abuse of discretion, or arithmetic error, is final and binding on each city. Each city found by the administrator to have an excess and unfunded liability under a prior plan which as of July 1, 1977, is not funded by sums on deposit or funds available for deposit with the administrator shall pay an additional sum over a period of time to amortize its excess liability as determined by the administrator. If any city and the administrator are unable by January 1, 1978, to negotiate and reduce to writing the terms of an agreement satisfactory to both of them for the city to amortize its excess liability, the administrator shall require such city to pay an additional sum to amortize its excess liability on July 1, 1977, over a period of not more than 40 years.~~

~~(3) Each city found by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this chapter shall receive a credit in the accounts of the administrator for any such excess payments.~~

~~(4) The excess unfunded liability for each city shall be revaluated by the administrator on July 1, 1980, as part of the normal actuarial valuations required in 19-9-504 reflecting the change in the contribution rates made in 19-9-601, 19-9-702, and 19-9-703, as amended by Chapter 375, Laws of 1979, and each city's funding position will be changed using the procedures of 19-9-107. The resulting report will be made available to the cities no later than October 1, 1980.~~

~~(5) If a majority of the cities participating in the municipal police officers' retirement system do not agree with the results of the revaluation outlined in subsection (4), they may, by mutual agreement of the cities, select a qualified~~

~~actuary, as defined in 19-9-504, to perform a second actuarial valuation as of July 1, 1980, with the conclusions of the second actuarial valuation to replace the actuarial valuation discussed in subsection (4). The cost of the second actuarial valuation shall be paid by all cities participating in the system in proportion to their active membership in the system as of July 1, 1980.~~

~~(6) (a) On April 1, 1983, the administrator shall revaluate the excess unfunded liability for each city based on the actuarial valuation required in 19-9-504 for the period ended June 30, 1982. Each city with an excess unfunded liability as of June 30, 1982, shall pay 25% of this excess unfunded liability, with interest, in 10 annual installments, the first payment due May 1, 1983, and subsequent payments due May 1 of each year thereafter, with the final payment due May 1, 1992.~~

~~(b) Credits received by a city following the revaluation required in subsection (6)(a) must be reduced proportionately over a 10-year period beginning July 1, 1983.~~

~~(c)~~*(1)* ~~On July 1, 1993,~~ *Each* ~~each~~ city shall pay the employer contribution rate specified in 19-9-703 without credit reduction, except for a city joining the ~~plan~~ *retirement system* after June 30, 1982. A city joining the ~~plan~~ *retirement system* after June 30, 1982, is subject to the provisions of 19-9-107.

~~(7)~~*(2)* If a city is required to make payments on or after July 1, 1985, to amortize its excess and unfunded liability under a prior plan, these payments must be made by the state auditor from the premium taxes on insurance risks enumerated in 19-11-512.

~~(8)~~*(3)* Subject to judicial review, the board is the determining body as to the interpretation and application of this section."

Section 186. Section 19-9-301, MCA, is amended to read:

"**19-9-301. Active membership — *inactive vested member — inactive nonvested member.*** (1) A police officer becomes an active member ~~under the plan~~ *of the retirement system*:

(a) on the date ~~his employment by~~ *the police officer's service with* an employer commences;

(b) on July 1, 1977, if ~~he~~ *the police officer* is employed by an employer on that date; or

(c) in the case of an employer ~~which~~ *that* elects to join the ~~plan~~ *retirement system* as provided in 19-9-107, on the effective date of ~~such~~ *the* election if ~~he~~ *the police officer* is employed by the employer on that date.

(2) Upon becoming eligible for membership, ~~he~~ *the police officer* shall complete ~~such~~ *the* forms and furnish ~~such~~ *the* proof ~~as may be~~ required by the board.

(3) A member becomes an inactive member on the first day of an approved absence from service of a substantial duration.

(4) A member with at least 10 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is

an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(5) A member with less than 10 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 187. Section 19-9-601, MCA, is amended to read:

"**19-9-601. Member contributions.** (1) The ~~normal~~ *regular* contribution of each active member *first employed by an employer on or before June 30, 1975,* is 6% of ~~his monthly~~ *the member's* compensation. In the case of a member first employed by an employer as a police officer after June 30, 1975, the contribution is 7.2% of ~~his monthly~~ *the member's* compensation. In the case of a member first employed by an employer as a police officer after June 30, 1979, the contribution is 8.7% of ~~his monthly~~ *the member's* compensation. ~~Compensation excludes overtime payments, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer.~~

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions ~~which~~ *that* would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and ~~his monthly~~ *the member's* compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 188. Section 19-9-702, MCA, is amended to read:

"**19-9-702. State contribution.** The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies~~, which premium tax is statutorily appropriated, as provided in 17-7-502, for the contributions~~. ~~Such~~ *The* payments ~~shall~~ *must* be made annually after the end of each fiscal year but no later than ~~September~~ *November* 1 from the gross premium tax after deduction for cancellations and returned premiums. The ~~administrator~~ *division* shall notify the auditor by ~~April~~ *September* 1 of each *fiscal* year of the annual compensation paid to all active members during the preceding *fiscal* year. The state's contribution is~~:~~

~~(1) 14.04% of compensation paid to members before July 1, 1985;~~

~~(2) 15.06% of compensation paid to members from July 1, 1985, through June 30, 1991; and~~

~~(3)~~ 15.66% of compensation paid to members ~~after July 1, 1991~~."

Section 189. Section 19-9-703, MCA, is amended to read:

"**19-9-703. Employer contribution.** Each employer shall make its contribution ~~on behalf of members~~ through the city treasurer or other appropriate official out of ~~moneys~~ *money* available to the city for ~~such~~ *that* purpose. The employer's contribution, which must be paid monthly to the ~~administrator~~ *division*, is~~:~~

~~(1) 14.04% of the total monthly compensation paid to all active members during the preceding month before July 1, 1985;~~

~~(2) 13.02% of the total monthly compensation paid to all active members during the preceding month from July 1, 1985, through June 30, 1991; and~~

~~(3)~~ 13.92% of the ~~total monthly~~ compensation paid to all active members ~~during the preceding month after July 1, 1991~~."

Section 190. Section 19-9-705, MCA, is amended to read:

"**19-9-705. Other ~~moneys~~ *money* credited as employer contributions.** All gifts, bequests, or emoluments given to an employer or member for the benefit of the ~~plan~~ *retirement system* or because of any member's service as a police officer, except when specifically allowed to be retained by the member by ~~his~~ *the member's* employer, and all ~~moneys~~ *money* withheld from the ~~monthly~~ compensation of a member for violation of the rules of ~~his~~ *the member's* employer ~~shall~~ *must* be paid to the ~~administrator~~ *pension trust fund*. ~~The administrator shall credit them to the fund and, as soon as practicable after their receipt, deposit them with the state treasurer. Such~~ *The* amounts are employer contributions but are in addition to the amounts required by 19-9-703."

Section 191. Section 19-9-706, MCA, is amended to read:

"**19-9-706. Contributions based on *total compensation when member receives* disability compensation.** ~~(1)~~ When ~~an officer~~ *a member* receives compensation *from both the member's employer and as benefits from the workers' compensation program* under *the provisions of* 7-32-4132, the *member's compensation reported by the employer is the same as if the member was in active service, and the* member, *employer, and state retirement* contributions ~~for retirement~~ required ~~under 19-9-601~~ *by this chapter* ~~will~~ *must* be *calculated and* paid on ~~the~~ *that* total compensation ~~received under 7-32-4132 and the employer contribution paid by the municipalities under 19-9-703 and the state contribution under 19-9-702 shall include as part of the salaries paid to police officers all compensation received under 7-32-4132~~. The service represented by these contributions ~~will~~ *must* be credited in the same manner as provided in 19-9-401.

~~(2) When an injured officer accepts a transfer under 7-32-4136 to a non-police position within the municipality covered under 19-3-401, all service and contributions previously credited with the municipal police officers' retirement system shall be transferred from the municipal police officers' retirement~~

~~system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred will be equal to the amount that would have been contributed had the transferred service been normal employment covered under the public employees' retirement system.~~"

Section 192. Section 19-9-401, MCA, is amended to read:

"**19-9-401. ~~Credited service~~ *Service credit* to be cumulative.** A member is entitled to benefits based upon ~~the entire period of his credited~~ *the member's total* service *credits* and final average ~~salary~~ *compensation* without regard to the number of employers by whom ~~he~~ *the member* was employed or the number of periods of ~~his employment~~ *the member's service* so that ~~no~~ *a* duplication of ~~credited~~ service *credit* ~~occurs~~ *does not occur.*"

Section 193. Section 19-9-403, MCA, is amended to read:

"**19-9-403. Election to qualify previous military service.** (1) A member with 15 years or more of service *credit* may, at any time prior to ~~his~~ retirement, make a written election with the board to qualify ~~all or any portion of his~~ *up to a maximum of 5 years of the member's* active *duty* service in the armed forces of the United States for the purpose of calculating retirement benefits~~, up to a maximum of 5 years,~~ if ~~he~~ *the member* is not otherwise eligible to receive credit. To qualify this service ~~he~~ *the member* ~~must~~ *shall* contribute to the ~~account~~ *pension trust fund* the actuarial cost of granting the service to be determined by the board based on ~~his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes~~ *the most recent actuarial valuation of the system.* ~~He~~ *The member* may not qualify more of ~~his~~ *the member's* military service than ~~he~~ *the member* has service *credit* in excess of 15 years.

(2) If a member has retired from active duty in the armed forces of the United States with *a* normal *military* service retirement ~~benefits~~ *benefit,* ~~he~~ *the member* may not qualify ~~his~~ *the member's* military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify ~~his~~ *the member's* active *duty* military service under subsection (1) if ~~his~~ *the member's* active duty in the armed forces of the United States is not more than 25% of the total of all ~~his~~ *the member's* years of military service, including reserve and active duty time."

Section 194. Section 19-9-405, MCA, is amended to read:

"**19-9-405. Qualification of ~~service from~~ other Montana public ~~retirement systems~~ *service.*** (1) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify all or any portion of ~~his creditable~~ *the member's* service *credit* in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game wardens' retirement system for which ~~he~~ *the member* has received a refund of ~~his membership~~ *the member's accumulated* contributions. To qualify this service, ~~he~~ *the member* ~~must~~ *shall* contribute to the ~~retirement~~ *pension trust* fund the actuarial cost of granting the service in the municipal police officers' retirement system, as determined by the board, based on ~~his compensation earned as a member of the~~

~~former system and the normal contribution rate according to~~ the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the ~~administrator~~ *division* shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the ~~normal~~ *regular* contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by ~~his~~ *the member's* public employer. The board ~~may~~ *shall* grant service credit subject to ~~the provisions of 19-9-201~~ *rules adopted by the board* upon contribution by the employee of the actuarial cost of granting this service in the municipal police officers' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the ~~normal~~ *regular* contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 195. **Transfer to public employees' retirement system.** When an injured nonvested member accepts a transfer under 7-32-4136 to a nonpolice position within the municipality covered under the public employees' retirement system, all service and contributions previously credited with the municipal police officers' retirement system must be transferred from the municipal police officers' retirement system pension trust fund along with the interest to the public employees' retirement system pension trust fund. The employer contributions and interest transferred must be equal to the amount that would have been contributed if the transferred service had been normal employment covered under the public employees' retirement system.

Section 196. Section 19-9-801, MCA, is amended to read:

"**19-9-801. Eligibility for service retirement — commencement of ~~allowance~~ *benefit*.** *(1)* Members are eligible for retirement ~~and shall retire~~ as provided in this section~~:~~.

~~(1)~~*(2)* A member ~~employed by an employer as a police officer~~ is eligible to receive a service retirement ~~allowance~~ *benefit* when ~~he~~ *the member* has completed 20 years or more of ~~qualified~~ *membership* service and has terminated ~~covered employment~~ *service*.

~~(2)~~*(3)* A member who terminates ~~employment as a police officer with an employer~~ *service* after completing at least 10 years of ~~qualified~~ *membership* service but prior to completing 20 years of ~~qualified~~ *membership* service is eligible to receive a service retirement ~~allowance~~ *benefit* when ~~he~~ *the member* has reached 50 years of age.

~~(3)~~*(4)* (a) Except as provided in subsection ~~(3)(b)~~ *(4)(b)*, the retirement ~~allowance~~ *benefit* may commence on the first day of the month following the member's minimum retirement date or, if requested by the ~~terminated~~ *inactive* member in writing, on the first day of the month following receipt of the written application.

(b) The retirement ~~allowance~~ *benefit* for an eligible ~~terminated~~ *inactive* member must commence no later than the first day of the month following the member's 55th birthday."

Section 197. Section 19-9-804, MCA, is amended to read:

"**19-9-804. Amount of service retirement ~~allowance~~ *benefit* — continuation of ~~allowance~~ *benefit* after death of member.** (1) A ~~police officer~~ *member* with *at least* 20 years of ~~qualified~~ *membership* service ~~who is eligible under 19-9-801 and does not elect to serve any additional years as an active police officer shall~~ *must* receive a ~~service~~ retirement ~~allowance~~ *benefit* equal to ~~one-half his final average salary.~~

~~(2) A police officer who is eligible for service retirement under 19-9-801 after 20 years of qualified service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of his final average salary for each year of additional qualified service, up to a maximum of 60% of his final average salary.~~

~~(3) A member who is eligible for service retirement under 19-9-801 with less than 20 years of qualified service shall receive a retirement allowance equal to 2.5% of his final average salary for each year of qualified service~~ *the sum of:*

(a) 2.5% of the member's final average compensation for each year of service credit up to and including 20 years; and

(b) 1% of the member's final average compensation for each year of service credit after 20 years.

(2) The total monthly benefit paid to any retiree under subsection (1) may not exceed 60% of the member's final average compensation.

(3) A member who retires with at least 10 years but less than 20 years of membership service must receive a retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(4) (a) Upon the death of a ~~police officer~~ *member* receiving a service retirement ~~allowance~~ *benefit* under subsection (1) ~~or (2)~~, ~~his~~ *the member's* surviving spouse, if there is one, ~~shall~~ *must* receive from the *pension trust* fund a ~~sum~~ *benefit* equal to one-half of the ~~officer's~~ *member's* final average ~~salary~~ *compensation.*

(b) Upon the death of a member receiving a service retirement ~~allowance~~ *benefit* under subsection (3), ~~his~~ *the member's* surviving spouse, if there is one, ~~shall~~ *must* receive from the *pension trust* fund a ~~sum~~ *benefit* equal to the amount of the ~~officer's allowance~~ *member's benefit* at the time of ~~his~~ *the member's* death.

(c) If the ~~officer~~ *member* leaves one or more dependent children, then upon ~~his~~ *the member's* death, if ~~he~~ *the member* leaves no surviving spouse, or upon the death of the surviving spouse, the ~~officer's~~ *member's* surviving dependent child, or children collectively if there are more than one, ~~shall~~ *must* receive the same monthly payments *that* a surviving spouse would receive for as long as the child or one of the children remains *a* dependent *child* as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent."

Section 198. Section 19-9-902, MCA, is amended to read:

"**19-9-902. Eligibility for disability retirement.** If a ~~police officer~~ *member* is determined by the board to be ~~totally and permanently~~ disabled, ~~he~~ *the member* is entitled to a disability retirement ~~allowance~~ *benefit,* regardless of the length of ~~his~~ *the member's* service, commencing on the day following the ~~police officer's last day of membership~~ *member's termination from* service."

Section 199. Section 19-9-903, MCA, is amended to read:

"**19-9-903. Amount of disability retirement ~~allowance~~ *benefit* — continuation of ~~allowance~~ *benefit* after death of member.** (1) A ~~police officer~~ *member* who is eligible under 19-9-902 before ~~completing~~ *earning* 20 years of ~~qualified~~ service *credit* ~~shall~~ *must* receive a disability retirement ~~allowance~~ *benefit* equal to one-half ~~his average~~ *the member's* final ~~salary~~ *average compensation.*

(2) A ~~police officer~~ *member* who is retired under 19-9-902 and who, at the time of ~~his~~ *the member's* injury or disability, was eligible at ~~his~~ *the member's* option to be retired under 19-9-801 but had elected to serve years in excess of 20 years of ~~qualified~~ service *credit* and was then serving ~~such~~ additional years ~~shall~~ *must* be paid for the additional years at the rate prescribed in 19-9-804~~(2)~~.

(3) Upon the death of a ~~police officer~~ *member* receiving a disability ~~allowance~~ *retirement benefit* under this section, ~~his~~ *the member's* surviving spouse or dependent child is eligible for benefits as provided in 19-9-804~~(4)~~."

Section 200. Section 19-9-904, MCA, is amended to read:

"**19-9-904. Termination of ~~allowance~~ *benefit.*** The board, in its discretion, may require the recipient of a disability retirement ~~allowance~~ *benefit* to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine, by reason of physical or mental capacity, whether the recipient can perform the duties of the position held by ~~him~~ *the recipient* when ~~he~~ *the recipient* was retired. If an inactive member is determined by the board to be no longer ~~totally and permanently~~ disabled, ~~his~~ *the inactive member's* disability retirement ~~allowance~~ *benefit* must be canceled when ~~he~~ *the inactive member* is offered a position under 19-9-905. If ~~he~~ *the inactive member* refuses to submit to a medical examination, ~~his~~ *the inactive member's* disability retirement ~~allowance~~ *benefit* ~~shall~~ *must* cease as of the date of ~~such~~ *the* determination. ~~He~~

The inactive member ~~shall~~ *must* be notified of the determination by the board. The board may review the status of ~~any~~ *an* inactive member at any time."

Section 201. Section 19-9-905, MCA, is amended to read:

"**19-9-905. Reinstatement upon termination of ~~allowance~~ *benefit*.** (1) ~~Any inactive~~ *A retired* member whose disability retirement ~~allowance~~ *benefit* is cancelled as provided in 19-9-904 ~~shall~~ *must* be reinstated to the position held by ~~him~~ *the member* immediately before ~~his~~ retirement or to a position in the same classification with duties within ~~his~~ *the member's* capacity, whichever is first open. The board shall advise the employer that the disability retirement ~~allowance~~ *benefit* has been cancelled and that the ~~inactive~~ member is eligible for reinstatement to duty. The fact that ~~he~~ *the member* was retired for disability may not prejudice any right to reinstatement to duty ~~which~~ *that* the ~~inactive~~ member may have or claim to have.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a police officer. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the ~~inactive~~ *retired* member again becomes an active member by returning to ~~active work for~~ *service with* an employer within 30 days following ~~his~~ receipt of notice under 19-9-904, ~~he~~ *the member* ~~shall~~ *must* be considered to have been continuously employed during the term of ~~his~~ *the member's* disability. If the ~~inactive~~ *retired* member fails to become an active member by returning to ~~active work for~~ *service with* an employer within 30 days following receipt of ~~such~~ *the* notice, ~~his~~ *the member's* termination of ~~employment~~ *service* ~~shall be~~ *is* considered to have occurred as of ~~his~~ *the member's* disability retirement date and the retirement ~~allowance~~ *benefit*, if any, to which ~~he~~ *the member* becomes entitled on ~~his~~ *the member's* service retirement *date* ~~shall~~ *must* be determined accordingly."

Section 202. Section 19-9-911, MCA, is amended to read:

"**19-9-911. ~~Death~~ *Preretirement death* benefits.** (1) Upon the death of a ~~police officer~~ *member* before retirement, ~~his~~ *the member's* surviving spouse or dependent child is eligible for benefits as provided in 19-9-804~~(4)~~.

(2) Upon the death of ~~a~~ *an inactive nonvested* member ~~who is no longer employed as a police officer and who did not attain the minimum retirement eligibility at the age of 50~~, ~~his~~ *the member's* surviving spouse or dependent child is eligible for a refund of the member's *accumulated* contributions ~~and accumulated interest on account with the retirement system on the date that the refund is made to the survivors~~."

Section 203. Section 19-9-912, MCA, is amended to read:

"**19-9-912. ~~Payment of death benefits~~ *Payments* in absence of spouse or child.** If a member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the ~~administrator~~ *division*, the ~~administrator shall pay to the~~ designated beneficiary *must be paid* an amount equal to the member's *accumulated* contributions less any retirement benefits paid to the member before ~~his~~ *the member's* death. If the ~~deceased~~ member did not designate a beneficiary or the *designated* beneficiary predeceased the member, this amount must be paid to the member's estate."

Section 204. Section 19-9-1007, MCA, is amended to read:

"19-9-1007. Supplement to certain ~~pensions~~ *benefits*. (1) The ~~payment for~~ *benefits paid in* each fiscal year to ~~the police officers, surviving spouses, or dependent children described in subsections (2)(a) through (2)(c)~~ *a retired member or the member's survivors* may *not* be ~~not~~ less than one-half of the ~~base salary~~ *compensation that will be* paid in the current fiscal year in the appropriate city or town to newly confirmed police officers~~, except that for the fiscal year beginning July 1, 1979, all retirees and their beneficiaries who received a supplement to their retirement allowance on July 1, 1978, and are receiving an allowance on July 1, 1979, shall receive a 3% increase in their retirement allowance in lieu of any other increase~~.

(2) On or before ~~August~~ *October* 1 of each year, the ~~department of administration~~ *division* shall make a report including the following information:

(a) the names of all ~~police officers~~ *retired members* who are receiving ~~payments~~ *benefits* from the ~~plan~~ *retirement system* as of the date of the report ~~and were receiving payments from a prior plan before July 1, 1975~~;

(b) the names of all surviving spouses or dependent children who are receiving ~~payments~~ *benefits* from the ~~plan~~ *retirement system* because of the death of ~~a police officer who was receiving payments from a prior plan before July 1, 1975~~ *an active or retired member of this or a prior plan*;

~~(c) the names of all surviving spouses or dependent children who are receiving payments from the plan and who were receiving payments from a prior plan before July 1, 1975, or in the case of dependent children, whose parent, the spouse of a police officer, was receiving payments from a prior plan before July 1, 1975;~~

~~(d)~~*(c)* for the purpose of determining the base ~~figure~~ *retirement, disability, or survivorship benefits* for the computations set forth in subsection (3), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the ~~payments made~~ *benefits paid* in the base fiscal year to each ~~police officer~~ *retired member* described in subsection (2)(a);

(ii) the amount of the ~~payments made~~ *benefits paid* in the base fiscal year to each surviving spouse or dependent child ~~(or children)~~ described in subsection (2)(b) ~~or (2)(c)~~;

(iii) upon the death after ~~April 18, 1977,~~ *the base fiscal year* of any ~~police officer on the retired list~~ *retired member* who was receiving ~~payments from a prior plan before July 1, 1975~~ *benefits*, ~~his surviving spouse or dependent children are entitled to receive payments from the plan,~~ the amount ~~which~~ *of benefits that* would have been paid to an eligible surviving spouse of ~~such police officer had that~~ *the retired member if the surviving* spouse *had* been receiving ~~payments~~ *benefits* in the base fiscal year;

(d) the original amount of retirement, disability, or survivorship benefits paid to retired members or their eligible survivors as of the original retirement dates after July 1, 1975;

(e) the ~~base salary for~~ *compensation that will be paid during* the current fiscal year ~~of~~ *to* a newly confirmed police officer of each city or town participating in the ~~plan~~ *retirement system.*

(3) The ~~department of administration~~ *division* shall compute the difference between each amount reported under subsections ~~(2)(d)(i)~~ *(2)(c)* through ~~(2)(d)(iii)~~ *(2)(e)* and one-half the ~~base salary for~~ *compensation to be paid during* the current fiscal year ~~of~~ *to* a newly confirmed police officer of the appropriate city or town. The difference ~~shall~~ *must* be reported to ~~and paid by~~ the state auditor *who shall pay the difference to the pension trust fund* out of the premium tax collected on insurance sold in this state to insure against the risks enumerated in 19-11-512(3) ~~to the administrator~~ no later than ~~September~~ *November* 1. If the ~~base salary~~ *compensation* of a newly confirmed police officer has not been set for the current fiscal year in time to be included in the ~~August~~ *October* 1 report to the state auditor, the ~~department~~ *division* shall make any retroactive adjustments necessary to individual supplemental benefits after the ~~base salary~~ *current compensation* has been determined and shall include these amounts in the next year's report for reimbursement at that time.

(4) The premium tax amount paid by the state auditor is statutorily appropriated, as provided in 17-7-502, *for the payment of supplemental retirement benefits to eligible retired members and their survivors.* This payment is in addition to the payment to be made by the state auditor under 19-9-702. ~~The administrator shall use the funds received under this subsection to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.~~

~~(4) In addition to the payments made by the auditor as provided in subsection (3), the auditor shall make annual payments of $100,000 after the end of each fiscal year but no later than September 1, until the sum of $500,000 has been paid to the administrator for deposit in the retirement account. These payments are statutorily appropriated as provided in 17-7-502. These payments are to be made to reimburse the retirement account for funds advanced to implement this section.~~

(5) If more than one dependent child is entitled to supplementary ~~payments~~ *benefits* under this section by virtue of the death of a common parent ~~police officer~~, the minimum ~~payment~~ *benefit paid* to ~~such~~ *the* dependent children under this section ~~shall~~ *must* be determined as if there were one ~~such~~ dependent child and the supplementary ~~payment~~ *benefits* ~~shall~~ *must* be ~~made~~ *paid* to the dependent children collectively."

Section 205. Section 19-13-103, MCA, is amended to read:

"**19-13-103. ~~Retirement~~ *Firefighters' unified retirement* system established.** A firefighters' unified retirement system is established and governed by the provisions of *[sections 1 through 42] and* this chapter."

Section 206. Section 19-13-104, MCA, is amended to read:

"**19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

~~(1) "Administrator" means the public employees' retirement division of the department of administration.~~

~~(2) "Board" means the retirement board described in 2-15-1009.~~

~~(3) "Credited service" means the aggregate of a member's prior service and membership service.~~

(1) "Compensation" means:

(a) for a full-paid firefighter, the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for the firefighter's service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

~~(4)~~*(2)* "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

~~(5)~~*(3)* "Employer" means any city that is of the first or second class or that elects to join this ~~plan~~ *retirement system* under 19-13-108.

~~(6)~~*(4)* "Final average ~~salary~~ *compensation*" means the monthly compensation of a member hired on or after July 1, 1981, averaged over the last 36 months of ~~his~~ *the member's* active service or, if ~~he~~ *the member* has not been a member that long, over the period of ~~his membership~~ *the member's service. Lump-sum payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.*

~~(7)~~*(5)* "Firefighter" means a person employed as a ~~full-~~ *full-paid* or part-paid firefighter by an employer.

~~(8)~~*(6)* "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

~~(9) "Fund" means the pension trust fund in the state treasury system designated for the use of the plan.~~

~~(10) "Member" means a person who is employed by an employer as a full- or part-paid firefighter or who is entitled to a retirement allowance by virtue of his service to an employer as a firefighter.~~

~~(11) "Member contributions" means the total of the deductions from a member's compensation made during a period of active membership under this chapter or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.~~

~~(12) "Membership service" means a period of employment with an employer occurring after July 1, 1981, during which the withholdings required by this chapter have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.~~

(7) "Last monthly compensation" means the compensation paid to a member during the member's last full month of service. Lump-sum payments for annual leave paid to the member upon termination of service may not be included in the calculation of last monthly compensation.

~~(13)~~*(8)* "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of ~~credited~~ *membership* service.

~~(14) "Monthly compensation" means:~~

~~(a) for a full-paid firefighter, the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for his service as a firefighter;~~

~~(b) for a part-paid firefighter employed by a city of the second class:~~

~~(i) 15% of the regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or~~

~~(ii) if that city does not employ a full-paid firefighter, 15% of the average regular monthly compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.~~

~~(15)~~*(9)* Any reference to ~~"municipality",~~ "city"~~,~~ or "town" includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

~~(16)~~*(10)* "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for ~~his~~ service as a firefighter.

~~(17) "Plan" means the municipal firefighters' retirement system created by this chapter.~~

~~(18)~~*(11)* "Prior plan" means the fire department relief association plan of a city that elects to join the ~~plan~~ *retirement system* under 19-13-108 or the fire department relief association plan of a city of the first or second class.

~~(19) "Prior service" means a period of employment as a firefighter for which credit was granted to a member under a prior plan and has been transferred to this plan.~~

~~(20) "Retirement allowance" means the monthly benefit payable after service or disability retirement.~~

~~(21)~~*(12)* "Retirement date" means the date on which the first payment of ~~the retirement or disability~~ benefits ~~of a member or a beneficiary~~ is payable.

~~(22)~~*(13)* "Surviving spouse" means the spouse married to a member at the time of the member's death.

~~(23) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a firefighter.~~"

Section 207. Section 19-13-201, MCA, is amended to read:

"**19-13-201. Firemen's association to advise board.** The Montana state firemen's association shall serve as an advisor to the board and may meet quarterly with the board to discuss matters relating to the administration of this chapter. The association may review all medical and legal information available to the board relating to service, disability, and survivorship benefits ~~for members of the plan~~ *of an individual member upon a written release of the member or the member's survivor.*"

Section 208. Section 19-13-105, MCA, is amended to read:

"**19-13-105. Participation in ~~plan~~ *retirement system* by first- and second-class cities.** Cities of the first and second class that employ full-paid firefighters ~~must~~ *shall* participate in the ~~plan~~ *retirement system*. If a city of the first or second class is reduced to a city of the third class or a town under 7-1-4118, it ~~must~~ *shall* continue to participate in the ~~plan~~ *retirement system* as long as it has retired firefighters or ~~beneficiaries~~ *survivors* eligible to receive retirement benefits."

Section 209. Section 19-13-108, MCA, is amended to read:

"**19-13-108. Election to join ~~plan~~ *retirement system* — transfer of assets.** (1) Except for cities with only volunteer firefighters, a city other than one described in 19-13-105 may, after July 1, 1981, elect to join the ~~plan~~ *retirement system* by passing an ordinance stating the election and the consent of the city to be bound by the provisions of this ~~chapter~~ *retirement system*. The fire department relief association of the city may pass a resolution to the same effect. Upon the enactment of the ordinance and passage of the resolution, the provisions of this ~~chapter~~ *retirement system* become applicable to the city. Any city that enacts ~~such~~ an *election* ordinance and in which the fire department relief association passes ~~such~~ a resolution shall send certified copies ~~thereof~~ to the board and shall, as soon as possible ~~thereafter~~, deposit ~~with the board~~ *into the pension trust fund* all cash and securities held by its fire department relief association. The value of the securities ~~shall~~ *must* be determined by the board.

(2) The board of trustees of the fire department relief association as of the effective date of the election shall certify the proportion, if any, of the funds of the association that represents the accumulated contributions of the active members and the relative shares of the members as of that date. Following the transfer of the cash and securities required by subsection (1) and the certification required by this subsection, the fire department relief association may conclude its affairs. The shares of the members ~~shall~~ *must* be charged to the employer and credited to the respective ~~individual accounts of the~~ members in the ~~plan~~ *retirement system* and administered as if the contributions had been made during membership in the ~~plan~~ *retirement system*. Any excess of employer credits over charges under this section ~~will~~ *must* be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section are payable by the employer, with interest, on a basis determined by the procedure described in 19-13-503."

Section 210. Section 19-13-110, MCA, is amended to read:

"**19-13-110. Termination of participation in ~~plan~~ *retirement system* or reduction of employer contributions.** (1) If a city voluntarily terminates its contributions in the ~~plan~~ *retirement system* or significantly reduces the number of full-paid firefighters it employs to a degree that, in the board's opinion, inadequately funds the accrued or accruing benefits of ~~plan~~ *retirement system* members, the board shall request as part of the *required* actuarial valuation ~~required in 19-13-504~~ an actuarial investigation of the funding status of the city.

(2) Based on the actuarial investigation, the board may request and the city shall pay annually ~~an~~ *the* amount ~~needed~~ *determined to be necessary* to provide adequate funding for the *liabilities of the* city. This amount must be in addition to any other contributions required by the retirement act.

(3) Six years after the actuarial investigation is conducted, a city making payments as provided in subsection (2) may request the board to review the city's funding status relative to the annual payments. As a result of the review, the board may adjust the payments."

Section 211. Section 19-13-503, MCA, is amended to read:

"**19-13-503. ~~Unfunded~~ *Excess unfunded* liabilities *of prior plans*.** (1) The legislature finds and declares that many cities operating under prior plans have excess and unfunded liabilities, and the liabilities cannot be amortized by the percentage contributions set forth in this chapter.

(2) The ~~administrator~~ *board* shall, within 6 months after a city is granted membership in the ~~plan~~ *retirement system*, determine the excess and unfunded

liability of the city's previous plan. If the ~~administrator~~ *board* determines that the city has an excess and unfunded liability under a previous plan that is not funded by sums on deposit or funds available for deposit ~~with the administrator~~ *in the pension trust fund,* the city shall pay an additional sum over a period of time to amortize the city's excess liability.

~~(3) For each city with an unfunded liability, any portion of the member, the employer, and state contributions that exceeds the amount necessary to maintain the current level of unfunded liability must be applied to the reduction of the unfunded liability.~~"

Section 212. Section 19-13-301, MCA, is amended to read:

"**19-13-301. Active membership — *inactive vested member — inactive nonvested member.*** (1) A full-paid firefighter becomes an active member ~~under~~ *of* the ~~plan~~ *retirement system*:

(a) on the first day of ~~his employment by~~ *the firefighter's service with* an employer;

(b) on July 1, 1981, if ~~he~~ *the firefighter* is employed by an employer on that date; or

(c) in the case of an employer that elects to join the ~~plan~~ *retirement system* as provided in 19-13-108, on the effective date of ~~such~~ *the* election if ~~he~~ *the firefighter* is employed by the employer on that date.

(2) Upon becoming eligible for membership, ~~he~~ *the firefighter* shall complete the forms and furnish any proof required by the board.

(3) A part-paid firefighter may elect to become a member of the ~~plan~~ *retirement system* by filing a membership application with the board.

(4) An active member becomes an inactive member upon the occurrence of the earliest of the following:

(a) the date the member ceases service with an employer;

(b) the 31st day of an approved absence from active duty with an employer; or

(c) the date the member ceases to be employed because of a reduction of the number of firefighters in the fire department as provided in 7-33-4125.

(5) A member with at least 10 years of membership service who terminates service and does not take a refund of accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(6) A member with less than 10 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 213. Section 19-13-302, MCA, is amended to read:

"**19-13-302. Ineligibility for other retirement plans.** ~~No~~ *An* active member is *not* eligible to be covered under any other mandatory retirement plan to which an employer is required to contribute on ~~his~~ *the member's* behalf while ~~he~~ *the member* is eligible to be covered by this ~~plan~~ *retirement system*."

Section 214. Section 19-13-107, MCA, is amended to read:

"**19-13-107. Effect on members of prior plans.** A firefighter hired before July 1, 1981, who was a member of a prior plan and who becomes a member of this ~~plan~~ *retirement system* retains all rights and benefits accrued under a prior plan."

Section 215. Section 19-13-506, MCA, is amended to read:

"**19-13-506. Separate account for supplementary ~~allowances~~ *benefits* for persons hired on or after July 1, 1981.** There is ~~created in the state treasury~~ an account within the pension trust fund ~~provided for in 19-13-501~~ to which must be credited all amounts transferred under 19-11-606(1). The money in the account must be used to pay the supplementary ~~allowances~~ *benefits* provided for in 19-13-1009."

Section 216. Section 19-13-601, MCA, is amended to read:

"**19-13-601. Deduction remitted to firemen's association — member's contributions.** (1) Each employer shall retain from the ~~monthly~~ compensation of each active member a sum equal to 1% of ~~his monthly~~ *the member's* compensation for ~~his~~ services as a firefighter and shall remit this amount on a monthly basis to the Montana state firemen's association for the payment of premiums on a group life and accidental death and dismemberment insurance policy for members and to defray expenses incurred by the association when representing members of the ~~plan~~ *retirement system*.

(2) The member's contribution to the retirement system ~~for each active member~~ is 6% of ~~his monthly~~ *the member's* compensation.

(3) If a member receives compensation under the provisions of the Workers' Compensation Act, Title 39, chapter 71, the amount received must be included as part of ~~his monthly~~ *the member's* compensation for purposes of determining contributions and service credits under the retirement system. Contributions made under ~~this section,~~ 19-13-604, ~~and~~ 19-13-605, *and this section* must be based on the total compensation received by the member from ~~his~~ *the* employer and from workers' compensation during the period of disability.

(4) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code, as amended and applicable on July 1, 1987, shall pick up and pay the contributions ~~which~~ *that* would be payable by the member under subsection (2) for service rendered after June 30, 1987.

(5) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(6) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's ~~monthly~~ compensation as defined in 19-13-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 217. Section 19-13-604, MCA, is amended to read:

"**19-13-604. State contribution.** The state shall make its contributions through the state auditor from the premium taxes on the insurance risks enumerated in 19-11-512. These payments ~~shall~~ *must* be made annually to the ~~administrator~~ *pension trust fund* after the end of each fiscal year but no later than ~~September~~ *November* 1 from the gross premium taxes after deduction for cancellations and returned premiums. ~~The payment is statutorily appropriated as provided in 17-7-502.~~ The ~~administrator~~ *division* shall notify the auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year~~, and effective July 1, 1981, the~~. *The* state's contribution is ~~12% of this compensation. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, to 22.98% effective July 1, 1985, and to~~ 23.27% *of this total compensation* effective July 1, 1991. As soon as practicable after receipt of the state contribution, the ~~administrator~~ *division* shall deposit it ~~with the state treasurer~~ *in the pension trust fund.*"

Section 218. Section 19-13-605, MCA, is amended to read:

"**19-13-605. Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available to the city for this purpose. ~~Effective July 1, 1981, the~~ *The* employer's contribution is ~~12% of the total monthly compensation paid to all active members during the preceding month. This contribution shall increase to 15% effective July 1, 1982, to 18% effective July 1, 1983, and shall decrease to~~ 13.02% ~~effective July 1, 1985~~ *of the total compensation paid to members.* All contributions are payable monthly to the ~~administrator who~~ *division, which* shall, as soon as practicable after their receipt, deposit them ~~with the state treasurer~~ *in the pension trust fund.*"

Section 219. Section 19-13-607, MCA, is amended to read:

"**19-13-607. Other money credited as employer contributions.** All gifts, bequests, and emoluments given to an employer or member for the benefit of the ~~plan~~ *retirement system* or because of any member's service as a firefighter, except when specifically allowed to be retained by the member by ~~his~~ *the member's* employer, ~~shall~~ *must* be paid to the ~~administrator~~ *division.* The ~~administrator~~ *division* shall ~~credit~~ *deposit* them ~~to~~ *in* the *pension trust* fund ~~and, as soon as practicable after their receipt, deposit them with the state treasurer~~. ~~Such~~ *The* amounts are employer contributions but are in addition to the amounts required by 19-13-605."

Section 220. Section 19-13-403, MCA, is amended to read:

"**19-13-403. Election to qualify previous military service.** (1) A member with 15 years or more ~~of~~ service *credit* may, at any time prior to ~~his~~ retirement, make a written election with the board to qualify all or any portion of ~~his~~ *the member's* active *duty* service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if ~~he~~ *the member* is not otherwise eligible to receive credit *for this service under 19-13-402*. To qualify this service ~~he~~ *the member* ~~must~~ *shall* contribute to the ~~account~~ *pension trust fund* the actuarial cost of granting the service to be determined by the board based on ~~his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes~~ *the most recent actuarial valuation of the system*. ~~He~~ *A member* may not qualify more of ~~his~~ *the member's* military service than ~~he~~ *the member* has service *credit* in excess of 15 years. Military service purchased under this section may not be used in determining *the member's* eligibility for a service retirement ~~requiring a minimum of 10 years of service~~.

(2) If a member has retired from active duty in the armed forces of the United States with ~~normal service~~ *military* retirement benefits, ~~he~~ *the member* may not qualify ~~his~~ military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify ~~his~~ *the member's* active *duty* military service under subsection (1) if ~~his~~ *the* active duty in the armed forces of the United States is not more than 25% of the total of all ~~his~~ *the member's* years of military service, including reserve and active duty time."

Section 221. Section 19-13-404, MCA, is amended to read:

"**19-13-404. Qualification of ~~service from~~ other Montana public ~~retirement systems~~ *service*.** (1) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify all or any portion of ~~his creditable~~ *the member's* service *credit* in the public employees', highway patrol officers', sheriffs', municipal police officers', or game wardens' retirement system for which ~~he~~ *the member* has received a refund of ~~his membership~~ *the member's accumulated* contributions. To qualify this service, ~~he~~ *the member* ~~must~~ *shall* contribute to the ~~retirement~~ *pension trust* fund the actuarial cost of granting the service in the firefighters' unified retirement system, as determined by the board, based on ~~his compensation earned as a member of the former system and the normal contribution rate according to~~ the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the ~~administrator~~ *division* shall transfer from the member's former retirement system to the firefighters' unified retirement system an amount equal to the employer contributions made during the member's service, but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system, according to the most recent actuarial valuation, based on the ~~salaries~~ *compensation* earned by the employee as a member of the former system.

(2) (a) A member may, at any time before ~~his~~ retirement, make a written election with the board to qualify any full-time public service employment

performed for the state or a political subdivision of the state. The member shall provide ~~salary~~ *compensation* and employment documentation certified by ~~his~~ *the member's* public employer. The board ~~may~~ *shall* grant service credit subject to ~~the provisions of 19-13-202~~ *rules adopted by the board* upon contribution by the employee of the actuarial cost of granting this service in the firefighters' unified retirement system, as determined by the board, based on ~~the employee's compensation earned during this period of service and the normal contribution rate according to~~ the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 222. Section 19-13-701, MCA, is amended to read:

"**19-13-701. Eligibility for service retirement — commencement of ~~allowance~~ *benefit*.** (1) A member who has reached age 50 and has completed 10 years or more ~~in the aggregate as a firefighter in any capacity or rank~~ *of membership service* is eligible for service retirement commencing on the first day of the month following the member's last day of ~~membership~~ service.

(2) A *vested* member who terminates ~~active~~ service before ~~age 50~~ *the minimum retirement date* and keeps ~~his~~ *the member's accumulated* contributions on deposit ~~under 19-13-304~~ is eligible for service retirement commencing on the ~~first day of the month coinciding with or immediately following, if none coincides, the date on which he reaches age 50~~ *member's minimum retirement date.*

(3) A ~~terminated~~ *vested inactive* member ~~eligible under subsection (1) or (2)~~ may file a written application with the board requesting that ~~his~~ *the member's* retirement ~~allowance~~ *benefit* commence on the first day of the month following receipt of the application. However, the retirement ~~allowance~~ *benefit* for an ~~eligible terminated~~ *inactive vested* member must commence no later than the first day of the month following the member's 55th birthday."

Section 223. Section 19-13-704, MCA, is amended to read:

"**19-13-704. Amount of *service* retirement ~~allowance~~ *benefit*.** (1) (a) A member hired before July 1, 1981, who ~~is eligible under 19-13-701 and who~~ elects to retire after ~~completing~~ *having reached both* 20 years of *membership* service and ~~reaching~~ age 50 ~~as an active firefighter shall~~ *must* receive a service retirement ~~allowance~~ *benefit* equal to ~~one-half the monthly compensation last received by the member for his service as an active firefighter. A member who completes more than 20 years of service shall receive an additional 1% of his final monthly compensation for each year in excess of 20, up to a maximum of 60% of the monthly compensation last received by the member~~ *the sum of:*

(i) 50% of the member's last monthly compensation for years of service credit up to and including 20 years; and

(ii) 1% of the member's last monthly compensation for each year of service credit after 20 years.

(b) A member hired before July 1, 1981, who ~~is eligible under 19-13-701 and who~~ elects to retire after ~~completing~~ *having reached at least* 10 years ~~or more~~ of *membership* service but ~~has not both completed 20 years of service and reached~~ *prior to reaching* age 50 as an active ~~firefighter~~ *member* ~~shall~~ *must* receive a service retirement ~~allowance~~ *benefit* equal to 2% of the *member's last* monthly compensation ~~last received by the member~~ for each year of service *credit* ~~up to a maximum of 60% of his final monthly salary~~.

~~(i)~~ ~~If~~ *Upon* the *retired* ~~member dies after he is permanently separated from service and before he both reaches age 50 and completes 20 years of service as an active firefighter~~ *member's death*, the ~~allowance prescribed in subsection (1)(b)~~ *benefit* must be made to the surviving spouse ~~beginning on the date the firefighter would have both reached his 50th birthday and completed 20 years of service as an active firefighter and terminating upon the surviving spouse's death~~. If there is no surviving spouse or if the surviving spouse dies and if the ~~firefighter~~ *member* leaves one or more dependent children, the children are entitled to receive the allowance as long as they remain dependent *children* as defined in 19-13-104.

~~(ii) If the firefighter dies after he both reaches age 50 and completes 20 years of service as an active firefighter, the payments must be made to the surviving spouse or children as provided in subsection (1)(b)(i).~~

(2) A member hired on or after July 1, 1981, who ~~is eligible under 19-13-701~~ *retires with at least 10 years of membership service* ~~shall~~ *must* receive a service retirement ~~allowance~~ *benefit* equal to 2% of ~~his~~ *the member's* final average ~~salary~~ *compensation* for each year of service *credit* ~~up to a maximum of 30 years of service~~.

(3) The maximum monthly benefit payable to any retiree under subsection (1) may not exceed 60% of the member's last monthly compensation. The maximum monthly benefit payable to any retiree under subsection (2) may not exceed 60% of the member's final average compensation."

Section 224. Section 19-13-802, MCA, is amended to read:

"**19-13-802. Eligibility for disability retirement.** If a member is determined by the board to be ~~totally and permanently~~ disabled, ~~he~~ *the member* is entitled to receive a disability retirement ~~allowance~~ *benefit*, regardless of the length of ~~his~~ *the member's* service, beginning the first day after the date on which ~~he~~ *the member* became ~~totally and permanently~~ disabled *and terminated service because of the disability*."

Section 225. Section 19-13-803, MCA, is amended to read:

"**19-13-803. Amount of disability retirement ~~allowance~~ *benefit*.** (1) A member hired before July 1, 1981, who ~~is eligible under 19-13-802~~ *becomes disabled*:

(a) before completing 20 years of *membership* service ~~shall~~ *must* receive a disability retirement ~~allowance~~ *benefit* equal to one-half the *member's last* monthly compensation ~~last received by the member for his services as an active firefighter~~;

(b) after completing 20 years or more of *membership* service ~~shall~~ *must* receive the disability retirement ~~allowance~~ *benefit* provided in subsection (1)(a) increased at a rate of 1% *of the member's last monthly compensation* for each year *of service credit* in excess of 20, up to a maximum ~~of~~ *benefit equal to* 60% of the *member's last* monthly compensation ~~last received by the member~~.

(2) A member hired on or after July 1, 1981, who ~~is eligible under 19-13-802~~ *becomes disabled*:

(a) before completing 25 years of *membership* service ~~shall~~ *must* receive a disability retirement ~~allowance~~ *benefit* equal to one-half the *member's last* monthly compensation ~~last received by the member for his services as an active firefighter~~;

(b) after completing 25 years or more of *membership* service ~~shall~~ *must* receive the disability retirement ~~allowance~~ *benefit* provided in subsection (2)(a) increased at a rate of 2% *of the member's last monthly compensation* for each year *of service credit* in excess of 25, up to a maximum ~~of 5 years of additional service~~ *benefit equal to 60% of the member's last monthly compensation.*

(3) A member's disability retirement benefit must be paid first to the member during the member's lifetime and, upon the member's death, to the member's surviving spouse. If upon a member's death the member leaves no surviving spouse or upon the death of the surviving spouse, the member's benefit must be paid to the member's dependent children as long as they remain dependent children as defined in 19-13-104."

Section 226. Section 19-13-804, MCA, is amended to read:

"19-13-804. Medical examination of disability retiree — cancellation of ~~allowance~~ *benefit*. (1) The board in its discretion may require the recipient of a disability retirement ~~allowance~~ *benefit* to undergo a medical examination at the board's expense. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on. Based on the results of the examination, the board shall determine whether the recipient has the physical or mental capacity to perform the duties required by ~~his~~ *the recipient's* position. If the board determines that the recipient is not incapacitated or if the recipient refuses to submit to a medical examination, ~~his~~ *the recipient's* disability retirement ~~allowance~~ *benefit* ~~shall~~ *must* be canceled. The board shall notify the recipient of this determination and the cancellation of ~~his allowance~~ *the recipient's benefit.*

(2) The cancellation of a disability ~~allowance~~ *retirement benefit* because a member is no longer incapacitated does not prejudice any right of the member to a service retirement benefit."

Section 227. Section 19-13-805, MCA, is amended to read:

"19-13-805. Reinstatement upon termination of ~~allowance~~ *benefit*. (1) (a) An inactive member whose disability retirement ~~allowance~~ *benefit* is canceled as provided in 19-13-804 ~~shall~~ *must* be reinstated to the position held by ~~him~~ *the member* immediately before ~~his~~ *the member's* retirement or to a position in the same classification with duties within ~~his~~ *the member's* capacity if an appropriate vacancy exists within ~~his~~ *the member's* fire department. The board shall advise the employer that the disability retirement ~~allowance~~ *benefit* has been canceled and that the inactive member is eligible for reinstatement to duty. The fact that ~~he~~ *the member* was retired for disability may not prejudice any right to reinstatement to duty ~~which~~ *that* the inactive member may have or claim to have.

(b) If ~~no~~ *an* appropriate vacancy ~~exists~~ *does not exist* within an inactive member's fire department when ~~his~~ *the member's* disability ~~allowance~~ *benefit* is canceled under 19-13-804, ~~his allowance~~ *the member's benefit* must be reinstated until a vacancy occurs.

(2) The city may request a medical or psychological review as to the ability of the member to return to work as a firefighter. If the board's findings are upheld, the city shall pay the costs of the review.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following ~~his~~ receipt of notice under 19-13-804, ~~he~~ *the member* ~~shall be~~ *is* considered to have been continuously employed during the term of ~~his~~ *the member's* disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of this notice, ~~his~~ *the member's* termination of employment ~~shall be~~ *is* considered to have occurred as of ~~his~~ *the member's* disability retirement date and the retirement ~~allowance~~ *benefit*, if any, to which ~~he~~ *the member* becomes entitled on ~~his~~ *the member's* service retirement ~~shall~~ *must* be determined accordingly."

Section 228. Section 19-13-902, MCA, is amended to read:

"**19-13-902. Survivorship ~~allowance~~ *benefit*.** (1) (a) Upon the death before retirement of an active member hired before July 1, 1981, ~~his~~ *the member's* surviving spouse, if there is one, ~~shall~~ *must* receive a survivorship ~~allowance~~ *benefit* equal to one-half the *last* monthly compensation ~~last~~ received by the member ~~for his service as an active firefighter~~. If the member leaves one or more dependent children, then, upon ~~his~~ *the member's* death if ~~he~~ *the member* leaves no surviving spouse or upon the death of the surviving spouse, ~~his~~ *the member's* dependent children ~~shall~~ *must* collectively receive the same ~~allowance~~ *benefit* that a surviving spouse would have received, as long as the children remain dependent *children* as defined in 19-13-104.

(b) If the deceased member completed over 20 years of *membership* service, the survivorship ~~allowance~~ *benefit* provided in subsection (1)(a) must be increased at a rate of 1% *of the last monthly compensation* for each year in excess of 20, up to a maximum of 60% of the *last* monthly compensation ~~last~~ received by the member.

(2) Upon the death before retirement of a member hired on or after July 1, 1981, ~~his~~ *the member's* surviving spouse, if there is one, ~~shall~~ *must* receive a survivorship ~~allowance~~ *benefit* equal to one-half of the member's final average ~~salary~~ *compensation*. If the ~~firefighter~~ *member* leaves one or more dependent children, then, upon ~~his~~ *the member's* death if ~~he~~ *the member* leaves no surviving spouse or upon the death of the surviving spouse, ~~his~~ *the member's* dependent children ~~shall~~ *must* collectively receive the same ~~allowance~~ *benefit* that a surviving spouse would have received, as long as the children remain dependent *children* as defined in 19-13-104."

Section 229. Section 19-13-903, MCA, is amended to read:

"**19-13-903. ~~Payment of death benefits~~ *Payments* in absence of spouse or *dependent* child.** If a member dies without leaving a surviving spouse or *dependent* child and if the member had designated a beneficiary in writing to the ~~administrator~~ *division*, the ~~administrator~~ *division* shall pay to the designated beneficiary an amount equal to the member's contributions less any retirement benefits paid to the member before ~~his~~ *the member's* death. If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, this amount must be paid to the member's estate."

Section 230. Section 19-13-1006, MCA, is amended to read:

"**19-13-1006. Supplement to retirement ~~allowances~~ *benefits* for persons retiring before July 1, 1973.** (1) The ~~plan~~ *retirement system* shall pay to each ~~firefighter~~ *member* retired before July 1, 1973, or ~~his~~ *the member's* surviving spouse or *dependent* children a monthly retirement ~~allowance~~ *benefit* of not less than one-half the regular monthly ~~salary~~ *compensation* paid to a confirmed active firefighter of the city that last employed ~~him~~ *the member* as a firefighter, as provided each year in the budget of that city. If the city that last employed ~~him~~ *the member* as a firefighter no longer employs a full-paid firefighter, the ~~firefighter's~~ *member's* or ~~his beneficiary's allowance~~ *survivor's benefit* may not be less than one-half the average regular monthly ~~salary~~ *compensation* paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the ~~plan~~ *retirement system* and employ a full-paid firefighter. In the case of volunteer firefighters, the retirement ~~allowance~~ *benefit* may not exceed $75 per month. Distribution of the money provided for this purpose under 19-11-606(1) ~~shall~~ *must* be made according to subsection (2).

(2) (a) At the beginning of each fiscal year the ~~administrator~~ *division* shall request and, except as provided in subsection (2)(b), the state auditor shall issue from the state special revenue fund and deliver to the ~~administrator~~ *division* an amount certified to be equal to the total annual dollar difference between the total retirement ~~allowances~~ *benefits* paid to all retirees or their surviving spouses or *dependent* children in the previous fiscal year and the total benefits payable on June 30, 1973. The ~~administrator~~ *division* shall deposit this money into the *pension trust* fund.

(b) If insufficient money is contained in the state special revenue fund to pay the amount requested in subsection (2)(a), the auditor shall pay to the ~~administrator~~ *division* the balance contained in the state special revenue fund. The ~~administrator~~ *division* shall continue to request any portion of the amount requested under subsection (2)(a) not paid in previous fiscal years plus sufficient interest to reimburse the *pension trust* fund ~~as defined in 19-13-104, and the~~, *which amounts must be paid to the division prior to determining whether sufficient cash remains in the special revenue fund to make any payments into the account established in 19-13-506. The* auditor shall pay the requests as money in the state special revenue fund becomes available."

Section 231. Section 19-13-1007, MCA, is amended to read:

"**19-13-1007. ~~Allowance~~ *Benefit* adjustment.** (1) For a member retiring on or after July 1, 1973, who was hired before July 1, 1981, or ~~his~~ *the* *member's* surviving spouse or dependent children, the service retirement ~~allowance~~ *benefit* provided in 19-13-704(1)(a), the disability retirement ~~allowance~~ *benefit* provided in 19-13-803(1), and the survivorship ~~allowance~~ *benefit* provided in 19-13-902(1) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed ~~him~~ *the member* as a firefighter, as provided each year in the budget of that city.

(2) For a member hired on or after July 1, 1981, or ~~his~~ *the member's* surviving spouse or dependent children, the disability retirement ~~allowance~~ *benefit* provided in 19-13-803(2) and the survivorship ~~allowance~~ *benefit* provided in 19-13-902(2) may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed ~~him~~ *the member* as a firefighter, as provided each year in the budget of that city.

(3) If after a member retires, the city that last employed ~~him~~ *the member* no longer employs a full-paid firefighter, the member's or ~~his beneficiary's allowance~~ *survivor's benefit* under subsections (1) and (2) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the ~~plan~~ *retirement system* and employ a full-paid firefighter.

(4) If the employment of a vested member hired before July 1, 1981, is involuntarily discontinued before ~~he~~ *the member* reaches age 50 because of the termination of employment of all full-paid firefighters in the city that employed ~~him~~ *the member*, ~~his~~ *the member's* service retirement ~~allowance~~ *benefit* provided in 19-13-704(1)(b) and ~~his~~ *the member's* spouse's or dependent child's survivorship ~~allowance~~ *benefit* provided in 19-13-902(1) may not be less than:

(a) if the member has ~~completed~~ *earned* 20 years or more of *membership* service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the ~~plan~~ *retirement system* and employ a full-paid firefighter; or

(b) if the member has ~~completed~~ *earned* more than 10 but less than 20 years of *membership* service, 2% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the ~~plan~~ *retirement system* and employ a full-paid firefighter, for each year of the member's service.

~~(5) In lieu of the benefit adjustment provided in subsection (4), a member may elect to receive an early retirement allowance, beginning upon termination of employment, that is the actuarial equivalent of the accrued portion of the service retirement allowance that would have been payable to him beginning at age 50.~~"

Section 232. Section 19-13-1009, MCA, is amended to read:

"**19-13-1009. Supplement to retirement ~~allowances~~ *benefits* for persons hired on or after July 1, 1981.** (1) The ~~administrator~~ *division* shall pay a supplemental ~~allowance~~ *benefit* from the account provided for in 19-13-506 to each member hired on or after July 1, 1981, who has both ~~completed~~ *earned* 25 years of *membership* service and reached age 50 as an active firefighter or to ~~his~~ *the member's* surviving spouse or dependent children. Except as provided in subsection (2), the supplemental ~~allowance~~ *benefit*, when added to the service retirement ~~allowance~~ *benefit*, must equal one-half the regular monthly compensation paid to a newly confirmed full-paid active firefighter of the city that last employed ~~him~~ *the member* as a firefighter as provided each year in the budget of that city. If after a member retires, the city that last employed ~~him~~ *the member* no longer employs a full-paid firefighter, the member's supplemental ~~allowance~~ *benefit* must be calculated on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each year in the budgets of those cities that participate in the ~~plan~~ *retirement system* and employ a full-paid firefighter.

(2) If the amount available to the account is insufficient to fully fund the supplemental ~~allowance~~ *benefit* provided for in subsection (1), the supplemental ~~allowance~~ *benefit* for each eligible member *or survivor* must be reduced by an equal percentage so that the amount contained in the account is not exceeded."

Section 233. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; *[section 12];* ~~19-5-404;~~ 19-6-709; ~~19-8-504; 19-9-702;~~ 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; ~~19-13-604;~~ 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7,*

Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.) "

Section 234. Section 31-2-106, MCA, is amended to read:

"**31-2-106. Exempt property — bankruptcy proceeding.** ~~No~~ *An* individual may *not* exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, ~~19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006,~~ 19-10-504, 19-11-612, ~~19-13-1004,~~ 19-21-212, Title 25, chapter 13, part 6, 33-7-522, 33-15-512 through 33-15-514, 35-10-502, 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title 70, chapter 32, and 80-2-245;

(2) the individual's right to receive unemployment compensation and unemployment benefits; and

(3) the individual's right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, excluding that portion of contributions made by the individual within 1 year before the filing of the petition in bankruptcy which exceeds 15% of the individual's gross income for that 1-year period, unless:

(a) the plan or contract was established by or under the auspices of an insider that employed the individual at the time the individual's rights under the plan or contract arose;

(b) the benefit is paid on account of age or length of service; and

(c) the plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409)."

Section 235. Section 44-1-518, MCA, is amended to read:

"**44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit.** (1) When an officer receives compensation under 44-1-511, the officer's contribution for retirement under 19-6-402 must be paid on the compensation received under 44-1-511 and the state's contribution for retirement under 19-6-404 must be paid on the compensation received under 44-1-511.

(2) The time for which contributions are paid under 44-1-511 shall be credited to the length of service computed for retirement purposes under ~~19-6-302~~ *[section 21].*

(3) When a disabled officer who qualifies for benefits under 44-1-511 accepts a transfer under 44-1-515 to a nonhighway patrol position within the department of justice that is covered under the Public Employees' Retirement System Act, all of the officer's length of service credited with the Montana patrol officers' retirement system ~~shall~~ *must* be transferred to the public employees' retirement system in the officer's credit and the officer's accumulated contributions and the

state's adjusted contributions, with accrued interest, credited to the officer in the Montana highway patrol officers' retirement account ~~shall~~ *must* be transferred to the public employees' retirement account in the officer's credit. The state's "adjusted contributions" means an amount equal to the amount that would have been contributed by the state had the transferred service been employment covered under the public employees' retirement system."

Section 236. **Repealer.** Sections 19-3-102, 19-3-307, 19-3-506, 19-3-804, 19-3-1001, 19-3-1003, 19-3-1004, 19-3-1107, 19-3-1108, 19-5-201, 19-5-202, 19-5-302, 19-5-303, 19-5-304, 19-5-405, 19-5-406, 19-5-407, 19-5-408, 19-5-602, 19-5-702, 19-5-703, 19-5-704, 19-5-705, 19-5-706, 19-6-103, 19-6-104, 19-6-201, 19-6-202, 19-6-203, 19-6-302, 19-6-303, 19-6-405, 19-6-406, 19-6-407, 19-6-408, 19-6-409, 19-6-506, 19-6-602, 19-6-611, 19-6-702, 19-6-703, 19-6-704, 19-6-705, 19-6-706, 19-6-708, 19-7-104, 19-7-201, 19-7-202, 19-7-303, 19-7-304, 19-7-306, 19-7-307, 19-7-401, 19-7-405, 19-7-406, 19-7-407, 19-7-408, 19-7-409, 19-7-602, 19-7-611, 19-7-702, 19-7-703, 19-7-704, 19-7-705, 19-7-706, 19-7-707, 19-8-103, 19-8-104, 19-8-201, 19-8-202, 19-8-203, 19-8-303, 19-8-305, 19-8-401, 19-8-402, 19-8-403, 19-8-404, 19-8-405, 19-8-406, 19-8-503, 19-8-505, 19-8-702, 19-8-711, 19-8-802, 19-8-803, 19-8-804, 19-8-805, 19-8-806, 19-8-807, 19-9-108, 19-9-201, 19-9-202, 19-9-203, 19-9-303, 19-9-304, 19-9-305, 19-9-402, 19-9-501, 19-9-502, 19-9-504, 19-9-505, 19-9-602, 19-9-603, 19-9-604, 19-9-701, 19-9-707, 19-9-802, 19-9-901, 19-9-1001, 19-9-1002, 19-9-1003, 19-9-1005, 19-9-1006, 19-9-1008, 19-9-1011, 19-9-1012, 19-13-106, 19-13-109, 19-13-202, 19-13-203, 19-13-204, 19-13-303, 19-13-304, 19-13-305, 19-13-401, 19-13-402, 19-13-501, 19-13-502, 19-13-504, 19-13-505, 19-13-602, 19-13-603, 19-13-608, 19-13-609, 19-13-801, 19-13-901, 19-13-1001, 19-13-1002, 19-13-1003, 19-13-1004, 19-13-1005, and 19-13-1008, MCA, are repealed.

Section 237. **Coordination instruction.** The code commissioner is instructed to change any references in legislation enacted by the 1993 legislature to reflect the recodification of Title 19.

Section 238. **Codification and recodification instruction.** (1) [Sections 1, 2, 6, 11, 12, 21, 22, 39, 40, and 41] are intended to be codified as an integral part of Title 19 in the chapter referred to in subsection (8), and the provisions of Title 19 and the chapter referred to in subsection (8) apply to [sections 1, 2, 6, 11, 12, 21, 22, 39, 40, and 41].

(2) [Sections 44, 48, 50, 65, and 83] are intended to be codified as an integral part of Title 19, chapter 3, and the provisions of Title 19, chapter 3, apply to [sections 44, 48, 50, 65, and 83].

(3) [Section 93] is intended to be codified as an integral part of Title 19, chapter 5, and the provisions of Title 19, chapter 5, apply to [section 93].

(4) [Sections 110 and 129] are intended to be codified as an integral part of Title 19, chapter 6, and the provisions of Title 19, chapter 6, apply to [sections 110 and 129].

(5) [Sections 132 and 152] are intended to be codified as an integral part of Title 19, chapter 7, and the provisions of Title 19, chapter 7, apply to [sections 132 and 152].

(6) [Sections 156 and 174] are intended to be codified as an integral part of Title 19, chapter 8, and the provisions of Title 19, chapter 8, apply to [sections 156 and 174].

(7) [Section 195] is intended to be codified as an integral part of Title 19, chapter 9, and the provisions of Title 19, chapter 9, apply to [section 195].

(8) The following sections are intended to be renumbered and codified as a new chapter in Title 19: 19-3-104, 19-3-105, 19-3-106, 19-3-107, 19-3-301, 19-3-302, 19-3-304, 19-3-305, 19-3-306, 19-3-406, 19-3-502, 19-3-508, 19-3-601, 19-3-602, 19-3-603, 19-3-604, 19-3-605, 19-3-606, 19-3-702, 19-3-703, 19-3-704, 19-3-802, 19-3-805, 19-3-1301, 19-3-1302, 19-3-1304, 19-3-1305, 19-3-1401, 19-3-1402, 19-3-1403, 19-3-1404, 19-5-104, 19-5-611, 19-7-103, and 19-9-1004.

(9) The code commissioner is instructed to renumber and recodify chapters 3, 5 through 9, and 13 of Title 19.

Section 239. **Effective date.** [This act] is effective July 1, 1993.

Approved April 2, 1993.

CHAPTER NO. 266

[SB 418]

AN ACT PROVIDING THAT THE REQUIREMENTS FOR HUNTING AND FISHING LICENSES AND PERMITS ISSUED JOINTLY BY THE STATE AND INDIAN TRIBES SUPERSEDE THE GENERAL LICENSING AND PERMIT REQUIREMENTS OF STATE LAW; AND AMENDING SECTION 87-1-228, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-228, MCA, is amended to read:

"**87-1-228. Agreement with Indians concerning hunting and fishing — Indian treaty of 1855.** (1) Whereas, by treaty of July 16, 1855, between the United States of America and the confederated tribes of the Flathead, Kootenai, and Upper Pend Oreille Indians, the tribes have certain rights to fish and hunt; and whereas, it appears to be to the common advantage of the state and Indian tribes to cooperate in matters involving hunting and fishing. Therefore, the department may negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of:

(a) authorizing individuals to serve on a state-tribal cooperative board to develop hunting and fishing regulations and reimbursing those individuals' expenses pursuant to 2-18-501 through 2-18-503;

(b) doing what in its judgment is necessary by way of granting to tribal Indians state permits to hunt and fish off reservation on open and unclaimed lands, to be issued without charge to the Indians, or allowing Indians to hunt without licenses, permits, or stamps;

(c) issuing jointly with the council hunting and fishing licenses, permits, and stamps under terms established by mutual agreement and recognized as valid for hunting and fishing throughout the state~~;~~. *These joint licensing and permit requirements supersede the general licensing and permit requirements set forth in this title.*

(d) authorizing all revenues collected from sale of joint licenses, permits, and stamps to be remitted to the council for the purpose of a fish and wildlife program;

(e) transferring to the council an amount equal to all fines and restitution collected in state court for fish and wildlife violations within reservation boundaries for use in a fish and wildlife program;

(f) policing Indian and other lands for the protection of fish and game and providing responsibility for redress of fish and game violations to state or tribal courts; and

(g) in general carrying out the purposes of this section.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11.

(3) Prior to concluding any agreement under this section, the department shall hold public meetings, after proper public notice of the meetings has been given and the proposed agreement has been made available for public review, to afford an opportunity to comment on the contents of the agreement."

Approved March 31, 1993.

CHAPTER NO. 267

[SB 168]

AN ACT GENERALLY REVISING THE TAXATION OF AGRICULTURAL LAND; REVISING THE METHOD OF VALUING AGRICULTURAL LANDS IN CLASS THREE PROPERTY FOR PROPERTY TAX PURPOSES; PROVIDING FOR THE DETERMINATION OF NET INCOME FROM AGRICULTURAL LAND; HOLDING CONSTANT THE STATEWIDE TOTAL TAXABLE VALUE OF CLASS THREE PROPERTY BETWEEN REAPPRAISAL CYCLES; PHASING IN THE CHANGE IN THE TAXABLE VALUE OF AGRICULTURAL LANDS; TAXING CLASS THREE PROPERTY AT THE RATE APPLICABLE TO CLASS FOUR PROPERTY; ESTABLISHING AN ADVISORY COMMITTEE TO REVIEW ALL RELEVANT COSTS, INCLUDING WATER COSTS, IN DETERMINING THE PRODUCTIVE CAPACITY OF IRRIGATED LANDS; ELIMINATING CLASS ELEVEN FARMSTEAD PROPERTY BY COMBINING IT WITH CLASS FOUR PROPERTY; AMENDING SECTIONS 7-13-2527, 15-6-133, 15-6-134, 15-7-201, 15-10-402, AND 15-10-412, MCA; REPEALING SECTION 15-6-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

WHEREAS, the Montana Legislature adopted a plan in 1975 for cyclical reappraisal of nonagricultural land; and

WHEREAS, nonagricultural land has been through three reappraisal cycles since 1972, with the values of the third cycle becoming effective January 1, 1993; and

WHEREAS, agricultural land has not been reappraised since 1963 and the Montana Legislature has determined that reappraisal of agricultural land is necessary for the overall improvement of Montana's property tax system; and

WHEREAS, the Montana Legislature has traditionally kept the total taxable value of an entire class of property relatively constant between reappraisal cycles by adjusting tax rates; and

WHEREAS, the Montana Legislature desires to keep the total taxable value of agricultural land constant despite reappraisal; and

WHEREAS, the new method of determining productive capacity of various subclasses of agricultural land results in significant increases or decreases in individual reappraised values; and

WHEREAS, the Montana Legislature finds that it is equitable and desirable for the tax system as a whole that the increases and decreases in taxable value of agricultural land be phased in over the appraisal cycle; and

WHEREAS, the Montana Legislature considers it appropriate to provide for the reappraisal of agricultural land and to provide for a phasein of the changes in taxable values over the reappraisal cycle.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-133, MCA, is amended to read:

"**15-6-133. Class three property — description — taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for ~~such~~ other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which ~~such~~ *the* improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(2) Class three property is taxed at the taxable percentage rate ~~"P" of its productive capacity~~ *applicable to class four property, as provided in 15-6-134(2)(a).*

~~(3) Until July 1, 1986, the taxable percentage rate "P" for class three property is 30%.~~

~~(4) Prior to July 1, 1986, the department of revenue shall determine the taxable percentage rate "P" applicable to class three property for the revaluation cycle beginning January 1, 1986, as follows:~~

~~(a) The director of the department of revenue shall certify to the governor before July 1, 1986, the percentage by which the appraised value of all property in the state classified under class three as of January 1, 1986, has increased due to the revaluation conducted under 15-7-111. This figure is the "certified statewide percentage increase".~~

~~(b) The taxable value of property in class three is determined as a function of the certified statewide percentage increase in accordance with the table shown below.~~

~~(c) This table limits the statewide increase in taxable valuation resulting from reappraisal to 0%. In calculating the percentage increase, the department may not consider agricultural use changes during calendar year 1985.~~

~~(d) The taxable percentage must be calculated by interpolation to coincide with the nearest whole number certified statewide percentage increase from the following table:~~

~~Certified Statewide~~	~~Class Three Taxable~~
~~Percentage Increase~~	~~Percentage "P"~~
~~0~~	~~30.00~~
~~10~~	~~27.27~~
~~20~~	~~25.00~~
~~30~~	~~23.08~~
~~40~~	~~21.43~~
~~50~~	~~20.00~~

~~(5) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a revaluation has been made as provided in 15-7-111.~~"

Section 2. Section 15-7-201, MCA, is amended to read:

"**15-7-201.** *(Temporary — applicable to 1986 land valuation schedules)* **Legislative intent — value of agricultural property.** (1) ~~Since~~ *Because* the market value of many agricultural properties is based upon speculative purchases ~~which~~ *that* do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties ~~shall~~ be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land ~~shall~~ *must* be classified according to its use, which classifications ~~shall~~ include but *are* not ~~be~~ limited to irrigated use, nonirrigated use, and grazing use. Within each class, land ~~shall~~ *must* be assessed at a value that is fairly based on its ability to produce, taking into consideration the classification system in existence on January 1, 1986, provided~~, however,~~ *that* the department may consolidate tillable irrigated land classes. With relation to irrigated land, water costs ~~shall~~ *must* be taken into consideration, except at no time may the resulting value of irrigated land be reduced below the value ~~such~~ *that the* land would have if it were not irrigated.

(3) Capital costs, such as improved water distribution, fertilizer, and land shaping that increase productivity, ~~shall~~ *may* not be used in determining assessed values.

15-7-201. *(Applicable to ~~1993~~ 1994 and later land valuation schedules)* **Legislative intent — value of agricultural property.** (1) ~~Since~~ *Because* the market value of many agricultural properties is based upon speculative purchases ~~which~~ *that* do not reflect the productive capability of agricultural land, it is the legislative intent that bona fide agricultural properties ~~shall~~ be classified and assessed at a value that is exclusive of values attributed to urban influences or speculative purposes.

(2) Agricultural land ~~shall~~ *must* be classified according to its use, which classifications ~~shall~~ include but *are* not ~~be~~ limited to irrigated use, nonirrigated use, and grazing use.

(3) Within each class, land ~~shall be assessed at a value that is fairly based on its productive capacity~~ *must be subclassified by production categories. Production categories are determined from the productive capacity of the land based on yield.*

(4) In computing the agricultural land valuation schedules to take effect on ~~the date that the revaluation cycle commencing January 2, 1986, takes effect pursuant to 15-7-111~~ *January 1, 1994,* and, thereafter, on the effective date when each revaluation cycle takes effect *pursuant to 15-7-111,* the department of revenue shall determine the productive capacity value of all agricultural lands using the formula V = I/R where:

(a) V is the per-acre productive capacity value of agricultural land in each land use and production category;

(b) I is the per-acre net income of agricultural land in each land use and production category and is to be determined ~~by the department using the formula I = (P — C) U where:~~

~~(i) I is the per-acre net income;~~

~~(ii) P is the per-unit price of the commodity being produced;~~

~~(iii) C is the per-unit production cost of the commodity being produced; and~~

~~(iv) U is the yield in units per acre~~ *as provided in subsection (5)*; and

(c) R is the capitalization rate ~~to be determined by the department as provided in subsection (9)~~ *and is equal to 6.4%. This capitalization rate must remain in effect until new agricultural land valuation schedules are computed as required by law.*

~~(5) Net income shall be:~~

~~(a) calculated for each year of a base period, which is the most recent 3-year period for which data are available, prior to a revaluation of property as provided in 15-7-111; and~~

~~(b) based on commodity price and production cost data for the base period from such sources as may be considered appropriate by the department, which sources shall include Montana state university.~~

(5) (a) Net income must be determined separately in each land use based on production categories.

(b) Net income must be based on commodity price data, grazing fees, crop share arrangements, and water cost data for the base period.

(i) Commodity price data and grazing fees for the base period must be obtained from the Montana Agricultural Statistics and from the Montana crop and livestock reporting service.

(ii) Crop share arrangements are based on the rental value of the land and average landowner costs.

(iii) Allowable water costs consist only of the per-acre labor costs and energy costs of irrigation.

(A) Labor costs are zero for pivot sprinkler irrigation systems; $4.50 an acre for tow lines, side roll, and lateral sprinkler irrigation systems; and $9 an acre for hand-moved and flood irrigation systems.

(B) Energy costs must be based on per-acre energy costs incurred in 1992. By July 1, 1993, an owner of irrigated land shall provide the department, on a form prescribed by the department, with energy costs incurred in 1992. In the event that no energy costs were incurred in 1992, the owner of irrigated land shall provide the department with energy costs from the most recent year available. The department shall adjust the most recent year's energy costs to reflect costs in 1992.

(c) The base crop for valuation of irrigated land is alfalfa hay, adjusted to 80% of sales price, and the base crop for valuation of nonirrigated land is wheat. The base unit for valuation of grazing lands is the average grazing fee for a 1,000-pound animal.

(d) The base period used to determine net income must be the most recent 7 years for which data is available prior to the date the revaluation cycle ends. Commodity price data and grazing fees referred to in subsection (5)(b) must be averaged for the 7-year period, but the average must exclude the lowest and highest commodity prices or grazing fees in the period.

~~(6) To the degree available, the department shall compile:~~

~~(a) commodity price data reflecting the average prices received per unit of measure by Montana farmers and ranchers. Such data may be obtained from all geographical areas of the state. Commodity prices may include wheat, barley, alfalfa hay, grass hay, corn for grain, corn for silage, sugar beets, dry beans, potatoes, cattle, and sheep. Government payments may be considered. Typical rental arrangements may be considered.~~

~~(b) production cost data reflecting average costs per unit of measure paid by Montana farmers and ranchers. Such data may be obtained from all geographical areas of the state. Such production costs may include costs relating to irrigation, fertilization, fuel, seed, weed control, hired labor, management, insurance, repairs and maintenance, and miscellaneous items. Variations in specific production cost data, when affected by different levels of production, and typical rental arrangements may be considered.~~

(6) The department shall compile data and develop valuation manuals adopted by rule to implement the valuation method established by subsections (4) and (5).

(7) The ~~department~~ *governor* shall appoint an advisory committee of persons knowledgeable in agriculture and agricultural economics to *compile and* review the data ~~prepared by Montana state university and advise the department on the implementation of subsections (2) through (6)~~ *required by subsections (4) and (5).* The advisory committee shall include one member of the Montana state university, *college of agriculture,* staff. *The advisory committee shall recommend agricultural land valuation schedules to the department. With respect to irrigated land, the value of irrigated land may not be below the value that the land would have if it were not irrigated.*

~~(8) Net income shall be determined separately for lands in irrigated use, nonirrigated use, and grazing use and shall be calculated for each use and production level according to the provisions of subsections (4) through (7).~~

~~(9) The capitalization rate shall be calculated for each year of the base period and is the annual average interest rate on agricultural loans as reported by the federal land bank association of Spokane, Washington, plus the effective tax rate in Montana.~~

~~(10) The effective tax rate shall be calculated by the department for each year of the base period by dividing the total estimated tax due on agricultural land in the state by the total productive capacity value of agricultural land in the state.~~"

Section 3. **Phasein of the taxable value of agricultural land.** The increase or decrease in taxable value of agricultural land resulting from the change in the method of determining productive capacity value under 15-7-201 must be phased in beginning January 1, 1994, as follows:

(1) For the year beginning January 1, 1994, and ending December 31, 1994, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, 1993, value by 25% of the difference between the product of the productive capacity value of agricultural land for 1994 determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, 1993.

(2) For the year beginning January 1, 1995, and ending December 31, 1995, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, 1993, value by 50% of the difference between the product of the productive capacity value of agricultural land for 1994 determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, 1993.

(3) For the year beginning January 1, 1996, and ending December 31, 1996, the taxable value of agricultural land in each land use and production category must increase or decrease from the December 31, 1993, value by 75% of the difference between the product of the productive capacity value of agricultural land for 1994 determined under 15-7-201 times the class three tax rate and the taxable value of agricultural land as of December 31, 1993.

(4) Beginning January 1, 1997, the taxable value of agricultural land in each land use and production category is equal to 100% of the productive capacity value of agricultural land determined under 15-7-201 times the class three tax rate.

Section 4. **Advisory committee — review of water costs and crop share arrangements.** (1) The governor shall appoint an advisory committee to review water costs, crop share arrangements, and other issues involving the assessment and valuation of agricultural land. The membership of the committee must include:

(a) one member representing urban interests;

(b) two members representing water users, one of whom must be an individual water user and one of whom must be a representative of an organized irrigation district;

(c) one member representing grazing interests;

(d) one member representing nonirrigated cropland interests;

(e) one member representing multiple-use farmers and ranchers;

(f) one member representing financial institutions;

(g) two members of the legislature, not of the same political party, one of whom must be a member of the senate and one of whom must be a member of the house of representatives; and

(h) one member representing local government.

(2) The committee shall review water costs and crop share arrangements associated with irrigated lands and recommend to the department of revenue by July 1, 1994, how water costs and crop share arrangements should be considered for the valuation of irrigated land. The committee may recommend the adjustment in the valuation of other agricultural land classes in order to prevent a reduction in the level of statewide taxable valuation of agricultural land.

Section 5. Section 7-13-2527, MCA, is amended to read:

"**7-13-2527. List of property owners.** (1) A copy of the order creating the district ~~shall~~ *must* be delivered to the county assessor of each county within the district.

(2) The assessor shall, on or before August 1 of ~~any given~~ *each* year, prepare and certify a list of all persons owning class four ~~or class eleven~~ property within ~~such~~ *the* district and deliver a copy of ~~such~~ *the* list to the board of trustees of ~~said~~ *the* district."

Section 6. Section 15-6-134, MCA, is amended to read:

"**15-6-134. Class four property — description — taxable percentage.** (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements, including trailers or mobile homes used as a residence, except those specifically included in another class;

(c) the first $80,000 or less of the market value of any improvement on real property, including trailers or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income or loss and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $10,000 for a single person or $12,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii);

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least 9 holes and not less than 3,000 lineal yards~~.~~*; and*

(e) all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(2), including 1 acre of real property beneath the agricultural improvements. The 1 acre must be valued at market value.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a), ~~and~~ (1)(b), *and (1)(e)* is taxed at 3.86% of its market value.

(b) (i) Property described in subsection (1)(c) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income	Income	Percentage
Single Person	Married Couple	Multiplier
	Head of Household	
$ 0 - 1,000	$ 0 - 1,200	0%
1,001 - 2,000	1,201 - 2,400	10%

2,001 - 3,000	2,401 - 3,600	20%
3,001 - 4,000	3,601 - 4,800	30%
4,001 - 5,000	4,801 - 6,000	40%
5,001 - 6,000	6,001 - 7,200	50%
6,001 - 7,000	7,201 - 8,400	60%
7,001 - 8,000	8,401 - 9,600	70%
8,001 - 9,000	9,601 - 10,800	80%
9,001 - 10,000	10,801 - 12,000	90%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1986; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111.

(4) Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 7. Section 15-10-402, MCA, is amended to read:

"**15-10-402. Property tax limited to 1986 levels.** (1) Except as provided in subsections (2) and (3), the amount of taxes levied on property described in 15-6-133, 15-6-134, *and* 15-6-136~~, and 15-6-144~~ may not, for any taxing jurisdiction, exceed the amount levied for taxable year 1986.

(2) The limitation contained in subsection (1) does not apply to levies for rural improvement districts, Title 7, chapter 12, part 21; special improvement districts, Title 7, chapter 12, part 41; elementary and high school districts, Title 20; juvenile detention programs authorized under 7-6-502; or bonded indebtedness.

(3) New construction or improvements to or deletions from property described in subsection (1) are subject to taxation at 1986 levels.

(4) As used in this section, the "amount of taxes levied" and the "amount levied" mean the actual dollar amount of taxes imposed on an individual piece of property, notwithstanding an increase or decrease in value due to inflation, reappraisal, adjustments in the percentage multiplier used to convert appraised value to taxable value, changes in the number of mills levied, or increase or decrease in the value of a mill."

Section 8. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not ~~mean that no~~ *prohibit a* further increase ~~may be made~~ in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not ~~mean that no~~ *prohibit a* further increase ~~may be made~~ in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in ~~classes~~ *class* four ~~and eleven~~ is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four ~~or class eleven~~ property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but ~~in no case may~~ the mills levied *may not* exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4);

(j) levies authorized under 7-6-502 for juvenile detention programs; and

(k) elementary and high school districts.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2).

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 9. **Repealer.** Section 15-6-144, MCA, is repealed.

Section 10. **Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 15, chapter 7, part 2, and the provisions of Title 15, chapter 7, part 2, apply to [sections 3 and 4].

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Termination.** [Section 4] terminates January 1, 1995.

Section 13. **Effective date — applicability.** [This act] is effective on passage and approval and applies to tax years beginning on or after January 1, 1994.

Approved April 2, 1993.

CHAPTER NO. 268

[HB 342]

AN ACT ALLOWING AN AIRPORT OPERATOR TO ENTER INTO A CONTRACT OR LEASE FOR A TERM NOT EXCEEDING 40 YEARS; ALLOWING AN AIRPORT OPERATOR LATITUDE IN DETERMINING REASONABLE CHARGES; EXEMPTING AIRPORT AUTHORITIES FROM CHARGES; AND AMENDING SECTIONS 67-10-302, 67-11-211, AND 67-11-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-10-302, MCA, is amended to read:

"**67-10-302. Granting of operation and use privileges.** (1) In operating an airport or air navigation facility owned, leased, or controlled by a municipality, ~~such~~ *the* municipality may, except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, enter into contracts, leases, and other arrangements for a term not exceeding ~~20~~ *40* years with any persons:

(a) granting the privilege of using or improving ~~such~~ *the* airport or air navigation facility or any portion or facility ~~thereof~~ *of* or space ~~therein~~ *in the airport or air navigation facility* for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at ~~such~~ *the* airport or air navigation facility; or

(c) making available services to be furnished by the municipality or its agents at ~~such~~ *the* airport or air navigation facility.

(2) In each case, the municipality may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which ~~shall~~ *must* be reasonable and uniform for the same class of privilege or service ~~and shall be established with due regard to the property and improvements used and the expenses of operation to the municipality~~.

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement pursuant to 67-10-405, a municipality may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed ~~20~~ *40* years the privilege of operating, as agent of the municipality or otherwise, any airport owned or controlled by the municipality; provided that ~~no such~~ *the* person ~~shall~~ *may not* be granted any authority to operate ~~such an~~ *the* airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the municipality might not have undertaken under subsections (1) and (2) ~~of this section~~."

Section 2. Section 67-11-211, MCA, is amended to read:

"**67-11-211. Granting of operation and use privileges.** (1) In connection with the operation of an airport or air navigation facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements for terms not to exceed ~~30~~ *40* years with any persons:

(a) granting the privilege of using or improving the airport or air navigation facility or any portion or facility ~~thereof~~ *of* or space ~~therein~~ *in the airport or air navigation facility* for commercial purposes;

(b) conferring the privilege of supplying goods, commodities, things, services, or facilities at the airport or air navigation facility; and

(c) making available services to be furnished by the authority or its agents at the airport or air navigation facility.

(2) In each case, the authority may establish the terms and conditions and fix the charges, rentals, or fees for the privileges or services, which must be reasonable and uniform for the same class of privilege or service ~~and must be established with due regard to the property and improvements used and the expenses of operation to the authority~~; provided that ~~in no case may~~ the public *may not* be deprived of its rightful, equal, and uniform use of the airport, air navigation facility, or portion ~~of~~ *or* facility ~~thereof~~ *of the airport or air navigation facility.*

(3) Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 67-11-305, an authority may by contract, lease, or other arrangement, upon a consideration fixed by it, grant to any qualified person for a term not to exceed ~~30~~ *40* years the privilege of operating, as agent of the authority or otherwise, any airport owned or controlled by the authority; provided that ~~no~~ *a* person may *not* be granted any authority to operate an airport other than as a public airport or to enter into any contracts, leases, or other arrangements in connection with the operation of the airport which the authority might not have undertaken under subsections (1) and (2) ~~of this section~~."

Section 3. Section 67-11-306, MCA, is amended to read:

"**67-11-306. Tax exemption.** Any property in this state acquired by an authority for airport purposes, pursuant to the provisions of this chapter, and any income derived by the authority from the ownership, operation, or control ~~thereof shall be~~ *of the property is* exempt from taxation *and any other charges* to the same extent as other property used for public purpose."

Approved April 6, 1993.

CHAPTER NO. 269

[HB 364]

AN ACT ALLOWING COUNTY COMMISSIONERS TO ASSESS PROPERTY WITHIN A RURAL IMPROVEMENT DISTRICT AND WITHIN A ROAD IMPROVEMENT DISTRICT IN EQUAL AMOUNTS BASED ON THE TOTAL COST OF THE IMPROVEMENT; ALLOWING A CITY COUNCIL OR COMMISSION TO ASSESS PROPERTY WITHIN A SPECIAL IMPROVEMENT DISTRICT IN EQUAL AMOUNTS BASED ON THE TOTAL COST OF THE IMPROVEMENT; AND AMENDING SECTIONS 7-12-2151, 7-12-4162, AND 7-14-2907, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-2151, MCA, is amended to read:

"**7-12-2151. Assessment of costs.** (1) To defray the cost of making or acquiring any of the improvements provided for in this part, including incidental expenses, the board of county commissioners shall assess the entire cost of the improvements against benefited lots, tracts, or parcels of land in the district, based upon the benefits received, and shall adopt one or any combination of the following methods of assessment for each improvement made or acquired for the benefit of the district:

(a) Each lot, tract, or parcel of land assessed in ~~such~~ *the* district may be assessed with that part of the whole cost which its assessable area bears to the assessable area of all the benefited lots, tracts, or parcels in the district, exclusive of streets, avenues, alleys, and public places. For the purposes of this subsection (1)(a), "assessable area" means an area of a lot, tract, or parcel of land representing the benefit conferred upon the lot, tract, or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot, tract, or parcel.

(b) Each lot, tract, or parcel of land assessed in the district may be assessed with that part of the whole cost of the improvement based upon the assessed value of the benefited lots or pieces of land within ~~said~~ *the* district, if the board determines ~~such~~ *the* assessment to be equitable in proportion to and not exceeding the benefits received from the improvement by the lot, tract, or parcel.

(c) Each lot, tract, or parcel of land in the district abutting upon the street where the improvement has been made may be assessed in proportion to its lineal feet abutting the street.

(d) Each lot, tract, or parcel of land in the district may be assessed an equal amount based upon the total cost of the improvement.

~~(d)~~*(e)* Each lot, tract, or parcel of land in the district served by a utility connection may be assessed an equitable lump sum for the connection based on the bid price in the applicable contract.

(2) The board may use one or any combination of methods of assessment in a single special improvement district and, if more than one improvement is undertaken, need not assess each lot, tract, or parcel in the district for the cost of all the improvements.

(3) The board in its discretion ~~shall have the power to~~ *may* pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of ~~such~~ *the* costs within the amount of the assessment to be paid by the benefited property in the district."

Section 2. Section 7-12-4162, MCA, is amended to read:

"**7-12-4162. Assessment of costs — area option — assessed valuation option — *equal amount option.*** (1) (a) The city council or commission shall assess the entire cost of an improvement against benefited property in the district, each lot or parcel of land assessed within such district to be assessed for that part of the whole cost which its assessable area bears to the assessable area of all benefited lots or parcels in the district, exclusive of streets, avenues, alleys, and public places. For the purposes of this subsection, "assessable area" means an area of a lot or parcel of land representing the benefit conferred on the lot or parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the lot or parcel.

(b) The council or commission, in its discretion, shall have the power to pay the whole or any part of the cost of any street, avenue, or alley intersection out of any funds in its hands available for that purpose or to include the whole or any part of such costs within the amount of the assessment to be paid by the benefited property in the district.

(c) In order to equitably apportion the cost of any of the improvements herein provided for between that land within the district which lies within 25 feet of the line of the street on which the improvement is to be made and all other benefited land within the district, the council or commission may, in the resolution creating any improvement district, provide that the amount of the assessment against the property in such district to defray the cost of such improvements shall be so assessed that each square foot of land within the district lying within 25 feet of the line of the street on which the improvements therein provided for are made shall bear double the amount of cost of such improvements per square foot of such land that each square foot of any other benefited land within the district shall bear.

(2) The city council or city commission may assess the cost of an improvement against each lot or parcel of land in the district based on the assessed value of the benefited lots or parcels of land within the district if the council or commission determines such assessment to be equitable and in proportion to and not exceeding the benefits derived from the improvement by the lot or parcel.

(3) The city council or city commission may assess each lot or parcel of land in the district an equal amount based upon the total cost of the improvement."

Section 3. Section 7-14-2907, MCA, is amended to read:

"**7-14-2907. Cost of road improvement districts — property owner assessments.** (1) The cost of operating a road improvement district must be assessed upon all the benefited property in the district based upon the benefits received, and the board of county commissioners shall adopt one or any combination of the following methods of assessment for improvements made for the benefit of the district:

(a) Each parcel of benefited property assessed in such district may be assessed with that part of the whole cost which its assessable area bears to the assessable area of all the benefited parcels in the district, exclusive of roads and public places. For the purposes of this subsection (1)(a), "assessable area" means an area of a parcel of benefited property representing the benefit conferred upon the parcel by the improvement. Assessable area may be less than but may not exceed the actual area of the parcel.

(b) Each parcel of benefited property assessed in the district may be assessed with that part of the whole cost of the improvement based upon the assessed value of the benefited parcels of land within said district if the board determines such assessment to be equitable in proportion to and not exceeding the benefits received from the improvement by the parcel.

(c) Each parcel of benefited property in the district abutting upon the road where the improvement has been made may be assessed in proportion to its lineal feet abutting the road.

(d) Each parcel of benefited property in the district may be assessed an equal amount based upon the total cost of the improvement.

(2) The board may use one or any combination of methods of assessment in a single road improvement district and, if more than one improvement is

undertaken, need not assess each parcel of benefited property in the district for the cost of all the improvements.

(3) Not later than the first Monday in September of each year, the board of county commissioners shall adopt a resolution levying and assessing upon all the benefited property in the district an amount equal to the total amount necessary for district operations. The amount necessary for district operations is the total of:

(a) (i) the estimated amount for improvements as authorized in 7-14-2903; and

(ii) the amount necessary to pay for debts for authorized improvements that cost more than estimated in previous years;

(b) less any amount in the road improvement district fund, as provided for in 7-14-2908, that may be unspent, unencumbered, and available for district use.

(4) (a) It is the duty of the county treasurer to collect the assessments in the same manner and at the same time as taxes for general purposes are collected.

(b) When an assessment becomes delinquent, the unpaid amount becomes a lien on the assessed parcel of land. The collection of delinquent assessments or enforcement of a lien may be made by any method authorized by law for the collection or payment of taxes."

Approved April 6, 1993.

CHAPTER NO. 270

[HB 502]

AN ACT REQUIRING THE RETURN OF A BAIL BOND TO THE SURETY WITHIN 30 DAYS AFTER A CONVICTION; PROVIDING THAT BAIL FORFEITURE BE DISCHARGED IF THE DEFENDANT APPEARS AND SATISFACTORILY EXCUSES AN ABSENCE WITHIN 90 DAYS AFTER THE FORFEITURE; AND AMENDING SECTION 46-9-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Return of bail bond after conviction.** If a commercial surety bond is posted as bail and the defendant is convicted, the bond must be released and returned to the surety within 30 days after the conviction. If the defendant appeals, the court may order that bail be provided during the appeal.

Section 2. Section 46-9-503, MCA, is amended to read:

"**46-9-503. Violation of release condition — forfeiture.** (1) If a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the court for revocation of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with 46-7-101.

(2) If a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address *within 10 working days or the bond becomes void and must be released and returned to the surety within 5 working days.*

(3) If at any time within 30 days after the forfeiture ~~the defendant or~~ the defendant's sureties appear and satisfactorily excuse the defendant's failure to appear, the judge may direct the forfeiture to be discharged upon terms as may be just. *If at any time within 90 days after the forfeiture the defendant appears and satisfactorily excuses the defendant's failure to appear, the judge shall direct the forfeiture to be discharged upon terms as may be just.*"

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 9, part 1, and the provisions of Title 46 apply to [section 1].

Approved April 6, 1993.

CHAPTER NO. 271

[SB 139]

AN ACT ALLOWING A LOCAL GOVERNMENT TO INVEST IN GOVERNMENT OBLIGATIONS GUARANTEED BUT NOT ISSUED BY THE UNITED STATES; AND AMENDING SECTIONS 7-6-202 AND 7-6-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-202, MCA, is amended to read:

"**7-6-202. Investment of public money in direct obligations of the United States.** (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in*:*

(a) direct obligations of the United States government*;* ~~and~~

(b) securities issued by agencies of the United States*;*

(c) securities guaranteed by the United States or by an agency of the United States but not issued by agencies of the United States; or

(d) mutual funds that invest only in:

(i) government obligations;

(ii) securities issued by agencies of the United States; or

(iii) securities guaranteed by the United States or by an agency of the United States but not issued by agencies of the United States.

(2) The local governing body may invest in these obligations either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian."

Section 2. Section 7-6-206, MCA, is amended to read:

"**7-6-206. Time deposits — repurchase agreement.** (1) Public money not necessary for immediate use by a county, city, or town ~~which~~ *that* is not invested in direct obligations of the United States government *or in mutual funds* as authorized in 7-6-202 may be placed in time or savings deposits with ~~any~~ *a* bank, savings and loan association, or credit union in the state or placed in repurchase agreements as authorized in 7-6-213. Money placed in repurchase agreements is subject to subsection (2).

(2) The local governing body may solicit bids for time or savings deposits from ~~any~~ *a* bank, savings and loan association, or credit union in the state. The local governing body may deposit public money in ~~such~~ *the* institutions unless a local financial institution agrees to pay the same rate of interest bid by a financial institution not located in the county, city, or town. The governing body may solicit bids by notice sent by mail to the investment institutions who have requested that their names be listed for bid notice with the department of administration."

Approved April 6, 1993.

CHAPTER NO. 272

[HB 408]

AN ACT GENERALLY REVISING THE MONTANA SUBDIVISION AND PLATTING ACT; CHANGING THE DEFINITION OF SUBDIVISION; REMOVING THE OCCASIONAL SALE EXEMPTION; REMOVING THE 20-ACRE LIMITATION; MODIFYING THE FAMILY SALE EXEMPTION; CHANGING THE CRITERIA FOR LOCAL GOVERNMENT SUBDIVISION REVIEW; AMENDING SECTIONS 76-3-102, 76-3-103, 76-3-104, 76-3-207, AND 76-3-608, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-102, MCA, is amended to read:

"**76-3-102. Statement of purpose.** It is the purpose of this chapter to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; ~~to require that whenever necessary, the appropriate approval of subdivisions be contingent upon a written finding of public interest by the governing~~

~~body;~~ and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey."

Section 2. Section 76-3-103, MCA, is amended to read:

"**76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to ~~himself~~ *the landowner* no rights ~~which~~ *that* are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(3) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

(4) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(5) "Final plat" means the final drawing of the subdivision and dedication required by this chapter to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this chapter and in regulations adopted pursuant thereto.

(6) "Governing body" means a board of county commissioners or the governing authority of ~~any~~ *a* city or town organized pursuant to law.

(7) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States government lot, the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

~~(8) "Occasional sale" means one sale of a division of land within any 12-month period.~~

~~(9)~~*(8)* "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, *or* office building parks~~, or any combination thereof which comprises~~ *that comprise* a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

~~(10)~~*(9)* "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, alleys, and other divisions and dedications.

~~(11)~~*(10)* "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

~~(12)~~*(11)* "Registered land surveyor" means a person licensed in conformance with Title 37, chapter 67, to practice surveying in the state of Montana.

~~(13)~~*(12)* "Registered professional engineer" means a person licensed in conformance with Title 37, chapter 67, to practice engineering in the state of Montana.

~~(14)~~*(13)* "Subdivider" means ~~any~~ *a* person who causes land to be subdivided or who proposes a subdivision of land.

~~(15)~~*(14)* "Subdivision" means a division of land or land so divided ~~which~~ *that* creates one or more parcels ~~containing less than 20 acres~~ *containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section*, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and ~~shall include~~ *includes* any resubdivision and ~~shall~~ further ~~include~~ *includes* ~~any~~ *a* condominium or area, regardless of its size, ~~which~~ *that* provides or will provide multiple space for recreational camping vehicles or mobile homes.

(15) "Tract of record" means a parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office."

Section 3. Section 76-3-104, MCA, is amended to read:

"**76-3-104. What constitutes subdivision.** A subdivision ~~shall comprise~~ *comprises* only those parcels ~~less than 20 acres which~~ *containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section when the parcels* have been segregated from the original tract~~, and the~~*. The subdivision* plat ~~thereof shall~~ *must* show all ~~such~~ *the* parcels whether contiguous or not."

Section 4. Section 76-3-207, MCA, is amended to read:

"**76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a *single* gift or sale *in each county* to ~~any~~ *each* member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

~~(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale;~~

~~(e)~~*(d)* for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

~~(f)~~*(e)* divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. ~~Any restrictions or requirements~~ *A restriction or requirement* on the original platted lot or original unplatted parcel ~~continue~~ *continues* to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, ~~any~~ *a* division of lots ~~which~~ *that* results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body, and an amended plat must be filed with the county clerk and recorder;

(b) ~~any~~ *a* change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) ~~No~~ *A* division of land may *not* be made under this section unless the county treasurer has certified that ~~no~~ real property taxes assessed and levied on the land to be divided are *not* delinquent."

Section 5. Section 76-3-608, MCA, is amended to read:

"**76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision ~~shall be~~ *is* whether the preliminary plat, *applicable* environmental assessment, public hearing, planning board recommendations, ~~and~~ *or* additional information ~~demonstrate~~ *demonstrates* that development of the subdivision ~~would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest~~ *meets the requirements of this chapter.*

(2) ~~To determine whether the proposed subdivision would be in the public interest, the~~ *The* governing body shall issue written findings of fact ~~which~~ *that* weigh the ~~following~~ criteria ~~for public interest:~~ *in subsection (3), as applicable.*

~~(a) the basis of the need for the subdivision;~~

~~(b) expressed public opinion;~~

~~(c) effects on agriculture;~~

~~(d) effects on local services;~~

~~(e) effects on taxation;~~

~~(f) effects on the natural environment;~~

~~(g) effects on wildlife and wildlife habitat; and~~

~~(h) effects on the public health and safety.~~

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) the effect on agriculture, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel."

Section 6. **Coordination instruction.** If House Bill No. 280 is passed and approved, then [this act] is void.

Section 7. **Applicability.** (1) [Sections 1 through 4] apply to all subdivision applications filed after passage and approval of [this act].

(2) [Section 5] applies to all subdivision applications filed after September 30, 1993.

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved April 6, 1993.

CHAPTER NO. 273

[HB 64]

AN ACT DELAYING THE EFFECTIVE DATE OF THE LAW ESTABLISHING A SOLID WASTE MANAGEMENT FEE ON WASTE GENERATED OUT OF STATE; REQUIRING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES TO ESTABLISH A FEE ON THE DISPOSAL OR INCINERATION OF SOLID WASTE GENERATED OUTSIDE MONTANA; LIMITING THE LENGTH OF TIME THE FEE IS APPLICABLE TO SOLID WASTE INCINERATORS AND CERTAIN SOLID WASTE DISPOSAL FACILITIES; AMENDING SECTIONS 75-10-118, 75-10-204, AND 75-10-206, MCA, AND SECTION 8, CHAPTER 398, LAWS OF 1991; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because of the rulemaking authority granted to the department of health and environmental sciences in [section 3]. It is the intent of the legislature that the department adopt rules to establish a rationally based, legally defensible fee on the disposal or incineration of solid waste generated outside Montana. The purpose of the fee is to prevent Montana citizens from subsidizing the disposal of out-of-state waste. Therefore, the fee is to be based on the justifiable direct and indirect costs to the state of regulating the disposal or incineration of out-of-state waste under Title 75, chapter 10, parts 1 and 2. It is the intent of the legislature that, until July 1, 1995, the fee established by the department under 75-10-204(8) apply to all solid waste imported from out of state to solid waste incinerators and solid waste disposal facilities in this state. Effective July 1, 1995, the fee established by the department under 75-10-204(8) applies only to solid waste imported from out of state to solid waste disposal facilities that receive less than 25,000 tons of solid waste annually. Also effective July 1, 1995, solid waste disposal facilities receiving 25,000 tons or more of solid waste annually and all solid waste incinerators, regardless of tonnage amounts, must be charged a fee of $5 per ton, pursuant to 75-10-118, on each ton of solid waste imported from out of state. The department shall report to the 1995 legislature on the implementation of the fee established under the authority of 75-10-204(8) so that the legislature may consider an amendment to 75-10-118 to adopt the fee amount established by the department.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 8, Chapter 398, Laws of 1991, is amended to read:

"Section 8. **Effective date.** [This act] is effective July 1, ~~1993~~ *1995.*"

Section 2. Section 75-10-118, MCA, is amended to read:

"**75-10-118.** *(Effective July 1, 1993)* **Solid waste management fee — out-of-state waste.** (1) ~~A~~ *Notwithstanding the fee established pursuant to 75-10-204(8) and except as provided in subsection (2) of this section, a* person who owns an incinerator that burns solid waste or a solid waste disposal facility that is licensed pursuant to 75-10-221 and to rules adopted under 75-10-221 shall pay to the department a quarterly fee of $5 for each ton of solid waste generated outside Montana and incinerated or disposed of at the facility.

(2) A person who owns a solid waste disposal facility that is licensed pursuant to 75-10-221 and to rules adopted under 75-10-221 that receives less than 25,000 tons of solid waste annually shall pay the department a quarterly fee, determined by the department pursuant to 75-10-204(8), for each ton of solid waste generated outside Montana.

~~(2)~~*(3)* All fees must be deposited in the solid waste management account provided for in 75-10-117."

Section 3. Section 75-10-204, MCA, is amended to read:

"**75-10-204. Powers and duties of department.** The department shall adopt rules governing solid waste management systems which shall include but are not limited to:

(1) requirements for the plan of operation and maintenance that must be submitted with an application under this part;

(2) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(3) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(4) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(5) requirements relating to ground water monitoring, including but not limited to:

(a) information that owners and operators of municipal solid waste landfills and other disposal sites specified in 75-10-207 must submit to the department to enable the department to prepare the priority compliance list authorized by 75-10-207(3);

(b) the content of plans for the design, construction, operation, and maintenance of monitoring wells and monitoring systems; and

(c) recordkeeping and reporting;

(6) fees related to the review of solid waste management system license applications;

(7) the renewal of solid waste management system licenses and related fees; ~~and~~

(8) a quarterly fee based on the justifiable direct and indirect costs to the state of administering Title 75, chapter 10, parts 1 and 2, for solid waste generated outside Montana and disposed of or incinerated within Montana. These rules must be adopted by August 1, 1993.

~~(8)~~*(9)* any other factors relating to the sanitary disposal or management of solid wastes."

Section 4. Section 75-10-206, MCA, is amended to read:

"**75-10-206. Variance.** (1) Any person may apply to the board for a variance from rules adopted by the department pursuant to 75-10-204, *except for rules adopted pursuant to 75-10-204(8).* The board may grant a variance if it finds that:

(a) failure to comply with the rules does not result in a danger to public health or safety; or

(b) compliance with the rules from which a variance is sought would produce hardship without producing benefits to the health and safety of the public that outweigh the hardship.

(2) No variance may be granted pursuant to this section except after a hearing pursuant to the Montana Administrative Procedure Act and consideration by the board of the relative interests of the applicant and owners of the property likely to be affected by the waste disposal system under consideration.

(3) Nothing in this section may be construed as relieving the board from the obligation to comply with the Resource Conservation and Recovery Act of 1976, as amended, or as allowing the board to grant a variance less restrictive than that act."

Section 5. **Effective date.** [Section 3 and this section] are effective on passage and approval.

Approved April 7, 1993.

CHAPTER NO. 274

[HB 107]

AN ACT ELIMINATING THE REQUIREMENT TO CONDUCT SUNRISE AUDITS; AMENDING SECTION 5-11-210, MCA; AND REPEALING SECTIONS 2-8-201, 2-8-202, 2-8-203, 2-8-204, 2-8-205, 2-8-206, 2-8-207, 2-8-208, AND 5-4-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-210, MCA, is amended to read:

"**5-11-210. Clearinghouse for reports to legislature.** (1) For the purposes of this section, "report" means:

(a) a document required to be prepared for the legislature as required in any of the sections listed in subsection (10); and

(b) unless otherwise provided by law, any other report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the executive director of the legislative council:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed one page;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies;

(e) an estimated cost for each copy of the report; and

(f) the date on which the entity will deliver the final, published copies of the report to the legislature.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the legislative council or the executive director shall, in writing, direct the reporting entity to provide a specific number of copies. The number of copies required is at the sole discretion of the legislative council. The legisla-

tive council or the executive director may require the reporting entity to mail the copies of the report.

(4) The legislative council may require that the report be submitted in an electronic format useable on the legislature's current computer hardware, in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative council.

(6) The executive director of the legislative council shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b), available from the legislative council. The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director or the legislative council shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative council may keep as many copies of a report as he considers necessary, and copies of the report may be discarded at his discretion.

(10) (a) A report to the legislature includes a report required to be made by a board, bureau, commission, committee, council, department, division, fund, authority, or officer of the state or a local government in 1-11-204, 2-4-411, 2-7-104, 2-8-112, ~~2-8-203, 2-8-207, 2-8-208,~~ 2-15-2021, 2-18-209, 2-18-811, 2-18-1103, 3-1-702, 3-1-1126, 5-5-216, 5-13-304, 5-17-103, 5-18-203, 5-19-108, 10-4-102, 15-1-205, 17-4-107, 17-5-1650, 18-7-303, 19-4-201, 20-9-346, 20-25-236, 20-25-301, 22-3-107, 23-7-203, 33-22-1513, 37-1-106, 39-6-101, 39-51-407, 44-2-304, 44-13-103, 46-23-316, 53-2-1107, 53-6-110, 53-20-104, 53-21-104, 53-24-204, 53-24-210, 53-30-133, 69-1-404, 72-16-202, 75-1-203, 75-1-1101, 75-7-304, 75-10-533, 75-10-704, 76-11-203, 76-12-109, 80-7-713, 80-12-402, 82-11-161, 85-1-621, 85-2-105, 87-2-724, 87-5-123, 90-3-203, or 90-4-111.

(b) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201."

Section 2. **Repealer.** Sections 2-8-201, 2-8-202, 2-8-203, 2-8-204, 2-8-205, 2-8-206, 2-8-207, 2-8-208, and 5-4-207, MCA, are repealed.

Approved April 7, 1993.

CHAPTER NO. 275

[HB 148]

AN ACT AUTHORIZING THE BOARD OF CHIROPRACTORS TO ADOPT RULES TO REGISTER INTERNS AND PRECEPTORS; AUTHORIZING THE ISSUANCE OF CHIROPRACTIC LICENSES BASED ON SUCCESSFUL COMPLETION OF EXAMINATIONS GIVEN BY THE NATIONAL BOARD OF CHIROPRACTIC EXAMINERS; AMENDING SECTIONS 37-12-201 AND 37-12-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-12-201, MCA, is amended to read:

"**37-12-201. Organization of board — meetings — powers and duties.** (1) The board shall elect annually a president, ~~vice-president~~ *vice president*, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. A majority of the board constitutes a quorum.

(3) The board shall:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal ~~which shall~~ *that must* be affixed to licenses issued;

(c) make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, ~~and~~ disciplinary standards for licensees, *and the registration of interns and preceptors*;

(e) investigate complaints;

(f) make determinations of the qualifications of applicants under this chapter;

(g) administer the examination for licensure under this chapter;

(h) establish and collect fees, fines, and charges as provided in this chapter;

(i) issue, suspend, or revoke licenses under the conditions prescribed in this chapter; and

(j) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

(4) The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection."

Section 2. Section 37-12-304, MCA, is amended to read:

"**37-12-304. Examinations — subjects.** (1) Examinations for a license to practice chiropractic ~~shall~~ *must* be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application ~~shall~~ *must* be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations ~~shall~~ *must* be ~~made in writing,~~ *administered* on subjects taught in chiropractic colleges~~, including the use of x-ray equipment and radiographs. Additional subjects may be prescribed by the board to meet new conditions~~, *on the provisions of this chapter, and on other provisions of the Montana Code Annotated pertaining to the practice of chiropractic.* A license ~~shall~~ *must* be granted to applicants who correctly answer 75% of all questions asked, including x-ray questions. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, ~~he~~ *the applicant* is not entitled to a license.

(3) The board may accept the grades an applicant has received in the ~~written~~ examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further ~~written~~ examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. The board may require an applicant to satisfactorily pass a clinical proficiency examination before being issued a license, even though ~~he~~ *the applicant* holds a valid certificate from the national board of chiropractic examiners."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 7, 1993.

CHAPTER NO. 276

[HB 232]

AN ACT PROVIDING THAT THE EXEMPTION, FOR TRUCKS OR TRUCK TRACTORS HAVING THREE OR MORE AXLES, FROM THE GENERAL REQUIREMENT THAT MOTOR VEHICLES MUST HAVE BRAKES ACTING ON ALL WHEELS APPLIES ONLY TO TRUCKS OR TRUCK TRACTORS THAT WERE MANUFACTURED BEFORE JULY 25, 1980; AND AMENDING SECTION 61-9-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-304, MCA, is amended to read:

"**61-9-304. Brakes required on all wheels — exceptions.** Every vehicle ~~shall~~ *must* be equipped with brakes acting on all wheels except:

(1) trailers, semitrailers, pole trailers of a gross weight not exceeding 3,000 pounds, provided that:

(a) the total weight on and including the wheels of the trailer or trailers ~~shall~~ *may* not exceed 40% of the gross weight of the towing vehicle when connected to the trailer or trailers; and

(b) the combination of vehicles consisting of the towing vehicle and its total towed load is capable of complying with the performance requirements of 61-9-312;

(2) any vehicle being towed in driveaway or towaway operations, provided the combination of vehicles is capable of complying with the performance requirements of 61-9-312;

(3) trucks and truck tractors having three or more axles need not have brakes on the front wheels, ~~except that when such vehicles are equipped with at least two steerable axles, the wheels of one steerable axle need not have brakes~~ *if the vehicle was manufactured before July 25, 1980*. However, ~~such~~ *the* trucks and truck tractors must be capable of complying with the performance requirements of 61-9-312.

(4) special mobile equipment as defined in 61-1-104;

(5) the wheel of a sidecar attached to a motorcycle or to a motor-driven cycle, or the front wheel of a motor-driven cycle need not be equipped with brakes. However, a quadricycle, motorcycle, or motor-driven cycle must be capable of complying with the performance requirements of 61-9-312."

Approved April 7, 1993.

CHAPTER NO. 277

[HB 237]

AN ACT CLARIFYING THE TYPES OF ESTABLISHMENTS THAT QUALIFY FOR THE REDUCED FEE FOR THE LICENSURE OF A PUBLIC SWIMMING POOL OR BATHING PLACE; AND AMENDING SECTION 50-53-203, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-53-203, MCA, is amended to read:

"**50-53-203. License fee and late fee — disposition.** (1) (a) Except as provided in subsection (1)(b), each application for an original or renewal license must be accompanied by a license fee of $75.

(b) The fee for an original or renewal license for a public swimming pool or public bathing place operated in conjunction with a ~~public accommodation~~ *campground, trailer court, work camp, youth camp, hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home* is $50.

(2) An operator of a public swimming pool or public bathing place who fails to renew a license by the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing place in the license year for which

~~no~~ *a* renewal fee was *not* paid shall, upon renewal, pay to the department a late renewal fee of $25 in addition to the renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for any operation without a license.

(3) The department shall deposit 85% of the fees collected under subsection (1) in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money deposited in the local board inspection fund account is subject to appropriation by the legislature for the purposes of 50-53-218.

(4) The department shall deposit 15% of the fees collected under subsection (1) and all the fees collected under subsection (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of 50-53-101 through 50-53-109 and this part."

Approved April 7, 1993.

CHAPTER NO. 278

[HB 336]

AN ACT ABOLISHING THE REQUIREMENT THAT A CERTIFICATION OF PROOF OF COMPLIANCE WITH THE FINANCIAL RESPONSIBILITY LAW BE SIGNED BY A MOTOR VEHICLE OWNER BEFORE THE OWNER MAY REGISTER THE VEHICLE; ABOLISHING THE PENALTY FOR FALSIFYING A CERTIFICATION; PROVIDING THAT THE REGISTRATION RECEIPT MUST STATE THAT IT IS UNLAWFUL TO OPERATE A VEHICLE WITHOUT COMPLYING WITH THE FINANCIAL RESPONSIBILITY LAW; AND AMENDING SECTION 61-6-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-6-302, MCA, is amended to read:

"**61-6-302. Proof of compliance.** (1) ~~Except as provided in subsection (2), before any applicant required to register his motor vehicle may do so, the applicant must certify to the county treasurer that he possesses an automobile liability insurance policy, a certificate of self-insurance, or a posted indemnity bond or that he is eligible for an exemption under 61-6-303 covering the motor vehicle. The certification shall be on a form prescribed by the department. The department may immediately cancel the registration and license plates of the vehicle upon notification that the insurance certification was not correctly represented. Any person who intentionally provides false information on an insurance certification is guilty of unsworn falsification to authorities, punishable as provided in 45-7-203.~~ *The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.*

~~(2) An applicant for registration of a motor vehicle who wishes to register the vehicle by mail must sign a statement on the application stating that the applicant is in compliance with the financial liability requirements of 61-6-301.~~

~~(3)~~*(2)* An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the department and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed.

~~(4)~~*(3)* Every person shall carry in a motor vehicle being operated by ~~him~~ *the person* an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, ~~no~~ *a* person charged with violating this subsection may *not* be convicted if ~~he~~ *the person* produces in court or the office of the arresting officer proof of insurance valid at the time of ~~his~~ arrest."

Approved April 7, 1993.

CHAPTER NO. 279

[HB 344]

AN ACT GENERALLY REVISING THE LAWS RELATING TO AIRPORTS; REDEFINING "GOVERNING BODY"; ALLOWING A LOCAL GOVERNMENT TO DESIGNATE AN AIRPORT INFLUENCE AREA AT ANY TIME; ALLOWING AN AIRPORT AUTHORITY TO ADOPT RULES FOR THE DISPOSAL OF PROPERTY; ALLOWING AN AIRPORT AUTHORITY TO CREATE A RESERVE FUND; AND AMENDING SECTIONS 67-1-101, 67-4-201, 67-4-202, 67-4-313, 67-5-211, 67-11-232, AND 67-11-304, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 6] allows an airport authority to adopt rules for the purpose of disposing of airport property. At a minimum, the rules should address:

(1) appraisal requirements for property to be sold;

(2) terms for sale or lease agreements;

(3) requirements for public auctions;

(4) the procedure to be followed if the property is not sold; and

(5) disposition of sale or lease proceeds.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-1-101, MCA, is amended to read:

"**67-1-101. Definitions.** Unless the context requires otherwise, in this title the following definitions apply:

(1) "Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories,

including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities; and air instruction.

(2) "Aeronautics instructor" means an individual engaged in giving instruction or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for hire or reward, without advertising that occupation, without calling ~~his~~ *the* facilities an "air school" or anything equivalent to an "air school", and without employing or using other instructors. It does not include an instructor in a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work while engaged in ~~his~~ duties as an instructor.

(3) "Air carrier" means a person or corporation owning, controlling, operating, or managing aircraft as a scheduled common carrier of passengers or freight for compensation within this state.

(4) "Aircraft" means a contrivance used or designed for navigation of or flight in the air.

(5) "Aircrew" includes an individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances except for an individual employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by the individual; and an individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.

~~(5)~~*(6)* "Air instruction" means the imparting of aeronautical information by an aeronautics instructor or in or by an air school or flying club.

~~(6) "Airman" means an individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; an individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, propellers, or appliances (excepting individuals employed outside the United States, an individual employed by a manufacturer of aircraft, aircraft engines, propellers, or appliances to perform duties as inspector or mechanic in connection with them, and an individual performing inspection or mechanical duties in connection with aircraft owned or operated by him) and an individual who serves in the capacity of aircraft dispatcher or air traffic control tower operator.~~

(7) "Air navigation" means the operation or navigation of aircraft in the air space over this state or upon an airport or restricted landing area within this state.

(8) "Air navigation facility" means a facility used in, available for use in, or designed for use in aid of air navigation, including airports, restricted landing areas, and structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid or

constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport or restricted area and any combination of these facilities.

(9) "Airport" means an area of land or water, except a restricted landing area, ~~which~~ *that* is designed for the landing and takeoff of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft or for receiving or discharging passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other airport facilities and all appurtenant rights-of-way.

(10) "Airport and landing field" means any area of land~~,~~ *or* water, or both, ~~which~~ *that* is used or is made available for the landing and takeoff of aircraft, owned, leased, controlled, operated, or maintained by the United States, the state of Montana, *or* any county ~~thereof~~ or ~~any~~ municipality~~,~~ or any of the authorized agencies or branches ~~thereof~~ *of a county or municipality* within the state of Montana.

(11) "Airport authority" or "authority" means a regional airport authority or municipal airport authority created under chapter 11 and the governing body of a municipality ~~which~~ *that* has determined to exercise the powers of a municipal airport authority under 67-11-102.

(12) "Airport hazard" means a structure, object of natural growth, or use of land ~~which~~ *that* obstructs the air space required for the flight of aircraft in landing or taking off at an airport or restricted landing area or is otherwise hazardous to landing or taking off.

(13) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this title.

(14) "Airport protection privileges" means easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation ~~thereof~~ *of airports or restricted landing areas.*

(15) "Air school" means a person engaged in giving or offering to give instruction in aeronautics, either in flying or ground subjects, or both, for or without hire or reward, and advertising~~,~~ *or* representing~~, or holding himself out as giving~~ *to the public that the person gives* or ~~offering~~ *offers* to give that instruction. It does not include a public school or university of this state or an institution of higher learning accredited and approved for carrying on collegiate work.

(16) "Board" means the board of aeronautics provided for in 2-15-2506.

(17) "Bonds" means bonds, notes, interim certificates, debentures, or similar obligations issued by an authority under chapter 11.

(18) "Building or structure" means any edifice, structure, or construction of any kind, character, or description and any object of natural growth erected, constructed, grown, located or proposed to be erected, constructed, grown, or located within the area described in 67-5-201 hereof as safety zones, including

any edifice, structure, or construction or object within ~~said~~ *the* restricted zones erected, constructed, placed, or located on or over land or water, or both.

(19) "Civil aircraft" means an aircraft other than a public aircraft.

(20) "Commercial air operator" means any person owning, controlling, operating, or managing aircraft for any commercial purpose for compensation.

(21) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(22) "Established perimeter of an airport or landing field", for the purposes of computing all distances and elevations as contemplated by chapter 5, ~~shall be~~ *is* the metes and bounds and elevations along the respective sides ~~thereof~~ *of the airport or landing field* as determined by the United States government, the state of Montana, ~~the several counties~~ *a county*, ~~the several municipalities~~ *a municipality*, or *any* other public authority owning, leasing, controlling, operating, or maintaining ~~such~~ *the* airport or landing field~~, the~~. *The* determination and definition ~~to~~ *must* be evidenced by *a* plat showing the metes~~,~~ *and* bounds~~,~~ and elevations ~~to~~ *that must* be filed in ~~and among~~ the records of ~~said~~ *the* public authority for official purposes and subject to inspection and examination at all reasonable times by any interested persons.

(23) "Flying club" means a person other than an individual ~~which~~ *that*, neither for profit nor reward, owns, leases, or uses one or more aircraft for the purpose of instruction or pleasure, or both.

(24) "Governing body" means ~~bodies and boards by whatever names they are known having charge of finances and management of a municipality~~ *a city commission, town council, or county commission and the boards, departments, and divisions of those entities, by whatever name they are known, that have charge of finances and management of a municipality or a county.*

(25) "Height of buildings and structures" means, for the purposes of chapter 5, the vertical distance measured from the ground or surface level of the airport or landing field on the side adjacent to the ~~said~~ building or structure to the level of the highest point of the building or structure.

(26) "Municipal airport authority" or "municipal authority" means a municipal airport authority created under 67-11-102.

(27) "Municipality" or "political subdivision" means a county, city, village, or town of this state and any other political subdivision, public corporation, authority, or district in this state authorized by law to acquire, establish, construct, maintain, improve, and operate airports and other air navigation facilities.

(28) "Navigable air space" means air space above the minimum altitudes of flight prescribed by the laws of this state or by regulations of the department.

(29) "Operation of aircraft" or "operate aircraft" means the use of aircraft for the purpose of air navigation and includes the navigation or piloting of aircraft. A person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, operates the aircraft.

(30) "Person" means an individual, firm, partnership, corporation (private, municipal, or public), company, association, joint-stock association, or body politic and includes a trustee, receiver, assignee, or other similar representative.

(31) "Public aircraft" means an aircraft used exclusively in the service of any government or of a political subdivision of a government, including the government of a state, territory, or possession of the United States, or the District of Columbia but not including a government-owned aircraft engaged in carrying persons or property for commercial purposes.

(32) "Real property" means lands, structures, buildings, and interests in land, including lands under water and riparian rights, and all things and rights usually included within the term real property, including not only fee simple absolute but also all lesser interests, such as easements, rights-of-way, uses, leases, licenses, and all other incorporeal hereditaments and every estate, interest, or right, legal or equitable, pertaining to real property.

(33) "Regional airport authority" or "regional authority" means a regional airport authority created under 67-11-103.

(34) "Restricted landing area" means an area of land~~,~~ *or* water, or both, ~~which~~ *that* is used or is made available for the landing and takeoff of aircraft, the use of which ~~shall~~ *must*, except in case of emergency, be only as provided by the department.

(35) "State airway" means a route in the navigable air space over and above the lands or waters of this state, designated by the department as a route suitable for air navigation.

(36) "Structure" means any object constructed or installed by ~~man~~ *a person*, including~~,~~ but ~~without limitation,~~ *not limited to* buildings, towers, smokestacks, and overhead transmission lines.

(37) "Tree" means any object of natural growth."

Section 2. Section 67-4-201, MCA, is amended to read:

"**67-4-201. Designation of airport influence areas.** (1) A local government with an airport shall designate an airport influence area around the airport ~~within 3 years from July 1, 1977~~. The designation ~~shall~~ *must* be based on federal aviation administration rules and guidelines. However, ~~no~~ *an* airport influence area may *not* extend more than 10,000 feet out from the thresholds of the primary instrument approach runway or exceed 1 mile in width on each side of the primary instrument approach runway and its extended centerline. A public hearing ~~shall~~ *must* be held by the local government following the procedure prescribed in 67-4-302.

(2) A map of the designation ~~shall~~ *must* be filed with the county clerk and recorders of the affected counties and the city clerks of the affected cities and towns."

Section 3. Section 67-4-202, MCA, is amended to read:

"**67-4-202. Temporary effect of designation.** Upon the designation of an airport influence area, the use of land within the airport influence area shall be restricted as to height consistent with part 77, federal aeronautics regulations, until rules are adopted pursuant to this chapter. This restriction does not affect nonconforming uses and areas already zoned on July 1, 1977, and may not be imposed for a period of more than 1 year. After the designation of an airport influence area, ~~no~~ *a* person may *not* recover from a local government, *an airport authority, an airport operator, or an airport owner* damages caused by noise and vibrations from normal and anticipated normal airport operations."

Section 4. Section 67-4-313, MCA, is amended to read:

"**67-4-313. Variance.** (1) Any person desiring to erect or increase the height of a structure, permit the growth of a tree, or use ~~his~~ property in violation of the rules adopted pursuant to this chapter may apply to the board of airport hazard adjustment for a variance from the rules.

(2) A variance ~~shall~~ *must* be granted where a literal application or enforcement of the rules would result in substantial practical difficulty or unnecessary hardship and where the variance would not be contrary to the public interest.

(3) A variance ~~shall~~ *must* be granted for a nonconforming use where there is no immediate hazard to safe flying operations or persons and property in the vicinity of the airport and where the noise or vibrations from normal and anticipated normal operations of the airport would not be likely to cause structural damage.

(4) Within an airport influence area a person who obtains a variance for building a structure which is a nonconforming use under rules adopted pursuant to this chapter or a person who takes or buys property subject to ~~such~~ a variance is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise and vibrations being projected over the property. ~~Furthermore, a~~ *A* person using a structure built under a variance may not collect damages from a local government, *an airport authority, an airport operator, or an airport owner* for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal airport operations."

Section 5. Section 67-5-211, MCA, is amended to read:

"**67-5-211. Enforcement.** ~~It shall be the duty and authority of every~~ *A* public body or governmental authority owning, operating, or maintaining a public airport or landing field *or that creates a municipal or regional airport authority for that purpose* ~~to~~ *shall* enforce the provisions of this chapter as *it* pertains to areas surrounding the particular airport under the control of ~~such~~ *the* body *or authority*~~,~~. ~~the same to~~ *This chapter must* be enforced in either ~~the~~ *a* court of law or of equity in the state of Montana having jurisdiction of ~~such~~ *the* action. Cases ~~are to~~ *must* be instituted in the name of the governmental body charged ~~hereunder~~ with the enforcement ~~hereof~~ *of this chapter*. ~~Such~~ *An* action may be *brought* to prevent the erection, construction, or maintenance of ~~such~~ buildings or other structures or parts of buildings or structures as may exceed the height limits fixed by this law or to restrain, correct, or abate any ~~such~~ violation and to prevent the occupancy and use of any part of a building or structure erected in violation of this law."

Section 6. Section 67-11-232, MCA, is amended to read:

"**67-11-232. Airport property — disposal.** Except as may be limited by the terms and conditions of any grant, loan, or agreement authorized by 67-11-305, an authority may, by sale, lease, or otherwise, dispose of any airport, air navigation facility, or other property or portion ~~thereof~~ *of* or interest ~~therein~~ *in an airport or facility* acquired pursuant to this chapter. ~~Such~~ *The* disposal by sale, lease, or otherwise ~~shall~~ *must* be in accordance with *the adopted rules of the authority* ~~the laws of this state governing~~, *which rules must be approved by the local governing body, for* the ~~disposition of other public~~ *disposal of county* property, except that in the case of disposal to another authority, a municipality, or an agency of the state or federal government for use and operation as a public airport, the sale, lease, or other disposal may be effected in ~~such~~ *a* manner and upon ~~such~~ terms as the commissioners of the authority ~~may deem~~ *consider to be* in the best interest of civil aviation."

Section 7. Section 67-11-304, MCA, is amended to read:

"**67-11-304. ~~Debt service~~ *Reserve* fund.** An airport authority may create a ~~debt service fund and accumulate therein the sum of $5 million together with interest thereon~~ *reserve fund* for the use, repairs, maintenance, and capital outlays of an airport."

Section 8. **Code commissioner instruction.** Wherever the term "airman" appears in Title 67 or elsewhere within the Montana Code Annotated or in legislation enacted by the 1993 legislature and the term means an "airman" as defined in 67-1-101, the code commissioner shall change the term to "aircrew" and make grammatical changes necessary to reflect the change.

Approved April 7, 1993.

CHAPTER NO. 280

[HB 366]

AN ACT REPEALING THE SURCHARGE ON RETAIL SALE OF FIELD RODENTICIDES; AMENDING SECTION 80-7-1105, MCA; REPEALING SECTION 80-7-1106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the volume of retail sales of field rodenticides has decreased to the extent that the administrative expenses for collecting the surcharge on those sales exceed the revenue raised.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-1105, MCA, is amended to read:

"**80-7-1105. Rodenticide fund.** There is a rodenticide fund. The fund consists of money collected under ~~80-7-1106 and~~ 80-7-1107, which must be deposited in the state special revenue fund and must be spent for the purposes set forth in this part."

Section 2. **Repealer.** Section 80-7-1106, MCA, is repealed.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 7, 1993.

CHAPTER NO. 281

[HB 417]

AN ACT PROVIDING FOR THE ASSESSMENT OF ADMINISTRATIVE PENALTIES UNDER THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT; PROVIDING RULEMAKING AUTHORITY TO ADOPT AN ADMINISTRATIVE PENALTY SCHEDULE AND A SYSTEM FOR ASSESSMENT OF ADMINISTRATIVE PENALTIES, NOTICE, AND APPEALS; PROVIDING FOR PENALTY FUNDS TO BE PAID INTO THE STATE GENERAL FUND; PROVIDING FOR APPROPRIATIONS FROM THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES' UNDERGROUND STORAGE TANK SPECIAL REVENUE ACCOUNT FOR THE PURPOSE OF SUPPORTING THE DEPARTMENT'S ADMINISTRATIVE PENALTY PROGRAM; AMENDING SECTIONS 75-10-405, 75-10-413, AND 75-10-447, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of health and environmental sciences authority to adopt administrative rules. The legislature intends that the administrative penalties provided by this bill be used to encourage compliance with the Montana underground storage tank laws and rules by allowing more timely and efficient processing of enforcement actions without the need for seeking a higher penalty through district court. To promote these goals, the department should develop rules that provide for a range of penalties for specific violations, the form for notice of violation, an expedited appeal, and a penalty mitigation process. In doing so, the department shall ensure that its rules and penalty schedule are consistent with the criteria set forth in [section 3]. The department shall ensure that the rules, the penalty schedule, and a statement of the department's enforcement policy are disseminated to the regulated community.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-405, MCA, is amended to read:

"**75-10-405. Administrative rules.** (1) The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel and for financial assurance of facility owners and operators and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes; and

(l) other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require generators and facilities to report on an annual rather than on a biennial basis;

(c) may adopt requirements for the prevention and correction of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and corrective action;

(iv) standards for design, construction, installation, and closure;

(v) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program; ~~and~~

(vi) a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under [section 3]; and

~~(vi)~~*(vii)* delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(d) may adopt regulatory requirements for hazardous waste transfer facilities;

(e) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

(f) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations."

Section 2. Section 75-10-413, MCA, is amended to read:

"**75-10-413. Administrative enforcement.** (1) When the department believes that a violation of this part, a rule adopted under this part, or a permit provision has occurred, it may serve written notice of the violation *personally or* by certified mail on the alleged violator or ~~his~~ *the violator's* agent. The notice must specify the provision of this part, the rule, or the permit provision alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order previously issued. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds ~~no~~ *that a* violation has *not* occurred, it shall rescind the department's order.

(3) ~~Instead~~ *In addition to or instead* of issuing an order pursuant to subsection (1), the department may ~~either~~:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on public health and welfare or the environment; ~~or~~

(b) initiate action under 75-10-414, 75-10-417, or 75-10-418~~.~~*; or*

(c) for underground storage tank violations, assess administrative penalties and issue corrective action orders under [section 3].

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with

regard to which ~~he~~ *the witness* may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

Section 3. **Administrative penalties for underground storage tank violations — appeals — venue for hearings.** (1) A person who violates any of the underground storage tank provisions of this chapter or any underground storage tank rules promulgated under the authority of this chapter may be assessed and ordered by the department to pay an administrative penalty not to exceed $500 per violation. This limitation on administrative penalties applies only to penalties assessed under this section. Each occurrence of the violation and each day it remains uncorrected constitutes a separate violation. The department may suspend a portion of the administrative penalty assessed under this section if the condition that caused the assessment of the penalty is corrected within a specified time. Assessment of an administrative penalty under this section may be made in conjunction with any order or other administrative action authorized by Title 75, chapter 11, or by this chapter.

(2) When the department assesses an administrative penalty under this section, it must have written notice served personally or by certified mail on the alleged violator or the violator's agent. For purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision alleged to be violated;

(b) the facts alleged to constitute the violation;

(c) the amount of the administrative penalty assessed under this section;

(d) the amount, if any, of the penalty to be suspended upon correction of the condition that caused the assessment of the penalty;

(e) the nature of any corrective action the department requires, whether or not a portion of the penalty is to be suspended;

(f) as applicable, the time within which the corrective action is to be taken and the time within which the administrative penalty is to be paid;

(g) the right to appeal or to a hearing to mitigate the penalty assessed and the time, place, and nature of any hearing; and

(h) that a formal proceeding may be waived.

(3) The department shall provide each person assessed a penalty under this section an opportunity for a hearing to either contest the alleged violation or request mitigation of the penalty. The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply

to a hearing conducted under this section. If a hearing is held under this section, it must be held in Lewis and Clark County or the county where the alleged violation occurred. This subsection does not apply until the department gives written notice, served personally or by certified mail, to the alleged violator or the violator's agent. For the purposes of this chapter, service by mail is complete on the day of receipt. The notice must state:

(a) the provision allegedly violated;

(b) the facts that constitute the alleged violation;

(c) the specific nature of any corrective action the department requires, estimated costs of compliance with the action, and where to receive help to correct the alleged violation; and

(d) a timetable that a reasonable person would consider appropriate for compliance with the alleged violations.

(4) The department shall publish a schedule of maximum and minimum penalties for specific violations. In determining appropriate penalties for violations, the department shall consider the gravity of the violations and the potential for significant harm to public health or the environment. In determining the appropriate amount of penalty, if any, to be suspended upon correction of the condition that caused the penalty assessment, the department shall consider the cooperation and the degree of care exercised by the person assessed the penalty, how expeditiously the violation was corrected, and whether significant harm resulted to the public health or the environment from the violation.

(5) If the department is unable to collect an administrative penalty assessed under this section or if a person fails to pay all or any portion of an administrative penalty assessed under this section, the department may take action in district court to recover the penalty amount and any additional amounts assessed or sought under Title 75, chapter 11, or this chapter.

(6) Action under this section does not bar action under Title 75, chapter 11, or this chapter, or any other remedy available to the department for violations of underground storage tank laws or rules promulgated under those laws.

(7) Administrative penalties collected under this section must be deposited in the state general fund.

Section 4. Section 75-10-447, MCA, is amended to read:

"**75-10-447. Underground storage tank special revenue account.** (1) There is an underground storage tank account within the state special revenue fund established in 17-2-102. There must be paid into the account:

(a) revenues from underground storage tank permit and notification fees; and

(b) corrective action costs, damages, and penalties recovered under section 9003 of the federal Resource Conservation and Recovery Act of 1976, as amended.

(2) Appropriations may be made from the underground storage tank account for the following purposes only:

(a) state and local government costs of implementing the underground storage tank leak prevention program; ~~or~~

(b) state and local government costs relating to the investigation of leaking underground storage tanks*; or*

(c) state costs relating to the administration of the administrative penalty program."

Section 5. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [section 3].

Section 6. **Applicability.** [This act] applies to all department of health and environmental sciences' notices served on alleged violators pursuant to [section 3] beginning October 1, 1993, or on the date of adoption of the department's rules under 75-10-405(2)(c)(vi), whichever is earlier.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved April 7, 1993.

CHAPTER NO. 282

[HB 428]

AN ACT EXTENDING FUNDING FOR THE VOLUNTARY STATEWIDE GENETICS PROGRAM; APPROPRIATING FUNDS FOR THE PROGRAM TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 3 AND 4, CHAPTER 638, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

This bill provides for an extension of the 70-cent fee paid on each Montana resident insured on February 1 of each year under any individual or group disability or health insurance policy. The fee is paid by the insurer or health service corporation issuing the policy and the state group health plan in order to operate the voluntary statewide genetics program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3, Chapter 638, Laws of 1991, is amended to read:

"Section 3. **Repealer.** ~~(1)~~ Section 7, Chapter 554, Laws of 1987, and sections 2 and 5, Chapter 155, Laws of 1989, MCA, are repealed.

~~(2) Sections 33-2-712 and 33-2-713, MCA, are repealed.~~"

Section 2. Section 4, Chapter 638, Laws of 1991, is amended to read:

"Section 4. **Effective ~~dates~~ *date*.** ~~(1)~~ [Sections 1, 2, and 3~~(1)~~] are effective July 1, 1991.

~~(2) [Section 3(2)] is effective June 30, 1993 1995.~~"

Section 3. **Appropriation.** There is appropriated from the general fund to the department of health and environmental sciences $1,069,299 for the biennium ending June 30, 1995, for the purpose of operating the voluntary statewide genetics program established in 50-19-211.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 7, 1993.

CHAPTER NO. 283

[HB 435]

AN ACT REQUIRING A REPORT TO THE 54TH LEGISLATURE ON THE FUNDING AVAILABLE IN THE VOLUNTEER FIREFIGHTERS' FUND; CLARIFYING THE CRITERIA FOR THE RECEIPT OF PARTIAL PENSION BENEFITS BY A VOLUNTEER FIREFIGHTER; REVISING THE PROCEDURE FOR CALCULATING PARTIAL PENSION BENEFITS; REMOVING THE LIMIT ON THE MONTHLY PENSION AMOUNT A VOLUNTEER FIREFIGHTER MAY RECEIVE; AMENDING SECTIONS 19-12-202, 19-12-401, AND 19-12-404, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-12-202, MCA, is amended to read:

"**19-12-202. Reports of board.** (1) The board shall, not later than November 1 of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, with such suggestions or recommendations as it may consider of value for public information.

(2) Copies of all such reports shall be made available by the board to the chief or other representative of any volunteer fire company or companies which may at any time request them.

(3) By January 10, ~~1993~~ *1995*, the board shall provide to the ~~53rd~~ *54th* legislature a report on the funding available in the volunteer firefighters' fund for benefits provided under the Volunteer Firefighters' Compensation Act. The legislature shall review the sufficiency of the fund to provide the current level of benefits and may eliminate, modify, or continue the benefit levels provided in 19-12-404."

Section 2. Section 19-12-401, MCA, is amended to read:

"**19-12-401. Eligibility for pension benefits.** In order to qualify for participation in the volunteer firefighters' pension plan under 19-12-404, a volunteer firefighter ~~must~~ *shall* meet each of the following requirements:

(1) (a) To qualify for full participation, ~~he~~ *a volunteer firefighter* must have completed a total of at least 20 years' service as an active volunteer firefighter and as an active member of a qualified volunteer fire company.

(b) If a firefighter is prevented from completing at least 20 years' service ~~by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control,~~ ~~he~~ *the firefighter* may qualify for partial participation if ~~he~~ *the firefighter* has completed at least 10 years' service *and has attained the age of 60*. In that event, ~~he~~ *the firefighter* is eligible for only a proportion of the benefits specified in 19-12-404, determined by multiplying the benefits by a fraction, the numerator of which is the number of years of active service completed and the denominator of which is 20.

(c) The years of active service are cumulative and need not be continuous. The service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.

(d) Effective March 1, 1965, the annual period of service for the purpose of this chapter is the fiscal year. ~~No~~ *A* fractional part of any year may *not* count toward the service requirement, and to receive credit for any particular year, a volunteer firefighter ~~must~~ *shall* serve with one particular volunteer fire company throughout that entire fiscal year.

(2) (a) Except as provided in subsection (2)(b), *in order to receive pension benefits,* ~~he~~ *a firefighter* must have attained the age of 55~~,~~ but ~~he~~ need not be an active volunteer firefighter or an active member of any volunteer fire company when ~~he reaches~~ that age *is reached.*

(b) An active member of a volunteer fire company whose duty-related injury results in a permanent total disability as defined in 39-71-116 is eligible, *regardless of age,* to receive a partial pension ~~regardless of his age~~ calculated as follows:

(i) for a member with less than 10 years of service, a pension calculated as provided in subsection (1)(b) in which the numerator equals 10; or

(ii) for a member with 10 years or more of service, a pension calculated as provided in subsection (1)(b).

(3) During each of the years for which ~~he claims~~ credit *is claimed* under subsection (1), ~~he~~ *a firefighter* must have completed a minimum of 30 hours of instruction in matters pertaining to firefighting under a program formulated and supervised by the chief or foreman of ~~his~~ *the* volunteer fire company.

(4) Effective July 1, 1965, ~~no~~ *a* volunteer firefighter may *not* receive credit for any year of membership in a volunteer fire company unless, throughout the year:

(a) the company maintained firefighting equipment in serviceable condition of a value of $2,500 or more; and

(b) the company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.

(5) ~~He~~ *In order to receive pension benefits, a firefighter* must have ceased to be an active member of any volunteer fire company, and if ~~he~~ *the firefighter*

applies for and receives pension benefits ~~hereunder~~ *under this part*, ~~he will not thereafter be~~ *the firefighter is not* eligible to become an active member of any volunteer fire company."

Section 3. Section 19-12-404, MCA, is amended to read:

"**19-12-404. Pension benefits.** (1) Each person who meets the requirements set forth in 19-12-401 or, in the case of a beneficiary, 19-12-405(1) and who has completed and filed a claim as provided in 19-12-403 is entitled to participate in the volunteer firefighters' pension plan and to receive payments as provided in this section.

(2) The payments ~~shall~~ *must* be computed each year in the following manner:

(a) For fiscal years ~~1992~~ *1994* and ~~1993~~ *1995*, the base benefit level is ~~established at~~ $120 per month for each retiree qualifying for full participation under the provisions of 19-12-401(1)(a). Partial participation is calculated under the provisions of 19-12-401(1)(b).

(b) Whenever at the close of business on the last day of a fiscal year there is a balance in the volunteer firefighters' fund in excess of $6 million, the board shall set aside the amount to be paid to each qualifying claimant.

~~(c) The total pension payable to a qualified claimant under this section may not exceed $200 per month, and the amount to be set aside from the volunteer firefighters' fund may not exceed the amount necessary to pay the maximum of $200 per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made.~~

~~(d)~~*(c)* For the purpose of computation and payment of benefits under this section, if children of a volunteer firefighter become eligible for benefits, all the children of the volunteer firefighter ~~shall~~ *must* be treated collectively as one claimant.

(3) If the amount of the benefit for a qualified claimant is at least $20 per month throughout the succeeding fiscal year, the pension ~~shall~~ *must* be paid monthly on or before the last day of each month. If the amount of the benefit for a qualified claimant is less than $20 per month, the qualified claimant's full pension for that year ~~shall~~ *must* be paid ~~to him~~ in one lump payment on or before December 15 of that year."

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved April 7, 1993.

CHAPTER NO. 284

[HB 441]

AN ACT MODIFYING GROUNDS, PROCEDURES, AND ACTIONS IN REGARD TO DISCIPLINE BY THE BOARD OF WATER WELL CONTRACTORS; AMENDING SECTIONS 37-43-202, 37-43-203, AND 37-43-204, MCA; REPEALING SECTION 37-43-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-43-202, MCA, is amended to read:

"**37-43-202. Powers and duties.** (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board shall adopt rules to establish mandatory water well construction standards and enforcement procedures. The standards must address the protection of the drilling site; specifications for casing materials; materials and specifications for well screens; casing perforations; well development procedures; proper sealing and grouting; temporary capping; cleaning and disinfecting; bonds; guaranties; contractors' and drillers' qualifications; tests for yield and drawdown; reporting procedures and requirements for water quality, well logs, location of wells, and information relating to local conditions; well filters; access ports; gravel packing; sampling methods; plumbness and alignment of the hole and casing; well abandonment procedures; and other necessary and appropriate standards.

(4) The board shall adopt minimum standards regarding the construction, use, and abandonment of monitoring wells. The standards must be designed to protect the state's ground water resource from degradation by contamination and loss of hydrostatic pressure. A violation of the standards does not occur if it can be shown that noncompliance results in equal or greater protection of the ground water resource.

(5) The board may request the department to inspect water wells or monitoring wells drilled or being drilled, and the department has access to these wells at reasonable times.

(6) The board may establish a program for training apprentices and licensed or prospective water well contractors, water well drillers, and monitoring well constructors to more effectively carry out this chapter.

(7) The board shall set and enforce standards and rules governing the licensing, registration, and conduct of water well drillers, water well contractors, and monitoring well constructors.

(8) The board shall set fees commensurate with costs. The board may establish fees, including but not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to specific programs may be equitably distributed as determined by the board. The board shall maintain records sufficient to support the fees charged for each program area.

(9) The rules of the board must be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales must be deposited in the state special revenue fund for the use of the board.

(10) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors, water well drillers, and monitoring well constructors in this state;

(b) cause examinations to be made of applicants for licenses;

(c) ~~deny, revoke, or suspend licenses for good cause, after notice and opportunity to be heard~~ *take disciplinary action and issue orders pursuant to this chapter*;

~~(d) reinstate licenses previously revoked when justification is shown to the satisfaction of the board;~~ and

~~(e)~~*(d)* generally perform duties ~~which~~ *that* will carry out this chapter.

(11) The board shall pay to the department its share of the assessed costs of the department in administering this chapter."

Section 2. Section 37-43-203, MCA, is amended to read:

"37-43-203. ~~Disciplinary authority — injunctions~~ *Injunctions*. ~~(1) The board may adopt rules specifying grounds for disciplinary action and rules providing for:~~

~~(a) revocation of a license;~~

~~(b) suspension of its judgment of revocation on terms and conditions determined by the board;~~

~~(c) suspension of the right to practice for a period not exceeding 1 year;~~

~~(d) placing a licensee on probation;~~

~~(e) reprimand or censure of a licensee; or~~

~~(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.~~

~~(2) Any disciplinary action by the board must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.~~

~~(3)~~ The board may maintain an action to enjoin a person from engaging in the drilling, making, or construction of water wells or monitoring wells until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court."

Section 3. **Complaints and investigations.** The board may investigate complaints against licensees to determine compliance with the laws and rules of this chapter. Licensees must be given an opportunity to respond to complaints and demonstrate or achieve legal compliance prior to disciplinary action. The board may require complainants and licensees to appear before the board to discuss complaints and to attempt to settle differences.

Section 4. **Disciplinary procedure.** (1) If, after investigation and attempted settlement under [section 3], compliance with lawful requirements is not demonstrated or achieved, the board may initiate discipline by issuing a proposed disciplinary order. The proposed order must state the factual and legal basis for the order and identify the witnesses, documents, logs, and reports relied upon by the board in reaching a decision. Copies of any documents, logs, or reports must be attached to the proposed order.

(2) The board shall mail or deliver a copy of the proposed order to the licensee, along with notice that the licensee may request a hearing to show cause why the order should be rejected or modified. If a hearing is not requested within 20 days, the board shall adopt the proposed order as a final order.

(3) A request for hearing must be in writing and specify which, if any, board witnesses the licensee wishes to cross-examine. If a timely request for hearing is received, the board shall schedule a hearing before the board or assign a hearings examiner to conduct the hearing at a later date to be set by the hearings examiner. The board shall make the specified witnesses available for cross-examination at the hearing.

(4) The licensee has the burden to show cause why the proposed order should be rejected or modified. The licensee may cross-examine the board's witnesses, present evidence, propose alternative discipline, argue issues of law and fact, or otherwise attempt to convince the board that the proposed order should be rejected or modified.

(5) After considering the evidence, proposals, and arguments presented at the hearing, the board shall issue its final order adopting, rejecting, or modifying the proposed order. The final order must state the reason for the adoption, rejection, or modification of the proposed order.

(6) A final disciplinary order may be appealed to the district court in the first judicial district and is reviewable according to the rules and standards for judicial review of contested cases pursuant to the Montana Administrative Procedure Act.

Section 5. **Disciplinary authority.** (1) If the board finds grounds for disciplinary action, as provided in subsection (2), the board may by order:

(a) require a licensee to repair or reconstruct substandard wells at the licensee's expense to meet board standards;

(b) require a licensee to take further training or education;

(c) place probationary terms and conditions on a license;

(d) suspend a license for a period not to exceed 1 year; or

(e) revoke a license, specifying that the licensee may not reapply for licensure for a period of 3 years from the date of revocation.

(2) Grounds for disciplinary action include:

(a) violating the rules, construction standards, or laws established by the board and this chapter;

(b) disobeying an order from the board to repair or reconstruct a substandard well;

(c) violating probationary terms of or conditions on a license;

(d) misrepresenting facts on well log reports, license or renewal applications, or apprenticeship records or in response to board inquiries; or

(e) failing to maintain qualifications for licensure as specified in 37-43-305.

Section 6. Section 37-43-204, MCA, is amended to read:

"**37-43-204. Earmarked money for board expenses — expenditure of funds from bonds.** (1) All money collected under this chapter must be deposited in the state special revenue fund and may be used only for the purpose of paying expenses of the board. Except for funds received from bonds in subsection (2), the money must be appropriated by the legislature before it may be expended by the board. Income and interest from investment of the money in the state special revenue fund that are collected under this chapter must be credited to the board.

(2) The board may accept and expend all funds received from bonds required by 37-43-306. The funds must be used to remedy defects in water wells, to compensate for damages caused by violations of this chapter or the rules of the board, or to pay any administrative costs incurred by the board under ~~37-43-311~~ *[sections 3 through 5]*. These funds are statutorily appropriated as provided in 17-7-502."

Section 7. **Repealer.** Section 37-43-311, MCA, is repealed.

Section 8. **Codification instruction.** [Sections 3 through 5] are intended to be codified as an integral part of Title 37, chapter 43, part 3, and the provisions of Title 37, chapter 43, part 3, apply to [sections 3 through 5].

Section 9. **Effective date — applicability.** [This act] is effective on passage and approval and applies to all disciplinary actions initiated by the board of water well contractors after [the effective date of this act].

Approved April 7, 1993.

CHAPTER NO. 285

[HB 488]

AN ACT DIRECTING THE DEPARTMENT OF STATE LANDS TO ESTABLISH A SALVAGE TIMBER PROGRAM; AND AMENDING SECTION 76-13-302, MCA.

STATEMENT OF INTENT

It is the intent of the legislature that the department of state lands establish and implement an aggressive salvage timber program for state lands that removes dead and dying timber before the timber decays and wood value is lost. However, the direction to establish a salvage timber program in this bill should not take precedence over the timely sale of green timber.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-302, MCA, is amended to read:

"**76-13-302. Definitions.** In this part, the following definitions apply:

(1) "Department" means the department of state lands provided for in Title 2, chapter 15, part 32.

(2) "Forest land" means any land ~~which~~ *that* has enough forest growth, standing or down, to constitute in the judgment of the department an insect or

disease infestation breeding ground of a nature to constitute a menace, injurious and dangerous to the forest resources in the district or zone of infestation.

(3) "Forest landowner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber, other than an easement, right-of-way, or mineral reservation.

(4) "Salvage" means the timely removal of dead and dying timber or timber that is threatened by insects, disease, fire, or windthrow when the removal of timber will help contain insect or disease outbreaks, aid in the prevention of wildfire, or provide long-range protection for such forest resources as wildlife, water, soils, or air quality."

Section 2. **Salvage timber program.** (1) The department shall establish a salvage timber program that provides for the timely salvage logging on state forests of dead or dying timber or timber that is threatened by insects, disease, fire, or windthrow. In managing the harvest of salvage timber, the department shall consider:

(a) the economic value of the timber to be salvaged;

(b) the cost of salvage efforts; and

(c) the long-term costs to all forest resources from insects, disease, or fire that otherwise might be controlled through salvage operations.

(2) The department shall, to the extent practicable, harvest dead and dying timber before there is substantial wood decay and value loss.

(3) The department may sell salvage timber pursuant to Title 77, chapter 5, part 2.

(4) The department's salvage timber program may not take precedence over the timely sale and harvest of green timber.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 77, chapter 5, and the provisions of Title 77, chapter 5, apply to [section 2].

Approved April 7, 1993.

CHAPTER NO. 286

[HB 489]

AN ACT CLARIFYING THAT THE POSSESSOR OF A DO NOT RESUSCITATE IDENTIFICATION MAY BE THE SUBJECT OF A LIVING WILL DECLARATION AND MUST BE IN A TERMINAL CONDITION; REQUIRING A DNR IDENTIFICATION FORM TO BE READILY AVAILABLE; AMENDING SECTION 50-10-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-10-101, MCA, is amended to read:

"**50-10-101. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of health and environmental sciences.

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor ~~has executed a declaration, as provided in 50-9-103, that has not been revoked~~ *is a qualified patient, as defined in 50-9-102,* or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state."

Section 2. **DNR form to be readily available.** The department shall ensure that the DNR identification form approved by the department is readily available at no cost or at a nominal charge.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Section 4. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 50, chapter 10, part 1, and the provisions of Title 50, chapter 10, part 1, apply to [section 2].

Approved April 7, 1993.

CHAPTER NO. 287

[HB 491]

AN ACT REVISING PROCEDURES FOR PREPARING AND FILING DEATH CERTIFICATES; CHANGING THE BURIAL TRANSIT PERMIT TO A DEAD BODY REMOVAL AUTHORIZATION; REVISING THE CATEGORIES OF DEATH AND DISPOSITION REQUIRING INQUIRY BY THE CORONER; REQUIRING IMMEDIATE NOTIFICATION TO THE COUNTY CORONER BY A PERSON FINDING HUMAN REMAINS; AND AMENDING SECTIONS 46-4-122, 50-15-403, AND 50-15-405, MCA.

STATEMENT OF INTENT

Passage and approval of this bill would require the department of health and environmental sciences to amend existing rules and possibly to adopt new rules under the authority already delegated under 50-1-202(20) and 50-15-102. The amendments to 50-15-403 replace the current 3-day filing requirement for a death certificate with timeframes established by rule. The legislature intends that these timeframes remain relatively brief but that good cause be recognized when the person in charge of disposition of a dead body is unable to obtain a physician's certification within the set time.

The department shall amend or replace its burial transit permit rule, Rule 16.6.906, Administrative Rules of Montana, to conform with the changes made by 50-15-405. The department may, in replacing this permit with a dead body removal authorization, require any information as to contemplated time, site, and method of disposition as the performance of its vital statistics mission requires.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Notification of finding human remains.** A person who finds a dead human body or fetus or remains that appear to be human shall immediately report this fact to the county coroner by telephone or by the fastest available means of communication.

Section 2. Section 46-4-122, MCA, is amended to read:

"**46-4-122. Human deaths requiring inquiry by coroner.** The coroner shall inquire into and determine the cause and manner of death and all circumstances surrounding a human death:

(1) that was caused or is suspected to have been caused:

(a) in any degree by an injury, either recent or remote in origin; or

(b) by the deceased or any other person that was the result of an act or omission, including but not limited to:

(i) a criminal or suspected criminal act;

(ii) a medically suspicious death, unusual death, or death of unknown circumstances, including any fetal death; or

(iii) an accidental death; or

(c) by an agent, disease, or medical condition that poses a threat to public health;

(2) whenever the death occurred:

(a) while the deceased was incarcerated in a prison or jail or confined to a correctional or detention facility owned and operated by the state or a political subdivision of the state;

(b) while the deceased was in the custody of, or was being taken into the custody of, a law enforcement agency or a peace officer;

(c) during or as a result of the deceased's employment;

(d) less than 24 hours after the deceased was admitted to a medical facility or if the deceased was dead upon arrival at a medical facility; or

(e) in a manner that was unattended or unwitnessed and the deceased was not attended by a physician at any time in the 30-day period prior to death;

(3) if the dead human body is to be cremated or *shipped into the state and* lacks proper medical certification or burial or transmit permits; or

(4) that occurred under suspicious circumstances."

Section 3. Section 50-15-403, MCA, is amended to read:

"50-15-403. Preparation *and filing* of *death or fetal death* certificate ~~when death medically attended.~~ *(1)* A person in charge of ~~interment~~ *disposition of a dead body or fetus* shall~~:~~

~~(1)~~ obtain personal data *on the deceased or, in the case of a fetal death, on the parents* required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate~~;~~.

(2) ~~(a)~~ *The person in charge of disposition of the dead body or fetus shall* present the death certificate to the *certifying* physician ~~last in attendance upon the deceased,~~ *or* the coroner having jurisdiction~~, or the state medical examiner, who shall certify~~ *for medical certification of* the cause of death. ~~according to his best knowledge and belief; or~~

~~(b) present the fetal death certificate to the physician, midwife, or other person in attendance, who shall certify the fetal death and supply any pertinent additional medical data;~~

~~(3) notify the local registrar if the death or fetal death occurred without attendance or if the physician last in attendance failed to sign the death certificate;~~ *The person in charge of disposition shall obtain the completed certification of the cause of death from the physician or coroner and shall, within the time that the department may by rule prescribe,*

~~(4)~~ file the death or fetal death certificate with the local registrar ~~within 3 days after the occurrence.~~ *in the registration area where the death occurred."*

Section 4. Section 50-15-405, MCA, is amended to read:

"50-15-405. ~~Permit~~ *Authorization* for ~~disposition~~ *removal* of body *from place of death.* (1) ~~No~~ *Except as provided in subsection (2), a* dead body may be ~~disposed of or~~ removed from ~~a registration district until a permit for disposition or removal has been issued by the local registrar.~~ *the place of death only upon the written authorization or oral authorization, which must be reduced to writing within 24 hours, of the physician in attendance at death or the physician's designee, the coroner having jurisdiction, or a mortician licensed under 37-19-302.*

(2) ~~No permit may be issued until a death certificate, fetal death certificate, or notice of delay as required in subsection (3) of this section has been filed with the local registrar.~~ *If the death requires inquiry under 46-4-122, the written authorization may only be granted by the coroner having jurisdiction or the coroner's designee or by the state medical examiner if the coroner fails to act. However, when the only reason for inquiry under 46-4-122 is that the body is to be cremated, the coroner may grant oral authorization for removal of the body, which must be reduced to writing as specified under subsection (1) by the coroner.*

(3) ~~If the cause of death or fetal death cannot be determined within 3 days after the occurrence, the attending physician, coroner, or medical examiner shall give the local registrar written notice of the reason for delay so that a permit may be issued for disposition of the body.~~ *The written authorization to move a dead body must be made in triplicate on a form provided by the department. The person in charge of disposition of the dead body, the coroner having jurisdiction, and the local registrar must each be provided with and retain a copy of the authorization.*

(4) A written authorization issued under this section permits removal, transportation, and final disposition of a dead body."

Section 5. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 46, chapter 4, part 1, and the provisions of Title 46, chapter 4, part 1, apply to [section 1].

Approved April 7, 1993.

CHAPTER NO. 288

[HB 506]

AN ACT ALLOWING A RELIGIOUS GROUP OR NONPROFIT ORGANIZATION TO HOLD A RAFFLE FOR WHICH THE PRIZE IS REAL PROPERTY CERTIFIED IN WRITING BY A LICENSED APPRAISER TO BE WORTH MORE THAN $5,000; AND AMENDING SECTION 23-5-413, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-413, MCA, is amended to read:

"23-5-413. **Raffle prizes — permits — exception.** (1) (a) Except as provided in subsection (1)(b), a permit must be issued by the board of county commissioners for each raffle conducted within its jurisdiction. The permit must be issued before the raffle may be conducted. The board of county commissioners may not charge a permit fee or an investigative fee for a raffle conducted by a religious corporation sole or a nonprofit organization if the organization presents sufficient documentation of its nonprofit status.

(b) If tickets for a raffle are to be sold in more than one county, a permit must be obtained only in the county where the winners of the raffle are to be determined.

(2) Except for a religious corporation sole or a nonprofit organization, a person or organization conducting a raffle shall own all prizes to be awarded as part of the raffle before the sale of any tickets.

(3) A person who has conducted a raffle must submit an accounting to the board of county commissioners within 30 days following the completion of the raffle.

(4) The sale of raffle tickets authorized by this part is restricted to events and participants within the geographic confines of the state.

(5) The value of a prize awarded for an individual ticket for a raffle conducted by a person or an organization, other than a religious corporation sole or a nonprofit organization, may not exceed $5,000. The prize may be in the form of cash, other intangible personal property, tangible personal property, or real property. Prizes may not be combined in any manner to increase the ultimate value of the prize awarded for each ticket.

(6) (a) In addition to complying with the requirements of subsections (1) through (5), a religious corporation sole or a nonprofit organization as defined in 23-5-112 shall provide the following information to the board of county commissioners when applying for a raffle permit:

(i) the cost and number of raffle tickets to be sold;

(ii) the charitable purposes the proceeds of the raffle are intended to benefit; and

(iii) the proposed prizes and their value.

(b) The proceeds from the sale of tickets for a raffle conducted by a religious corporation sole or a nonprofit organization may be used only for charitable purposes or to pay for prizes. Proceeds may not be used for the administrative cost of conducting the raffle.

(c) *(i)* The value of a prize awarded for an individual ticket for a raffle conducted by a religious corporation sole or a nonprofit organization may equal or exceed $5,000 if the prize is in the form of*:*

(A) tangible personal property*; or*

(B) real property the fair market value of which has been certified in writing by an appraiser licensed under 37-54-201.

(ii) If the value of the prize is less than $5,000, the prize may be in the form of cash, other intangible personal property, tangible personal property, or real property."

Approved April 6, 1993.

CHAPTER NO. 289

[HB 543]

AN ACT PERMITTING A FIDUCIARY TO ACQUIRE AND INVEST FIDUCIARY FUNDS IN A MANAGEMENT INVESTMENT COMPANY OR INVESTMENT TRUST EVEN IF THE FIDUCIARY OR AN AFFILIATE OF THE FIDUCIARY IS PROVIDING COMPENSATED SERVICES TO THE MANAGEMENT INVESTMENT COMPANY OR INVESTMENT TRUST; REQUIRING THE FIDUCIARY TO DISCLOSE TO TRUST BENEFICIARIES THE COMPENSATION THE FIDUCIARY IS RECEIVING FROM A MANAGEMENT INVESTMENT COMPANY OR INVESTMENT TRUST; AND AMENDING SECTION 72-34-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Investment by trust fiduciary in management investment company or investment trust.** (1) In the absence of an express prohibition in a trust instrument, a trust company fiduciary or the trust division of a financial institution, whether organized under state or federal law, may acquire and retain, invest, and reinvest fiduciary funds in the securities of or other interests in an open-end or closed-end management investment company or investment trust registered under 15 U.S.C. 80a-1 through 80a-64.

(2) The investments authorized in subsection (1) may be made even if the fiduciary or an affiliate of the fiduciary is providing services to a management investment company or investment trust and is receiving compensation as an investment adviser or manager, sponsor, broker, distributor, custodian, transfer agent, or registrar or for a similar service. The fiduciary shall disclose to all current income beneficiaries of the trust the rate, formula, and method of compensation for the services provided.

Section 2. Section 72-34-309, MCA, is amended to read:

"**72-34-309. Investments.** The trustee has the power to invest, *including making those investments provided for in [section 1],* in any kind of property, whether real, personal, or mixed."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 32, chapter 1, part 4, and the provisions of Title 32, chapter 1, part 4, apply to [section 1].

Approved April 7, 1993.

CHAPTER NO. 290

[HB 596]

AN ACT AUTHORIZING TRUST COMPANIES ORGANIZED IN ANOTHER STATE TO SERVE AS TRUSTEE, GUARDIAN, OR CONSERVATOR IN THIS STATE IF THE STATE IN WHICH THE TRUST COMPANY IS ORGANIZED GRANTS AUTHORITY TO SERVE IN SIMILAR FIDUCIARY CAPACITIES TO A TRUST COMPANY ORGANIZED IN MONTANA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 7] authorizes the department of commerce to adopt rules regulating the conduct of business in Montana by foreign trust companies. It is intended that the rules allow a foreign trust company to establish branches or offices of any sort in Montana or to solicit business in Montana only if reciprocating states within the ninth federal reserve district generally permit such solicitation.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definition of foreign trust company.** (1) For the purposes of [sections 1 through 7], the term "foreign trust company" includes each banking and trust association or corporation organized under the laws of any state other than Montana that has the power to act as trustee, guardian, or conservator and each national banking association that maintains its principal office in any state other than Montana that has been granted permission by the comptroller of the currency to act in a fiduciary capacity under the provisions of 12 U.S.C. 92a, as amended.

(2) A foreign trust company acting pursuant to [sections 1 through 7] is not a foreign corporation regulated by 32-1-103 or 32-1-402.

Section 2. **Appointment of foreign trust companies.** (1) A foreign trust company from a state offering reciprocity, as provided in subsection (2), may accept an appointment and act as:

(a) the trustee of any trust created by will, indenture, or other instrument by a person residing in this state, a corporation with its principal offices in this state, or a political entity located in this state;

(b) a guardian or conservator of the person, estate, or both person and estate of any resident of this state;

(c) an executor of the will or administrator of the estate of a decedent who was a resident of the state in which the foreign trust company maintains its principal office at the time of death, in ancillary probate proceedings in this state; and

(d) a guardian or conservator in ancillary proceedings in this state with respect to the property of a resident of the state in which the foreign trust company maintains its principal office.

(2) A foreign trust company may accept appointments in this state if banking or trust associations or corporations organized under the laws of this state or national banking associations that maintain their principal offices in this state are permitted to act as trustees, guardians, or conservators in the state in which the foreign trust company maintains its principal office.

Section 3. **Designation of attorney for service of process.** Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall appoint the secretary of state as its attorney for the service of all legal process in any action or proceedings involving any acts or defaults by it as trustee, guardian, or conservator. The appointment is irrevocable. Service upon the secretary of state as attorney is as valid and binding as if personal service were made upon the foreign trust company.

Section 4. **Service of process.** Service of process under [sections 1 through 7] may be made by delivering a copy of the papers to be served to the secretary of state personally or by filing a copy in the secretary of state's office, accompanied by one additional copy for each foreign trust company to be served. The secretary of state shall, no later than the business day following the date of service, mail to each served foreign trust company, by certified mail, a copy of papers that were served. The copies must be mailed to the address shown for each foreign trust company in the records of the office of the secretary of state.

Section 5. **Bond.** Before accepting an appointment or acting as a trustee, guardian, or conservator, a foreign trust company shall file a bond with a court of competent jurisdiction in an amount as the court directs, with sufficient sureties, conditioned on the faithful discharge of its duties as trustee, guardian, or conservator. In lieu of the bond, the foreign trust company shall certify, in a manner acceptable to the department of commerce, that the capital stock of the foreign trust company is fully paid in cash, on deposit with an appropriate bank, and is of a sufficient amount [to meet the requirements of 32-1-307(3) for a trust company organized under the laws of this state]. The deposit must be maintained until the foreign trust company ceases to act as trustee, guardian, or conservator under [sections 1 through 7]. A foreign trust company does not have to file a bond or certify the deposit of its capital with respect to a trust, created other than a trust created by a will, if the trust instrument requests or directs that a bond is not required of the trustee.

Section 6. **Rights and duties.** A foreign trust company acting as trustee, guardian, or conservator has the rights, authority, and duties that a natural person resident in this state duly acting as trustee, guardian, or conservator has under the laws of this state.

Section 7. **Solicitation of business.** A foreign trust company may conduct business in Montana only in accordance with rules promulgated by the department of commerce.

Section 8. **Coordination instruction.** If House Bill No. 201 is passed and approved with amendments to 33-1-307 that delete subsection (3), then in [section 5 of this act], the bracketed phrase relating to 32-1-307(3) is void.

Approved April 7, 1993.

CHAPTER NO. 291

[HB 646]

AN ACT INCREASING THE ALLOWABLE SALE PRICE OF THE MONTANA CODE ANNOTATED TO THE COST PRICE PLUS 25 PERCENT; PROVIDING THAT SALES TO STATE AND LOCAL GOVERNMENT AGENCIES AND TO NONPROFIT ORGANIZATIONS MAY BE AT COST PLUS 5 PERCENT; AMENDING SECTION 1-11-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-11-301, MCA, is amended to read:

"**1-11-301. Publication and sale of Montana Code Annotated — free distribution.** (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the code commissioner call for bids for the printing and binding and contract for their publication. The code commissioner shall follow the requirements of state law relating to contracts and bids, except as ~~herein~~ provided *in this section*.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications ~~thereto~~ may be included as an alternative specification and bid and as a part of a contract to be let by bids by the code commissioner.

(3) The sales price to the public ~~shall~~ *must* be fixed by the legislative council but may not exceed the cost price plus ~~20%~~ *25%*. All ~~revenues~~ *revenue* generated from the sale of the Montana Code Annotated or ancillary publications ~~shall~~ *must* be deposited in the state special revenue fund~~,~~. ~~from which fund appropriations~~ *Appropriations from the fund* may be made for the use of the office and facilities of the legislative council under this chapter.

(4) Sets of the Montana Code Annotated purchased by the state ~~or~~, Montana local governmental agencies that are supported by public funds, *and nonprofit organizations* ~~shall be for~~ *may not exceed* the cost price of the sets *plus 5%*.

(5) (a) The Montana Code Annotated and supplements and other subsequent and ancillary publications except annotations ~~shall~~ *must* be provided at no cost to the following:

(i) each library designated as a depository library under 22-1-214, one copy;

(ii) each library designated as a federation headquarters library under 22-1-402, one copy.

(b) The state law library in Helena ~~shall~~ *must* be provided with four copies of the Montana Code Annotated and supplements including annotations and other subsequent and ancillary publications.

(c) The legislative council shall include in the cost price of the code the cost of providing the copies under this subsection."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 7, 1993.

CHAPTER NO. 292

[SB 37]

AN ACT CREATING THE OFFENSE OF STALKING; PROVIDING FOR RESTRAINING ORDERS; REQUIRING NOTIFICATION OF VICTIMS WHEN ACCUSED STALKERS ARE RELEASED ON BAIL; EXEMPTING THE OFFENSE OF STALKING FROM BAIL SCHEDULES; AMENDING SECTIONS 40-4-121, 46-9-108, AND 46-9-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

The legislature finds that there are not adequate provisions in existing state law to protect stalking victims. Civil restraining orders are often difficult to obtain and alone are often inadequate to deter a stalker from committing an act of violence. It is the intent of the legislature to criminalize and punish the activities of people who repeatedly watch, follow, harass, or threaten someone when such activity causes the victim substantial emotional distress or reasonable apprehension of bodily injury or death. It is the intent of the legislature to give law enforcement personnel recourse before an attack takes place. Further, it is the intent of the legislature that the offense not apply to an otherwise lawful activity. In particular, the legislature does not want to place a chill on constitutionally protected rights, such as the right to demonstrate, to assemble, to picket, to peacefully protest, to distribute literature, and to lawfully communicate with persons in public places, or on the full exercise of freedom of speech and freedom of the press.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Stalking — exemption — penalty.** (1) A person commits the offense of stalking if the person purposely or knowingly causes another person substantial emotional distress or reasonable apprehension of bodily injury or death by repeatedly:

(a) following the stalked person; or

(b) harassing, threatening, or intimidating the stalked person, in person or by phone, by mail, or by other action, device, or method.

(2) This section does not apply to a constitutionally protected activity.

(3) For the first offense, a person convicted of stalking shall be imprisoned in the county jail for a term not to exceed 1 year or fined an amount not to exceed $1,000, or both. For a second or subsequent offense or for a first offense against a victim who was under the protection of a restraining order directed at the offender, the offender shall be imprisoned in the state prison for a term not to exceed 5 years or fined an amount not to exceed $10,000, or both. A person convicted of stalking may be sentenced to pay all medical, counseling, and other costs incurred by or on behalf of the victim as a result of the offense.

(4) Upon presentation of credible evidence of violation of this section, an order may be granted, as set forth in 40-4-121, restraining a person from engaging in the activity described in subsection (1).

(5) For the purpose of determining the number of convictions under this section, "conviction" means:

(a) a conviction, as defined in 45-2-101, in this state;

(b) a conviction for a violation of a statute similar to this section in another state; or

(c) a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state for a violation of a statute similar to this section, which forfeiture has not been vacated.

(6) Attempts by the accused person to contact or follow the stalked person after the accused person has been given actual notice that the stalked person does not want to be contacted or followed constitutes prima facie evidence that the accused person purposely or knowingly followed, harassed, threatened, or intimidated the stalked person.

Section 2. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child *or from stalking, as defined in [section 1]*;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) *(i)* alleging physical abuse, harm, or bodily injury against the petitioner by a family or household member or the threat of physical abuse, harm, or bodily injury against the petitioner by a family or household member that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; ~~and~~ *or*

(ii) alleging a violation of [section 1]; and

(b) requesting relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, *as appropriate*. Persons who may request relief under this subsection include spouses, former spouses, ~~and~~ persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition, *and persons alleging a violation of [section 1]*.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208;

(c) terminates upon order of the court or when a final decree is entered or when a petition for dissolution or legal separation is voluntarily dismissed; and

(d) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626 *or [section 1]*."

(8) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown."

Section 3. Section 46-9-108, MCA, is amended to read:

"**46-9-108. Conditions upon defendant's release — *notice to victim of stalker's release.*** (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

(3) Whenever a person accused of a violation of [section 1] is admitted to bail, the court shall, as soon as possible under the circumstances, make one and if necessary more reasonable attempts, by means that include but are not limited to certified mail, to notify the alleged victim or, if the alleged victim is a minor, the alleged victim's parent or guardian of the accused's release."

Section 4. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule — acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse ~~or~~, any assault against a family member or a household member, *or stalking, as defined in [section 1].*

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

Section 5. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, and the provisions of Title 45 apply to [section 1].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 9, 1993.

CHAPTER NO. 293

[SB 120]

AN ACT RELATING TO TREATMENT AND DISCHARGE OF PATIENTS ADMITTED TO A MENTAL HEALTH FACILITY; REVISING THE REQUIREMENTS GOVERNING THE ESTABLISHMENT AND PERIODIC REVIEW OF PATIENT TREATMENT PLANS, THE KEEPING OF PATIENT RECORDS, AND THE DEVELOPMENT OF INDIVIDUALIZED DISCHARGE PLANS; AND AMENDING SECTIONS 53-21-162 AND 53-21-165, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-162, MCA, is amended to read:

"**53-21-162. Establishment of patient treatment plan — patient's rights.** (1) Each patient admitted as an inpatient to a mental health facility ~~shall~~ *must* have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility.

(2) Each patient ~~shall~~ *must* have an individualized treatment plan. This plan ~~shall~~ *must* be developed by appropriate professional persons, including a psychiatrist, and ~~shall~~ *must* be implemented no later than 10 days after the patient's admission. Each individualized treatment plan ~~shall~~ *must* contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of ~~commitment~~ *hospitalization*;

(c) a description of ~~intermediate and long-range~~ treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these ~~intermediate and long-range~~ goals;

(e) a specification of staff responsibility ~~and a description of proposed staff involvement with the patient in order to attain these treatment goals;~~ *for attaining each treatment goal;*

(f) criteria for release to less restrictive treatment conditions ~~and criteria for discharge~~; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

~~(3) As part of his treatment plan, each patient shall have an individualized aftercare plan. This plan shall be developed by a professional person as soon as practicable after the patient's admission to the facility.~~

~~(4) In the interests of continuity of care, whenever possible one professional person (who need not have been involved with the development of the treatment plan) shall be responsible for supervising the implementation of the treatment plan, integrating the various aspects of the treatment program, and recording the patient's progress. This professional person shall also be responsible for ensuring that the patient is released, where appropriate, into a less restrictive form of treatment.~~

~~(5) The treatment plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. Moreover, at least every 90 days each patient shall receive a mental examination from and his treatment plan shall be reviewed by a professional person other than the professional person responsible for supervising the implementation of the plan.~~

(3) Overall development, implementation, and supervision of the treatment plan must be assigned to an appropriate professional person.

(4) The inpatient mental health facility shall periodically reevaluate the patient and revise the individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan must be reviewed:

(a) at the time of any transfer within the facility;

(b) at the time of discharge;

(c) upon any major change in the patient's condition;

(d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of stay;

(e) no less than every 90 days; and

(f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that includes at least one professional person who is not primarily responsible for the patient's treatment plan.

~~(6)~~*(5)* A patient has the right:

(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning of mental health services to be provided and in the revision of the plan;

(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:

(i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, or providers of mental health services; and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment:

(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) permitted under the applicable law in the case of a person committed to a facility by a court.

~~(7)~~*(6)* In the case of a patient who lacks the capacity to exercise the right to consent to treatment described in subsection ~~(6)(c)~~ *(5)(c)*, the right must be exercised on behalf of the patient by a guardian appointed pursuant to the provisions of Title 72, chapter 5.

~~(8)~~*(7)* The department shall develop procedures for initiating limited guardianship proceedings in the case of a patient who appears to lack the capacity to exercise the right to consent described in subsection ~~(6)(c)~~ *(5)(c)*."

Section 2. Section 53-21-165, MCA, is amended to read:

"**53-21-165. Records to be maintained.** Complete patient records ~~shall~~ *must* be kept by the mental health facility for the length of time required by rules established by the department of health and environmental sciences. All records kept by the mental health facility ~~shall~~ *must* be available to any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records ~~shall~~ *must* also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records ~~shall~~ *must* include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation ~~which~~ *that* notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination ~~which~~ *that* describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications ~~thereto~~ *to the plan*;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan ~~which~~, *required under 53-21-162(4), that* analyzes the successes and failures of the treatment program and ~~directs whatever modifications are necessary~~ *includes recommendations for appropriate modification of the treatment plan*;

(8) a copy of the individualized ~~aftercare~~ *discharge* plan and any modifications ~~thereto~~ *to the plan* and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status ~~which~~ *that* includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a ~~detailed~~ summary of each significant contact by a professional person with the patient;

~~(11) a detailed summary, on at least a weekly basis, by a professional person involved in the patient's treatment, of the patient's progress along the treatment plan;~~

~~(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;~~

(11) documentation of the implementation of the treatment plan;

(12) documentation of all treatment provided to the patient;

(13) chronological documentation of the patient's clinical course;

(14) descriptions of any changes in the patient's condition;

~~(13)~~*(15)* a signed order by a professional person for any restrictions on visitations and communications;

~~(14)~~*(16)* a signed order by a professional person for any physical restraints and isolation;

~~(15)~~*(17)* a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that ~~he~~ *the staff member* has personal knowledge of the incident or specifying ~~his~~ *any* other source of information ~~and initialed~~. *The summary of the incident must be initialed* within 24 hours by a professional person~~; and~~.

~~(16)~~*(18)* a summary by the professional person in charge of the facility or ~~his~~ *by an* appointed agent of ~~his findings~~ *the determination made* after the 30-day review provided for in 53-21-163."

Section 3. **Discharge plan.** Each patient admitted as an inpatient to a mental health facility must have an individualized discharge plan developed within 10 days after admission. The discharge plan must be updated as necessary. Each individualized discharge plan must contain:

(1) an anticipated discharge date;

(2) criteria for discharge;

(3) identification of the facility staff member responsible for discharge planning;

(4) identification of the community-based agency or individual that is assisting in arranging postdischarge services; and

(5) other information necessary to ensure an appropriate discharge and adequate postdischarge services.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [section 3].

Approved April 9, 1993.

CHAPTER NO. 294

[SB 150]

AN ACT CONFORMING WITH FEDERAL LAW THE STATE CHILD SUPPORT ENFORCEMENT LAWS RELATING TO CHILD SUPPORT GUIDELINES AND PATERNITY BLOOD TESTING FEES; AMENDING SECTIONS 40-4-204, 40-5-210, 40-5-226, AND 40-6-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-204, MCA, is amended to read:

"**40-4-204. Child support — orders to address health insurance — withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for ~~his~~ *the child's* support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and ~~his~~ *the child's* educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209~~,~~. *The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award,* unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court ~~does not apply these standards and guidelines to determine child support~~ *finds that the guideline amount is unjust or inappropriate in a particular case*, it shall state its reasons for finding that the application of ~~such~~ *the* standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. *Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.*

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(6) For the purposes of income withholding under subsection (5), every district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(8) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the

department is providing services under Title IV-D of the Social Security Act for the enforcement of the order."

Section 2. Section 40-5-210, MCA, is amended to read:

"**40-5-210. Standardized fee schedule.** (1) The department shall by rule establish a standardized schedule of fees for the recovery of administrative costs and expenses of child support enforcement. The fees may be recovered from an obligor if the obligor's failure or refusal to support a child makes it necessary for the department to provide child support enforcement services under this part. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(2) If paternity is established or presumed under 40-5-234 for the alleged father, the fees for paternity blood testing may be recovered from the parent, whether the alleged father or the mother, denying paternity of the alleged father. The total amount of the paternity blood testing fee may not exceed the actual costs of the paternity blood tests.

~~(2)~~*(3)* In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order in which the department is the prevailing party.

~~(3)~~*(4)* Fees awarded under this section are in the nature of child support and are collectible in the same manner as a support order. The fee award may be collected separately or added to and collected with any balance due on a support debt.

~~(4)~~*(5)* Collection of a fee award may not reduce any current child support payment due the obligee.

~~(5)~~*(6)* Arrearage amounts collected that include a fee must be allocated as follows:

(a) If the obligee is a recipient of public assistance, the amount must be allocated first to satisfy the fee.

(b) If the obligee is not a recipient of public assistance, the first 10% of each amount collected must be allocated to satisfy the fee.

~~(6)~~*(7)* The department, upon a showing of necessity, may waive or defer any fee assessed under this section."

Section 3. Section 40-5-226, MCA, is amended to read:

"**40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) At the discretion of the hearing officer, the administrative hearing may be held:

(a) in the county of residence or other county convenient to the obligor or obligee; or

(b) in the county in which the department or any of its offices are located.

(3) If a hearing is requested, it must be scheduled within 20 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with ~~such~~ *the* determination.

(5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(6) In a hearing to determine financial responsibility, *whether temporary or final, and in any proceeding to modify support under 40-5-273,* the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the ~~scale of suggested minimum contributions~~ *uniform child support guidelines adopted by the department* under ~~40-5-214~~ *40-5-209.* The hearing officer is not limited to the amounts stated in the notice. *The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the order is entered upon the parties' consent. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award, unless the hearing officer finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in a particular case. If the hearing officer finds that the guideline amount is unjust or inappropriate in a particular case, the hearing officer shall state the reasons for finding that the application of the standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.*

(7) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

(8) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

(10) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(11) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, every order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

(12) For the purposes of income withholding provided for in subsection (11), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information."

Section 4. Section 40-6-116, MCA, is amended to read:

"**40-6-116. Judgment or order.** (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily ~~shall~~ *must* be for periodic payments, which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court ~~deems~~ *considers* just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including ~~his~~ medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209. *The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of a defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying the guidelines. The amount determined under the guidelines is presumed to be an adequate and reasonable support award,* unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court ~~does not apply these standards and guidelines to determine child support~~ *finds that the guideline amount is unjust or inappropriate in a particular case,* it shall state its reasons for finding that the application of ~~such~~ *the* standards and guidelines is unjust to the child or a party or is inappropriate in that particular case. *Similar reasons must also be stated in a case in which the parties have agreed to a support amount that varies from the guideline amount. Findings that rebut and vary the guideline amount must include a statement of the amount of support that would have ordinarily been ordered under the guidelines.*

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(8) Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(10) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(11) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child

support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order."

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 9, 1993.

CHAPTER NO. 295

[SB 163]

AN ACT CREATING THE MONTANA SAFETY CULTURE ACT; REQUIRING EMPLOYERS TO ESTABLISH SAFETY PROGRAMS; REQUIRING SAFETY TRAINING AND EDUCATION PROGRAMS; REQUIRING WORKERS' COMPENSATION INSURERS TO PROVIDE SAFETY CONSULTATION SERVICES; GRANTING IMMUNITY TO INSURERS FOR CERTAIN OCCURRENCES; CREATING A SAFE EMPLOYMENT EDUCATION AND TRAINING ADVISORY COMMITTEE; ALLOWING THE STATE FUND TO IMPLEMENT VARIABLE PRICING LEVELS; ALLOWING THE STATE FUND TO PLACE A SURCHARGE ON HIGH-LOSS EMPLOYERS; AMENDING SECTION 39-71-2311, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] authorizes the department of labor and industry to adopt rules to implement safety programs and to stimulate the creation of a safety culture in Montana workplaces. The rules adopted by the department must:

(1) be consistent with the provisions of [this act] and of Titles 33 and 39 and Title 50, chapter 71; and

(2) further the objectives of improving occupational safety and health and reducing the costs of the workers' compensation system by attempting to control or diminish the incidence of injury or illness.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 9] may be cited as the "Montana Safety Culture Act".

Section 2. **Purpose.** The purpose of [sections 1 through 9] is to reduce the incidence of occupational injury and illness by promoting safety in the workplace in order to control the costs of claims for workers' compensation insurance. The creation of a safety culture requires employers to provide training and education to make safety awareness part of the requirement for each worker's satisfactory job performance and requires the department to promote safety awareness for the public through the education and preparation of each student for entrance into the labor market. A reduction in workplace injuries, illnesses, and deaths through enhanced safety on the job benefits the public as well as the employers and the employees by lowering both financial and physical costs. Ensuring immunity to insurers in the provision of safety consultation services encourages and promotes safety in the workplace and improves the relationship between employers and employees.

Section 3. **Safety consultation.** (1) As used in [sections 1 through 9], "safety consultation services" means assistance rendered by an insurer to advise and aid an insured employer in the identification, evaluation, and control of existing and potential accidental and occupational health problems. The services may be delivered in person, by mail, or by telephone, based upon need.

(2) Safety consultation services include but are not limited to:

(a) surveys consisting of onsite identification and subsequent evaluation of exposures relative to employees, materials, equipment, work methods, processes, and facilities;

(b) recommendations expressed in the form of communications to an insured employer, with reference to control of exposures to occupational accident, injury, or illness and to improvement of safety programs and systems;

(c) training programs, including aids, programs, and materials made available to assist in the control of exposures;

(d) consultations to advise insured employers relative to risk, exposure, and experience in the insured employer's business;

(e) accident analysis consisting of review of reported accidents to determine cause and trends; and

(f) industrial hygiene services, including recognition, evaluation, and control of chemical, physical, and biological exposures.

Section 4. **Safety programs — educational activities.** (1) To promote health and safety in places of employment in this state:

(a) each public or private employer shall establish and administer a safety program in accordance with rules adopted by the department pursuant to [section 5]; and

(b) the department, relying upon the support and assistance of concerned private entities or other governmental agencies, shall produce and distribute material to the schools of Montana and provide guest speakers intended to:

(i) educate students about the necessity for safe work practices;

(ii) prepare students to embark on accident-free careers; and

(iii) disseminate information promoting the reduction and control of the rate of incidence of workplace injuries or occupational disease.

(2) An employer who employs temporary workers shall include those workers in the employer's safety program. A temporary services contractor shall provide a safety program for employees not employed by other employers.

Section 5. **Rulemaking authority.** The department shall adopt rules, including but not limited to rules that require:

(1) each employer to conduct an educational-based safety program, including but not limited to:

(a) a safety training program to provide:

(i) new employee general safety orientation;

(ii) job- or task-specific safety training; and

(iii) continuous refresher safety training, including periodic safety meetings;

(b) periodic hazard assessment, with corrective actions identified; and

(c) appropriate documentation of performance of the activities; and

(2) an employer of more than five employees to have a comprehensive and effective safety program, including but not limited to:

(a) a safety committee composed of employee and employer representatives that holds regularly scheduled meetings;

(b) procedures of reporting and investigating all work-related incidents, accidents, injuries, and illnesses; and

(c) policies and procedures that assign specific safety responsibilities and safety performance accountability.

Section 6. **Notification of safety consultation services available by insurer.** To implement safety requirements, each insurer shall notify each insured employer of the type of safety consultation services available and the location where the safety consultation services may be requested.

Section 7. **Safety consultation services — safety program as provision of insurance contract or agreement.** (1) Each insurer shall provide safety consultation services to each of its insured employers who request the assistance.

(2) The safety consultation services to be provided are within the discretion of the insurer but must include consideration of the hazard, experience, and size of the insured employer's operations.

(3) The insurer shall establish a system of priorities to use in responding to worksite safety consultation service requests, giving first priority to insured employers that have an unreasonably high actual or potential loss experience.

(4) Each insurer's insurance contract or agreement must require each insured employer to implement a safety program as part of the contract or agreement to provide workers' compensation coverage.

Section 8. **Safety employment education and training advisory committee — terms — expenses — duties — meetings.** (1) There is a safety employment education and training advisory committee composed of seven members appointed by the commissioner of labor and industry to serve for terms of 3 years.

(2) The committee consists of:

(a) three members representing employees;

(b) three members representing employers; and

(c) one member representing the department of labor and industry.

(3) The committee shall elect its presiding officer.

(4) Before the expiration of the term of a member of the committee, the commissioner shall appoint a successor. A member may be reappointed. The commissioner shall make an appointment to fill a vacancy.

(5) The members of the committee serve without compensation but are entitled to travel expenses as provided in 2-18-501.

(6) The commissioner shall prescribe the committee's duties, including but not limited to recommending to the commissioner methods by which the department may:

(a) implement safety education in secondary schools and vocational-technical programs;

(b) facilitate the implementation of employer safety programs; and

(c) universally increase safety awareness in the workplace.

(7) The committee shall meet at least once every 3 months at a place and time determined by the committee and shall meet at other times and places determined by a majority of the members of the committee or the presiding officer of the committee. Four members of the committee constitute a quorum for the transaction of business, but the department member may not be counted to determine a quorum.

Section 9. **Safety consultation services — insurer's exemption from civil liability — exceptions.** (1) The furnishing of or the failure to furnish safety consultation services related to, in connection with, or incidental to a workers' compensation insurance contract or agreement to provide workers' compensation coverage does not subject the insurer or its agents, employees, or service contractors to liability for damages from injury, loss, or death, whether direct or consequential, occurring as a result of any act or omission by any person in the course of providing safety consultation services.

(2) Subsection (1) does not apply:

(a) if the injury, loss, or death occurred during the actual performance of safety consultation services and was directly and proximately caused by the negligence of the insurer or its agents, employees, or service contractors;

(b) to any safety consultation services required to be performed under the provisions of a written service contract for which a specific charge is made and not incidental to a policy of insurance; or

(c) in an action against an insurer or its agents, employees, or service contractors for damages caused by the act or omission of the insurer or its agents, employees, or service contractors in which it is judicially determined that the act or omission constituted a crime or involved actual malice.

Section 10. **Variable pricing — higher premium by state fund for noncompliance with safety program — expenditure accounting.** (1) The state fund shall:

(a) implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. The timeliness of an employer's payroll reporting and premium payments and other relevant factors may be considered in the placement of an employer within the variable pricing levels.

(b) provide an additional pricing level with a higher rate within the classification for those employers who do not satisfactorily implement a safety program subsequent to the provision of or attempt to provide onsite safety consultation services.

(2) The state fund may assess a surcharge of an additional 20% on premiums payable to the state fund by high-loss employers. The criteria for identifying high-loss employers must be established by the state fund board of directors by rule.

(3) The state fund shall separately account for money expended under [sections 1 through 11] and 39-71-2311.

Section 11. **Safety program requirement in workers' compensation policies.** A policy, contract, or agreement to insure an employer against a workers' compensation or occupational disease risk must require each insured employer to implement a safety program, as provided in [section 7], as part of the policy, contract, or agreement to provide workers' compensation or occupational disease insurance coverage.

Section 12. Section 39-71-2311, MCA, is amended to read:

"**39-71-2311. Intent and purpose of plan.** It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a mutual insurance fund. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer ~~unless an assigned risk plan established under 39-71-431 is in effect~~. The state fund must be neither more nor less than self-supporting. Premium rates must be set at least annually at a level sufficient to ensure the adequate funding of the insurance program, including the costs of administration, benefits, and adequate reserves, during and at the end of the period for which the rates will be in effect. In determining premium rates, the state fund shall make every effort to adequately predict future costs. When the costs of a factor influencing rates are unclear and difficult to predict, the state fund shall use a prediction calculated to be more than likely to cover those costs rather than less than likely to cover those costs. Unnecessary surpluses that are created by the imposition of premiums found to have been set higher than necessary because of a high estimate of the cost of a factor or factors may be refunded by the declaration of a dividend as provided in this part. For the purpose of keeping the state fund solvent, it must implement variable pricing levels ~~within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. An employer's payroll reporting and~~

~~premium history and other relevant factors may also be considered in implementing variable pricing levels~~ *as provided in [section 10].*"

Section 13. **Codification instruction.** (1) [Sections 1 through 7 and 9] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 through 7 and 9].

(2) [Section 8] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [section 8].

(3) [Section 10] is intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [section 10].

(4) [Section 11] is intended to be codified as an integral part of Title 33, chapter 15, part 3, and the provisions of Title 33, chapter 15, part 3, apply to [section 11].

Section 14. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 15. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Effective dates.** (1) [Sections 5, 8, and this section] are effective July 1, 1993.

(2) [Sections 1 through 4, 6, 7, and 9 through 15] are effective January 1, 1994.

Approved April 9, 1993.

CHAPTER NO. 296

[SB 164]

AN ACT CREATING A WORKERS' COMPENSATION FRAUD INVESTIGATION AND PROSECUTION OFFICE IN THE DEPARTMENT OF JUSTICE; CREATING A WORKERS' COMPENSATION FRAUD PREVENTION AND DETECTION UNIT IN THE STATE FUND; CLARIFYING CRIMINAL PENALTIES FOR WORKERS' COMPENSATION FRAUD; AMENDING SECTIONS 39-71-206, 39-71-316, 39-71-701, 39-71-702, AND 39-71-2001, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Workers' compensation fraud office.** There is a workers' compensation fraud investigation and prosecution office in the department of justice. The office shall investigate and prosecute cases referred by the state compensation mutual insurance fund. The office is under the supervision and control of the attorney general and consists of:

(1) four persons qualified by education, training, experience, and high professional competence in investigative procedures who shall investigate violations of the provisions of Title 39, chapters 71 and 72, at the request of the state compensation mutual insurance fund; and

(2) one person licensed to practice law in Montana who shall prosecute violations of the provisions of Title 39, chapters 71 and 72. The attorney may also assist county attorneys in prosecuting violations of Title 39, chapters 71 and 72, without charge to the county.

Section 2. Section 39-71-206, MCA, is amended to read:

"**39-71-206. Legal advisers of department and state fund —** ***investigative and prosecution services.*** *(1)* The attorney general is the legal adviser of the department and the state fund and shall represent either entity in all proceedings if requested by the department or state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.

(2) As provided in [section 1], the attorney general shall provide investigative and prosecution services to the state fund with respect to violations of Title 39, chapters 71 and 72."

Section 3. **Fraud detection and prevention unit — expenditure accounting.** (1) The state fund shall establish a fraud prevention and detection unit. The unit is responsible for developing detection and prevention procedures, providing detection services, and providing training in the prevention and detection of fraudulent conduct under Title 39, chapters 71 and 72, that is subject to prosecution under Title 45. The unit shall refer all cases of suspected fraudulent conduct to the workers' compensation fraud investigation and prosecution office established in [section 1].

(2) The state fund shall expend money to investigate fraud pursuant to this section and shall separately account for money expended.

Section 4. Section 39-71-316, MCA, is amended to read:

"**39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means.** (1) A person filing a claim under this chapter or chapter 72 of this title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title ~~may be~~ *is* guilty of theft *and may be prosecuted* under 45-6-301. A county attorney *or the attorney general* may initiate criminal proceedings against the person. *This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer.*"

Section 5. Section 39-71-701, MCA, is amended to read:

"**39-71-701. Compensation for temporary total disability — exception.** (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing.

(2) The determination of temporary total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for injury producing temporary total disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than ~~he~~ *the individual* received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though ~~he~~ *the worker* has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available for any reason to the worker and the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for ~~such~~ *the* week, which amount is to be calculated from the date of the disability social security entitlement.

(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of $299 established July 1, 1986.

(7) A worker may not receive both wages and temporary total disability benefits without the written consent of the insurer. A worker who receives both wages and temporary total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 6. Section 39-71-702, MCA, is amended to read:

"**39-71-702. Compensation for permanent total disability.** (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for an injury resulting in permanent total disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits ~~shall~~ *may* not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for ~~such~~ *the* week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 ~~such~~ adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) ~~Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of $299 established July 1, 1986.~~ *A worker may not receive both wages and permanent total disability benefits without the written consent of the insurer. A worker who receives both wages and permanent total disability benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.*"

Section 7. Section 39-71-2001, MCA, is amended to read:

"**39-71-2001. Rehabilitation benefits.** (1) An injured worker is eligible for rehabilitation benefits if:

(a) the injury results in permanent partial disability or permanent total disability as defined in 39-71-116;

(b) a physician certifies that the injured worker is physically unable to work at the job the worker held at the time of the injury;

(c) a rehabilitation plan completed by a rehabilitation provider and designated by the insurer certifies that the injured worker has reasonable vocational goals and a reemployment and wage potential with rehabilitation. The plan must take into consideration the worker's age, education, training, work history, residual physical capacities, and vocational interests.

(d) a rehabilitation plan between the injured worker and the insurer is filed with the department. If the plan calls for the expenditure of funds under 39-71-1004, the department shall authorize the department of social and rehabilitation services to use the funds.

(2) After filing the rehabilitation plan with the department, the injured worker is entitled to receive rehabilitation benefits at the injured worker's temporary total disability rate. The benefits must be paid for the period specified in the rehabilitation plan, not to exceed 104 weeks. Rehabilitation benefits must be paid during a reasonable period, not to exceed 10 weeks, while the worker is waiting to begin the agreed-upon rehabilitation plan. Rehabilitation benefits must be paid while the worker is satisfactorily completing the agreed-upon rehabilitation plan.

(3) If the rehabilitation plan provides for job placement, a vocational rehabilitation provider shall assist the worker in obtaining other employment

and the worker is entitled to weekly benefits for a period not to exceed 8 weeks at the worker's temporary total disability rate. If, after receiving benefits under this subsection, the worker decides to proceed with a rehabilitation plan, the weeks in which benefits were paid under this subsection may not be credited against the maximum of 104 weeks of rehabilitation benefits provided in this section.

(4) If there is a dispute as to whether an injured worker can return to the job the worker held at the time of injury, the insurer shall designate a rehabilitation provider to evaluate and determine whether the worker can return to the job held at the time of injury. If it is determined that ~~he~~ *the worker* cannot *return to the job held at the time of injury*, the worker is entitled to rehabilitation benefits and services as provided in subsection (2).

(5) A worker may not receive temporary total or biweekly permanent partial disability benefits and rehabilitation benefits during the same period of time.

(6) The rehabilitation provider, as authorized by the insurer, shall continue to work with and assist the injured worker until the rehabilitation plan is completed.

(7) A worker may not receive both wages and rehabilitation benefits without the written consent of the insurer. A worker who receives both wages and rehabilitation benefits without written consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."

Section 8. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 20, and the provisions of Title 2, chapter 15, part 20, apply to [section 1].

(2) [Section 3] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 3].

Section 9. **Effective date.** [This act] is effective July 1, 1993.

Approved April 9, 1993.

CHAPTER NO. 297

[SB 166]

AN ACT REVISING CERTAIN DEFINITIONS RELATING TO OCCUPATIONAL THERAPY; ESTABLISHING CRITERIA FOR THE USE OF OCCUPATIONAL THERAPY TECHNIQUES; AMENDING SECTION 37-24-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-24-103, MCA, is amended to read:

"**37-24-103.** *(Temporary)* **Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1859.

(2) "Certified occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association and adopted by the board.

~~(2)~~*(3)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(3)~~*(4)* "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

~~(4)~~*(5)* "Occupational therapy" means the use of purposeful activity ~~with an~~ *and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an* individual who is limited by physical injury or illness, psychosocial dysfunction, *mental illness*, developmental or learning disability, ~~or~~ the aging process, *cognitive impairment, or an adverse environmental condition* ~~in order to maximize independence, prevent disability, and maintain health~~. The practice encompasses ~~evaluation~~ *assessment*, treatment, and consultation. ~~Treatment includes the use of superficial heat and cold, including hot packs, cold packs, ice, paraffin, and water, applied to the elbow, forearm, and hand; vibration and brushing; treatment of oral motor conditions; and the use of therapeutic devices limited to the elbow, forearm, and hand that the board approves consistent with the basic education requirements for professional licensure under this chapter. Treatment is limited to procedures in preparation for or in conjunction with purposeful activity.~~ Occupational therapy services may be provided individually, in groups, or through social systems. ~~Specific occupational~~ *Occupational* therapy ~~services~~ *interventions* include but are not limited to:

(a) teaching daily living skills;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills ~~and prevocational~~ and leisure capacities *and enhancing educational performance skills*;

(d) designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity orthotic devices;

(e) ~~using specifically designed crafts and exercises to enhance functional performance~~ *providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance*;

(f) ~~administering and interpreting tests such as manual muscle and range of motion; and~~ *providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;*

(g) adapting environments for the ~~handicapped~~ *disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning;*

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) employing physical agent modalities as defined in this section; and

(l) promoting health and wellness.

~~(5)~~*(6)* "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

~~(6) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association, as it read on October 1, 1985.~~

(7) "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of [section 2]. Use of sound and electrical physical agent modality devices is limited to the elbow, forearm, wrist, and hand and is subject to the provisions of [section 3].

(8) "Purposeful activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations. (Terminates July 1, 1993—sec. 3, Ch. 35, L. 1991.)

37-24-103. *(Effective July 1, 1993)* **Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1859.

(2) "Certified occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association and adopted by the board.

~~(2)~~*(3)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(3)~~*(4)* "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

~~(4)~~*(5)* "Occupational therapy" means the use of purposeful activity ~~with an~~ *and interventions to achieve functional outcomes to maximize the independence and the maintenance of health of an* individual who is limited by physical injury or illness, psychosocial dysfunction, *mental illness,* developmental or learning disability, ~~or~~ the aging process, *cognitive impairment, or an adverse environmental condition* ~~in order to maximize independence, prevent disability, and maintain health~~. The practice encompasses ~~evaluation~~ *assessment,* treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. ~~Specific occupational~~ *Occupational* therapy ~~services~~ *interventions* include but are not limited to:

(a) teaching daily living skills;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills ~~and prevocational~~ and leisure capacities *and enhancing educational performance skills*;

(d) designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity orthotic devices;

(e) ~~using specifically designed crafts and exercises to enhance functional performance~~ *providing for the development of emotional, motivational, cognitive, psychosocial, or physical components of performance*;

(f) ~~administering and interpreting tests such as manual muscle and range of motion; and~~ *providing assessment and evaluation, including the use of skilled observation or the administration and interpretation of standardized or nonstandardized tests and measurements to identify areas for occupational therapy services;*

(g) adapting environments for the ~~handicapped~~ *disabled, including assistive technology, such as environmental controls, wheelchair modifications, and positioning;*

(h) developing feeding and swallowing skills;

(i) enhancing and assessing work performance and work readiness through occupational therapy intervention, including education and instruction, activities to increase and improve general work behavior and skill, job site evaluation, on-the-job training and evaluation, development of work-related activities, and supported employment placement;

(j) providing neuromuscular facilitation and inhibition, including the activation, facilitation, and inhibition of muscle action, both voluntary and involuntary, through the use of appropriate sensory stimulation, including vibration or brushing, to evoke a desired muscular response;

(k) employing physical agent modalities as defined in this section; and

(l) promoting health and wellness.

~~(5)~~*(6)* "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

~~(6) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association, as it read on October 1, 1985.~~

(7) "Physical agent modalities" means those modalities that produce a response in soft tissue through the use of light, water, temperature, sound, or electricity. Physical agent modalities are characterized as adjunctive methods used in conjunction with or in immediate preparation for patient involvement in purposeful activity. Superficial physical agent modalities include hot packs, cold packs, ice, fluidotherapy, paraffin, water, and other commercially available superficial heating and cooling devices. Use of superficial physical agent modalities is limited to the shoulder, arm, elbow, forearm, wrist, and hand and is subject to the provisions of [section 2]. Use of sound and electrical physical agent modality devices is limited to the elbow, forearm, wrist, and hand and is subject to the provisions of [section 3].

(8) "Purposeful activity" means an activity in which the individual is an active, voluntary participant and is directed toward a goal that the individual considers meaningful. Purposeful activities are used to evaluate, facilitate, restore, or maintain individuals' abilities to function within their daily occupations."

Section 2. **Use of superficial physical agent modalities.** (1) Except as provided in subsection (2), a person may not use occupational therapy techniques involving superficial physical agent modalities unless the person:

(a) is a licensed occupational therapist under this chapter;

(b) limits application of superficial agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand; and

(c) has successfully completed 16 hours of instruction or training in superficial physical agent modalities and documents competency, as approved by the board, in the following areas:

(i) principles of physics related to specific properties of light, water, temperature, sound, or electricity, as indicated by selected modalities;

(ii) physiological, neurophysiological, and electrophysiological changes that occur as a result of the application of selected modalities;

(iii) the response of normal and abnormal tissue to the application of selected modalities;

(iv) indications and contraindications related to the selection and application of the modality;

(v) guidelines for the treatment or administration of the modality within the philosophical framework of occupational therapy;

(vi) guidelines for educating the patient, including information about risks and benefits of the occupational therapy techniques;

(vii) safety rules and precautions related to the selected modalities;

(viii) methods for documenting the effectiveness and immediate and long-term effects of treatment in relation to task-oriented activities; and

(ix) characteristics of and guidelines for the use of therapy equipment, including safe operation, adjustment, and care and maintenance of the equipment.

(2) A certified occupational therapy assistant who works under the direct supervision of a qualified occupational therapist may apply superficial physical agent modalities to the shoulder, arm, elbow, forearm, wrist, and hand.

Section 3. **Use of sound and electrical physical agent modalities.** A person may not utilize occupational therapy techniques involving sound or electrical physical agent modality devices unless the person:

(1) is licensed under this chapter;

(2) limits application of sound and electrical physical agent modalities to the elbow, forearm, wrist, or hand to restore and enhance hand function; and

(3) (a) provides to the board documentation of certification by the hand certification commission, inc., and has successfully completed 40 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in [section 2(1)(c)]; or

(b) has successfully completed 100 hours of instruction or training in sound and electrical physical agent modality devices and documents competency, as approved by the board, in the areas provided in [section 2(1)(c)].

Section 4. **Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 37, chapter 24, part 1, and the provisions of Title 37, chapter 24, part 1, apply to [sections 2 and 3].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 9, 1993.

CHAPTER NO. 298

[SB 228]

AN ACT EXPANDING THE CATEGORIES OF PETROLEUM PRODUCTS FOR WHICH A PETROLEUM STORAGE TANK CLEANUP FEE IS ASSESSED; DEFINING THE TERMS "AVIATION GASOLINE", "DISTRIBUTOR", "EXPORT", "EXPORTER", "HEATING OIL", "IMPORT", AND "SPECIAL FUEL"; AMENDING SECTIONS 75-11-302 AND 75-11-314, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-302, MCA, is amended to read:

"**75-11-302. Definitions.** ~~The~~ *Except as provided in subsections (2), (14), and (24), the* following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third party bodily injury or property damage.

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

~~(2)~~*(3)* "Board" means the petroleum tank release compensation board established in 2-15-2108.

~~(3)~~*(4)* "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

~~(4)~~*(5)* "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

~~(5)~~*(6)* "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

~~(6)~~*(7)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(7)~~*(8)* "Distributor" means a ~~distributor as defined in 15-70-201~~ *person who is licensed to sell gasoline, as provided in 15-70-202, and who:*

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

~~(8)~~*(9)* "Eligible costs" means expenses reimbursable under 75-11-307.

(10) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(11) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

~~(9)~~*(12)* "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

~~(10)~~*(13)* "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

~~(11)~~*(14)* "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to the federal defense fuel supply center.

(15) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(16) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

~~(12)~~*(17)* "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

~~(13)~~*(18)* "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

~~(14)~~*(19)* "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

~~(15)~~*(20)* "Petroleum" or "petroleum products" means crude oil or any fraction ~~thereof~~ *of crude oil* that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

~~(16)~~*(21)* "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections ~~(16)(b)~~ *(21)(b)* and ~~(16)(c)~~ *(21)(c)*, except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections ~~(16)(d)(i)~~ *(21)(d)(i)* and ~~(16)(d)(ii)~~ *(21)(d)(ii)*, if the facility is intrastate.

~~(17)~~*(22)* "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

~~(18)~~*(23)* "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(24) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 2. Section 75-11-314, MCA, is amended to read:

"**75-11-314. Petroleum storage tank cleanup fee — collection — penalties — warrant for distraint — statute of limitations.** (1) Except as provided in subsection (4), ~~every~~ *each* distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, *aviation gasoline, special fuel, or heating oil* distributed by ~~him~~ *the* *distributor* within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991; ~~and~~

(b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991*;*

(c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;

(d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and

(e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

(2) Gasoline, *aviation gasoline, special fuel, and heating oil* exported or sold for export out of the state ~~may not~~ *must* be included in the measure of a distributor's fee.

(3) Alcohol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds $8 million. Whenever the unobligated fund balance, *less claims anticipated for board approval within the next 90 days,* is less than $4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds $8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of 15-70-203, 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

Section 3. **Effective date — applicability.** [This act] is effective July 1, 1993, and applies to all tax revenue recorded on or after July 1, 1993.

Approved April 9, 1993.

CHAPTER NO. 299

[SB 138]

AN ACT CLARIFYING THAT THE LOCAL GOVERNMENT SEVERANCE TAX WAS ENACTED TO REPLACE PROPERTY TAX LEVIES; REQUIRING CERTAIN SCHOOL DISTRICTS TO REPAY AN OVERDISTRIBUTION OF FOUNDATION PROGRAM MONEY FOR SCHOOL FISCAL YEAR 1991 THAT IS ATTRIBUTABLE TO AN OVERDISTRIBUTION OF LOCAL GOVERNMENT SEVERANCE TAX REVENUE; AMENDING SECTION

15-36-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, controversy has arisen on the intended use of the local government severance tax on oil and gas production because of a phrase that reads "for the exclusive use and benefit of local governments"; and

WHEREAS, that phrase is a copy of the phrase "for the exclusive use and benefit of the state of Montana" used earlier in the same sentence relating to the state severance tax on oil and gas in which the local government severance tax was incorporated during the June 1989 Special Session on school financing; and

WHEREAS, the local government severance tax was enacted at the request of petroleum producers to replace an unwieldy county-by-county property tax on oil and gas net proceeds with an administratively viable tax applicable to all pre-1985 production on the same basis statewide; and

WHEREAS, the allocation of the proceeds of the local government severance tax was intended to replace various property tax levies on the net proceeds of oil and gas production and not to institute a new system of tax distribution; and

WHEREAS, the term "local government severance tax" is a label for the tax and was not intended as a limit on the tax because if the proceeds were strictly limited to local governments in the constitutional sense, then schools, which received the property tax revenue, would be eliminated because they are not local governments and municipalities would reap a benefit by receiving proceeds that they did not receive under the property tax system; and

WHEREAS, the Legislature considers the clarification of the distribution of the local government severance tax to be of a curative nature and thus it is applicable to all distributions made since the original effective date of the tax; and

WHEREAS, Saco Elementary School District No. 12A, Saco High School District No. B, Whitewater Elementary School District No. 20AA, Whitewater School District No. D, Malta Elementary School District No. 14, and Malta High School District No. A, Phillips County, received foundation program money in excess of the districts' foundation entitlements for school fiscal year 1991.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-101, MCA, is amended to read:

"**15-36-101. Definitions and rate of tax — state severance tax — local government severance tax — assessment of nonworking interest owner — exemption.** (1) Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas within this state or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced shall, except as provided in 15-36-121, each year when engaged in or carrying on the business in this state pay to the department of revenue a state severance tax for ~~the exclusive use and benefit~~ *deposit in the general fund* of the state of Montana plus a local government severance tax in lieu of a tax on net proceeds for ~~the exclusive use and benefit of local government~~

replacement of property taxes formerly levied on net proceeds. Except as provided in subsection (3), the state severance tax and the local government severance tax are as follows:

(a) except as provided in subsections (1)(b), (1)(c), and (1)(d), a 5% state severance tax on the gross taxable value of all the petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 8.4% on the gross taxable value, as defined in subsection (6)(a)(ii), of all the petroleum and other mineral or crude oil produced by the person other than new production, from each lease or unit; but in determining the amount of the state severance tax and local government severance tax, there must be excluded from consideration all petroleum or other crude or mineral oil produced and used by the person during the year in connection with ~~his~~ *the person's* operations in prospecting for, developing, and producing the petroleum or crude or mineral oil;

(b) a 2.65% state severance tax on the gross taxable value of all natural gas produced by the person, plus the local government severance tax of 15.25% on the gross taxable value, as defined in subsection (6)(a)(ii), of all natural gas produced by the person other than new production, from each lease or unit; but in determining the amount of the state severance tax and the local government severance tax, there must be excluded from consideration all gas produced and used by the person during the year in connection with ~~his~~ *the person's* operations in prospecting for, developing, and producing the gas or petroleum or crude or mineral oil; and there must also be excluded from consideration all gas, including carbon dioxide gas, recycled or reinjected into the ground;

(c) a 2.5% state severance tax on the gross taxable value of the incremental petroleum and other mineral or crude oil produced by the person, plus the local government severance tax of 5% on the gross taxable value, as defined in subsection (6)(a)(ii), of the incremental petroleum and other mineral or crude oil produced by the person other than new production, from each lease or unit in a tertiary recovery project after July 1, 1985. For purposes of this section, a tertiary recovery project must meet the following requirements:

(i) the project must be approved as a tertiary recovery project by the board of oil and gas conservation. The approval may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(ii) the property to be affected by the project must be adequately delineated according to the specifications required by the board; and

(iii) the project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil which may potentially be recovered. For purposes of this section, tertiary recovery methods include but are not limited to:

(A) miscible fluid displacement;

(B) steam drive injection;

(C) micellar/emulsion flooding;

(D) in situ combustion;

(E) polymer augmented water flooding;

(F) cyclic steam injection;

(G) alkaline or caustic flooding;

(H) carbon dioxide water flooding;

(I) immiscible carbon dioxide displacement; or

(J) any other method approved by the department as a tertiary recovery method.

(d) a 5% local government severance tax on the gross taxable value, as defined in subsection (6)(a)(ii), of all petroleum and other mineral or crude oil produced by the person other than new production produced by a stripper well, as defined in subsection (7).

(2) For purposes of this section, the term "incremental petroleum and other mineral or crude oil" means the amount of oil, as determined by the board, to be in excess of what would have been produced by primary and secondary methods. The determination arrived at by the board must be made only after notice and hearing and shall specify through the life of a tertiary project, calendar year by calendar year, the combined amount of primary and secondary production that must be used to establish the incremental production from each lease or unit in a tertiary recovery project.

(3) (a) A local government severance tax is imposed on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas subject to local government severance taxes imposed under this chapter. The local government severance tax on nonworking interest owners is computed at the following rates:

(i) 12.5% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum and other mineral or crude oil;

(ii) 15.25% on the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted or marketable natural gas.

(b) The amounts paid or apportioned in kind to nonworking interest owners are exempt from the local government severance taxes imposed under 15-36-121(2) and under subsections (1)(a) through (1)(d) of this section.

(4) Nothing in this part may be construed as requiring laborers or employees hired or employed by any person to drill any oil or natural gas well or to work in or about any oil or natural gas well or prospect or explore for or do any work for the purpose of developing any petroleum, other mineral or crude oil, or natural gas to pay the severance tax, nor may work done or the drilling of a well or wells for the purpose of prospecting or exploring for petroleum, other mineral or crude oil, or natural gas or for the purpose of developing them be considered to be the engaging in or carrying on of the business. If, in the doing of any work, in the drilling of any oil or natural gas well, or in prospecting, exploring, or development work, any merchantable or marketable petroleum,

other mineral or crude oil, or natural gas in excess of the quantity required by the person for carrying on the operation is produced sufficient in quantity to justify the marketing of the petroleum, other mineral or crude oil, or natural gas, the work, drilling, prospecting, exploring, or development work is considered to be the engaging in and carrying on of the business of producing petroleum, other mineral or crude oil, or natural gas within this state within the meaning of this section.

(5) Every person required to pay the state or local government severance tax under this section shall pay the tax in full for ~~his~~ *the person's* own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of the extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the interests that are owned by the federal, state, county, or municipal governments are exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(6) For purposes of this section, the following definitions apply:

(a) (i) "Gross taxable value", for the purpose of computing the state severance tax, means the gross value of the product as determined in 15-36-103.

(ii) "Gross taxable value", for the purpose of computing the local government severance tax, means the gross value of the product as determined in 15-36-103 less the gross value paid in cash or apportioned in kind to a nonworking interest owner by the operator or producer of extracted marketable petroleum, other mineral or crude oil, or natural gas.

(b) "Nonworking interest owner" means any interest owner who does not share in the development and operation costs of the lease or unit.

(7) For the purposes of this section, "stripper well" means a well that produces less than 10 barrels a day, determined by dividing the amount of production from a lease or unitized area for the year prior to the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365."

Section 2. **Repayment of foundation program money.** (1) Beginning July 1, 1993, and by June 30, 1998, Saco School Districts No. 12A and B, Whitewater School Districts No. 20AA and D, and Malta School Districts No. 14 and A, Phillips County, shall repay any overdistribution of foundation program money for school fiscal year 1991 attributable to an overdistribution of local government severance tax revenue in the following amounts, plus interest as provided in subsection (2), based on an annual repayment schedule approved by the superintendent of public instruction:

Saco School District No. 12A	$135,682
Saco School District No. B	102,003
Whitewater School District No. 20AA	121,924

Whitewater School District No. D	73,196
Malta Elementary School District No. 14	12,923
Malta High School District No. A	8,086

(2) A repayment amount under subsection (1) must include interest at the average annual short-term investment pool rate of the preceding fiscal year.

Section 3. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to August 11, 1989.

Approved April 9, 1993.

CHAPTER NO. 300

[SB 218]

AN ACT REVISING THE LAWS RELATING TO OUT-OF-STATE MAIL SERVICE PHARMACIES; REQUIRING MONTANA REGISTRATION FOR ANY PHARMACIST DISPENSING PRESCRIPTION DRUGS VIA A MAIL SERVICE PHARMACY LOCATED OUTSIDE THIS STATE FOR SHIPMENT INTO THIS STATE; REQUIRING FILING AND APPROVAL IN CERTAIN INSTANCES OF A UTILIZATION PLAN FOR THE EMPLOYMENT OF A PHARMACY TECHNICIAN BY AN OUT-OF-STATE MAIL SERVICE PHARMACY; SPECIFYING THAT A GROUP HEALTH INSURANCE CONTRACT OR PLAN FOR A UNIT OF STATE OR LOCAL GOVERNMENT MAY ONLY BE WITH AN OUT-OF-STATE MAIL SERVICE PHARMACY THAT IS REGISTERED AS A FOREIGN CORPORATION IN THIS STATE; PROVIDING DISCIPLINARY PROCEDURES; GRANTING PUBLIC EMPLOYEES THE RIGHT TO PATRONIZE IN-STATE PHARMACIES; AMENDING SECTIONS 2-18-704, 37-7-701, AND 37-7-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-704, MCA, is amended to read:

"**2-18-704. Mandatory provisions.** (1) An insurance contract or plan issued ~~after June 30, 1977,~~ under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until ~~he~~ *the member* becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless ~~he~~ *the member* is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless ~~he~~ *the member* is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued after June 30, 1983, under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan issued after August 31, 1991, must contain provisions that permit a legislator to remain a member of the state's group plan until ~~he~~ *the legislator* becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of his legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3) if ~~he~~ *the person*:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3) and subsequently terminates membership may not rejoin the group unless ~~he~~ *the person* again serves as a legislator.

(4) A person electing to remain a member of the group under subsection (1), (2), or (3) shall pay the full premium for ~~his~~ coverage and for that of ~~his~~ *the person's* covered dependents.

(5) An insurance contract or plan issued under this part after June 30, 1993, that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the

group or plan by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is licensed by the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation."

Section 2. Section 37-7-701, MCA, is amended to read:

"**37-7-701. Legislative declaration.** The legislature recognizes that with the proliferation of alternate methods of health care delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail service pharmacies located outside this state. As a result, the legislature finds and declares that to continue to protect the consumer-patients of this state, all out-of-state mail service pharmacies that provide services to this state's residents must be licensed with the board, *shall* disclose specific information about their services, *shall meet the same standards for utilization of technicians as an in-state pharmacy,* and *shall* provide pharmacy services at a high level of competence."

Section 3. Section 37-7-703, MCA, is amended to read:

"**37-7-703. License requirements.** ~~Every~~ *Each* out-of-state mail service pharmacy must be licensed by the board *of pharmacy.* In order to be licensed by the board to do business in this state and for annual renewal of its license, an out-of-state mail service pharmacy:

(1) (a) must be licensed and in good standing in the state in which its dispensing facilities are located; and

(b) shall comply with all applicable laws, regulations, and standards of that state and the United States and, if requested by the board, provide evidence that it has so complied;

(2) shall submit an application in form and content as determined by the board, including information on ownership and location *of the out-of-state mail service pharmacy* and the identity of a ~~licensed~~ pharmacist in charge of *dispensing prescriptions for shipment to Montana from* the out-of-state mail service pharmacy; ~~and~~

(3) shall submit a utilization plan for the employment of pharmacy technicians if allowed by the state where the mail service pharmacy is located. Any plan that has a ratio of technicians to pharmacists greater than the maximum ratio allowed for an in-state retail pharmacy under the board's rules must be approved by the board as provided in 37-7-307 through 37-7-309.

(4) shall register each pharmacist identified under subsection (2) with the board, with proof of the pharmacist's good standing with the licensing authority in the state where the pharmacist is employed and with the pharmacist's written commitment to comply with the utilization plan, if any; and

~~(3)~~*(5)* shall pay an initial license fee and annual renewal fee in an amount to be determined by the board."

Section 4. **Discipline of registered pharmacists.** The board may, upon investigation and opportunity for hearing, suspend or revoke the registration of a pharmacist registered under 37-7-703 for any violation of this part by the pharmacist.

Section 5. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 37, chapter 7, part 7, and the provisions of Title 37, chapter 7, part 7, apply to [section 4].

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Effective date.** [This act] is effective July 1, 1993.

Approved April 10, 1993.

CHAPTER NO. 301

[HB 19]

AN ACT ESTABLISHING A JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES; APPROPRIATING FUNDS FOR USE BY THE OVERSIGHT COMMITTEE; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Joint Interim Subcommittee on Children and Families, established by House Joint Resolution No. 54 of the 1991 Regular Session, studied the following issues: the existing and the ideal continuum of services for children and families, especially programs for those families that are at risk of out-of-home placement of their children; the feasibility of instituting early identification and intervention programs for at-risk families; interagency coordination of programs and services for at-risk children and families in Montana; and the feasibility of establishing a statutory legislative oversight committee to review and monitor public and private programs and services for children and families;

WHEREAS, the Joint Interim Subcommittee on Children and Families concluded its study assignments by recommending numerous policy and programmatic changes related to the above issues, including the establishment of an oversight committee that could monitor the implementation of legislative recommendations or coordinate further study of emerging issues related to programs for children and families in Montana.

THEREFORE, the Legislature of the State of Montana finds it is appropriate to establish a joint oversight committee on children and families.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative oversight committee — appointment — staff assistance.** (1) There is a joint oversight committee on children and families composed of eight members appointed as follows:

(a) four members of the house of representatives, not more than two of whom may be from one political party, appointed by the speaker; and

(b) four members of the senate, not more than two of whom may be from one political party, appointed by the committee on committees.

(2) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(3) Members are entitled to salary and expenses as provided in 5-2-302.

(4) The oversight committee may request staff assistance from the legislative council, which may be provided within limits established by the council, given other priorities and responsibilities.

(5) Any agency providing services or funding for a program or activity for children and families shall provide assistance and information upon request of the oversight committee.

Section 2. **Duties of oversight committee.** The oversight committee shall:

(1) examine public and private programs, services, and planning for children and families for the purpose of identifying duplications, inefficiencies, and any unmet needs within those programs, services, and plans;

(2) review federal, state, local, and private funds available to state and local jurisdictions for programs and services for children and families and consider feasible methods of refinancing of those resources to maximize overall funding for existing and new programs;

(3) monitor implementation of any legislation that mandates interagency coordination of programs and services for children and families and study ways to improve coordination and collaboration among public and private human service providers at all levels of government in Montana;

(4) monitor implementation of any pilot programs designed to provide early identification of and family-based support for families that may be at risk of child abuse and neglect and at risk of out-of-home placement of their children; and

(5) report the results of its study in a written report to the 54th legislature no later than November 30, 1994. The oversight committee shall also provide copies of its report to the governor and appropriate state agencies.

Section 3. **Appropriation.** There is appropriated $10,000 from the general fund to the legislative council for the biennium ending June 30, 1995, to support the activities of the joint oversight committee on children and families established in [section 1].

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Section 5. **Termination.** [This act] terminates June 30, 1995.

Approved April 12, 1993.

CHAPTER NO. 302

[HB 21]

AN ACT CLARIFYING THE STAFFING RESPONSIBILITY OF THE LEGISLATIVE COUNCIL; AMENDING SECTIONS 2-4-401, 5-11-112, AND 5-18-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-401, MCA, is amended to read:

"**2-4-401. Administrative code committee — staff, meetings, and compensation.** (1) *The legislative council shall provide staff assistance to the administrative code committee.* The ~~administrative code~~ committee may retain whatever employees, consultants, or counsel as are necessary to carry out the provisions of this chapter and to advise the publisher in relation to the text and legal authority of the material published in the register or ARM, within the limitations of legislative appropriations.

(2) The committee shall meet as often as may be necessary during and between legislative sessions.

(3) Committee members are entitled to receive compensation and expenses as provided in 5-2-302."

Section 2. Section 5-11-112, MCA, is amended to read:

"**5-11-112. Functional divisions.** The legislative council may establish functional divisions within the council staff in order to carry out all of the responsibilities delegated to the council by law or legislative rule. The divisions shall include the following:

(1) legislative services division:

(a) engrossing and enrolling;

(b) mailroom;

(c) printing;

(d) data processing;

(2) research and reference services division:

(a) general and specialized legislative research;

(b) legislative reference and information~~, including preparation and publication of the Legislative Review to be sold at the cost of the publication plus postage~~;

(c) committee staffing ~~when the legislature is not in session~~, including staffing for ~~the revenue oversight committee~~ *interim committees organized under Title 5, chapter 5, part 2*;

(3) legal services division:

(a) bill drafting;

(b) legal counseling;

(c) committee staffing;

(4) management and business services division, which shall:

(a) maintain bookkeeping records;

(b) sign claims and payrolls;

(c) order all printing, supplies, and equipment; and

(d) serve the house and senate during the session."

Section 3. Section 5-18-107, MCA, is amended to read:

"**5-18-107. Powers and duties of the committee — duty to review revenue rules — legislative oversight of the department of revenue — committee reports — revenue estimating and use of estimates.** (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

(a) request and obtain the department's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department;

(c) submit oral or written testimony at a rulemaking hearing;

(d) require the department to appear before the committee and respond to the committee's recommendations for the adoption, amendment, or rejection of a rule;

(e) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(f) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412;

(g) institute, intervene in, or otherwise participate in proceedings involving the legality of a rule under the Montana Administrative Procedure Act in the state and federal courts and administrative agencies;

(h) review the incidence and conduct of the department's administrative proceedings;

(i) require the department to publish the full or partial text of any pertinent material adopted by reference under 2-4-307;

(j) by an affirmative vote of at least six members of the committee, contract for the preparation of an economic impact statement or require the department to prepare an economic impact statement, following the provisions of 2-4-405;

(k) petition the department to promulgate, amend, or repeal a rule. Within 60 days after submission of a petition, the department shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(l) make written objection to a proposed rule of the department for lack of substantial compliance with 2-4-302 through 2-4-305. The provisions of 2-4-406 govern the objection procedure, the department's response, and the procedure for and effect of publication of the objection in the Montana Administrative Register and the Administrative Rules of Montana.

(m) petition the department for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the department. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a ruling is subject to judicial review in the same manner as decisions or orders in contested cases under the Montana Administrative Procedure Act.

(n) petition for judicial review of the sufficiency of the reasons for the department's finding of imminent peril to the public health, safety, or welfare, cited in support of an emergency or temporary rule proposed by the department under 2-4-303; and

(o) require the department to conduct the biennial review of its rules as required in 2-4-314 and report its findings to the committee.

(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of the department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue.

(5) (a) The committee shall have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

(b) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating revenues or costs, including the preparation of fiscal notes.

(c) *The legislative council shall provide staff assistance to the committee.* The committee may request the assistance of the staffs of ~~the legislative council,~~ the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 12, 1993.

CHAPTER NO. 303

[HB 102]

AN ACT EXTENDING THE TIME FOR THE BOARD OF NATURAL RESOURCES AND CONSERVATION TO ACT ON APPLICATIONS FOR RESERVATIONS OF WATER IN THE MISSOURI RIVER BASIN BELOW FORT PECK DAM AND IN THE LITTLE MISSOURI RIVER BASIN; AMENDING SECTION 85-2-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-331, MCA, is amended to read:

"**85-2-331. Reservations within Missouri River basin and Little Missouri River basin.** (1) The state or ~~any~~ *an* agency or political subdivision ~~thereof~~ *of the state* or the United States or ~~any~~ *an* agency ~~thereof~~ *of the United States* that desires to apply for a reservation of water in the Missouri River basin or in the Little Missouri River basin shall file an application pursuant to 85-2-316 no later than:

(a) July 1, 1989, for reservation of water above Fort Peck dam; or

(b) July 1, 1991, for reservation of water below Fort Peck dam and in the Little Missouri River basin.

(2) Subject to legislative appropriation, the department shall provide technical and financial assistance to other state agencies and political subdivisions in applying for reservations within the Missouri River basin and the Little Missouri River basin.

(3) (a) Before July 1, 1992, the board shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1989, for reservations of water in the Missouri River basin above Fort Peck dam.

(b) Before December 31, ~~1993~~ *1994*, the board shall make a final determination in accordance with 85-2-316 on all applications filed before July 1, 1991, for reservations of water in the Missouri River basin below Fort Peck dam and in the Little Missouri River basin.

(c) The board shall determine which applications or portions of applications are considered to be above or below Fort Peck dam.

(4) Water reservations approved by the board under this section have a priority date of July 1, 1985, in the Missouri River basin and a priority date of July 1, 1989, in the Little Missouri River basin. If the department issues a permit under Title 85, chapter 2, part 3, prior to the granting of a reservation under this section, the board may subordinate the reservation to the permit if it finds that the subordination does not interfere substantially with the purpose

of any reservation. The board shall by order establish the relative priority of applications approved under this section."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 12, 1993.

CHAPTER NO. 304

[HB 118]

AN ACT REVISING THE MONTANA CHILD CARE ACT; DEFINING "DAY CARE" TO EXCLUDE CARE PROVIDED BY A PARENT OR OTHER PERSON LIVING WITH THE CHILD AS A PARENT; INCLUDING A FACILITY PROVIDING DAY CARE FOR SICK CHILDREN IN THE DEFINITION OF DAY-CARE FACILITY; REQUIRING A FACILITY PROVIDING CARE IN A CHILD'S HOME AND A PERSON PROVIDING CARE TO CHILDREN RELATED TO THE PERSON TO REGISTER AS A DAY-CARE FACILITY IN ORDER TO RECEIVE STATE PAYMENTS; ALLOWING A FAMILY DAY-CARE HOME TO PROVIDE CARE FOR CHILDREN FROM THE SAME FAMILY; AND AMENDING SECTION 52-2-703, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-2-703, MCA, is amended to read:

"**52-2-703. Definitions.** In this part, the following definitions apply:

(1) "Child" means a person under 13 years of age.

(2) "Day care" or "child care" means ~~less than 24-hour out-of-home~~ care for children *provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours*, whether that care is for daytime or nighttime hours.

(3) "Day-care center" means ~~a~~ *an out-of-home* place in which day care is provided to 13 or more children on a regular basis.

(4) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis *or a place licensed or registered to provide day care on an irregular basis for children suffering from illness*. It includes a family day-care home, a day-care center, ~~or~~ a group day-care home, *or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713*. The term does not include:

(a) a person who limits care to children who are related to ~~him~~ *the person* by blood or marriage or under ~~his~~ *the person's* legal guardianship, *unless registration or licensure as a day-care facility is required to receive payments as provided in 52-2-713*; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older.

(5) "Department" means the department of family services provided for in 2-15-2401.

(6) "Family day-care home" means a private residence in which day care is provided to three to six children ~~from separate families~~ on a regular basis.

(7) "Group day-care home" means a private residence *or other structure* in which day care is provided to 7 to 12 children on a regular basis.

(8) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(9) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(10) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(11) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify ~~that he has complied~~ *compliance* with the prescribed standards and promulgated rules.

(12) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department ~~his~~ compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(13) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(14) (a) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(b) The term includes the status of a child described in subsection (14)(a) in a step or adoptive relationship."

Approved April 12, 1993.

CHAPTER NO. 305

[HB 132]

AN ACT EXEMPTING THE SALE OR LEASE OF MUNICIPAL PROPERTY ACQUIRED BY TAX DEED FROM THE REQUIREMENT THAT A CITY OR TOWN COUNCIL MUST OBTAIN VOTER APPROVAL BEFORE AUTHORIZING THE SALE OR LEASE OF ANY MUNICIPAL PROPERTY HELD IN TRUST FOR A SPECIFIC PURPOSE; AND AMENDING SECTION 7-8-4201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-4201, MCA, is amended to read:

"7-8-4201. Disposal or lease of municipal property. (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, or lease any property belonging to the city or town.

(2) (a) ~~Such~~ *The* lease or transfer ~~shall~~ *must* be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) ~~If~~ *Except for property acquired by tax deed, if* the property is held in trust for a specific purpose, the sale or lease ~~thereof~~ must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose.

(3) ~~Nothing contained herein~~ *This section* may *not* be construed to abrogate the power of the board of park commissioners to lease all lands owned by the city ~~heretofore~~ *that were* acquired for parks within the limitations prescribed by 7-16-4223."

Approved April 12, 1993.

CHAPTER NO. 306

[HB 315]

AN ACT ALLOWING OPTOMETRISTS TO ADMINISTER, DISPENSE, AND PRESCRIBE CORTICOSTEROIDS; AND AMENDING SECTION 37-10-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-10-101, MCA, is amended to read:

"37-10-101. Definitions — practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and ~~is hereby defined to be~~ *includes* any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions which consummate the process of human vision to ascertain the presence ~~therein~~ of abnormal conditions or functions which may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition of the process of vision which may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those topical drugs~~, not including corticosteroids,~~ approved by the board for use in ocular treatment limited to the anterior segment of the eye and adnexa. Glaucoma may not be treated.

(2) ~~Nothing in subsection~~ *Subsection* (1) ~~prohibits~~ *does not prohibit* an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

(3) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometrists provided for in 2-15-1846; and

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18."

Approved April 12, 1993.

CHAPTER NO. 307

[HB 355]

AN ACT REQUIRING THE BOARD OF PHARMACY TO ADOPT A RULE UNDER CERTAIN CIRCUMSTANCES; AND REQUIRING THE MONTHLY POSTING OF 20 TOP-SELLING PRESCRIPTION DRUGS BY LICENSED PHARMACIES.

WHEREAS, rapidly rising costs of prescription drugs are one of today's most serious problems facing persons on fixed or lower incomes; and

WHEREAS, even though prescription drug price increases are dictated by pharmaceutical manufacturers, there are sometimes significant differences in price for the same prescription drug among retail pharmacies; and

WHEREAS, in some instances, the ability to comparison shop for prescription drugs can be helpful to the consumer in choosing a pharmacy to patronize.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 1] requires the board of pharmacy, under certain circumstances, to adopt a rule requiring the listing of certain prescription drugs. The legislature intends that the board of pharmacy make every effort to devise, in consultation with senior citizens, other consumer organizations, and retail pharmacists, a workable and practical system for the listing of prescription drug prices. The list should be based upon standard assumptions as to the quantity and dosage in order to facilitate comparison of prices.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Posting of prescription drug prices — adoption of list by rule.** If the board of pharmacy finds after a public hearing that the interests of consumers will be furthered by its action, the board shall annually adopt by rule a list of 20 prescription drugs frequently prescribed for outpatient dispensing in Montana. A licensed pharmacy, other than in a hospital or nursing home, that sells prescription drugs shall monthly post its prices for the drugs on the list adopted by the board. The list must show the drugs by brand name and retail price and by generic name and retail price.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 37, chapter 7, and the provisions of Title 37, chapter 7, apply to [section 1].

Approved April 12, 1993.

CHAPTER NO. 308

[HB 357]

AN ACT EXPANDING THE CATEGORY OF PERSONS AND ENTITIES THAT HAVE AN AIRCRAFT LIEN; AND AMENDING SECTION 67-10-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-10-403, MCA, is amended to read:

"**67-10-403. Liens.** To enforce the payment of ~~any~~ charges for repairs or improvements to or storage, *service,* or care of any *aircraft or other* personal property made or furnished by ~~the municipality or its agents~~ *an airport, person, or entity or an agent of an airport, person, or entity* in connection with the operation of an *aircraft,* airport, or air navigation facility ~~owned or operated by the municipality, the municipality shall have liens~~, *the airport, person, entity, or agent has a lien* on ~~such~~ *the* property, which ~~shall be~~ *is* enforceable ~~by the municipality~~ as provided by law."

Approved April 12, 1993.

CHAPTER NO. 309

[HB 368]

AN ACT CLARIFYING THAT MUNICIPAL AND COUNTY RESOLUTIONS ARE IMMEDIATELY EFFECTIVE UNLESS THE RESOLUTION PROVIDES OTHERWISE; REDUCING FROM UNANIMOUS TO TWO-THIRDS THE VOTE REQUIRED TO ADOPT AN EMERGENCY ORDINANCE IN A MUNICIPAL COMMISSION-MANAGER FORM OF LOCAL GOVERNMENT; AMENDING SECTIONS 7-3-4325 AND 7-5-4203, MCA; AND REPEALING SECTIONS 7-5-2201 AND 7-5-2202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-3-4325, MCA, is amended to read:

"**7-3-4325. Effective date of ordinance or resolution.** (1) All ordinances ~~and resolutions shall be in effect from and after~~ *are effective* 30 days ~~from~~ *after* the date of their passage by the commission except as otherwise provided in this part or part 44.

(2) All resolutions are immediately effective unless a delayed effective date is specified in the resolution.

~~(2)~~*(3)* The commission may, by an affirmative vote *of two-thirds* of all the members, pass emergency measures to take effect at the time indicated ~~therein~~ *in the measure.*"

Section 2. Section 7-5-4203, MCA, is amended to read:

"**7-5-4203. Effective date of ordinances and resolutions.** *(1)* ~~No~~ *An* ordinance ~~or resolution~~ passed by the council of any city or town may *not* become effective until 30 days after its passage except:

~~(1)~~*(a)* general appropriation ordinances providing for the ordinary and current expenses of the city or town; and

~~(2)~~*(b)* emergency measures.

(2) A resolution is immediately effective unless a delayed effective date is specified in the resolution."

Section 3. **Repealer.** Sections 7-5-2201 and 7-5-2202, MCA, are repealed.

Approved April 12, 1993.

CHAPTER NO. 310

[HB 536]

AN ACT ALLOWING COUNTY RURAL FIRE CHIEFS AND EMPLOYEES OF THE STATE FIRE PREVENTION AND INVESTIGATION PROGRAM TO SERVE AS FIREWARDENS; ELIMINATING THE REQUIREMENT THAT COUNTY COMMISSIONERS APPOINT FIREWARDENS; AMENDING SECTION 77-5-104, MCA; AND REPEALING SECTIONS 7-33-2301 AND 7-33-2302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-104, MCA, is amended to read:

"**77-5-104. Firewardens.** (1) The department shall appoint firewardens in the number and localities as it considers necessary.

(2) The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens.

(3) The following are firewardens but may not receive any additional compensation by reason of the duties ~~hereby~~ imposed:

(a) sheriffs;

(b) undersheriffs;

(c) deputy sheriffs;

(d) state fish, wildlife, and parks wardens and park rangers;

(e) the state fish, wildlife, and parks director;

(f) the commissioner and employees of the department designated by him;

(g) officers of organized forest protection districts;

(h) members of the Montana highway patrol;

(i) officers of the national park service residing in Montana; ~~and~~

(j) officers of the bureau of Indian affairs*;*

(k) county rural fire chiefs; and

(l) employees of the state fire prevention and investigation program provided for in 2-15-2005.

(4) The firewardens shall promptly report all fires to the department, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders."

Section 2. **Repealer.** Sections 7-33-2301 and 7-33-2302, MCA, are repealed.

Approved April 12, 1993.

CHAPTER NO. 311

[HB 594]

AN ACT PROVIDING THAT BEER OR WINE SOLD ON CREDIT WHEN THE RETAIL LICENSE IS BEING TRANSFERRED BECOMES THE OBLIGATION OF THE SUBSEQUENT LICENSEE; AND AMENDING SECTION 16-4-404, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-404, MCA, is amended to read:

"**16-4-404. Protest period — contents of license — posting — privilege — transfer.** (1) ~~No~~ *A* license may *not* be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code ~~shall~~ *must* state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited upon request to any authorized representative of the department or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of a deceased licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) (a) A licensee may apply to the department for a transfer of the license to different premises if:

(i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

(ii) the lease of the licensed premises has expired;

(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord; or

(iv) the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated.

(b) The department may, after notice and opportunity for protest, permit a transfer in the cases specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the licensee applying for the transfer and is justified by public convenience and necessity. The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. ~~No~~ *A* transfer of a license to a person or location is *not* effective unless approved by the department. A licensee or transferee or proposed transferee who operates or attempts to operate under a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in subsections (2) through (6) and 16-4-204, ~~no~~ *a* license may *not* be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license. *Beer or wine sold to a licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a subsequent licensee has the obligation to pay for the beer or wine.*"

Approved April 12, 1993.

CHAPTER NO. 312

[HB 633]

AN ACT CLARIFYING THE LAWS RELATING TO THE DETENTION OF MENTALLY ILL PERSONS IN JAIL; CLARIFYING THE DEFINITION OF "MENTAL DISORDER"; ALLOWING DETENTION IN JAIL OF A PERSON INTOXICATED BY DRUGS OR ALCOHOL WHO IS ACCUSED OF A MINOR MISDEMEANOR OFFENSE UNTIL A SCREENING FOR SERIOUS MENTAL ILLNESS CAN BE PERFORMED; AMENDING SECTIONS 53-21-102 AND 53-21-138, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"**53-21-102.** *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. *The term does not include:*

(a) addiction to drugs or alcohol; or

(b) drug or alcohol intoxication.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. ~~No~~ *A* correctional institution or facility or jail is *not* a mental health facility within the meaning of this part.

(8) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury to others or the imminent threat ~~thereof~~ *of injury* but which:

(a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;

(b) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be committed;

(c) has deprived the person of the capacity to make an informed decision concerning treatment;

(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(e) poses a significant risk of the person's becoming seriously mentally ill~~, within the meaning of this section,~~ or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

(9) "Next of kin" ~~shall include~~ *includes* but ~~need~~ *is* not ~~be~~ limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be mentally ill or seriously mentally ill.

(15) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat ~~thereof~~ *of injury* or which has deprived the person afflicted of the ability to protect ~~his~~ *the person's* life or health. For this purpose, injury means physical injury. ~~No~~ *A* person may *not* be involuntarily committed to a mental health facility or detained for evaluation and treatment because ~~he~~ *the person* is an epileptic or is mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes ~~him~~ *the person* to be seriously mentally ill within the meaning of this part.

(16) "State hospital" means the Montana state hospital. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-102. *(Effective July 1, 1997)* **Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. *The term does not include:*

(a) addiction to drugs or alcohol; or

(b) drug or alcohol intoxication.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. ~~No~~ *A* correctional institution or facility or jail is *not* a mental health facility within the meaning of this part.

(8) "Next of kin" ~~shall include~~ *includes* but ~~need~~ *is* not ~~be~~ limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(9) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(10) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(11) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(12) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat ~~thereof~~ *of injury* or which has deprived the person afflicted of the ability to protect ~~his~~ *the person's* life or health. For this purpose, injury means physical injury. ~~No~~ *A* person may *not* be involuntarily committed to a mental health facility or detained for evaluation and treatment because ~~he~~ *the person* is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes ~~him~~ *the person* to be seriously mentally ill within the meaning of this part.

(15) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-138, MCA, is amended to read:

"53-21-138. *(Effective July 1, 1993)* **Diversion of certain mentally ill persons from jail.** (1) The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be seriously mentally ill, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is seriously mentally ill, the sheriff or administrator of the jail shall:

(a) request services from a crisis intervention program established by the department as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-212; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are seriously mentally ill.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for serious mental illness can be performed."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 12, 1993.

CHAPTER NO. 313

[SB 104]

AN ACT REVISING THE LAW GOVERNING THE POOLING AND SPACING OF OIL AND GAS WELLS; PROVIDING FOR TEMPORARY AND PERMANENT SPACING OR POOLING; PROVIDING FOR RECOVERY OF COSTS; AND AMENDING SECTIONS 82-11-201 AND 82-11-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-201, MCA, is amended to read:

"**82-11-201. Establishment of well spacing units.** (1) To prevent or to assist in preventing waste of oil or gas prohibited by this chapter, *to avoid the drilling of unnecessary wells, or to protect correlative rights,* the board, upon its own motion or upon application of an interested person, after hearing, may by order establish*:*

(a) temporary spacing units on a statewide basis or for defined areas within the state for oil, gas, or oil and gas wells drilled to varying depths; and

(b) permanent ~~well~~ spacing units for a *discovered* pool ~~as to oil wells or as to gas wells or both~~, except in those pools ~~which~~ *that,* prior to April 1, 1953, have been developed to such an extent that it would be impracticable or unreasonable to establish spacing units at the existing stage of development. ~~Spacing units when established shall insofar as possible be of uniform size and shape for the entire pool.~~

(2) The size and the shape of *temporary* spacing units ~~shall~~ *must* be ~~such as will result in the efficient and economic~~ *established to promote the orderly* development of ~~the pool as a whole, and the size shall~~ *unproven areas and must* be *uniform throughout* the *surface* area ~~that can be efficiently drained by one well~~ *and depths covered by the unit. A temporary spacing unit must remain in effect until superseded by an order issued by the board or until a permanent spacing unit is established.*

(3) Permanent spacing units do not need to be uniform in size or shape but must result in the efficient and economic development of the pool as a whole. In establishing permanent spacing units, the acreage to be embraced within a unit and the shape of the unit must be determined by the board based upon evidence introduced at the hearing. The board may divide a pool into zones and establish spacing units for each zone if necessary for a purpose mentioned in subsection (1) or to facilitate production through the use of innovative drilling and completion methods. The spacing units within the zone may differ in size and shape from spacing units in any other zone but may not be smaller than the maximum area that can be efficiently and economically drained by one well.

~~(3)~~*(4)* ~~Subject to this chapter, the~~ *An* order establishing *temporary or permanent* spacing units ~~shall direct that no more than~~ *may permit only* one well ~~may~~ *to* be drilled and produced from the common source of supply on any spacing unit, and ~~that~~ the well ~~shall~~ *must* be drilled at a location authorized by the order, with ~~such~~ *an* exception as may be reasonably necessary. ~~where it is shown,~~ *The exception may be included if,* upon application, notice, and hearing, ~~and~~ the board finds that the spacing unit is located on the edge of a pool or field and adjacent to a producing unit or, for some other reason, *that* the requirement to drill the well at the authorized location on the spacing unit would be inequitable or unreasonable. *The board shall take action to offset any advantage that the person securing the exception may have over other producers by reason of drilling the well as an exception. The order must include provisions to prevent production from the spacing unit from being more than its just and equitable share of the producible oil and gas in the pool.*

~~(4)~~*(5)* An order establishing *temporary or permanent* spacing units for a pool ~~shall~~ *must* cover all lands ~~then~~ determined or ~~then~~ believed to be underlaid by the pool and may be modified after notice and hearing by the board ~~from time to time~~ to include additional areas subsequently determined to be underlaid by the pool.

(6) ~~When found necessary for the prevention of waste, an order establishing spacing units in a pool may be modified after~~ *The board, upon application,* notice, and hearing, ~~by the board to~~ *may* increase or decrease the size of *a temporary or permanent* spacing ~~units in the pool~~ *unit* or ~~to~~ permit the drilling of additional wells in ~~the pool on a reasonably uniform plan~~ *a spacing unit for a purpose mentioned in subsection (1).*"

Section 2. Section 82-11-202, MCA, is amended to read:

"**82-11-202. Pooling of interest within spacing unit.** (1) *(a)* When two or more separately owned tracts are embraced within a *temporary or permanent* spacing unit or when there are separately owned interests in all or a part of the spacing unit, then the persons owning those interests may pool their interests for the development and operation of the spacing unit.

(b) ~~In the absence of voluntary pooling within the spacing unit, the~~ *The* board, upon the application of an interested person, may enter an order pooling all interests in the *permanent* spacing unit for the development and operation ~~thereof~~ *of the permanent spacing unit and the allocation of production if the applicant has made an unsuccessful, good faith attempt to voluntarily pool the interests within the permanent spacing unit. The applicant must be a person who owns an interest in the oil or gas underlying the permanent spacing unit or who has drilled a well, proposes to drill a well, or proposes to conduct other operations on a well, including recompleting, deepening, or stimulation.* The pooling order ~~shall~~ *must* be made after *a* hearing and ~~shall~~ *must* be upon terms and conditions that are just and reasonable and that afford to the owner of each tract or interest in the *permanent* spacing unit the opportunity to recover or receive without unnecessary expense ~~his~~ *a* just and equitable share of the oil or gas produced and saved from the spacing unit. Operations incident to the drilling of a well upon any portion of a *permanent* spacing unit covered by a pooling order ~~shall be~~ *are* considered, for all purposes, the conduct of the operations upon each separately owned tract in the spacing unit by the several owners ~~thereof~~ *of the tracts*. That portion of the production allocated to each tract included in a *permanent* spacing unit covered by a pooling order ~~shall~~ *must* when produced be considered for all purposes to have been produced from the tract by a well drilled ~~thereon~~ *on the tract.*

(2) (a) ~~The pooling order shall provide for the drilling and operating of a well on the spacing unit and for the payment of the cost thereof, which cost may include a reasonable charge for supervision, handling, and storage.~~ As to each owner who refuses to pay ~~his~~ *the owner's* share of the costs of ~~drilling and~~

~~operating the well~~ *development or other operations referred to in subsection (1),* the order ~~shall~~ *must* provide for payment of ~~his~~ *the owner's* share of the cost out of and only out of production from the well allocable to ~~his~~ *the owner's* interest in the *permanent* spacing unit, excluding royalty or other interest not obligated to pay any part of the cost ~~thereof,~~ and excluding the royalty provided for in subsection (2)(c) ~~of this section~~. *If a well has not been drilled prior to the hearing on the application, the pooling order must provide for the drilling and operating of a well on the permanent spacing unit and for the payment of the cost of the well, which may include a reasonable charge for supervision, handling, and storage.* If a dispute arises as to the cost, the board by *subsequent* order, *after notice and hearing,* shall determine the proper cost. The order may provide in substance that the owners who agree to share in the cost of drilling and operating the well are, unless they agree otherwise, entitled to receive, subject to royalty or similar obligations, all of the production of the well until they have recovered all of the costs out of the production. ~~, and thereafter~~ *After all costs of drilling and operation are recovered,* all of the owners in the *permanent* spacing unit are entitled to receive their respective shares of the production of the well as their interest may appear after deducting their respective shares of current operating costs.

(b) If *a well has been drilled prior to the hearing on the application and* an owner ~~refuses~~, *after written demand, has failed or refused* to pay ~~his~~ *the owner's* share of the costs of ~~drilling and operating the well~~ *development or other operations referred to in subsection (1)*~~,~~ *or if a well has not been drilled prior to the hearing on the application and an owner refuses to agree to pay the owner's share of drilling and completion costs, in addition to the costs under subsection (2)(a),* the order must include as ~~cost~~ *costs*:

(i) 100% of the refusing owner's share of the cost of newly acquired surface equipment beyond the wellhead connections, including but not limited to stock tanks, separators, treaters, pumping equipment, and piping, plus 100% of the refusing owner's share of the cost of operation of the well commencing with first production and continuing until the agreeing owners have recovered ~~such~~ *the* costs; and

(ii) 200% of the refusing owner's share of the costs and expenses of staking, well site preparation, obtaining rights-of-way, rigging up, drilling, reworking, deepening or plugging back, testing, and completing the well, after deducting any cash contributions received from the refusing owners by the agreeing owners, and 200% of that portion of the cost of equipment in the well, including the wellhead connections.

(c) A refusing owner of an oil and gas interest in a spacing unit ~~which~~ *that* is not subject to any lease or other contract for development of oil and gas is considered to own a landowner royalty equal to one-eighth of ~~his~~ *the owner's* proportionate share of production from the well until such time as the consenting owners recover the costs specified in subsection (2)(b). Any interest in production from the spacing unit to which the interest of the refusing owner may be subject must be deducted from the royalty considered to be owned by the refusing owner. After costs have been recovered by the agreeing owners, the refusing owner owns ~~his~~ *the refusing owner's* proportionate share of the well, surface facilities, and production and is liable for further costs as if ~~he~~ *the refusing owner* had originally agreed to drilling of the well.

(d) The operator of a well under a pooling order in which there is a refusing owner shall upon demand furnish ~~such~~ *the refusing* owner with a monthly statement of all costs incurred, together with the quantity of oil or gas produced and the amount of proceeds realized from the sale of production during the preceding month.

(e) If an owner of an oil and gas interest in a temporary spacing unit refuses to agree to pay the owner's share of the costs of drilling and operating a well drilled within the unit and an application is filed for pooling of the interests in the well in a permanent spacing unit, the board shall, upon hearing the application for pooling of the interests for the well, order that the parties who agreed to share in the cost of drilling and operating the well prior to commencement of the drilling operation recover out of the refusing owner's share of the costs as provided in subsections (2)(a) and (2)(b).

(3) (a) An owner is presumed to have refused to pay the owner's share of costs if prior to the spud date of the well, the owner fails to pay or agree in writing to promptly pay the share of the costs after notice by the well operator either:

(i) acknowledged in writing by the owner as received; or

(ii) sent at least 30 days prior to the spud date of the well to the owner by certified mail, addressed to the owner's address of record in the office of the clerk and recorder of the county where the well is to be drilled or to the owner's address on file with the board.

(b) The notice must set forth the location of the well, the projected depth and target formations, the anticipated costs of drilling and completing the well, and the anticipated spud date of the well."

Approved April 12, 1993.

CHAPTER NO. 314

[HB 158]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE ALTERNATIVE HEALTH CARE BOARD; PROVIDING STAGGERED TERMS FOR MEMBERS OF THE BOARD; DELETING THE REQUIREMENT THAT ALL MEMBERS BE PRESENT IN ORDER TO CONDUCT BOARD BUSINESS; MAKING FEES COLLECTED BY THE BOARD NONREFUNDABLE; CLARIFYING THE DRUGS AND THERAPIES THAT MAY BE PRESCRIBED BY NATUROPATHIC PHYSICIANS; CLARIFYING THE REQUIREMENTS FOR NATUROPATHIC PHYSICIAN ENDORSEMENT; ALLOWING A PERSON WITH A HIGH SCHOOL EQUIVALENCY DIPLOMA TO QUALIFY FOR LICENSURE AS A DIRECT-ENTRY MIDWIFE; PROVIDING REQUIREMENTS FOR DOCUMENTATION OF THE APPRENTICESHIP EXPERIENCE OF MIDWIVES; GRANTING THE BOARD AUTHORITY TO SET THE PASSING GRADE ON THE LICENSING EXAMINATION FOR MIDWIVES; ALLOWING A MIDWIFE TO OBTAIN APPRENTICESHIP EXPERIENCE BY WORKING UNDER THE SUPERVISION OF A LICENSED NATUROPATH WHO IS CERTIFIED FOR SPECIALTY PRACTICE IN NATUROPATHIC CHILDBIRTH ATTENDANCE; PROVIDING RESTRICTIONS IN THE USE OF TITLES IDENTIFYING LICENSED MIDWIVES;

AMENDING SECTIONS 2-15-1840, 37-26-201, 37-26-202, 37-26-301, 37-26-404, 37-27-201, 37-27-202, 37-27-203, 37-27-205, AND 37-27-210, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1840, MCA, is amended to read:

"**2-15-1840. Alternative health care board — composition — terms — allocation.** (1) There is an alternative health care board.

(2) The board consists of *six* members appointed by the governor with the consent of the senate. The members are:

(a) two persons from each of the health care professions regulated by the board who have been actively engaged in the practice of their respective professions for at least 3 years preceding appointment to the board;

(b) one public member who is not a member of a profession regulated by the board; and

(c) one member who is a Montana physician whose practice includes obstetrics.

(3) The members must have been residents of this state for at least 3 years before appointment to the board.

(4) ~~Following the initial appointment of members to the board, all~~ *All* members shall serve *staggered* 4-year terms. A member may not be appointed for more than two consecutive terms. The governor may remove a member from the board for neglect of a duty required by law, for incompetency, or for unprofessional or dishonorable conduct.

(5) The board is allocated to the department for administrative purposes only, as prescribed in 2-15-121.

(6) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that one member of the board need not be an attorney licensed to practice law in this state."

Section 2. **Transition to staggered terms — appointments.** (1) On September 1, 1995, the governor shall make appointments to the alternative health care board as follows:

(a) one person who is a Montana physician whose practice includes obstetrics, to serve a 4-year term;

(b) one person who is a public member, to serve a 3-year term;

(c) one person who is a direct-entry midwife, to serve a 2-year term; and

(d) one person who is a naturopath, to serve a 1-year term.

(2) At the expiration of the 1-year and 2-year terms provided for in subsections (1)(c) and (1)(d), the governor shall appoint the person designated to fill the position to serve a 4-year term. At the expiration of these 4-year terms, the physician 4-year term, and the public member 3-year term, appointments must be made in accordance with 2-15-1840.

(3) On September 1, 1997, the governor shall make appointments to the board as follows:

(a) one person who is a direct-entry midwife, to serve a 1-year term; and

(b) one person who is a naturopath, to serve a 2-year term.

(4) At the end of the terms provided for in subsection (3), the governor shall appoint the person designated to fill the positions to serve a 4-year term. At the expiration of these 4-year terms, appointments must be made in accordance with 2-15-1840.

Section 3. Section 37-26-201, MCA, is amended to read:

"**37-26-201. Powers and duties of board.** The board shall:

(1) adopt rules necessary or proper to administer and enforce this chapter;

(2) adopt rules that specify the scope of practice of naturopathic medicine stated in 37-26-301, that are consistent with the definition of naturopathic medicine provided in 37-26-103, and that are consistent with the education provided by approved naturopathic medical colleges;

(3) adopt rules prescribing the time, place, content, and passing requirements of the licensure examination, which may be composed of part or all of the national naturopathic physicians licensing examination;

(4) adopt rules that endorse equivalent licensure examinations of another state or territory of the United States, the District of Columbia, or a foreign country and that may include licensure by reciprocity;

(5) adopt rules that set *nonrefundable* fees, commensurate with costs, for application, examination, licensure, and other administrative services;

(6) approve naturopathic medical colleges as defined in 37-26-103;

(7) adopt rules for the investigation of complaints against naturopathic physicians, for hearings on complaints, and to impose disciplinary action against naturopathic physicians found to be in violation of this chapter;

(8) investigate individuals falsely claiming to be naturopathic physicians and act in cooperation with county attorneys to enforce the provisions of this chapter;

(9) adopt rules that establish, approve, and routinely review a continuing education curriculum and accreditation for naturopathic physicians that is required for license renewal;

(10) issue certificates of specialty practice;

(11) issue temporary licenses as provided for in 37-26-403; and

(12) adopt rules that, in the discretion of the board, appropriately restrict licenses to a limited scope of practice of naturopathic medicine, which may exclude the use of minor surgery or the legend drugs allowed under 37-26-301."

Section 4. Section 37-26-202, MCA, is amended to read:

"37-26-202. **Board meetings.** (1) The board shall meet at least once annually.

(2) Special meetings may be called by any two board members or the ~~chairman~~ *presiding officer.*

(3) ~~All members must be present in order to conduct board business~~ *A majority of the board constitutes a quorum for the transaction of business.*"

Section 5. Section 37-26-301, MCA, is amended to read:

"37-26-301. **Practice of naturopathic health care.** (1) Naturopathic physicians may practice naturopathic medicine as a limited practice of the healing arts as exempted in 37-3-103(1)(n), with the following restrictions. A naturopathic physician may not:

(a) prescribe, dispense, or administer any legend drug as defined in 50-31-301 except for whole gland thyroid~~,~~*;* homeopathic preparations~~,~~*; the natural therapeutic substances, drugs, and therapies described in subsection (2);* and oxytocin (pitocin), provided that the naturopathic physician may administer but may not prescribe or dispense oxytocin (pitocin);

(b) administer ionizing radioactive substances for therapeutic purposes;

(c) perform surgical procedures except those minor surgery procedures authorized by this chapter; or

(d) claim to practice any licensed health care profession or system of treatment other than naturopathic medicine unless holding a separate license in that profession.

(2) Naturopathic physicians may prescribe and administer for preventive and therapeutic purposes the following natural therapeutic substances, drugs, and therapies:

(a) food, food extracts, vitamins, minerals, enzymes, whole gland thyroid, botanical medicines, homeopathic preparations, and oxytocin (pitocin);

(b) topical drugs, health care counseling, nutritional counseling and dietary therapy, naturopathic physical applications, therapeutic devices, and non-prescription drugs; and

(c) barrier devices for contraception, naturopathic childbirth attendance, and minor surgery.

(3) Naturopathic physicians may perform or order for diagnostic purposes a physical or orificial examination, ultrasound, phlebotomy, clinical laboratory test or examination, physiological function test, and any other noninvasive diagnostic procedure commonly used by physicians in general practice and as authorized by 37-26-201(2).

(4) Except as provided by this subsection, it is unlawful for a naturopath to engage, directly or indirectly, in the dispensing of any drugs that a naturopath is authorized to prescribe by subsection (2). If the place where a naturopath maintains an office for the practice of naturopathy is more than 10 miles from a place of business that sells and dispenses the drugs a naturopath may

prescribe under subsection (2), then, to the extent ~~such~~ *the* drugs are not available within 10 miles of the naturopath's office, the naturopath may sell ~~such~~ *the* drugs that are unavailable."

Section 6. Section 37-26-404, MCA, is amended to read:

"**37-26-404. Licensure by endorsement.** ~~(1)~~ The board may authorize the department to issue to an applicant a license by endorsement if the applicant produces evidence satisfactory to the board of:

~~(a)~~*(1)* a valid license or certificate issued to the applicant on the basis of an examination by ~~an~~ *a naturopathic* examining board under the laws of another state or territory of the United States, the District of Columbia, or a foreign country, whose licensing standards at the time the license or certificate was issued were, in the judgment and according to the rules of the board, acceptable for endorsement for granting a license to practice naturopathic medicine; or

~~(b)~~ ~~(i)~~*(2)* *(a)* an inactive license or other certificate of examination issued to or for the applicant by a naturopathic examining board under the laws of another state or territory of the United States, the District of Columbia, or a foreign country, whose examination standards at the time the license was granted or the examination was passed were acceptable for endorsement in the judgment and according to the rules of the board;

~~(ii)~~*(b)* the fact that ~~he~~ *the applicant* has not been disciplined or had ~~his~~ *an* inactive license suspended or revoked for malpractice;

~~(iii)~~*(c)* the fact that ~~he~~ *the applicant* has been actively engaged in the practice of naturopathic medicine for at least 1 year in a state or territory of the United States, the District of Columbia, or a foreign country, that does not license naturopathic physicians;

~~(iv)~~*(d)* the fact that ~~he~~ *the applicant* is a graduate of an approved naturopathic medical college; and

~~(v)~~*(e)* ~~his~~ *the* good moral character *of the applicant.*"

Section 7. Section 37-27-201, MCA, is amended to read:

"**37-27-201. Qualifications of applicants for license — educational and practical experience requirements.** To be eligible for a license as a direct-entry midwife, an applicant:

(1) must ~~be~~ *possess* a high school ~~graduate~~ *diploma or its equivalent*;

(2) must be of good moral character and be at least 21 years of age;

(3) shall satisfactorily complete educational requirements in pregnancy and natural childbirth, approved by the board, which must include but are not limited to the following:

(a) provision of care during the antepartum, intrapartum, postpartum, and newborn period;

(b) parenting education for prepared childbirth;

(c) observation skills;

(d) aseptic techniques;

(e) management of birth and immediate care of the mother and the newborn;

(f) recognition of early signs of possible abnormalities;

(g) recognition and management of emergency situations;

(h) special requirements for home birth;

(i) intramuscular and subcutaneous injections;

(j) suturing necessary for episiotomy repair;

(k) recognition of communicable diseases affecting the pregnancy, birth, newborn, and postpartum periods;

(l) assessment skills; and

(m) the use and administration of drugs authorized in 37-27-302;

(4) shall acquire practical experience, which may be attained in a home, clinic, or hospital setting. Practical experience attained in a hospital does not constitute training or supervision by the hospital, nor may a hospital be required to provide such practical experience. At a minimum, this experience must include the following types and numbers of experiences acquired through an apprenticeship or other supervisory setting:

(a) provision of 100 prenatal examinations;

(b) observation of 40 births; and

(c) participation as the primary birth attendant at 25 births, 15 of which included continuous care, as evidenced by ~~signing the birth certificate as the primary birth attendant.~~*:*

(i) birth certificates from Montana or another state;

(ii) a signed affidavit from the birthing mother; or

(iii) documented records from the person who supervised the births.

(5) shall file documentation with the board that the applicant has been certified by the American heart association or American red cross to perform adult and infant cardiopulmonary resuscitation. Certification must be current at the time of application and remain valid throughout the license period."

Section 8. Section 37-27-202, MCA, is amended to read:

"**37-27-202. Examination — preparation — requirements.** (1) An examination for a license to practice direct-entry midwifery must be prepared by a certified nurse-midwife designated by the board in consultation with the physician on the board.

(2) Examinations must be conducted once each year, be fair and impartial, and be sufficiently comprehensive to adequately test the applicant's competence and ability.

(3) ~~A~~ *In order to be licensed, a* person ~~must~~ *shall* attain a *passing* grade ~~of at least 70% to pass~~ *on* the examination, *as set by the board.*

(4) A person who fails to achieve a passing grade on the examination may not engage in the practice of midwifery."

Section 9. Section 37-27-203, MCA, is amended to read:

"**37-27-203. Examination — exemption.** (1) Except as provided in subsection (4), an applicant for a license as a direct-entry midwife shall pass a qualifying, written examination, prescribed by the board, that is designed to test knowledge of theory regarding pregnancy and childbirth and to test clinical judgment in midwifery management. If considered necessary, an oral interview may be conducted in addition to the written examination to determine the fitness of the applicant to practice as a direct-entry midwife.

(2) Before an applicant may take the examination, the applicant shall demonstrate to the board that the educational and practical experience requirements in 37-27-201~~(2)~~*(3)* and ~~(3)~~*(4)* have been met.

(3) An applicant is exempt from the educational and practical experience requirements of 37-27-201~~(2)~~*(3)* and ~~(3)~~*(4)* if the applicant has:

(a) satisfactorily completed the first examination given by the board following July 1, 1991; and

(b) filed supporting documentation, as required by the board by rule, certifying that the applicant has served as the primary birth attendant, providing continuous care at no less than 75 births within the 7 years prior to July 1, 1991, as verified by birth certificates from Montana or another state, a signed affidavit from the birthing mother, or documented records from the midwife.

(4) Upon payment of the license fee established by the board, a nurse-midwife certified pursuant to 37-8-409 is exempt from the requirements of 37-27-201 and this section and may be licensed as a direct-entry midwife."

Section 10. Section 37-27-205, MCA, is amended to read:

"**37-27-205. Provisional license — apprentice license.** (1) Upon payment of a $200 fee to the department, the board may grant a provisional direct-entry midwife license only to a person who filed an affidavit required by section 2, Chapter 493, Laws of 1989.

(2) The provisional license is valid until the issuance of grades for the first examination administered pursuant to 37-27-202.

(3) Upon payment of a $200 fee to the department, the board may grant an apprentice direct-entry midwife license to a person who*:*

(a) is working under the personal supervision of a licensed direct-entry midwife, a certified nurse-midwife, ~~or~~ a physician licensed under Title 37, chapter 3, ~~and who~~ *or a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance; and*

(b) is seeking licensure as a direct-entry midwife under this chapter.

(4) An apprentice direct-entry midwife license is valid for 1 year and must be renewed annually, with a limit of four renewals."

Section 11. Section 37-27-210, MCA, is amended to read:

"**37-27-210. Fees.** (1) An applicant for a direct-entry midwife license shall, upon submitting an application to the board, pay an application fee set by the board, commensurate with costs.

(2) An applicant required to take an examination shall, before commencement of the examination, pay an examination fee set by the board, commensurate with costs.

(3) Before a license may be issued or renewed, an applicant shall pay a fee set by the board, commensurate with costs.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for use by the board.

(5) Fees are nonrefundable."

Section 12. **Title restricted — enjoining unlawful practice.** (1) A direct-entry midwife licensed under this chapter may use the term "licensed midwife" or "direct-entry midwife" as a title.

(2) Only a direct-entry midwife licensed under this chapter may use the title "licensed midwife" or "direct-entry midwife".

(3) The terms and titles in subsections (1) and (2) identify direct-entry midwives and are restricted to describing and identifying licensed practitioners and their practice. A person who uses these terms and titles to represent the person or the person's practice to the public without being licensed pursuant to this chapter is in violation of this chapter.

(4) A violation of this chapter may be enjoined by the district court on petition by the board.

Section 13. **Codification instruction.** [Section 12] is intended to be codified as an integral part of Title 37, chapter 27, part 2, and the provisions of Title 37, chapter 27, part 2, apply to [section 12].

Section 14. **Effective date.** [This act] is effective on passage and approval.

Approved April 12, 1993.

CHAPTER NO. 315

[HB 338]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE LICENSING AND OPERATION OF GAME FARMS; ELIMINATING THE GAME FARM SHOOTING LICENSE; REVISING DEFINITIONS, PENALTIES, APPLICATION PROCEDURES, AND LICENSING CRITERIA RELATED TO GAME FARM LICENSURE; INCREASING THE LICENSE FEE; REVISING

ANIMAL TRANSPORTATION AND SALE PROVISIONS; REVISING LICENSE REVOCATION CRITERIA AND PROCEDURES; EXPANDING RECORDKEEPING REQUIREMENTS; AMENDING SECTIONS 87-4-406, 87-4-407, 87-4-409, 87-4-411, 87-4-412, 87-4-414, 87-4-415, 87-4-416, 87-4-417, 87-4-422, 87-4-423, AND 87-4-424, MCA; REPEALING SECTION 87-4-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-406, MCA, is amended to read:

"**87-4-406. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of fish, wildlife, and parks.

(2) "Facilities" means perimeter fences and other enclosures that provide for the confinement, handling, and quarantine of game farm animals.

~~(2)~~*(3)* "Game animals" means game animals as defined in 87-2-101 that are not the lawful property of any private person.

~~(3)~~*(4)* "Game farm" means the enclosed land area upon which game farm animals may be kept for purposes of obtaining, rearing in captivity, keeping, ~~and~~ *or* selling game *farm* animals or parts of game *farm* animals, as authorized under this part.

~~(4)~~*(5)* "Game farm animal" means a privately owned caribou, black bear, mountain lion, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana or any other cloven-hoofed ungulate as classified by the department.

~~(5) "Game farm shooting license" means the license required under 87-4-421 for a game farm operator to hunt the game farm animals indigenous to the state of Montana on his game farm.~~

(6) "Person" means an individual firm, corporation, association, or partnership."

Section 2. Section 87-4-407, MCA, is amended to read:

"**87-4-407. License required** ***— penalty — seizure of illegally possessed animals.*** *(1)* ~~No~~ *A* person may *not* operate a game farm in this state without first obtaining a game farm license from the department.

(2) A person who operates a game farm without a license or possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to 87-4-424 is guilty of a misdemeanor and is subject to the penalties provided in [section 12(4)].

(3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be immediately seized by the department and is subject to disposal by the department. Costs of seizure may be charged to the person in possession of the animal."

Section 3. Section 87-4-409, MCA, is amended to read:

"**87-4-409. Application for license — limitations on issuance.** (1) ~~Any~~ *A* person desiring to obtain a game farm license shall make written application to the department *on forms provided by the department.* The application shall specify:

(a) the applicant's name;

(b) the applicant's address;

(c) *the name and address of the individual who will be the principal manager of the game farm;*

(d) the exact legal description of the land upon which the game farm is to be located, together with the nature of the applicant's title ~~thereto~~ *to the land,* whether in fee, under lease, by contract for deed, or otherwise;

~~(d)~~*(e)* the species of game *farm* animals proposed to be kept or reared on the game farm;

~~(e)~~*(f)* the type of ~~fencing~~ *facilities* contemplated *and the location of perimeter fencing;*

~~(f)~~*(g)* the source from which the applicant intends to acquire the game animals;

~~(g)~~*(h)* if the applicant is not a Montana resident, the name and address of a Montana resident designated by the applicant as ~~his~~ *the applicant's* local agent;

~~(h)~~*(i)* if the applicant is a corporation, the full names and addresses of all stockholders owning more than 10% of the stock in the corporation; and

~~(i)~~*(j)* information demonstrating that the applicant is responsible.

(2) ~~A game farm license shall be issued only to a responsible applicant who owns or leases the premises on which the operations are to be conducted and who has properly fenced the land upon which the game farm is to be located. The fencing must be designed and constructed to prevent the escape of the species of game farm animals kept on the land and to prevent the entry of the same species of game animals.~~ *Within 30 days of receipt of an application, the department shall notify the applicant in writing whether the application:*

(a) is in compliance and is accepted as complete; or

(b) is not in compliance and shall list any deficiencies that must be corrected before the application is in compliance. The department shall return any noncomplying application to the applicant, who may resubmit the application upon correction of the deficiencies.

(3) Within ~~60~~ *120* days of ~~receiving~~ the *acceptance of a complete* application, the department shall notify the applicant of its *proposed* decision to approve, *approve with stipulations,* or deny the application. *If the department determines that the preparation of an environmental impact statement is required by Title 75, chapter 1, and by department rules adopted pursuant to the Montana Environmental Policy Act, then the department has an additional 180 days to act on the completed application.* If required fencing has not been completed, the

department shall approve the application subject to completion *and approval* of the fencing. If the application is denied *or approved with stipulations*, the department shall specify the reasons for denial *or stipulations.*"

Section 4. **Criteria for issuance of license — fencing and enclosure requirements.** (1) A game farm license may be issued by the department only to an applicant:

(a) who owns or leases the premises on which the operations are to be conducted;

(b) who has not been or whose principal manager has not been convicted of or who has not forfeited bond of $100 or more for more than one violation of the fish and game laws or applicable regulations of any state or the United States within a 5-year period prior to application;

(c) who has not or whose principal manager has not at any time pleaded guilty to or been convicted of a felony, unless civil rights have been restored pursuant to law. A person may not apply for licensure during any time in which a deferred or suspended felony sentence is in effect.

(d) who is or whose principal manager is at least 18 years of age.

(2) A game farm license must be issued by the department if:

(a) the applicant has properly fenced the perimeter of the land upon which the game farm is to be located with fencing designed and constructed to prevent the escape of the species of game farm animal kept on the game farm and to prevent the entry of the same species of game animal or other native game animal species capable of interbreeding with or contracting diseases or parasites from game farm animals;

(b) the application is for a single location;

(c) it is demonstrated that the applicant or the applicant's principal manager has the necessary skills to properly care for game farm animals or intends to employ a person who has those necessary skills; and

(d) the application has not been denied under this section or issued with stipulations under subsection (3).

(3) An application for a game farm license may be denied in its entirety or issued with stipulations if necessary to prevent public safety hazards or significant negative impacts to Montana's wildlife resources. Denial of an application or stipulations attached to a game farm license must be based on one or more of the following potential impacts ascribed to the physical location of the proposed game farm:

(a) substantial loss or destruction of critical seasonal game animal habitat or habitat of federally designated threatened or endangered species under the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., including but not limited to traditional breeding, birthing, rearing, and wintering areas;

(b) blockage or disruption of major traditional seasonal migration corridors or major travel routes;

(c) unacceptable threat of introduction or transmission of serious diseases or parasites to native wildlife populations, as determined by the state veterinarian appointed pursuant to 81-1-301;

(d) unacceptable threat of escape of captive game farm animals and establishment of feral populations that would result in habitat damage or competition with or genetic pollution of native wildlife populations;

(e) the creation of a significant threat to the safety of the general public and surrounding landowners by the shooting of game farm animals.

(4) If the department determines that it will propose, within the time allowed under 87-4-409(3), to deny a game farm license or issue a license with stipulations, the applicant must be given an opportunity to make changes to the application within 30 days of receipt of the department's written determination in order to mitigate or correct any problems or deficiencies. The department shall reconsider the application with the proposed changes within 30 days of receipt of changes to the application before granting, proposing to deny, or proposing to issue the license with stipulations.

(5) An applicant may request that the commission review a department proposal to deny a game farm license or to issue a license with stipulations by petitioning the commission for review within 10 days of the department's proposed decision. The commission shall decide whether to grant the license, propose to deny the license, or issue the license with stipulations. The commission's decision then becomes the department's proposed decision, subject to an opportunity for hearing under [section 15].

Section 5. Section 87-4-411, MCA, is amended to read:

"**87-4-411. License and renewal fees — deposit of fees.** (1) The department shall charge an initial game farm license fee of ~~$100~~ *$200* and ~~for each year thereafter~~ shall charge an annual renewal fee of ~~$25~~ *$50*.

(2) The fees must be deposited in the state special revenue fund for the use of the department for purposes of this part."

Section 6. Section 87-4-412, MCA, is amended to read:

"**87-4-412. Term of license — *renewal* — ~~nontransferability~~ *transferability*.** (1) A game farm license expires on January 31 of the year succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license upon payment of the renewal fee if the licensee has ~~not violated any provisions under which the license was granted~~ *complied with all recording and reporting requirements.*

(2) A game farm license *for a specific facility* is ~~nontransferable~~ *transferable with the consent of the department. The department's consent must be given if:*

(a) the transferee meets the requirements of [section 4(1)];

(b) the game farm and facilities are in compliance with requirements in place at the time the license was issued;

(c) the game farm is not under quarantine by the department of livestock;

(d) game farm animals to be transferred are not prohibited under this part and department rules; and

(e) the transfer is not proposed as a means to evade a requirement imposed on the licensee."

Section 7. Section 87-4-414, MCA, is amended to read:

"**87-4-414. Game farm animals as private property —** ***source.*** (1) All game farm animals lawfully ~~raised~~ *possessed* on a licensed game farm are ~~the~~ private property ~~of the~~ *for which the* licensee *is responsible as provided by law.*

(2) The licensee may acquire, breed, grow, keep, pursue, capture, ~~kill~~ *harvest,* use, sell, or dispose of the game farm animals and their progeny in any quantity~~,~~ *and* at any time of year~~, and in any manner,~~ as long as ~~he~~ *the licensee* complies with the requirements of this part.

(3) A licensee shall mark each game farm animal in a manner approved by the department of livestock that ~~facilitates~~ *indicates* ownership *and provides individual* identification of animals for inspection, transportation, reporting, and taxation purposes.

(4) ~~Before allowing hunting of any game farm animals on a game farm, the game farm licensee must obtain a game farm shooting license from the department.~~ *Game farm animals must be lawfully acquired by the licensee.*

(5) Except for importation permits and health certificates required under 81-2-703, laws applicable to game animals do not apply to game farm animals raised on a licensed game farm."

Section 8. Section 87-4-415, MCA, is amended to read:

"**87-4-415. Transportation and sale of game farm animals — quarantine.** (1) ~~Whenever the licensee of a licensed game farm sells or disposes of one or more game farm animals, he shall, at the same time, deliver to the recipient or otherwise cause to accompany each game farm animal or animals an invoice or bill of sale signed by the licensee or his agent stating the number of the game farm license, the date of acquisition or disposition, the species, the age, sex, and class of game animals disposed of, and the name and address of the transferee. This invoice or bill of sale, along with any required health certifications, authorizes transportation of the game farm animal or animals being sold, transferred, or disposed of.~~

~~(2) Within 10 days after movement or sale, the licensee or his agent shall mail postpaid a duplicate of the invoice or bill of sale to the department of livestock and the department.~~ *Prior to selling, transferring, transporting, or disposing of one or more game farm animals, the game farm licensee shall contact the department of livestock to request an inspection by a department of livestock stock inspector for all game farm animals except carnivores and omnivores. In the case of carnivores and omnivores, the game farm licensee shall contact the department to request an inspection by a department official. This section applies to all game farm animals, whether alive or dead.*

(2) (a) Inspection under subsection (1) must include examination of the game farm animal and all marks, tags, and tattoos to identify ownership prior to issuance of a certificate of inspection.

(b) A certificate of inspection must be made in triplicate and must specify:

(i) the date of inspection;

(ii) the place of origin and destination of the shipment;

(iii) the name and address of the owner of the game farm animals and of the purchaser or transferee;

(iv) the number, species, age, and sex of game farm animals transported or disposed of;

(v) ear tag numbers and tattoos on each animal; and

(vi) any other information that the department of livestock may require.

(c) A copy of the certificate must be:

(i) retained by the inspector;

(ii) furnished by the inspector to the owner or shipper of the game farm animals, to accompany the animals to their destination;

(iii) filed by the inspector with the department of livestock within 5 days of inspection; and

(iv) provided by the department of livestock to the department within 10 days of inspection.

(3) The department of livestock may quarantine any game farm animal pending inspection and health certification. The department shall advise the department of livestock regarding the importation or transportation of any game farm animal that the department reasonably believes may be infected with a disease specific to wildlife."

Section 9. Section 87-4-416, MCA, is amended to read:

"**87-4-416. Sale of game parts, meats, and byproducts.** (1) A game farm licensee may sell or otherwise dispose of the carcass, parts, or byproducts of a properly identified game farm animal taken from a game farm~~, only upon preparing an invoice or bill of sale and attaching a~~ *in accordance with the provisions of 87-4-415. A* copy of ~~it~~ *the certificate of inspection must be attached* to the carcass or container ~~and keeping a copy for his records~~. Upon the attaching of the ~~invoice or bill of sale~~ *certificate of inspection,* ~~to~~ the carcass, parts, or byproducts of the game farm animal~~, the same~~ may be transported within the state to the transferee named on the ~~invoice or bill of sale~~ *certificate of inspection.*

(2) The licensee may sell game farm animals for meat upon compliance with all applicable health laws."

Section 10. Section 87-4-417, MCA, is amended to read:

"**87-4-417. Records and reporting.** (1) Each game farm licensee shall keep and maintain for 3 years accurate written records of all purchases, transfers, and sales of game farm animals showing:

(a) the number of each species of game farm animal purchased by the game farm licensee and from whom purchased;

(b) the number of each species of game farm animal transferred or sold, the date of transfer or sale, and the name and address of the person to whom the transfer or sale was made; and

(c) individual identification of each game farm animal purchased, transferred, or sold.

(2) ~~On or before January 31~~ *Within 2 weeks after January 1, April 1, and September 1* of each year, the game farm licensee shall file a report with the director, showing the number and species of game farm animals on hand as of January 1, *April 1, and September 1* and the number and species of game farm animals bought ~~or~~, sold, *or propagated* during the ~~past year~~ *reporting period.*"

Section 11. Section 87-4-422, MCA, is amended to read:

"**87-4-422. Rulemaking.** (1) The department may adopt and enforce ~~only such~~ rules ~~as~~ *that* are necessary to implement the provisions of this part *and to coordinate regulation of game farms with the department of livestock.*

(2) The rules may address but are not limited to *the* classifying of cloven-hoofed ungulates, ~~fencing~~ requirements *for facilities*, reporting *and recordkeeping* requirements, transportation and importation, *restrictions on importation,* identification, sale of animal parts, *and* the care and maintenance of game farm animals~~, and game farm shooting licenses~~."

Section 12. **Revocation of license — criteria — penalties.** (1) The department may revoke any game farm license or impose any of the penalties or conditions specified in subsection (2) if the licensee or the principal manager has committed or is responsible for any of the following acts or omissions:

(a) failure to operate a game farm according to the provisions of this part, rules adopted under this part, or stipulations of the game farm license;

(b) making a materially false statement in the license application;

(c) having pleaded guilty to or been convicted of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(d) two convictions or bond forfeitures of $100 or more for violations of the fish and game laws or applicable regulations of any state or the United States within the preceding 5 years;

(e) negligent or willful misconduct of the game farm operation, including but not limited to the unauthorized egress and ingress of game animal species or game farm animals that:

(i) threatens public safety;

(ii) endangers native game animal populations or habitat through the establishment of feral populations, genetic pollution, or competition for forage or habitat; or

(iii) increases the risk of transmission of disease to native wildlife and the game farm animals of others;

(f) a material and willful falsification of any required game farm records or reports;

(g) the purposeful capture of wild animals within the perimeter fence of a game farm;

(h) repeated failure to maintain or repair required fences or facilities; or

(i) any other willful conduct or omission that creates a substantial threat to other game farm animals and operators or to native wildlife or habitat.

(2) If misconduct under subsection (1)(e) is negligent, the licensee must be given notice and 30 days to correct the misconduct and any adverse impacts of the misconduct. Negligent misconduct may be grounds for license revocation only if the misconduct is not corrected after the initial notice or if the misconduct is repeated.

(3) If the department finds, after opportunity for a hearing required under [section 15], that a game farm licensee or the principal manager is responsible for any act or omission set out in subsection (1), the department may in its discretion impose any one or more of the following penalties upon the licensee:

(a) revocation of the game farm license for up to 5 years;

(b) imposition of a civil penalty not to exceed $5,000, restoration of any damage to native wildlife, or both;

(c) deferral of the revocation of a license subject to the completion of or adherence to specified conditions; or

(d) reprimand of a licensee.

(4) In addition to the revocation of a license or other penalties allowed by this section, a person who purposely or knowingly violates this part or a rule adopted pursuant to this part is subject to criminal prosecution and a fine of not more than $1,000, imprisonment in the county jail for not more than 1 year, or both. Any violation of 87-3-118 is subject to prosecution and penalties under that section.

Section 13. Section 87-4-423, MCA, is amended to read:

"**87-4-423. Revocation of license — ~~penalty~~ *procedure — disposition of animals.*** (1) ~~A game farm license may be revoked for failure to operate the game farm according to the provisions of this part or rules adopted under this part.~~ *Proceedings for the revocation of a license or the discipline of a licensee must be based on a determination by the department, after an investigation, that there is good cause and a sufficient factual basis to believe that the licensee or the principal manager is responsible for one or more of the acts or omissions set out in [section 12(1)].*

(2) The department may initiate revocation or disciplinary proceedings against a licensee by specifying the grounds in writing to the licensee and providing an opportunity for a hearing as provided in [section 15].

~~(2)~~*(3)* Upon discovery of a violation *of recordkeeping or reporting requirements that is not a material violation or an attempt to deceive,* the department shall give notice of the violation to the licensee, with a statement that the violation must be corrected within 30 days of the notice, unless a longer period is approved by the department. *Upon failure of the licensee to correct the violation, the department may institute revocation proceedings.*

~~(3) Upon failure of the licensee to correct the violation, the department may institute revocation proceedings. If the department institutes revocation proceedings, it shall provide reasonable notice and opportunity for a hearing to the licensee. After hearing and upon proof of violation, the department may revoke the game farm license.~~

(4) *(a)* ~~In addition to the revocation of a license allowed by this section, a person who violates this part or a rule adopted under this part is subject to a fine of not more than $500 or imprisonment in the county jail for not more than 1 year, or both.~~ *A licensee whose license is revoked shall lawfully dispose of any game farm animal held pursuant to the license. Lawfully acquired and held game farm animals may be disposed of by the licensee within 180 days of the license revocation or within a longer period if specified by the department in the revocation order. After the expiration of this period, the department shall seize and dispose of any game farm animals that have not been lawfully disposed of by the licensee. Any proceeds that remain after deducting the department's expenses revert to the licensee. Any unrecovered costs may be charged to the licensee.*

(b) The department, when it is determined to be necessary by the state veterinarian appointed pursuant to 81-1-301, may require that diseased or potentially diseased game farm animals be quarantined or destroyed."

Section 14. Section 87-4-424, MCA, is amended to read:

"**87-4-424. Department restrictions on importation of certain species.** The department or the department of livestock may restrict from importation for purposes of game farming any species or subspecies and their hybrids with native species that are determined through scientific investigation to pose a threat to native wildlife or livestock through nonspecific genetic dilution, *habitat degradation or competition caused by feral populations of escaped game farm animals,* parasites, or disease."

Section 15. **Right to administrative hearing.** (1) An applicant must be given notice and an opportunity for a hearing on a proposed denial or issuance with stipulations of a game farm license pursuant to [section 4] before the department may deny a license or grant a license with stipulations.

(2) A licensee must be given notice and an opportunity for a hearing before the department may refuse to renew a license, withhold consent to the transfer of a license, revoke a license, or discipline a licensee.

(3) The notice and an opportunity for a hearing and any judicial appeal must be conducted as provided in Title 2, chapter 4, parts 6 and 7.

Section 16. **Repealer.** Section 87-4-421, MCA, is repealed.

Section 17. **Codification instruction.** [Sections 4, 12, and 15] are intended to be codified as an integral part of Title 87, chapter 4, part 4, and the provisions of Title 87, chapter 4, part 4, apply to [sections 4, 12, and 15].

Section 18. **Effective date.** [This act] is effective on passage and approval.

Approved April 12, 1993.

CHAPTER NO. 316

[SB 157]

AN ACT ALLOWING A COUNTY TO ASSIGN PROPERTY WITHIN A MUNICIPALITY TO THE MUNICIPALITY AFTER THE COUNTY HAS RECEIVED THE PROPERTY PURSUANT TO A TAX SALE; AND AMENDING SECTION 7-8-2301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2301, MCA, is amended to read:

"**7-8-2301. ~~Auction sale~~ *Disposal* of county tax-deed land.** (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to*:*

(a) make and enter an order for sale of the lands at public auction at the front door of the courthouse*; or*

(b) donate the land to a municipality, as provided in subsection (6), if the land is within the incorporated boundaries of the municipality.

(2) A sale may not be made for a price less than the fair market value of the land, as determined and fixed by the board prior to making the order of sale. In determining fair market value, the board shall subtract the amount of outstanding assessments that are a lien on the land from the unencumbered value of the land, but the minimum sale price for a parcel of land may not be less than $10.

(3) If no bids are received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the fair market value of the land under subsection (2). In the period of time between the auction conducted under subsection (1), in which there were no qualifying bids for the property, and an auction held pursuant to this subsection, the board may sell the land by negotiated sale at a price that is not less than the fair market value that was fixed for the original auction under subsection (1).

(4) If no bid is received at the sale conducted under subsection (3), the board may dispose of the land as provided in 7-8-2218.

(5) Notwithstanding the amount of the fair market value fixed by the board prior to the auction, if the successful sale bidder is the delinquent taxpayer or ~~his~~ *the taxpayer's* successor in interest, ~~his~~ *the taxpayer's* agent, or a member of ~~his~~ *the taxpayer's* immediate family, the purchase price may not be less than the

amount necessary to pay, in full, all county costs of conducting the sale, delinquent taxes, assessments, and all interest and penalties.

(6) A board of county commissioners may, upon expiration of the redemption period provided for in 15-18-111, donate the land to a municipality with the consent of the municipality."

Approved April 12, 1993.

CHAPTER NO. 317

[SB 229]

AN ACT DEFINING AND AUTHORIZING POKER RUNS; EXEMPTING POKER RUNS HELD BY CERTAIN NONPROFIT ORGANIZATIONS FROM CERTAIN REGULATIONS; AMENDING SECTIONS 23-5-308 AND 23-5-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Poker run defined — authorization — conditions.** (1) For the purposes of this section, "poker run" means a gambling activity involving a live poker card game conducted in the following manner:

(a) Each person pays valuable consideration to participate.

(b) A participant travels to designated locations and obtains a playing card at each location. Cards accumulated by the participant constitute a poker hand.

(c) After each participant has accumulated the required number of cards, the participants' poker hands are ranked as described in the poker run rules to determine the winner.

(2) It is lawful to conduct or participate in a poker run subject to the following conditions:

(a) Each participant must receive a copy of the rules for conducting the poker run before the poker run begins. The rules must include:

(i) the amount of the entry fee;

(ii) the type of poker game being played and ranking of poker hands;

(iii) the value of the prizes to be awarded;

(iv) a description of the locations where playing cards may be obtained; and

(v) the date and time during which the poker run will be conducted.

(b) The rules may provide for more than one winner of the ranked hands, with each winner receiving a prize, but a prize may not exceed $300 in value.

(c) Except as provided in subsection (2)(d), all consideration paid to participate in a poker run must be expended on the prize or prizes.

(d) If a poker run is conducted by a nonprofit organization, as defined in 23-5-112, the organization may retain a portion of the total amount paid to participate.

Section 2. Section 23-5-308, MCA, is amended to read:

"**23-5-308. Card game dealers — license.** (1) ~~A~~ *Except as provided in [section 1], a* person may not deal cards in a live card game of panguingue or poker without being licensed annually by the department.

(2) The fee for the first year in which the license is effective is $75, and the annual renewal fee is $25. The fee may not be prorated.

(3) The department shall retain for administrative purposes the license fee charged for the issuance of a dealer's license.

(4) A licensed dealer shall have on his person, and display upon request, his dealer's license when he is working as a dealer.

(5) (a) The department shall adopt rules to implement temporary licensing procedures until a permanent license is issued to a dealer.

(b) The rules must provide that:

(i) a temporary license may be obtained at the place where a person locally applies for a driver's license; and

(ii) the receipt received upon mailing by certified mail a completed license application and the fee required under subsection (2), return receipt requested, constitutes a temporary license.

(c) The department may not assess a fee for the temporary license."

Section 3. Section 23-5-309, MCA, is amended to read:

"**23-5-309. Requirements for conducting card games.** (1) Except as provided in 23-5-317 *and [section 1]*, a live card game must be played on a live card game table for which a permit has been issued and on the premises of a licensed operator.

(2) ~~A~~ *Except as provided in [section 1], a* live card game of panguingue or poker must be played in the presence and under the control of a licensed dealer."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 23, chapter 5, part 3, and the provisions of Title 23, chapter 5, part 3, apply to [section 1].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 12, 1993.

CHAPTER NO. 318

[HB 421]

AN ACT ALLOWING COUNTY COMMISSIONERS TO LEVY A TAX FOR PUBLIC SAFETY; PROVIDING THAT THE GENERAL LIMITATION ON PROPERTY TAXES APPLIES TO THE PUBLIC SAFETY TAX; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **County public safety levy — purpose.** The board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax on all property within the county for the purpose of providing for the public safety of citizens. The tax must be used to support county law enforcement services and to maintain county detention centers.

Section 2. **Tax limitation applicable.** The property tax limitation to 1986 levels under Title 15, chapter 10, part 4, applies to the county public safety levy authorized in [section 1]. The limitation is determined by the total tax levied for the county general fund. The first year a county public safety tax is levied, the public safety levy and the general fund levy may not exceed the prior year's county general fund levy. In subsequent years, any increases in the public safety levy and the general fund levy are limited under Title 15, chapter 10, part 4.

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 12, 1993.

CHAPTER NO. 319

[HB 481]

AN ACT STANDARDIZING THE PERCENTAGE OF SIGNATURES REQUIRED FOR LOCAL GOVERNMENT PETITIONS AS 15 PERCENT OF THE NUMBER OF ELECTORS REGISTERED TO VOTE AT THE LAST GENERAL ELECTION; AND AMENDING SECTIONS 7-2-4902, 7-3-103, 7-3-4305, AND 7-3-4327, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4902, MCA, is amended to read:

"**7-2-4902. Disincorporation by election.** (1) Any city or town may be disincorporated in the manner ~~hereafter~~ provided *in this section.*

(2) If the registered electors of a city or town equal in number to ~~20%~~ *at least 15%* of the number of electors ~~voting~~ *registered* at the last ~~regular~~ municipal *general* election petition the board of county commissioners of the county where the city or town is situated to disincorporate the city or town, or if the city governing body by a two-thirds vote of all its members resolves to disincorporate, then the board shall order, within 60 days, that a special election be held within the city or town on the question of disincorporating the city or town. The day for holding the election ~~shall be~~ *may* not *be* less than 75 days or more than 120 days after the board orders the election."

Section 2. Section 7-3-103, MCA, is amended to read:

"**7-3-103. Amendment of self-government charter or adopted alternative form of government.** (1) An amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government. To be effective, a proposed amendment must receive an affirmative vote of a majority of the electors voting on the question. An amendment approved by the electors becomes effective on the first day of the local government fiscal year following the fiscal year of approval unless the question submitted to the electors provides otherwise.

(2) An amendment to a self-government charter or an adopted alternative form of government may be proposed by initiative by petition of 15% of the electors *registered at the last general election* of the local government or by ordinance enacted by the governing body. The question on amendment of a charter or an adopted alternative form of government shall be submitted to the electors as soon as possible after the submission of a petition or enactment of a resolution, either at a regularly scheduled election or at a special election.

(3) The local government, by ordinance, may provide procedures for the submission and verification of initiative petitions."

Section 3. Section 7-3-4305, MCA, is amended to read:

"**7-3-4305. Petition to organize under commission-manager form — election required.** (1) Upon a petition being filed with the city or town council, signed by not less than ~~25%~~ *15%* of the qualified electors of ~~such~~ *the* municipality registered for the last ~~preceding~~ general municipal election, ~~praying~~ *proposing* that the question of reorganization under this part and part 44 be submitted to the qualified electors of ~~such~~ *the* municipality, ~~said~~ *the* city or town council shall ~~thereupon and~~ within 30 days ~~thereafter~~ order a special election to be held, at which election the question of reorganization of ~~such~~ *the* municipality under the provisions of this part and part 44 ~~shall~~ *must* be submitted to the qualified electors of ~~such~~ *the* municipality.

(2) ~~Such~~ *The* order of the city or town council ~~shall~~ *must* specify ~~therein~~ the time when ~~such~~ *the* election ~~shall~~ *must* be held, which ~~must~~ *may not* be ~~no~~ less than 75 ~~and no~~ *or* more than 90 days from the date of the order of the council."

Section 4. Section 7-3-4327, MCA, is amended to read:

"**7-3-4327. Petition for initiative.** (1) Any proposed ordinance may be submitted to the commission by petition signed by at least ~~10%~~ *15%* of the total number of ~~registered voters~~ *electors registered at the last general municipal election* ~~in the municipality~~. All petition papers circulated with respect to any proposed ordinance ~~shall~~ *must* be uniform in character and ~~shall~~ *must* contain the proposed ordinance in full and have printed or written ~~thereon~~ *on the petition* the names and addresses of at least five electors who ~~shall~~ *must* be officially regarded as filing the petition and ~~shall~~ *who* constitute a committee of the petitioners for the purposes ~~hereinafter named~~ *of this section.*

(2) Each signer of a petition shall sign ~~his~~ *the person's* name in ink or indelible pencil and shall place on the petition papers, after ~~his~~ *the* name, ~~his~~ *the person's* place of residence by street and number. The signatures of any ~~such~~ petition papers need not all be appended to one paper, but to each ~~such~~ paper there ~~shall~~ *must* be attached an affidavit by the circulator ~~thereof~~ *of the petition,* stating the number of signers to ~~such~~ *that* part of the petition and that each signature appended to the paper is the genuine signature of the person whose name it purports to be and was made in the presence of the affiant.

(3) Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided for initiating ordinances.

(4) Initiated ordinances adopted by the electors ~~shall~~ *must* be published and may be amended or repealed by the commission as in the case of other ordinances."

Approved April 12, 1993.

CHAPTER NO. 320

[HB 503]

AN ACT REVISING THE DEFINITION OF TIMBER SALE IN THE STREAMSIDE MANAGEMENT ZONE LAWS; AND AMENDING SECTION 77-5-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-302, MCA, is amended to read:

"**77-5-302. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative practices" means forest practices:

(a) conducted in the streamside management zone that are different from practices required by rules adopted under this part;

(b) that are designed for site-specific conditions encountered during a timber sale; and

(c) that are subject to department approval under 77-5-303.

(2) "Department" means the department of state lands provided for in 2-15-3201.

(3) "Forest practices" means, within a timber sale, the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and management of logging slash. The term does not include activities related to the operation of a Christmas tree farm or nursery that do not involve new road construction.

(4) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.

(5) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.

(6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.

(7) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.

(8) "Streamside management zone" or "zone" means the stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.

(9) "Timber sale" means a series of forest practices designed to access, harvest, ~~and~~ *or* regenerate trees on a defined land area for commercial purposes."

Approved April 12, 1993.

CHAPTER NO. 321

[HB 528]

AN ACT ESTABLISHING A COMMUNITY AND URBAN FORESTRY PROGRAM; AND CREATING A SPECIAL REVENUE ACCOUNT.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] authorizes the department of state lands to adopt rules for the implementation of [sections 1 through 4]. Although implementation by the department is discretionary, it would require the adoption of rules.

At a minimum, the rules must address the following:

(1) the types of trees and vegetative cover best suited to the Montana environment;

(2) instructions for the planting and maintenance of trees and vegetation; and

(3) criteria for the selection of suitable sites for planting.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Title — purpose.** [Sections 1 through 4] may be cited as the "Community and Urban Forestry Act". The purpose of the act is to:

(1) encourage the planting, maintenance, and management of trees in municipalities and counties;

(2) maximize the potential of trees and vegetative cover in improving the quality of the environment;

(3) encourage the coordination of state and local agency activities and maximize citizen participation in the development and implementation of community and urban forestry-related programs;

(4) foster healthy economic activity for the state's community and urban forestry-related businesses through cooperative and supportive contracts with the private business sector;

(5) facilitate the creation of jobs related to community and urban forestry activities, including opportunities for retraining and employing displaced timber resource workers; and

(6) provide meaningful voluntary opportunities for the state's citizens and organizations interested in community and urban forestry activities.

Section 2. **Definitions.** As used in [sections 1 through 4], the following definitions apply:

(1) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(2) "Department" means the department of state lands provided for in 2-15-3201.

(3) "Local government" means a city, town, county, consolidated city-county, or other political subdivision of the state.

Section 3. **Authority — rulemaking.** (1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose set forth in [section 1]. The department may assist local governments in establishing and maintaining community and urban forestry programs and in encouraging persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist local governments in the development and coordination of policies, programs, and activities for the promotion of community and urban forestry.

(3) The department may appoint an advisory committee to assist the department in establishing and carrying out a program in community and urban forestry.

(4) The department may adopt rules to implement [sections 1 through 4].

Section 4. **Special revenue account — donations.** (1) There is an account in the state special revenue fund. The department shall deposit in the account money received from gifts, grants, bequests, or endowments from public or private sources, and the funds must be used to carry out the provisions of [sections 1 through 4]. The money in the account may be spent in accordance with a legislative appropriation.

(2) The department may accept donations of labor, material, seedlings, and equipment from public or private sources for the purpose of carrying out the provisions of [sections 1 through 4].

Approved April 12, 1993.

CHAPTER NO. 322

[HB 550]

AN ACT PROVIDING A PROCEDURE FOR WAIVING THE CONFLICT OF INTEREST PROVISION FOR LOCAL GOVERNMENT OFFICERS AND EMPLOYEES; AND AMENDING SECTIONS 2-2-201 AND 7-5-4109, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-2-201, MCA, is amended to read:

"**2-2-201. Public officers, employees, and former employees not to have interest in contracts — *local government waiver.*** *(1)* Members of the legislature~~,~~*;* state, county, city, town, or township officers*;* or any deputy or employee ~~thereof must~~ *of an enumerated governmental entity may* not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees. A former employee may not, within 6 months following the termination of ~~his~~ employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which ~~he~~ *the former employee* was directly involved during ~~his~~ employment. In this section the term:

~~(1)~~*(a)* "be interested in" does not include holding a minority interest in a corporation;

~~(2)~~*(b)* "contract" does not include:

~~(a)~~*(i)* contracts awarded to the lowest responsible bidder or proposer based on competitive bidding procedures;

~~(b)~~*(ii)* merchandise sold to the highest bidder at public auctions;

~~(c)~~*(iii)* investments or deposits in financial institutions ~~which~~ *that* are in the business of loaning or receiving money;

~~(d)~~*(iv)* a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It ~~shall be~~ *is* presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

~~(3)~~*(c)* "former employee" does not include a person whose employment with the state was involuntarily terminated due to a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

(2) The governing body of a city, town, or county may waive the application of the prohibition contained in subsection (1) for a present or former city, town, or county officer or employee who in an official capacity does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;

(b) whether an opportunity was provided for open competitive bidding or negotiation;

(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and

(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict."

Section 2. Section 7-5-4109, MCA, is amended to read:

"**7-5-4109. Control of conflict of interest.** *(1)* The mayor, any member of the council, any city or town officer, or any relative or employee ~~thereof must~~ *of an enumerated officer may* not be directly or indirectly interested in the profits of any contract entered into by the council while ~~he~~ *the officer* is or was in office.

(2) The governing body of a city or town may waive the application of the prohibition contained in subsection (1) for a city or town officer or employee, or to the relative of an officer or employee, if in an official capacity the officer or employee does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

(a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;

(b) whether an opportunity was provided for open competitive bidding or negotiation;

(c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and

(d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict."

Approved April 12, 1993.

CHAPTER NO. 323

[HB 574]

AN ACT CONTINUING THE EXISTENCE OF THE APPELLATE DEFENDER SYSTEM, THE APPELLATE DEFENDER COMMISSION, AND THE OFFICE OF THE APPELLATE DEFENDER; REPEALING SECTION 13, CHAPTER 781, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 13, Chapter 781, Laws of 1991, is repealed.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 12, 1993.

CHAPTER NO. 324

[HB 632]

AN ACT PROVIDING FOR THE CONTROL OF OUT-OF-STATE PLACEMENTS OF CHILDREN WITH MULTIAGENCY SERVICE NEEDS; ESTABLISHING A MULTIAGENCY SERVICE PLACEMENT PLAN COMMITTEE; PROVIDING FOR THE DUTIES OF THE COMMITTEE; REQUIRING A PLACEMENT PLAN BY THE DEPARTMENT OF FAMILY SERVICES AND THE COMMITTEE; PROHIBITING FUTURE OUT-OF-STATE PLACEMENTS EXCEPT UNDER CERTAIN CIRCUMSTANCES; AND PROVIDING A METHOD FOR AWARDING OUT-OF-STATE PLACEMENTS TO IN-STATE PROVIDERS.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because [section 8] requires the department of family services to adopt rules. The legislature intends that the department particularly adopt rules implementing [sections 6 and 7]. Rules implementing [section 6] should combine the review and approval process required by this bill into the current processes used by the department and the youth placement committees. The rules adopted to implement [section 7] should provide a process similar to the request for proposal (RFP) process used previously by the department in placing groups of children with providers. The legislature intends that implementation of this bill not duplicate similar initiatives by other state agencies.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** The following definitions apply to [sections 1 through 8]:

(1) "Child with multiagency service needs" means a child under 18 years of age who has a need for services that are available from more than one state agency.

(2) "Least restrictive setting" means a setting in which a child with multiagency service needs is served:

(a) within the child's family or community; or

(b) outside the child's family or community where the needed services are not available within the child's family or community and where the setting is determined to be the most appropriate alternative setting based on:

(i) the safety of the child and others;

(ii) ethnic and cultural norms;

(iii) preservation of the family;

(iv) services needed by the child and the family;

(v) the geographic proximity to the child's family and community if proximity is important to the child's treatment or does not adversely affect the child's treatment.

(3) "Local agency" means a local interagency staffing group formed pursuant to 52-2-203 or parents who are seeking placement of a child with multiagency service needs and who is suffering from mental, behavioral, or emotional disorders.

(4) "Managed care" means control of the provision of services to a defined population through a planned delivery system.

(5) "Provider" means an agency of state or local government, a person, or a program authorized to provide treatment or services to a child with multiagency service needs who is suffering from mental, behavioral, or emotional disorders.

(6) "Request for proposals" has the meaning as defined in 18-4-301.

(7) "Services" has the meaning as defined in 52-2-202.

Section 2. **State policy.** The legislature declares that it is the policy of this state:

(1) to the extent that funds are available and using a managed care system, to provide for and encourage the development of a continuum of quality education, treatment, and services for the children of this state with multiagency service needs;

(2) to serve children with multiagency service needs either in their homes or in the least restrictive setting that is most appropriate to their needs as provided in [sections 6 and 7];

(3) to serve children with multiagency service needs within the state and use out-of-state providers as a last resort.

Section 3. **Multiagency service placement plan committee — membership — administration.** (1) There is a multiagency service placement plan committee.

(2) The committee is composed of the following members:

(a) an appointee of the director of the department;

(b) an appointee of the superintendent of public instruction;

(c) an appointee of the director of the department of corrections and human services;

(d) an appointee of the director of the department of health and environmental sciences; and

(e) an appointee of the director of the department of social and rehabilitation services.

(3) The committee is attached to the department for administrative purposes only as provided in 2-15-121.

(4) Except as provided in this section, the committee must be administered in accordance with 2-15-122.

Section 4. **Committee duties.** The committee established in [section 3] shall:

(1) assist the department in the development of the plan required by [section 5];

(2) develop policies aimed at allowing local agencies, through a managed care system, to access funding for services for children with multiagency service needs:

(a) that are currently provided by out-of-state providers; and

(b) who may have a future need to obtain services provided by out-of-state providers unless in-state services are developed; and

(3) advise local agencies to ensure that the agencies comply with applicable statutes, administrative rules, and department policy in making any determination that a child with multiagency service needs cannot be served by an in-state provider.

Section 5. **Multiagency service placement plan required.** The department and the committee established in [section 3] shall develop a written plan for limiting placement of children with multiagency service needs with out-of-state providers. The plan must adhere to the policy set forth in [section 2] and as a minimum must include:

(1) an explanation of how the range and quality of services necessary will be developed for children with multiagency service needs in order for those children to receive quality services from in-state providers;

(2) changes needed in rules regarding classification, reimbursement rates, or licensing of providers who may be used;

(3) flexible funding strategies, pooling of resources, and strategies for the development and provision of a broad range of services to assist in returning children with multiagency service needs from out-of-state providers, limiting the placement of other children with multiagency service needs with out-of-state providers, and maintaining children with multiagency service needs within the least restrictive state setting;

(4) a description of those instances in which children with multiagency service needs may continue to be placed with out-of-state providers;

(5) the amount and source of money needed to implement the plan;

(6) a current description of the children with multiagency service needs that, as a minimum, include services:

(a) being received and the cost of the services;

(b) needed in the least restrictive setting and an estimated cost of the services; and

(7) other information necessary to implement the purposes of [sections 1 through 8].

Section 6. **Out-of-state placements limited.** (1) Until the plan required by [section 5] is implemented, the department may approve the placement of a child with multiagency service needs with an out-of-state provider after October 1, 1993, only if:

(a) the provider is located closer to the child's home than is an alternative in-state provider or equally appropriate, individualized in-state services are not available or cannot be developed for the child for up to 100% of the cost of an out-of-state provider for which application is being made or would be made on behalf of the child; and

(b) placement of the child is approved by the local interagency staffing group formed pursuant to 52-2-203.

(2) After the plan required by [section 5] is completed and submitted to the department, the department shall adopt rules implementing the plan. Placement of a child with multiagency service needs with an out-of-state provider may be approved by the department only if the child is placed in accordance with the rules implementing the plan.

Section 7. **Department to use requests for proposals from in-state providers.** (1) The department shall:

(a) continuously group children with multiagency service needs placed with out-of-state providers into categories according to the type of treatment received by the children;

(b) notify in-state providers of the number of children in each category, the types of treatment being received by the children, and the cost to the state of the treatment provided; and

(c) use the request for proposals process to solicit in-state providers. If there is no appropriate in-state response to a request for proposals under this section, alternative resources may be sought.

(2) A decision by the department not to place a child with multiagency service needs with a particular provider is not subject to a contested case procedure.

Section 8. **Rulemaking.** The department shall adopt rules necessary to implement [sections 1 through 7]. The rules must be adopted in cooperation with the committee established in [section 3].

Section 9. **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 52, chapter 2, and the provisions of Title 52, chapter 2, apply to [sections 1 through 8].

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 12, 1993.

CHAPTER NO. 325

[HB 656]

AN ACT ELIMINATING STATE IMPACT AID TO SCHOOL DISTRICTS; AMENDING SECTIONS 20-3-106 AND 20-9-141, MCA; REPEALING SECTION 20-9-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-106, MCA, is amended to read:

"**20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state, and ~~he~~ shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute state equalization aid in support of the foundation program and guaranteed tax base aid, in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(15) ~~distribute state impact aid in accordance with the provisions of 20-9-304;~~

~~(16)~~ provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

~~(17)~~*(16)* approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

~~(18)~~*(17)* request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

~~(19)~~*(18)* authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

~~(20)~~*(19)* prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

~~(21)~~*(20)* approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

~~(22)~~*(21)* recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

~~(23)~~*(22)* collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

~~(24)~~*(23)* establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

~~(25)~~*(24)* license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

~~(26)~~*(25)* as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

~~(27)~~*(26)* supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

~~(28)~~*(27)* administer the traffic education program in accordance with the provisions of 20-7-502;

~~(29)~~*(28)* administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

~~(30)~~*(29)* review school building plans and specifications in accordance with the provisions of 20-6-622;

~~(31)~~*(30)* prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

~~(32)~~*(31)* provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

~~(33)~~*(32)* administer the distribution of guaranteed tax base aid for county retirement levy obligations in accordance with 20-9-366 through 20-9-369; and

~~(34)~~*(33)* perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 2. Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303; and

(ii) any additional general fund budget amount adopted by the trustees of the district under the provisions of 20-9-145 and 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

(iii) general fund balance reappropriated, as established under the provisions of 20-9-104;

(iv) ~~anticipated or reappropriated state impact aid received under the provisions of 20-9-304;~~

~~(v)~~ anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

~~(vi)~~*(v)* anticipated net proceeds taxes for new production, as defined in 15-23-601;

~~(vii)~~*(vi)* anticipated revenue from local government severance taxes as provided in 15-36-112;

~~(viii)~~*(vii)* anticipated revenue from coal gross proceeds under 15-23-703;

~~(ix)~~*(viii)* anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

~~(x)~~*(ix)* anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

~~(xi)~~*(x)* any other revenue anticipated by the trustees to be received during the ensuing school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any additional general fund budget amount adopted by the trustees of the district as the permissive amount under the provisions of 20-9-145 to determine the general fund permissive net levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by a district levy as provided in 20-9-303 and 20-9-353 to determine the additional general fund levy requirement.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund permissive net levy requirement by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund permissive net levy requirement and the additional general fund levy requirement for the district,

and a levy must be set by the county commissioners in accordance with 20-9-142."

Section 3. **Repealer.** Section 20-9-304, MCA, is repealed.

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved April 12, 1993.

CHAPTER NO. 326

[HB 144]

AN ACT DEFINING "INDEPENDENT LIVING" FOR THE PURPOSES OF VOCATIONAL REHABILITATION LAWS; AND AMENDING SECTIONS 53-7-101, 53-7-301, 53-19-101, AND 53-19-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-7-101, MCA, is amended to read:

"**53-7-101. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(2) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

~~(2)~~*(3)* "Maintenance" means money payments made in accordance with 53-7-108.

~~(3)~~*(4)* "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

~~(4)~~*(5)* "Person with an employment handicap" means the same as "individual with handicaps" as defined in the federal Rehabilitation Act of 1973 (29 U.S.C. 706(8)(A)), as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.

~~(5)~~*(6)* "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce the employment handicap of a person within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

~~(6)~~*(7)* "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

~~(7)~~*(8)* "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with employment handicaps. Such barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

~~(8)~~*(9)* "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with an employment handicap to become independent and productive or employable.

~~(9)~~*(10)* "Rehabilitation training" means training provided to a person with an employment handicap to rehabilitate the person's employment handicap; including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

~~(10)~~*(11)* "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with an employment handicap to enable the person insofar as possible to become independent and productive or employable.

~~(11)~~*(12)* "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person."

Section 2. Section 53-7-301, MCA, is amended to read:

"**53-7-301. Definitions.** As used in this part, the following definitions apply:

(1) (a) "Blindness" means a visual disability in which:

(i) a person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses; or

(ii) a person's visual field at the widest diameter subtends an angle no greater than 20 degrees.

(b) The term includes any visual disability that, in the determination of the department, renders vision seriously defective or causes blindness.

(2) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(3) "Independent living" means control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

~~(3)~~*(4)* "Low vision" means a visual impairment that, even with correction, remains so severe as to make performance of daily tasks difficult.

~~(4)~~*(5)* "Maintenance" means money payments made in accordance with 53-7-310.

~~(5)~~*(6)* "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

~~(6)~~*(7)* "Person with an employment handicap" means the same as "individual with handicaps" as defined in the federal Rehabilitation Act of 1973 (29 U.S.C. 706(8)(A)), as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.

~~(7)~~*(8)* "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce an employment handicap caused by blindness or low vision within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

~~(8)~~*(9)* "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

~~(9)~~*(10)* "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with blindness or low vision. Such barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

~~(10)~~*(11)* "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with blindness or low vision to become independent and productive or employable.

~~(11)~~*(12)* "Rehabilitation training" means training provided to a person with blindness or low vision to rehabilitate the person's employment handicap, including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

~~(12)~~*(13)* "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with blindness or low vision to enable the person insofar as possible to become independent and productive or employable.

~~(13)~~*(14)* "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person."

Section 3. Section 53-19-101, MCA, is amended to read:

"**53-19-101. Purpose.** The legislature, in recognition of needs of persons with severe disabilities and of the desirability of meeting those needs on a community level to the extent of available funding and in order to reduce the need for institutional care settings, establishes by this part a community program to assist persons with severe disabilities ~~in living~~ *to live* and ~~functioning~~ *function* independently. This program implements Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended, for persons with severe disabilities in Montana."

Section 4. Section 53-19-102, MCA, is amended to read:

"**53-19-102. Definitions.** As used in this part, the following definitions apply:

(1) "Community home for persons with severe disabilities" means a facility licensed by the department of family services, as provided for in 52-4-201 through 52-4-205.

(2) "Department" means the department of social and rehabilitation services established in 2-15-2201.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

(4) "Live and function independently" means to have control over one's life based upon a choice between acceptable options in a manner that minimizes reliance upon others for making decisions and conducting activities of daily living.

~~(4)~~*(5)* "Person with severe disabilities" means the same as "individual with severe handicaps" as defined in the federal Rehabilitation Act of 1973 (29 U.S.C. 706(15)(B)), as may be amended. The term includes an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of his physical or mental disability that the services provided under this part are required in order for the individual to achieve a greater level of independence in functioning in family or community or in engaging in or continuing in employment."

Approved April 13, 1993.

CHAPTER NO. 327

[HB 191]

AN ACT ELIMINATING THE $50 WHOLESALE LIMIT ON THE VALUE OF MERCHANDISE THAT MAY BE OBTAINED THROUGH REDEMPTION OF TOKENS OR TICKETS AWARDED FOR PLAY OF AN AMUSEMENT GAME; LIMITING THE VALUE OF A TOKEN OR TICKET FOR REDEMPTION PURPOSES; LIMITING THE VALUE OF TOKENS OR TICKETS THAT MAY BE AWARDED AFTER A SINGLE PLAY OF AN AMUSEMENT GAME; PERMITTING COIN- OR TOKEN-OPERATED GAMES OF SKILL TO BE MADE AVAILABLE FOR PUBLIC PLAY; AND AMENDING SECTIONS 23-6-101, 23-6-102, AND 23-6-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-6-101, MCA, is amended to read:

"**23-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this part:

(1) "Arcade" means a commercial establishment whose primary purpose is to make amusement games available for public play.

(2) "Concessionaire" means a person who owns one or more amusement games and who enters into an agreement with an operator, as defined in subsection (5)(a), to conduct games. A concessionaire may also be an operator.

(3) "Crane game" means an amusement game activated by the insertion of a coin or token by which the player uses one or more buttons, control sticks, or similar means of control or a combination of those means of control to position a mechanical or electromechanical claw or other retrieval device over a prize and attempts to retrieve it.

(4) "Nonprofit organization" means a nonprofit corporation or a nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, or service organization, established for a purpose other than conducting amusement games.

(5) "Operator" means a person who:

(a) enters into an agreement with a county fair commission, board of directors of a fair district, joint fair and civic center commission, business, or an association of businesses, such as a shopping center or downtown area, to provide amusement games; or

(b) makes an amusement game available for public play on ~~his~~ premises *owned by the operator* or on premises owned by another person.

(6) "Prize" means ~~only~~*:*

(a) tangible personal property ~~with a wholesale value of $50 or less~~*;* or

(b) nontransferable tokens~~,~~ *or* tickets~~, or coupons~~ that may be accumulated and redeemed for tangible personal property ~~with a wholesale value of $50 or less~~."

Section 2. Section 23-6-102, MCA, is amended to read:

"**23-6-102. Requirements for games.** An operator, concessionaire, nonprofit organization, or arcade may provide amusement games to the public under the following conditions:

(1) The sale of a right to participate, the determination of winners, and the distribution of prizes all occur in the presence of all players.

(2) The appropriate permit to operate the game has been obtained as provided for in 23-6-103.

(3) The player pays cash for the right to play the game.

(4) ~~A cash prize is not awarded, and only~~ *Only* a prize ~~is~~ *may be* awarded, *and a prize may not be repurchased from a player.* Prizes, *as defined in 23-6-101(6)(a), and tangible personal property that may be obtained through redemption of tokens or tickets* must be displayed ~~and may not be repurchased~~.

(5) (a) If tangible personal property, rather than tokens or tickets, is awarded following play of the amusement game, the wholesale value of the property may not exceed $50.

(b) If tokens or tickets are awarded following play of the amusement game:

(i) the value of the tokens or tickets for redemption purposes may not exceed 5 cents;

(ii) the maximum number of tokens or tickets awarded after a single play of the amusement game may not exceed the value of 10 times the total amount paid by all participants to play the amusement game; and

(iii) any tangible personal property for which tokens or tickets are redeemed may exceed a wholesale value of $50.

~~(5)~~*(6)* The system for awarding prizes does not require forfeiture of a previously won prize unless the prize is traded for a prize of equal or greater value.

~~(6)~~*(7)* Concealed numbers or conversion charts are not used in conducting the game.

~~(7)~~*(8)* The game is not designed or adapted with a control device to permit manipulation of the game to control the ability of a player to win or to predetermine who the winner will be. A crane game may not contain a variable resistor or any turn screw, knob, potentiometer, or similar device that may be used to alter the closing strength of the game's claws or retrieval device.

~~(8)~~*(9)* The object of the game is attainable and possible to perform, under the stated game rules, from the playing position of the player.

~~(9)~~*(10)* The game is conducted in a fair and honest manner and does not constitute a fraud upon the players."

Section 3. Section 23-6-104, MCA, is amended to read:

"**23-6-104. Amusement games allowed.** (1) Crane games, as defined in 23-6-101, and the games described in subsection (2) may be made available for public play.

(2) (a) Fish pond (duck pond). The player catches a fish or other object floating in a pond of water by using a pole, hand, net, or string. All fish or objects are marked on the bottom, indicating the size of prize the player wins. The player is awarded a prize each time, and the player must be allowed to continue playing until a prize is won.

(b) Hoop or ring toss. The player tosses a hoop or ring over a target that must consist of bottles, pegs, blocks, or prizes. The operator shall specifically advise the player as to the degree that the hoop or ring must go over the target. All hoops of the same color used at an individual stand must be the same size. All targets used at an individual booth must be the same size, or the operator shall advise the player by posting signs or using color codes denoting the different sizes.

(c) Dart games. The target area for all dart games must be of a material capable of being penetrated and of retaining a metal tip dart. The target area must be in the rear of the stand and must be at least 3 feet but not more than 15 feet from the foul line. A target must be stationary at all times.

(i) Balloon (poparoo) (balloon smash). The targets are inflated balloons. The player throws one or more darts to burst a predetermined number of balloons. If the predetermined number of balloons are burst by the darts, the player receives the prize indicated.

(ii) Dart throw. The targets are various sizes and shapes located on the target area. The player throws darts individually at the target. A dart must stick in a predetermined target to win the prize as designated.

(iii) Tic tac toe dart. The target is a tic tac toe board located in the target area. The player throws darts at the target and wins a designated prize when the thrown darts line up in a row in the target. The darts may line up vertically, horizontally, or diagonally to win.

(iv) Add-um-up darts. The target consists of numbered squares located in the target area. Prizes are awarded based on the total score obtained by the player by throwing and sticking the darts in the numbered squares. A dart that sticks on a line must be thrown again. The player may add up the score of the darts thrown.

(d) Ball tosses. In all ball toss games, the balls used at a specific stand must be of the same weight and size. Targets must be of the same weight and size, or the operator shall color code the targets and advise the player of the difference in targets by posting a sign or providing a duplicate of the target showing the limitations or restrictions. The sign or duplicate target must be readily visible to the player.

(i) Milk bottle toss. The player tosses or throws balls at simulated milk bottles. The player wins by either tipping over or knocking bottles off the raised platform as designated by the operator. The bottles may be constructed of wood, metal, or plastic or a combination of the three. Operators may vary the number of bottles and balls used in each game. Floating or loose weights in bottles are not allowed. The weight of individual bottles may not exceed 7 1/2 pounds.

(ii) Milk can (Mexican hat) (cone). The player tosses a ball into the opening of a milk can, into a fiberglass Mexican hat turned upside down, or through a cone to win.

(iii) Football toss (tire toss). The player tosses or throws a football through a stationary tire or hoop to win.

(iv) Basketball toss/throw. The player tosses or throws a basketball through a hoop to win.

(v) Bushel baskets. The player tosses balls into a bushel basket mounted on a stationary backdrop at a fixed angle. The balls must stay in the basket to win. Rim shots are allowed, except the operator may designate the top 6 inches of the basket rim by color and disallow balls striking this area as winning tosses.

(vi) Cat-ball-toss (star/diamond toss). The player tosses balls into a simulated cat's mouth or a round, diamond, or star-shaped hole to win.

(vii) Ping pong toss. The player tosses ping pong balls into dishes, saucers, cups, or ashtrays floating in water. A predetermined number of balls must remain in the dishes, saucers, cups, or ashtrays for the player to win. The dishes, saucers, cups, or ashtrays must have water covering the bottom of the surface that is facing up.

(viii) Fishbowl game. The player tosses ping pong balls into a water-filled fish bowl to win.

(ix) Volleyball toss (soccer ball). The player tosses a volley or soccer ball into a keg-type container mounted on a stationary backdrop at a fixed angle. The ball must stay in the keg to win a prize. Rim shots are authorized as stated in subsection (2)(d)(v) for bushel baskets.

(x) Goblet ball (whiffle ball). The player tosses a whiffle ball into a target area of glass or plastic goblets. Located in the target area are colored goblets that determine the type of prize the player wins. At least 33% of the goblets in the target area must be winners. The ball must stay in the goblet to win a prize.

(xi) Break the plate/bottle. The player tosses or throws a ball at a plate, phonograph record, or bottle. The type of prize won is determined by the number of targets broken by the player.

(xii) Punk rack. The targets for this game are rows of dolls or cats on a ledge at the rear of the stand. The dolls or cats must be filled with sawdust, styrofoam, cotton, or other like material that provides a firm base for the ball to strike. The hair protruding from the side of the dolls or cats may not exceed 3 inches. The prize is determined by how many dolls or cats the player knocks over or off the ledge, as posted by the operator.

(xiii) Teeth game. The target consists of a large face with wooden teeth. The prize is determined by how many teeth the player knocks down by throwing a ball.

(xiv) Toilet game (doniker). To win, the player tosses or throws a ball or other object through a toilet seat located at the rear of the stand.

(xv) Coke roll. The player rolls a ball down an alley with the object of knocking over two coke bottles standing at the end of the alley. The player must tip over both bottles to win. Bottles must be placed on predetermined spots painted on the surface of the alley.

(xvi) Rolldown. The player rolls balls down an alley with the object of putting the balls in numbered slots at the end of the alley. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Scores above or below a predetermined score win. The alley surface must be smooth and free from defects at all times.

(xvii) Fascination (I got it). Fascination is a group game that involves competition among the players. The target area consists of 25 holes, and the player tosses or rolls a ball into one of the holes. The object of the game is to get five balls in a row either vertically, horizontally, or diagonally. The first player to accomplish this is the winner. Prize size is determined by the number of players participating in each game.

(xviii) Cakewalk. The players walk on a predetermined route with designated spots, and when the operator stops the walk, the player on a predetermined spot wins a prize.

(xix) Batter-up. The player uses a whiffle ball bat to swing and strike whiffle balls that are pitched at medium speed from a pitching machine. The player wins when ~~he~~ *the player* hits a ball into the home run shelf. The home run shelf is located at the back of the batting cage approximately 15 feet from the player.

(xx) Sky bowling. Two bowling pins are set on predetermined painted spots on a shelf. A ball is attached to a chain suspended from a stationary support at least 6 inches to the right or left of the bowling pins. The object is to swing the ball, miss the pins with the ball as it goes forward, and knock the pins over as the ball returns.

(xxi) Clown rolldown. A ball is tossed through the open mouth of a moving clown or animal head. The ball then rolls down a chute to numbered slots at the rear of the clown or animal head. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Prizes are awarded on the points achieved.

(xxii) Skee ball. The player rolls a ball up the mechanical bowling alley into targets. A computer adds up the scores, and the predetermined scores win.

(xxiii) Speedball radar game. The player gets four balls and throws three balls through radar to establish speeds and to estimate at what speed the fourth ball will pass through the radar. The player wins a prize if ~~he~~ *the player* accurately estimates the speed of the fourth ball. The radar must be mounted and stationary.

(e) Shooting games. These games are conducted by the player using a weapon of some type to shoot at a target in the rear of the stand. The safety requirements of local city or county ordinances must be observed by the operator and player. The target may be stationary or mobile.

(i) Short range (shooting gallery). In this game, the player is given four rounds to shoot at a spot target 1/4 inch or less in diameter. The player wins when the spot target is completely shot out, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. The prize is determined by the number of targets struck by the player, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. Within each target is a bull's eye. The player must hit the bull's eye without touching the outer surface of the target. The prize is determined by the number of bull's eyes correctly hit.

(ii) Shoot-out-the-star (machine gun). The player, using an automatic air pellet gun, is given 100 pellets to shoot at a star-shaped target. The player must shoot out all of the target to win. The star cannot be more than 1 ¼ inches from point-to-point.

(iii) Water racer. This group game involves a competition, with the player winning a prize based on the number of players competing. The player, using a water pistol, shoots the water into a target. The water that strikes the target causes a balloon to inflate or advances an object to ring a bell. The first player who bursts the balloon or rings the bell is the winner.

(iv) Rapid fire. This group game involves competition similar to the water racer game described in subsection (2)(e)(iii). The player uses an electronic pistol to shoot at a target. Hits on the target give the player a score. The first player to reach a predetermined score is the winner.

(v) Cork gallery. The player uses a cork gun or similar device to propel objects, including but not limited to corks, suction cup darts, or styrofoam balls, to shoot at targets located on a shelf or at a bull's eye target. The player must hit the bull's eye or knock the target over or off the shelf to win a prize. The prize is determined by the target knocked over or off the shelf, by the number of targets knocked over or off the shelf, or by the player accomplishing other tasks, as stated in the posted rules. When suction cup darts or other darts are used and fail to stay on or in the target, the player must shoot the dart again. The base of each target must be uniform, front and rear.

(vi) Boomball. The player uses a cannon with compressed air to propel balls into a target area. The targets have varied point value. If the ball remains in the target, a computer adds up the score. Prizes are awarded based on the points achieved.

(f) Coin pitchers.

(i) Spot pitch (lucky strike). The player pitches a coin at colored spots located on a table in the center of the stand. The coin must touch or stay inside of a spot to win a prize.

(ii) Plate pitch. The player pitches a coin onto a glass plate to win a prize as designated.

(iii) Glass pitch (bowl). The player pitches a coin into or onto dishes or glasses. If the coin remains in a top target glass item, then the player wins that item.

(g) Miscellaneous games.

(i) Skill chute (bulldozer) (penny fall). The player inserts a coin or token into a chute, aiming the coin or token so that it will fall in front of a continuous sweeper (bulldozer). If the coin or token is aimed correctly, the sweeper (bulldozer) will push additional tokens or prizes into a hole or chute that sends them to the player. Tokens are exchanged for prizes. If there is a hidden ledge, tip, or similar obstruction that inhibits the passage of tokens or prizes into the hole or chute that sends them to the player, the operator shall post a sign to advise the players.

(ii) Tip-em-up bottle. The player is provided with a pole and a string that has a hoop or ring attached at the end. The player, using the pole with a ring, must raise a bottle lying on its side to an upright position to win.

(iii) Hi-striker. The player, using a wooden maul, must strike a lever target that causes a metal weight to rise on a guideline or track and ring a bell. The player must ring the bell a predetermined number of times to win a prize.

(iv) Rope ladder. The player must climb up a rope ladder, which is anchored at both ends by a swivel, and ring a bell or buzzer to win a prize.

(v) Whac-a-mole. This is a group game that has a target surface with five holes through which animated moles pop up and down at random. The player must hit as many moles as possible with a mallet. The first player to hit a predetermined number of moles wins.

(vi) Dip bowling game. The player rolls a bowling-type ball over a hump in the track. If the ball stays on the back side of the hump, the player wins.

(vii) Horserace derby. This is a group game in which a player advances ~~his~~ *a* horse by shooting or rolling a ball in the target area. The faster and more skillfully the player shoots or rolls ~~his~~ *the* ball, the faster ~~his~~ *the player's* horse will run. The first horse to cross the finish line wins.

(viii) Shuffleboard. The player pushes a puck down a shuffleboard alley to knock over poly pins at the end of an alley. The player wins by knocking down all the pins.

(ix) Bean bag. The player tosses or throws a bean bag or a simulated bean bag at cans, bottles, or other objects on a raised platform. The player wins a prize when ~~he~~ *the player* either knocks the object off the raised platform or tips the target over.

(x) Soccer kick. The player kicks a soccer ball through a hole in the target area to win.

(xi) Frog game. A plastic frog or similar object sits on a small end of a teeter-totter. The opposite end of the teeter-totter is struck with a mallet, causing the frog to fly off the teeter-totter. If the frog lands in a pail or similar receptacle, the player wins a prize.

(xii) Cover the spot. The object of this game is for the player to drop five circular discs onto a circular spot, completely covering the spot. The diameter of each of the discs used to cover the spot must be a minimum of 64% of the diameter of the spot to be covered. The spot to be covered must be painted or drawn on a permanent, solid material, such as metal or wood, or may be a lighted circle. The spot and each disc must have a uniform diameter.

(xiii) Pocket billiards. Using a regulation pocket billiard table, a player must run a consecutive number of balls to win a prize. The number of balls is set by the operator.

(xiv) Other coin- or token-operated games of skill. The player inserts a coin or token into a mechanical, electrical, or electromechanical device manufactured for bona fide amusement purposes only that dispenses tokens or tickets based on the player's skill in operating the device. Games authorized under this subsection are limited to those involving a substantial degree of skill. A substantial degree of skill is present if:

(A) a player's physical or mental abilities play an integral role in determining the number of tokens or tickets accumulated during the play of the game;

(B) the number of tokens or tickets initially received by the average player would increase with repeated play of the game; and

(C) a player's precision, dexterity, or knowledge enables the player to obtain more tokens or tickets than would be received by a less precise, dexterous, or knowledgeable player."

Approved April 13, 1993.

CHAPTER NO. 328

[HB 228]

AN ACT REPLACING THE REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT WITH THE UNIFORM INTERSTATE FAMILY SUPPORT ACT; CLARIFYING THAT ONLY ONE STATE HAS JURISDICTION TO MODIFY A SUPPORT AWARD AT ANY TIME; REVISING PRINCIPLES OF INTERSTATE JURISDICTION AND CLARIFYING THE JURISDICTION OF THE HOME STATE OF A CHILD; EXTENDING CHILD SUPPORT ENFORCEMENT PROVISIONS TO SPOUSAL SUPPORT; AMENDING SECTIONS 40-4-210, 40-5-101, 40-5-103, 40-5-104, 40-5-106, 40-5-107, 40-5-115, 40-5-118, 40-5-119, 40-5-133, 40-5-137, 40-5-140, 40-5-141, 40-5-142, 40-5-202, 40-5-226, 40-5-231, 40-5-263, 40-5-272, 40-5-431, AND 40-6-109, MCA; AND REPEALING SECTIONS 40-5-102, 40-5-105, 40-5-108, 40-5-109, 40-5-110, 40-5-111, 40-5-112, 40-5-113, 40-5-114, 40-5-116, 40-5-117, 40-5-120, 40-5-121, 40-5-122, 40-5-123, 40-5-124, 40-5-125, 40-5-126, 40-5-127, 40-5-128, 40-5-129, 40-5-130, 40-5-131, 40-5-132, 40-5-134, 40-5-135, 40-5-136, 40-5-138, AND 40-5-139, MCA.

WHEREAS, the United States Commission on Interstate Child Support and the National Conference of Commissioners on Uniform State Laws intend [section 21] to require a state support enforcement agency, in a Uniform Interstate Family Support Act (UIFSA) proceeding, to provide locator services upon the request of any individual; and

WHEREAS, the Department of Social and Rehabilitation Services is charged under [section 21] with providing locator services and does not receive a state general fund appropriation for providing locator services; and

WHEREAS, in enacting [section 21] the Legislature of the State of Montana intends the Department of Social and Rehabilitation Services to establish a fee schedule under 40-5-210 for locator services provided to an individual under [section 21].

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5-101, MCA, is amended to read:

"**40-5-101. Short title.** This part may be cited as the "~~Revised~~ Uniform ~~Reciprocal Enforcement of~~ *Interstate Family* Support Act ~~(1968)~~"."

Section 2. Section 40-5-103, MCA, is amended to read:

"**40-5-103. Definitions.** (1) ~~"Court" means the district court of this state and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.~~ *"Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support* *by the individual's parent or who is or is alleged to be the beneficiary of a child support order directed to the parent.*

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

~~(2)~~*(3)* "Duty of support"*:*

(a) means *an obligation* ~~a duty of support whether~~ imposed or imposable by law ~~or by order, decree, or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid~~ *to provide support for a child, spouse, or former spouse; and*

(b) includes an unsatisfied obligation to provide support.

~~(3)~~*(4)* "Governor" includes ~~any person~~ *an individual* performing the functions of governor or the executive authority of any state covered by this part.

(5) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least 6 consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than 6 months old, the state in which the child lived from birth with a parent or person acting as parent. A period of temporary absence of a parent or person acting as parent is counted as part of the 6-month or other period.

(6) "Income" includes:

(a) earnings or other periodic entitlements to money from any source; and

(b) any other property subject to withholding for support under the law of this state.

(7) "Income-withholding order" means an order or other legal process directed to an obligor's employer, as provided in Title 40, chapter 5, parts 3 and 4, or by a tribunal of another state to withhold support from the income of the obligor.

~~(4)~~*(8)* "Initiating state" means a state in which a proceeding pursuant to this *part* or a *law* substantially similar ~~reciprocal law is commenced~~ *to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a proceeding initiated by the department of social and rehabilitation services under 40-5-263 is filed for forwarding to a responding state.*

(9) "Initiating ~~court~~ *tribunal*" means the ~~court in which a proceeding is commenced~~ *authorized tribunal in an initiating state.*

(10) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(11) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

~~(5)~~*(12)* "Law" includes ~~both common~~ *decisional* and statutory law *and rules and regulations having the force of law.*

~~(6)~~*(13)* "Obligee" means*:*

(a) ~~a person, including a state or political subdivision,~~ *an individual* to whom a duty of support is *or is alleged to be* owed or *in whose favor a support order has been issued or a judgment determining parentage has been rendered;*

(b) a ~~person, including a~~ state or political subdivision~~, that has commenced a proceeding for enforcement of an alleged~~ *to which the rights under a* duty of support or ~~for registration of~~ a support order *have been assigned or that has independent claims based on financial assistance provided to an individual obligee; or*~~. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance~~

(c) an individual seeking a judgment determining parentage of that individual's child.

~~(7)~~*(14)* "Obligor" means *an individual or the estate of a decedent:*

(a) ~~any person owing~~ *who owes or is alleged to owe* a duty of support*;* ~~or against whom a proceeding for the enforcement of a duty of support or registration of~~

(b) who is alleged but has not been adjudicated to be a parent of a child; or

(c) who is liable under a support order ~~is commenced~~.

~~(8)~~*(15)* "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

~~(9)~~*(16)* "Register" means to file *a support order or judgment determining parentage* in the registry of foreign support orders.

~~(10)~~*(17)* "Registering ~~court~~ *tribunal*" means ~~any court of this state~~ *a tribunal* in which a support order ~~of a rendering state~~ is registered.

~~(11)~~*(18)* "~~Rendering~~ *Responding* state" means a state ~~in~~ *to* which ~~the court has issued a support order for which registration is sought or granted in the court of another state~~ *a proceeding is forwarded under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, or a proceeding initiated by the department of social and rehabilitation services under 40-5-263.*

~~(12)~~*(19)* "Responding ~~court~~ *tribunal*" means the ~~court in which the responsive proceeding is commenced~~ *authorized tribunal in a responding state.*

~~(13) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced.~~

(20) "Spousal support order" means a support order for a spouse or former spouse of the obligor.

~~(14)~~*(21)* "State" ~~includes~~ *means* a state~~, territory, or possession~~ of the United States, the District of Columbia, the Commonwealth of Puerto Rico, *or any territory or insular possession subject to the jurisdiction of the United States. The* *term "state" includes an Indian tribe* and ~~any~~ *includes a* foreign jurisdiction ~~in which this or a~~ *that has established procedures for issuance and enforcement of support orders that are* substantially similar ~~reciprocal law is in effect~~ *to the procedures under this part.*

(22) (a) "Support enforcement agency" means a public official or agency authorized to seek:

(i) enforcement of support orders or laws relating to the duty of support;

(ii) establishment or modification of child support;

(iii) a determination of parentage; or

(iv) to locate obligors or their assets.

(b) Support enforcement agency includes:

(i) in cases brought under title IV-D of the Social Security Act, the department of social and rehabilitation services; and

(ii) in all other cases, the prosecuting attorney.

~~(15)~~*(23)* "Support order" means ~~any~~ *a* judgment, decree, or order, ~~of support in favor of an obligee~~ whether temporary, ~~or~~ final, or subject to modification, ~~revocation, or remission, regardless of the kind of action or proceeding in which it is entered~~ *that is for the benefit of a child, a spouse or a former spouse, or a state or political subdivision; that provides for monetary support, health care, arrearages, or reimbursement; and that may include related costs and fees, interest, income withholding, attorney fees, and other relief.*

(24) "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage."

Section 3. **Tribunals of this state.** The district courts and the department of social and rehabilitation services are the tribunals of this state.

Section 4. Section 40-5-104, MCA, is amended to read:

"**40-5-104. Remedies** ~~**additional to those now existing**~~ ***cumulative.*** ~~The remedies herein~~ *Remedies* provided *in this part* are ~~in addition to~~ *cumulative* and *do* not *affect* ~~in substitution for any other~~ *the availability of* remedies *under other law.*"

Section 5. **Bases for jurisdiction over nonresident.** In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

(1) the individual is personally served with notice within this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(7) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

Section 6. **Procedure when exercising jurisdiction over nonresident.** A tribunal of this state exercising personal jurisdiction over a nonresident pursuant to [section 5] may apply [section 29] to receive evidence from another state and [section 31] to obtain discovery through a tribunal of another state. In all other respects, [sections 15 through 17, 19 through 21, 24 through 34, and 39 through 48] and 40-5-115, 40-5-118, 40-5-119, 40-5-133, 40-5-137, 40-5-140, and 40-5-141 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this part.

Section 7. **Initiating and responding tribunal of this state.** Under this part, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

Section 8. **Simultaneous proceedings in another state.** (1) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if:

(a) the petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(b) the contesting party timely challenges the exercise of jurisdiction in the other state; and

(c) if relevant, this state is the home state of the child.

(2) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

(a) the petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(b) the contesting party timely challenges the exercise of jurisdiction in this state; and

(c) if relevant, the other state is the home state of the child.

Section 9. **Continuing, exclusive jurisdiction.** (1) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(a) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(b) until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(2) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this part.

(3) If a child support order of this state is modified by a tribunal of another state pursuant to a law substantially similar to this part, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state and may only:

(a) enforce the order that was modified as to amounts accruing before the modification;

(b) enforce nonmodifiable aspects of that order; and

(c) provide other appropriate relief for violations of that order that occurred before the effective date of the modification.

(4) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order pursuant to a law substantially similar to this part.

(5) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(6) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

Section 10. **Enforcement and modification of support order by tribunal having continuing jurisdiction.** (1) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(2) A tribunal of this state that has continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order of another state. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply [section 29] to receive evidence from another state and [section 31] to obtain discovery through a tribunal of another state.

(3) A tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

Section 11. **Recognition of child support orders.** (1) If a proceeding is brought under this part and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(a) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.

(b) If two or more tribunals have issued child support orders for the same obligor and child and only one of the tribunals would have continuing, exclusive jurisdiction under this part, the order of that tribunal must be recognized.

(c) If two or more tribunals have issued child support orders for the same obligor and child and more than one of the tribunals would have continuing, exclusive jurisdiction under this part, an order issued by a tribunal in the current home state of the child must be recognized. However, if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

(d) If two or more tribunals have issued child support orders for the same obligor and child and none of the tribunals would have continuing, exclusive jurisdiction under this part, the tribunal of this state may issue a child support order, which must be recognized.

(2) The tribunal that has issued an order recognized under subsection (1) is the tribunal having continuing, exclusive jurisdiction.

Section 12. **Multiple child support orders for two or more obligees.** In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which orders was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state.

Section 13. Section 40-5-106, MCA, is amended to read:

"**40-5-106.** ~~**Interstate**~~ ***Grounds for*** **rendition.** *(1)* The governor of this state may:

~~(1)~~*(a)* demand of the governor of another state the surrender of ~~a person~~ *an individual* found in ~~that~~ *the other* state who is charged criminally in this state with failing to provide for the support of ~~any person~~ *an obligee*; or

~~(2)~~*(b)* ~~surrender~~ on demand by the governor of another state, *surrender* ~~a person~~ *an individual* found in this state who is charged criminally in that state with failing to provide for the support of ~~any person~~ *an obligee.*

(2) ~~Provisions~~ *A provision* for extradition of ~~criminals~~ *individuals that is* not inconsistent with this part ~~apply~~ *applies* to the demand even if the ~~person~~ *individual* whose surrender is demanded was not in the demanding state ~~at the~~

~~time of the commission of~~ *when* the crime *was allegedly committed* and has not fled ~~therefrom~~ *from the demanding state.* ~~The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.~~"

Section 14. Section 40-5-107, MCA, is amended to read:

"**40-5-107. Conditions of ~~interstate~~ rendition.** (1) Before making ~~the~~ *a* demand ~~upon~~ *that* the governor of another state ~~for the~~ surrender ~~of a person~~ *an individual* charged criminally in this state with ~~failing~~ *having failed* to provide for the support of ~~a person~~ *a child or to pay support to an obligee*, the governor of this state may require any prosecuting attorney of this state to ~~satisfy him~~ *demonstrate:*

(a) that at least 60 days ~~prior thereto~~ *previously*, the obligee *had* initiated proceedings for support ~~under~~ *pursuant to* this part; or

(b) that ~~any~~ *the* proceeding would be of no avail.

(2) If, under *this part or* a *law* substantially similar ~~law~~ *to this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act*, the governor of another state makes a demand ~~upon~~ *that* the governor of this state ~~for the~~ surrender ~~of a person~~ *an individual* charged criminally in that state with ~~failure~~ *having failed* to provide for the support of a ~~person~~ *child or to pay support to an obligee*, the governor *of this state* may require ~~any~~ *a* prosecuting attorney to investigate the demand and ~~to~~ report ~~to him~~ whether ~~proceedings~~ *a proceeding* for support ~~have~~ *has* been initiated or would be effective. If it appears ~~to the governor~~ that a proceeding would be effective but has not been initiated, ~~he~~ *the governor of this state* may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If ~~proceedings have~~ *a proceeding for support has* been initiated and the ~~person demanded has prevailed therein~~ *individual whose rendition is demanded prevails*, the governor *of this state* may decline to honor the demand. If the ~~obligee prevailed~~ *petitioner prevails* and the ~~person~~ *individual whose rendition is* demanded is subject to a support order, the governor *of this state* may decline to honor the demand if the ~~person demanded~~ *individual* is complying with the support order."

Section 15. **Proceedings under this part.** (1) Except as otherwise provided in this part, [sections 15 through 17, 19 through 21, 24 through 32, and 34] and 40-5-115, 40-5-118, 40-5-119, and 40-5-133 apply to all proceedings under this part.

(2) This part provides for the following proceedings:

(a) establishment of an order for spousal support or child support pursuant to [section 33];

(b) enforcement of a support order and income-withholding order of another state without registration;

(c) registration of an order for spousal support or child support of another state for enforcement pursuant to [sections 39 through 47] and 40-5-137, 40-5-140, and 40-5-141;

(d) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to [sections 7 through 10];

(e) registration of an order for child support of another state for modification pursuant to [sections 39 through 47] and 40-5-137, 40-5-140, and 40-5-141;

(f) determination of parentage pursuant to [section 48]; and

(g) assertion of jurisdiction over nonresidents pursuant to [sections 5 and 6].

(3) If the tribunal is the department of social and rehabilitation services, this part includes the administrative remedies under this chapter.

(4) An individual or a support enforcement agency may commence a proceeding authorized under this part by filing a petition in an appropriate initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent.

Section 16. **Action by a minor parent.** A minor parent or the guardian or other legal representative of a minor parent may maintain a proceeding on behalf of or for the benefit of the minor's child.

Section 17. **Application of law of this state.** Except as otherwise provided by this part, a responding tribunal of this state:

(1) shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

Section 18. Section 40-5-115, MCA, is amended to read:

"**40-5-115. ~~Duty~~ *Duties* of initiating ~~court~~ *tribunal*.** ~~If the~~ *(1) Upon the filing of a petition authorized by this part, an* initiating ~~court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property, it~~ *tribunal* shall ~~so certify and cause~~ *forward* three copies of the petition and its ~~certificate and one copy of this part to be sent~~ *accompanying documents:*

(a) to the responding ~~court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and~~ *tribunal or appropriate support enforcement agency in* the responding state*; or*

(b) ~~has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent~~ *if the identity of the responding*

tribunal is unknown, to the state information agency ~~or other proper official~~ of the responding state, with a request that ~~the agency or official forward them~~ *they be forwarded* to the ~~proper court and that the court of the responding state acknowledge their~~ *appropriate tribunal and that* receipt ~~to the initiating court~~ *be acknowledged.*

(2) The department of social and rehabilitation services is the initiating tribunal for any action or proceeding that may be brought under Title 40, chapter 5, parts 2, 4[, and 5]. In all other cases, the district court is the initiating tribunal."

Section 19. **Duties and powers of responding tribunal.** (1) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to [section 15(4)], it shall cause the petition or pleading to be filed and notify the petitioner by first-class mail where and when it was filed.

(2) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(a) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(b) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(c) order income withholding;

(d) determine the amount of any arrearages and specify a method of payment;

(e) enforce orders by use of civil or criminal contempt, or both;

(f) set aside property for satisfaction of the support order;

(g) place liens and order execution on the obligor's property;

(h) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(i) issue a bench warrant for an obligor who has failed, after proper notice, to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(j) order the obligor to seek appropriate employment by specified methods;

(k) award reasonable attorney fees and other fees and costs; and

(l) grant any other available remedy.

(3) A responding tribunal of this state shall include in a support order issued under this part or in the documents accompanying the order the calculations on which the support order is based.

(4) A responding tribunal of this state may not condition the payment of a support order issued under this part upon a party's compliance with visitation provisions.

(5) If a responding tribunal of this state issues an order under this part, the tribunal shall send a copy of the order by first-class mail to the petitioner and the respondent and to the initiating tribunal, if any.

(6) The department of social and rehabilitation services is the responding tribunal for receipt of a petition or comparable proceedings from an initiating state as provided in 40-5-263. In all other cases, the district court is the responding tribunal.

Section 20. **Inappropriate tribunal.** If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner by first-class mail where and when the pleading was sent.

Section 21. **Duties of support enforcement agency.** (1) A support enforcement agency of this state, upon application, shall provide services to a petitioner in a proceeding under this part.

(2) A support enforcement agency that is providing services to the petitioner shall, as appropriate:

(a) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(b) request an appropriate tribunal to set a date, time, and place for a hearing;

(c) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(d) after receipt of a written notice from an initiating, responding, or registering tribunal, promptly send a copy of the notice by first-class mail to the petitioner;

(e) after receipt of a written communication from the respondent or the respondent's attorney, promptly send a copy of the communication by first-class mail to the petitioner; and

(f) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(3) This part does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

(4) For purposes of this part, the department of social and rehabilitation services is the support enforcement agency for this state as provided in Title 40, chapter 5, parts 2, 4[, and 5]. All the provisions of this part must be interpreted as supplemental to and cumulative with the department's powers and duties under those provisions. In all other cases, the county attorney in the county in which an action must be filed is the support enforcement agency.

Section 22. Section 40-5-118, MCA, is amended to read:

"**40-5-118.** ~~**State**~~ ***Duties of state*** **information agency.** (1) The ~~state~~ department of social and rehabilitation services is designated as the state information agency under this part.

(2) ~~It~~ *The department* shall:

(a) compile *and maintain* a *current* list, *including addresses,* of the ~~courts and their addresses~~ *tribunals* in this state ~~having~~ *that have* jurisdiction under this part *and of any support enforcement agencies in this state* and transmit ~~it~~ *a copy* to the state information agency of every other state ~~which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this part and a statement of their effective date to all other state information agencies.~~;

(b) maintain a register of ~~lists of courts~~ *tribunals and support enforcement agencies* ~~received from~~ *of* other states; ~~and transmit copies thereof promptly to every court in this state having jurisdiction under this part; and~~

~~(c) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates, and copies of the reciprocal enforcement of support act it receives from courts or information agencies of other states.~~

~~(3) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the Social Security Act, as amended.~~

~~(4) After the deposit of three copies of the petition and certificate and one copy of the reciprocal enforcement of support act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the attorney general who may undertake the representation.~~

(c) forward to the appropriate tribunal in the place in this state in which the individual obligee or the obligor resides or in which the obligor's property is believed to be located all documents concerning a proceeding under this part received from an initiating tribunal or the state information agency of the initiating state; and

(d) obtain information concerning the location of the obligor and the obligor's property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security."

Section 23. Section 40-5-119, MCA, is amended to read:

"40-5-119. **Duty of ~~the court and officials of this state as responding state~~ *attorney general.*** ~~(1) After the responding court receives copies of the petition, certificate, and reciprocal enforcement of support act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.~~

~~(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.~~

~~(3)~~ If the ~~prosecuting attorney neglects or refuses to represent the obligee, the~~ attorney general *determines that a support enforcement agency is neglecting or refusing to provide services to an individual, the attorney general* may order ~~him~~ *the agency* to ~~comply with the request of the court~~ *perform its duties under this part* or may ~~undertake the representation~~ *provide those services directly to the individual.*"

Section 24. **Private counsel.** An individual may employ private counsel to represent the individual in proceedings authorized by this part.

Section 25. **Pleadings and accompanying documents.** (1) A petitioner who seeks to establish or modify a support order or to determine parentage in a proceeding under this part shall verify the petition. Unless otherwise ordered under [section 26], the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

(2) The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

Section 26. **Nondisclosure of information in exceptional circumstances.** Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this part.

Section 27. **Costs and fees.** (1) The petitioner may not be required to pay a filing fee or other costs to initiate a proceeding under this part.

(2) If an obligee prevails, a responding tribunal may assess against an obligor the filing fees, reasonable attorney fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. Except as provided by other law, the tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the

initiating or the responding state. Attorney fees may be taxed as costs and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of current support owed to the obligee has priority over fees, costs, and expenses.

(3) The tribunal shall order the payment of costs and reasonable attorney fees if it determines that a hearing was requested primarily for delay. In a proceeding under [sections 39 through 47] and 40-5-137, 40-5-140, 40-5-141, or 40-5-271, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

(4) The standardized schedule of fees established by the department of social and rehabilitation services under 40-5-210 is conclusive in any action under this section. Any fees or costs recoverable under subsection (2) that are not included in the standardized schedules are recoverable under subsection (2).

Section 28. **Nonparentage as defense — limitation.** A party whose parentage of a child has been previously determined pursuant to law may not plead nonparentage as a defense to a proceeding under this part.

Section 29. **Special rules of evidence and procedure.** (1) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or for the rendition of a judgment determining parentage.

(2) A verified petition, affidavit, or document substantially complying with federally mandated forms and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(3) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(4) Copies of bills for testing for parentage and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(5) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(6) In a proceeding under this part, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(7) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(8) A privilege against disclosure of communications between spouses does not apply in a proceeding under this part.

(9) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this part.

Section 30. **Communications between tribunals.** A tribunal of this state may communicate, in writing or by telephone or other means, with a tribunal of another state to obtain information concerning the laws of that state; the legal effect of a judgment, decree, or order of that tribunal; and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state.

Section 31. **Assistance with discovery.** A tribunal of this state may:

(1) request a tribunal of another state to assist in obtaining discovery; and

(2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

Section 32. **Receipt and disbursement of payments.** A support enforcement agency or tribunal of this state shall disburse promptly any amounts received pursuant to a support order as directed under this part. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

Section 33. **Petition to establish support order.** (1) If a support order entitled to recognition under this part has not been issued, an appropriate responding tribunal of this state may issue a support order if:

(a) the individual seeking the order resides in another state; or

(b) the support enforcement agency seeking the order is located in another state.

(2) The tribunal may issue a temporary child support order if:

(a) the respondent has signed a verified statement acknowledging parentage;

(b) the respondent has been determined by or pursuant to law to be the parent; or

(c) there is other clear and convincing evidence that the respondent is the child's parent.

(3) Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to [section 19].

Section 34. **Administrative enforcement of orders.** (1) A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

(2) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this part.

Section 35. Section 40-5-133, MCA, is amended to read:

"**40-5-133.** ~~**Effect of participation in proceeding**~~ ***Limited immunity of petitioner.*** *(1)* Participation *by a petitioner* in ~~any~~ *a* proceeding ~~under this part~~ *before a responding tribunal, whether in person, by private attorney, or through services provided by a support enforcement agency,* does not confer jurisdiction ~~upon any court~~ over ~~any of~~ the ~~parties thereto~~ *petitioner* in ~~any other~~ *another* proceeding.

(2) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this part.

(3) The immunity granted by this section does not extend to civil litigation based on acts that are unrelated to a proceeding under this part and that are committed by a party while present in this state to participate in the proceeding."

Section 36. Section 40-5-137, MCA, is amended to read:

"**40-5-137. Registration** ***of order for enforcement.*** ~~The obligee may register the foreign~~ *A* support order ~~in a court of~~ *or an income-withholding order issued by a tribunal of another state may be registered in* this state ~~in the manner, with the effect, and for the purposes herein provided~~ *for enforcement.*"

Section 37. Section 40-5-140, MCA, is amended to read:

"**40-5-140.** ~~**Registration procedure — notice**~~ ***Procedure to register order for enforcement.*** (1) ~~An obligee seeking to register a foreign~~ *A* support order *or income-withholding order of another state may be registered* in ~~a court of~~ this state ~~shall transmit~~ *by sending the following documents and information* to the ~~clerk of~~ *department of social and rehabilitation services pursuant to 40-5-263 or to* the *district* court:

(a) a letter of transmittal to the tribunal to request registration and enforcement;

~~(a)~~*(b)* ~~three certified~~ *two* copies, *including one certified copy,* of ~~the order with~~ all ~~modifications thereof~~ *orders to be registered, including any modification of an order*;

~~(b) one copy of the reciprocal enforcement of support act of the state in which the order was made; and~~

(c) a *sworn* statement~~, verified and signed~~ by the ~~obligee, showing the post-office address of the obligee,~~ *party seeking registration or a certified statement by the custodian of the records, showing the amount of any arrearages;*

(d) the *name of the obligor and, if known:*

(i) the obligor's ~~last known place of residence and post-office~~ address ~~of the obligor, the amount of support remaining unpaid,~~ *and social security number;*

(ii) the name and address of the obligor's employer and any other source of income of the obligor; and

(iii) a description and the location of ~~any~~ property of the obligor ~~available upon~~ *in this state that is not exempt from* execution~~, and a list of the states in which the order is registered~~*; and*

(e) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(2) ~~Upon~~ *On* receipt of ~~these documents the clerk of the court~~ *a request for registration,* ~~without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this part~~ *the registering tribunal shall cause the order to be filed, together with one copy of the documents and information, regardless of their form.*

(3) ~~Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.~~ *A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed either at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.*"

Section 38. Section 40-5-141, MCA, is amended to read:

"**40-5-141. Effect of registration — enforcement ~~procedure~~.** (1) ~~Upon registration the~~ *A support order or income-withholding order issued in another state is* registered ~~foreign support~~ *when the* order ~~shall be treated in the same manner as a support order issued by a court~~ *is filed in a registering tribunal* of this state.

(2) ~~It has the same effect~~ *A registered order issued in another state is enforceable in the same manner* and is subject to the same procedures~~, defenses, and proceedings for reopening, vacating, or staying~~ as ~~a support~~ *an* order *issued by a tribunal* of this state ~~and may be enforced and satisfied in like manner~~.

~~(2) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.~~

(3) ~~At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay~~

~~enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.~~ *Except as otherwise provided in [sections 39 through 47] and 40-5-137, 40-5-140, and 40-5-141, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction."*

Section 39. **Choice of law.** (1) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(2) In a proceeding for arrearages, the statute of limitations under the laws of this state or of the issuing state, whichever is longer, applies.

Section 40. **Notice of registration of order.** (1) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class or certified mail or by any means of personal service authorized by the law of this state. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(2) The notice must inform the nonregistering party:

(a) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(b) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after the date of mailing or personal service of the notice;

(c) that failure to contest the validity or enforcement of the registered order in a timely manner:

(i) will result in confirmation of the order and enforcement of the order and the alleged arrearages; and

(ii) precludes further contest of that order with respect to any matter that could have been asserted; and

(d) of the amount of any alleged arrearages.

(3) Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to Title 40, chapter 5, part 4.

Section 41. **Procedure to contest validity or enforcement of registered order.** (1) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after the date of mailing or personal service of notice of the registration. The nonregistering party may, pursuant to [section 42], seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages.

(2) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(3) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing.

Section 42. **Contest of registration or enforcement.** (1) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(a) the issuing tribunal lacked personal jurisdiction over the contesting party;

(b) the order was obtained by fraud;

(c) the order has been vacated, suspended, or modified by a later order;

(d) the issuing tribunal has stayed the order pending appeal;

(e) there is a defense under the law of this state to the remedy sought;

(f) full or partial payment has been made; or

(g) the statute of limitations under [section 39] precludes enforcement of some or all of the arrearages.

(2) If a party presents evidence establishing a full or partial defense under subsection (1), the registering tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(3) If the contesting party does not establish a defense under subsection (1) to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

Section 43. **Confirmed order.** Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Section 44. **Procedure to register child support order of another state for modification.** A party or support enforcement agency seeking to modify or to modify and enforce a child support order issued in another state shall register that order in this state in the same manner provided in 40-5-137, 40-5-140, 40-5-141, [section 40], and 40-5-271 if the order has not been registered. A petition for modification may be filed either at the same time as a request for registration or later. The pleading must specify the grounds for modification.

Section 45. **Effect of registration for modification.** A tribunal of this state may enforce a child support order of another state, registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this state. However, the registered order may be modified only if the requirements of [section 46] have been met.

Section 46. **Modification of child support order of another state.** (1) After a child support order issued in another state has been registered in this state, the appropriate responding tribunal of this state may modify that order only if, after notice and hearing, it finds that:

(a) the following requirements are met:

(i) the child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(b) an individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed in the issuing tribunal a written consent providing that the appropriate tribunal of this state may modify the support order and that this state may assume continuing, exclusive jurisdiction over the order.

(2) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state, and the order may be enforced and satisfied in the same manner.

(3) A tribunal of this state may modify only a child support order. A tribunal may not modify provisions, such as custody, visitation, or other provisions not related to support.

(4) On issuance of an order modifying a child support order issued in another state, a tribunal of this state has continuing, exclusive jurisdiction.

(5) Within 30 days after issuance of a modified child support order, the tribunal issuing the modification shall file a certified copy of the order:

(a) with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order; and

(b) in each tribunal in which the modifying tribunal knows that earlier order has been registered.

Section 47. **Recognition of order modified in another state.** A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction pursuant to a law substantially similar to this part. Except as otherwise provided in this part, the tribunal of this state shall, upon request:

(1) enforce the order that was modified only as to amounts accruing before the modification;

(2) enforce only nonmodifiable aspects of that order;

(3) provide other appropriate relief only for violations of the order that occurred before the effective date of the modification; and

(4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

Section 48. **Proceeding to determine parentage.** (1) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this part or a law substantially similar to this part, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of that child.

(2) In a proceeding to determine parentage, a responding tribunal of this state shall apply the rules of this state on choice of law.

(3) A proceeding to determine parentage directed to:

(a) the department of social and rehabilitation services from an initiating state pursuant to 40-5-263 and this part is subject to the provisions of 40-5-231 through 40-5-237 or Title 40, chapter 6, part 1, as applicable; and

(b) a district court from an initiating state is subject to the provisions of Title 40, chapter 6, part 1.

Section 49. Section 40-5-142, MCA, is amended to read:

"**40-5-142. Uniformity of interpretation.** This part ~~shall~~ *must* be so construed as to effectuate its general purpose to make uniform the law ~~of those~~ *with respect to the subject of this part among* states ~~which enact~~ *enacting* it."

Section 50. Section 40-5-272, MCA, is amended to read:

"**40-5-272. Application for review of child support orders.** (1) Upon the application of the department, the obligor, or the obligee, a hearing officer appointed pursuant to 40-5-273 shall review support orders filed with the support order registry. The purpose of the review is to determine whether the support order should be modified in accordance with the guidelines.

(2) Jurisdiction to conduct the review and to issue a modifying order under 40-5-273 is authorized when:

(a) the obligor and the obligee reside in this state; *or*

(b) jurisdiction can be obtained as provided under ~~40-4-210; or~~

~~(c) the obligor resides in this state and the department is providing IV-D enforcement services for the order~~ *40-5-231.*

(3) Jurisdiction to review a child support order under this section does not confer jurisdiction for any other purpose, such as custody or visitation disputes.

(4) Criteria constituting sufficient grounds for review of a child support order include:

(a) inconsistency with this state's guidelines, unless the inconsistency is considered negligible under department rules; or

(b) availability of health insurance coverage to the obligor's child through the obligor's employment or other group insurance.

(5) The department shall make available procedures and forms that allow the obligor or the obligee to complete the review process without legal counsel.

(6) To the extent that they are consistent with this section, the provisions of [sections 5, 9, and 10] apply to this section."

Section 51. Section 40-5-431, MCA, is amended to read:

"**40-5-431. Registration of interstate income withholding orders.** (1) Whenever an obligor, whether or not ~~he~~ *the obligor* resides in this state, derives income within this state and an order for income withholding of the obligor's income has been issued by a public agency of another state as a means to enforce support orders under Title IV-D of the Social Security Act, that agency may register the income withholding order with the department. Upon registration of the foreign withholding order, it must be treated in the same manner and have the same effect as an income withholding order issued by the department. *The provisions of [sections 40 through 43] apply to this section to the extent that they are consistent with this section.*

(2) The application for registration of a foreign order for income withholding must include:

(a) a certified copy of the support order, with all modifications ~~thereof~~ *of the order*;

(b) a certified copy of the income withholding order;

(c) a sworn statement of the facts entitling the agency to issue an income withholding order, including a statement of the amount of arrearages and a statement that all procedural due process requirements of the foreign jurisdiction for issuance of ~~such~~ *the* income withholding order have been carried out in full;

(d) the name, address, and social security number of the obligor;

(e) the name and address of the obligor's employer or of any other payor of income to the obligor if the order for income withholding of the foreign jurisdiction extends to ~~such~~ other income; and

(f) the name and address of the agency or person to whom support payments collected by the department under income withholding procedures should be transmitted.

(3) When the foreign income withholding order is registered, the department shall serve the order upon the payor, with directions to the payor to comply with the order and to deliver the withheld amounts to the department. *Registration of a foreign income-withholding order under this section does not confer jurisdiction for any other purpose, such as modification of the support order, custody, or visitation.*"

Section 52. Section 40-4-210, MCA, is amended to read:

"**40-4-210. Child support jurisdiction — nonresident ~~parent~~ *individual.*** A court of this state that is competent to decide child support matters may exercise personal jurisdiction over a nonresident ~~parent~~ *individual or the individual's guardian or conservator* in a child support determination in the initial or modification decree if:

(1) the ~~nonresident parent has resided with the child in~~ *individual is personally served with notice within* this state *in accordance with Rule 4B, Montana Rules of Civil Procedure*;

(2) ~~(a)~~ the ~~nonresident parent maintained a marital domicile in this state from which the child was conceived or adopted; and~~

~~(b) the other party to the marital relationship or~~ *individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;*

(3) the individual has resided with the child ~~resides~~ within this state;

~~(3)~~*(4)* the child was ~~conceived or~~ adopted within this state when at least one parent was a resident; ~~or~~

(5) the individual resided in this state and provided prenatal expenses or support for the child;

(6) the child resides in this state as a result of the acts or directives of the individual;

(7) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

~~(4)~~*(8)* there is any *other* basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction."

Section 53. Section 40-5-202, MCA, is amended to read:

"**40-5-202. Department of social and rehabilitation services — powers and duties regarding collection of support debt.** (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to ensure that the parent or other person responsible pays for the care, support, or maintenance of a child if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, *the Uniform Interstate Family Support Act,* or an interstate action by a Title IV-D agency of another state.

(2) If the department is providing child support enforcement services for a child under this part, the department becomes trustee of any cause of action of

the child or the obligee to recover support due to the child or obligee from the obligor. The department may bring and maintain the action in its own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(4) For purposes of prosecuting any civil action, the department is a real party in interest if it is providing child support enforcement services under this part. ~~No~~ *An* obligee may *not* act to prejudice the rights of the department while ~~such~~ services are being provided.

(5) If child support enforcement services are being or have been provided under this part, ~~no~~ *an* agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may *not* act to reduce or terminate any rights of the department to recover from the obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(7) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

(8) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence."

Section 54. Section 40-5-226, MCA, is amended to read:

"**40-5-226. Administrative hearing — nature — ~~place —~~ time — determinations — failure to appear — entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) ~~At the discretion of the hearing officer, the administrative hearing may be held:~~

~~(a) in the county of residence or other county convenient to the obligor or obligee; or~~

~~(b) in the county in which the department or any of its offices are located.~~

~~(3)~~ If a hearing is requested, it must be scheduled within 20 days.

~~(4)~~*(3)* The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with ~~such~~ *the* determination.

~~(5)~~*(4)* If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

~~(6)~~*(5)* In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.

~~(7)~~*(6)* Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

~~(8)~~*(7)* A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

~~(9)~~*(8)* A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

~~(10)~~*(9)* A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

~~(11)~~*(10)* Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, every order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

~~(12)~~*(11)* For the purposes of income withholding provided for in subsection ~~(11)~~ *(10)*, whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information."

Section 55. Section 40-5-231, MCA, is amended to read:

"**40-5-231. ~~Establishment of paternity — jurisdiction~~ *Jurisdiction* and venue.** (1) For purposes of an administrative action brought under ~~40-5-231 through 40-5-237~~ *this part*, personal jurisdiction is established in the department over any ~~person who has had sexual intercourse in this state that has resulted in the birth of a child who is the subject of such proceedings and over any person subject to the provisions of Rule 4B of the Montana Rules of Civil Procedure, including but not limited to the child, the child's parents, any person having custody of the child, and any alleged father~~ *individual or the individual's guardian or conservator if:*

(a) the individual is personally served with notice within this state;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by the act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(2) Personal jurisdiction over the ~~persons~~ *individuals* described in subsection (1) may be acquired by personal service or by service of notice by certified mail.

(3) If the child or either parent resides in this state, a hearing under ~~40-5-231 through 40-5-237~~ *this part* may be held in the county where:

(a) the child resides;

(b) either parent resides; or

(c) the department or any of its regional offices is located."

Section 56. Section 40-5-263, MCA, is amended to read:

"**40-5-263. Central clearinghouse — interstate enforcement services — powers and duties of the department.** (1) The department shall establish a clearinghouse for the registration of all interstate IV-D cases referred to the department by other states. The clearinghouse shall serve as the central point for the receipt and dissemination of information regarding interstate enforcement requests, including but not limited to:

(a) petitions under the Revised Uniform Reciprocal Enforcement of Support Act *or the Uniform Interstate Family Support Act*; and

(b) wage withholding requests under part 4 of this chapter.

(2) (a) A case must be referred to the clearinghouse to be processed as a IV-D case and receive the benefits of IV-D status and clearinghouse services.

(b) The clearinghouse may accept any interstate IV-D referral made by interstate application or by petition under the Revised Uniform Reciprocal Enforcement of Support Act *or the Uniform Interstate Family Support Act*. An application must be made on forms prescribed by the department.

(3) Upon certification by the initiating state that a case filed in the registry of foreign support orders, including a petition under the Revised Uniform Reciprocal Enforcement of Support Act *or the Uniform Interstate Family Support Act*, is eligible for IV-D services and that the obligor resides, has property, or derives income in this state, the department may establish or enforce a child support obligation by any appropriate statute, including the remedies in this chapter.

(4) If necessary, the department shall establish the paternity of the child.

(5) The clearinghouse shall:

(a) review and acknowledge receipt of any interstate IV-D referral;

(b) request missing information from the initiating state;

(c) determine appropriate enforcement remedies and forward the referral to the appropriate enforcement unit;

(d) provide status updates to the initiating state, including the location of the responsible enforcement unit;

(e) locate an obligor and the obligor's assets, if necessary; and

(f) initiate a IV-D referral if services are provided by the department to a resident of this state and the obligor resides outside the state.

(6) If the department is providing support enforcement services to a resident of this state, the director or ~~his~~ *the director's* designee may certify any interstate petition, application, and referral, including a petition under part 1 of this chapter."

Section 57. Section 40-6-109, MCA, is amended to read:

"**40-6-109. Jurisdiction — venue.** (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over ~~any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with~~

~~Rule 4B of the Montana Rules of Civil Procedure~~ *an individual or the individual's guardian or conservator, if:*

(a) the individual is personally served within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

(b) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

(c) the individual resided with the child in this state;

(d) the individual resided in this state and provided prenatal expenses or support for the child;

(e) the child resides in this state as a result of the acts or directives of the individual;

(f) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

(g) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of ~~his~~ *the father's* estate have been or could be commenced."

Section 58. **Repealer.** Sections 40-5-102, 40-5-105, 40-5-108, 40-5-109, 40-5-110, 40-5-111, 40-5-112, 40-5-113, 40-5-114, 40-5-116, 40-5-117, 40-5-120, 40-5-121, 40-5-122, 40-5-123, 40-5-124, 40-5-125, 40-5-126, 40-5-127, 40-5-128, 40-5-129, 40-5-130, 40-5-131, 40-5-132, 40-5-134, 40-5-135, 40-5-136, 40-5-138, and 40-5-139, MCA, are repealed.

Section 59. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 60. **Coordination.** If neither Senate Bill No. 217 nor House Bill No. 482 is passed and approved, then the bracketed language in [section 18(2) and section 21(4)] is void and the code commissioner shall make necessary changes in grammar.

Section 61. **Codification instruction.** [Sections 3, 5 through 12, 15 through 17, 19 through 21, 24 through 34, and 39 through 48] are intended to be codified as an integral part of Title 40, chapter 5, part 1, and the provisions of Title 40, chapter 5, part 1, apply to [sections 3, 5 through 12, 15 through 17, 19 through 21, 24 through 34, and 39 through 48].

Approved April 13, 1993.

CHAPTER NO. 329

[HB 238]

AN ACT ALLOWING INQUIRY INTO THE FINANCIAL RESOURCES OF A PARENT OR GUARDIAN DURING AN INVESTIGATION OF AN ALLEGATION OF ABUSE OR NEGLECT OF A CHILD FOR THE PURPOSE OF DETERMINING ELIGIBILITY FOR FEDERAL PROGRAM FUNDING OR PARENTAL CONTRIBUTION FOR THE COST OF OUT-OF-HOME CARE FOR THE CHILD; AMENDING SECTIONS 41-3-202 AND 41-3-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-202, MCA, is amended to read:

"**41-3-202. Action on reporting.** (1) Upon receipt of a report as required by 41-3-201 that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care *except as necessary to ascertain eligibility for federal assistance programs or to comply with the provisions of 41-3-406.*

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child. If considered appropriate by the social worker, county attorney, or peace officer conducting an interview of the child, an employee of the public school attended by the child involved may participate in any interview of the child if the child is enrolled in kindergarten through 8th grade.

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The department shall maintain a record system containing child abuse and neglect cases.

(5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private residential institution, home, facility, or agency shall be responsible for ensuring that the report is made to the department of family services, its local affiliate, and the county attorney of the county in which the facility is located."

Section 2. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney, attorney general, or an attorney hired by the county welfare department or office of human services shall be responsible for filing all petitions alleging abuse, neglect, or dependency. The county attorney or attorney general, or an attorney hired by the county welfare department or office of human services with the written consent of the county attorney or attorney general, may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. ~~Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.~~

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) In the event personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced at the request of the department of family services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption;

(d) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 13, 1993.

CHAPTER NO. 330

[HB 278]

AN ACT GENERALLY REVISING THE DISTRICT COURT CRIMINAL REIMBURSEMENT PROGRAM; PROVIDING A STATUTORY APPROPRIATION; REVISING THE TIME FOR APPLYING FOR GRANTS; ELIMINATING THE REIMBURSEMENT OF CERTAIN AMOUNTS TO COUNTIES; AMENDING SECTIONS 3-5-901, 7-6-2352, 17-7-502, 46-15-116, AND 61-3-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-901, MCA, is amended to read:

"3-5-901. *(Temporary)* **State assumption of certain district court expenses.** (1) The state shall, to the extent that money is appropriated, fund the following district court expenses in criminal cases only:

(a) salaries of court reporters;

(b) transcripts of proceedings;

(c) witness fees and necessary expenses;

(d) juror fees;

(e) indigent defense;

(f) expenses of the appellate defender commission and the office of appellate defender; and

(g) psychiatric examinations.

(2) The supreme court administrator, in consultation with the district judges for each judicial district and the appellate defender commission, shall include within the supreme court's biennial budget request to the legislature a request for funding the expenses listed in subsection (1).

(3) (a) If money appropriated for the expenses listed in subsection (1):

(i) exceeds the amount necessary to fully fund those expenses, the excess amount must be used for district court grants as provided in 7-6-2352; or

(ii) is insufficient to fully fund those expenses, the appellate defender commission and the office of appellate defender must be funded first and the county is responsible for payment of the balance.

(b) If no money is appropriated, the county is responsible for payment of all expenses.

(4) Money deposited in the state general fund in fiscal year 1992, as provided in 61-3-509, that is in excess of the legislative appropriation is statutorily appropriated, as provided in 17-7-502, to the supreme court for district court and courts of limited jurisdiction automation purposes during the 1995 biennium. (Terminates July 1, 1993—sec. 13, Ch. 781, L. 1991.)

3-5-901. *(Effective July 1, 1993)* **State assumption of certain district court expenses.** (1) The state shall, to the extent that ~~money is appropriated~~ *revenue is available under 61-3-509,* fund the following district court expenses in criminal cases only:

(a) salaries of court reporters;

(b) transcripts of proceedings;

(c) witness fees and necessary expenses;

(d) juror fees;

(e) indigent defense; and

(f) psychiatric examinations.

(2) The *revenue received under 61-3-509 is statutorily appropriated, as provided in 17-7-502, to the* supreme court ~~administrator, in consultation with the district judges for each judicial district, shall include within the supreme court's biennial budget request to the legislature a request~~ for funding the expenses listed in subsection (1) *and the costs of administering this section.*

(3) ~~(a)~~ If money appropriated for the expenses listed in subsection (1):

~~(i)~~*(a)* exceeds the amount necessary to fully fund those expenses, the excess amount must be used for district court grants as provided in 7-6-2352; or

~~(ii)~~*(b)* is insufficient to fully fund those expenses, the county is responsible for payment of the balance.

~~(b) If no money is appropriated, the county is responsible for payment of all expenses.~~

(4) Money deposited in the state general fund in fiscal year 1992, as provided in 61-3-509, that is in excess of the legislative appropriation is statutorily appropriated, as provided in 17-7-502, to the supreme court for district court and courts of limited jurisdiction automation purposes during the 1995 biennium."

Section 2. Section 7-6-2352, MCA, is amended to read:

"**7-6-2352. State grants to district courts — rules.** (1) The state shall make grants, to the extent funds are available after expenses provided for in 3-5-901 are funded, to the governing body of a county for the district courts for assistance, as provided in this section.

(2) The governing body of a county may apply to the supreme court administrator for a grant by filing a written request on forms provided by the administrator by ~~July~~ *August* 20 for the previous fiscal year unless the administrator grants a time extension upon request of the county. In its request for a grant, a county must certify that:

(a) all expenditures from the district court fund have been lawfully made;

(b) no transfers from the district court fund have been or will be made to any other fund; and

(c) no expenditures have been made from the district court fund that are not specifically authorized by 7-6-2511 and 7-6-2351.

(3) To the extent funds are available, the state shall award a grant if the county's district court expenditures for the previous fiscal year exceeded the sum of:

(a) the product of the maximum mill levy authorized by law for district court purposes, whether or not assessed, multiplied by the previous year's taxable valuation of the county; and

(b) all revenues, except district court grants, required by law to be deposited in the district court fund for the previous fiscal year.

(4) Eligible court expenditures for grant purposes include all costs of the county associated with the operation and maintenance of the district court, from whatever fund paid, except costs for building and capital items and library maintenance, replacement, and acquisition.

(5) The supreme court administrator shall notify each eligible county as soon as possible of the state's intention to award a grant to that county and the amount of the award.

(6) The grant received by the county ~~shall~~ *must* be placed in the district court fund.

(7) If an audit conducted pursuant to 2-7-503 discloses that the recipient received a grant in excess of the amount for which it was eligible, the recipient shall repay the excess to the state. The supreme court administrator shall redistribute any repaid excess amounts to the other counties that received grants from the appropriation from which the overpayment was made, on the same basis as the original awards. ~~No~~ *A* county is *not* eligible for a district court grant if it owes the state a refund of a prior year's overpayment.

(8) The supreme court administrator, in consultation with the supreme court, shall prescribe rules and forms necessary to effectively administer this section. The administrator may require a county to provide any information considered necessary for the administration of the program."

Section 3. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; *3-5-901;* 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 4. Section 46-15-116, MCA, is amended to read:

"**46-15-116. Fees, costs, and expenses.** (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness shall receive the witness fee prescribed by Title 26, chapter 2, part 5. The court, on motion by either party, may allow additional fees for expert witnesses.

(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses and order the clerk of the court to pay the expenses from the county treasury.

(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by statutory enactment required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

(4) According to procedures required by the supreme court administrator, under 3-5-902, the clerk of the district court shall submit to the administrator a detailed statement containing a list of witnesses and the amount of expenses paid to each witness by the county. Upon receipt and verification of the statement, the administrator shall promptly reimburse the designated county for all or a portion of the witness expenses. The county shall deposit the amount reimbursed in its general fund *unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in the district court fund.*"

Section 5. Section 61-3-509, MCA, is amended to read:

"**61-3-509. Disposition of taxes.** (1) Except as provided in subsection (2), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motor homes, travel trailers, and campers collected under 61-3-504, 61-3-521, and 61-3-537 to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax collected on an automobile or truck having a rated capacity of 1 ton or less. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the general fund to be used for purposes of state funding of the district court expenses as provided in 3-5-901. ~~Any amount forwarded to the state treasurer under this subsection that is not used for district court expenses must be refunded to the counties in the proportion that the amount collected from each county bears to the total amount collected.~~"

Section 6. **Effective date.** [This act] is effective on passage and approval.

Section 7. **Termination.** The amendment to 3-5-901, enacting subsection (4) for purposes of the 1995 biennium, terminates July 1, 1995.

Approved April 13, 1993.

CHAPTER NO. 331

[HB 394]

AN ACT EXTENDING INVESTMENT AUTHORITY FROM THE PERMANENT COAL TAX TRUST FUND; GENERALLY REVISING THE MONTANA SCIENCE AND TECHNOLOGY FINANCING ACT; AMENDING SECTIONS 17-6-201, 17-6-308, 90-3-102, 90-3-305, 90-3-505, 90-3-523, 90-3-524, AND 90-3-525, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-201, MCA, is amended to read:

"**17-6-201. Unified investment program — general provisions.** (1) The unified investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds ~~shall~~ *must* be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge ~~his~~ duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so; and

(c) discharge ~~his~~ duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) Retirement funds may be invested in common stocks of any corporation provided that ~~no~~ investment may *not* be made at any time ~~which~~ *that* would cause the book value of ~~such~~ *the* investments in any retirement fund to exceed 50% of the book value of ~~such~~ *the* fund or would cause the stock of one corporation to exceed 2% of the book value of ~~such~~ *the* retirement fund.

(3) (a) ~~Nothing contained in this~~ *This* section ~~prevents~~ *does not prevent* the investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies which demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(4) The board has the ~~sole~~ *primary* authority to invest state funds. ~~No~~ *Except as provided in this chapter, no* other agency may invest ~~such~~ state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to ~~such~~ *the* fund and a record of the participation of each treasury fund account ~~therein~~ *in each fund.*

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received ~~therefor~~ *for the property*;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund ~~shall~~ *must* be deducted from the income ~~therefrom~~ *from each fund.*

(8) *At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.*

(9) (a) The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection ~~(8)(b)~~ *(9)(b),* the cost to an agency of providing services to a program funded through an account in the state special revenue fund as defined in 17-2-102 must be deducted by the board from the account's investment earnings according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.

(b) ~~No~~ *A* deduction for program costs, as provided in subsection ~~(8)(a)~~ *(9)(a),* may *not* be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202."

Section 2. Section 17-6-308, MCA, is amended to read:

"**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances

or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer ~~$7.5~~ *$15.5* million of the permanent coal tax trust fund for seed capital project loans and ~~$5.1~~ *$8.1* million of the permanent coal tax trust fund for research and development project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, ~~1994~~ *1997,* for seed capital project loans and *beyond June 30, 1995,* for research and development project loans. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

Section 3. Section 90-3-102, MCA, is amended to read:

"**90-3-102. Definitions.** As used in this chapter the following definitions apply:

(1) "Act" means the Montana science and technology financing act.

(2) "Board" means the Montana board of science and technology development provided for in 2-15-1818.

(3) "Company" means a firm, partnership, corporation, association, or any other entity authorized to conduct business in Montana.

(4) "Convertible debenture" means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.

(5) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

(6) "Department" means the department of commerce created in 2-15-1801.

(7) "Expansion capital project" means a science and technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.

(8) "Innovative technology" means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(9) "Matching funds" means the funds received in cash by the science and technology development project loan recipient from nonstate-appropriated sour-

ces and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the board for use in the science and technology development project.

(10) "Medical facility research and development project" means a research and development project designed to advance the development and operation of facilities that concentrate on fields of medical research involving advanced technology applied to national medical concerns through the financing of personnel, equipment, and operating costs with the goal of establishing the facilities as enduring research organizations in Montana.

(11) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the board.

(12) "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

(13) "Research and development project" means a science and technology development project that falls into the category of research capability development, applied technology research, or technology transfer and assistance.

(14) "Research and development project loan" means a science and technology development project loan entered into between the board and a loan recipient for a research and development project.

(15) "Science and technology development project" means either a seed capital project or research and development project designed to discover, develop, transfer, utilize, or commercialize existing or new, innovative technology in order to strengthen and enhance economic development in Montana.

(16) "Science and technology development project loan agreement" or "loan" means an agreement entered into between the board and the loan recipient of a seed capital project loan or a research and development project loan that:

(a) creates a debt relationship between the parties;

(b) provides for a financial return to the board;

(c) provides economic development potential to the state; and

(d) contains the applicable provisions and terms required by this chapter.

(17) "Seed capital project" means a startup capital project or expansion capital project.

(18) "Seed capital project loan" means a science and technology development project loan entered into between the board and a loan recipient for a seed capital project.

(19) "Startup capital project" means a science and technology development project that assists a company in initiating commercial operations.

(20) "State" means the state of Montana.

(21) *"Technology transfer" means a two-way process by which ideas or inventions for processes or products developed in a research program, usually on a laboratory or pilot-plant scale, are converted to commercial use.*

(22) "Venture capital company" means a partnership, corporation, or other business entity engaged in raising funds from investors and earning a financial return for those investors by making equity or quasi-equity investments in new or expanding business.

~~(22)~~*(23)* "Warrant" means an instrument issued by a corporation that gives a holder other than the board the right to purchase stock of a corporation either for a limited time or perpetually."

Section 4. Section 90-3-305, MCA, is amended to read:

"**90-3-305.** *(Temporary)* **Science and technology development account.** (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the science and technology development account:

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana permanent coal tax trust fund, executed under this chapter; and

(b) all payback of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989.

(3) Any time the balance of the science and technology development account exceeds $50,000, the board shall transfer the amount of the balance in excess of $50,000 to the general fund. *(Terminates June 30, 1993—sec. 3, Ch. 9, Sp. L. January 1992.)*

90-3-305. *(Effective July 1, 1993)* **Science and technology development account.** (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the science and technology development account:

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana permanent coal tax trust fund, executed under this chapter; and

(b) all payback of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989.

(3) The department may use all payback funds deposited in the account to cover administrative costs of programs authorized under this chapter. Payback funds must be used to cover administrative costs before the funds received from the board of investments under 17-6-201(8) are used."

Section 5. Section 90-3-505, MCA, is amended to read:

"**90-3-505. Research and development project — goals.** (1) The board may make a research and development project loan upon a determination by the board that the proposed project meets the loan criteria established in 90-3-502 and 90-3-506 and that the project meets one of the goals established in subsection (2).

(2) The goals of the research and development project loan program are:

(a) to significantly upgrade existing research capabilities within the state's research and development institutions and organizations;

(b) to provide financial support to individual research projects that have significant potential to:

(i) advance technology development in the state; or

(ii) be readily commercialized upon completion of the research phase; ~~or~~

(c) to facilitate the process of transferring research from the laboratory to the commercial marketplace~~.~~*; or*

(d) to enhance the competitiveness of Montana's small and medium-sized firms in the national and international markets by stimulating the productivity and modernization of the firms.

(3) These goals may be accomplished by:

(a) supporting the advanced technology centers of excellence program that will institutionalize cooperative arrangements between the public sector and the private sector and significantly build on existing research and development capabilities;

(b) providing financial support for individual research and development projects that are at a preprototype or early stage but that hold significant potential for future commercial success;

(c) providing financial support for the development of advanced research capabilities within the state's university system through the acquisition of facilities, equipment, or personnel *and for the development of a university-based technology transfer program*;

(d) facilitating the flow of information to technology-based entrepreneurial businesses in the state to assist those businesses in reaching their full commercial potential; ~~or~~

(e) improving the information and resources available to entrepreneurs in the state who are involved in commercialization of innovative products and processes*; or*

(f) fostering competitiveness, productivity, and modernization of Montana firms, farms, ranches, mills, and mines."

Section 6. Section 90-3-523, MCA, is amended to read:

"**90-3-523. Seed capital project loan agreement — specific requirements — payback.** (1) Except as provided in 90-3-519, in addition to the loan agreement provisions required in 90-3-522, a seed capital project loan must be structured as contracted debt that includes but is not limited to the following terms:

(a) an interest rate set at the level that provides a return to the board, from paybacks by all of its portfolio companies, in an amount at least equal to the principal amount of the loans and that provides for a market rate of return when considering the overall benefit to the state derived from the projects;

(b) a provision in the note that may defer debt service until maturity of the note, the term of which may not exceed 8 years;

(c) a loan amount that may not exceed $350,000 in any one round of financing. Successive rounds of financing in which the board participates for any one company may not occur within a 9-month period *unless the board determines that there is an overriding financial benefit to the board's portfolio*. The total amount that may be loaned to any one company may not exceed ~~$750,000~~ *10% of the seed capital funds managed by the board.*

(d) a provision that the note becomes due in full upon dissolution or liquidation of the company.

(2) (a) In addition to the provisions in 90-3-522 and subsection (1) of this section, a seed capital project loan agreement may provide for any of the following:

(i) a convertible debenture;

(ii) a warrant held by the board; or

(iii) a warrant held by a third party for the benefit of the board.

(b) The board itself may not convert the convertible debenture, exercise the warrant, or hold stock acquired upon any conversion or exercise."

Section 7. Section 90-3-524, MCA, is amended to read:

"**90-3-524. Research and development project loan agreement — specific requirements — payback.** In addition to the loan agreement provisions described in 90-3-522, a research and development project loan agreement must be structured as contracted debt with the following terms:

(1) The agreement must include provisions calling for a payback of at least two times the original loan amount paid as a percentage of the income stream derived from the sale or other commercialization of products or processes developed with the board's financing~~. This percentage rate may not exceed 5%~~ *as negotiated by the parties.*

(2) The payback on a research and development project loan for a technology transfer and assistance project may be made pursuant to subsection (1) or may be realized in terms of indirect benefits related to the goals and criteria of the program. No more than 10% of the board's annual allocation of research and development funds may be used for technology transfer and assistance projects. The payback on a research and development project loan for a technology transfer and assistance project made from the permanent coal tax trust fund may not be repaid in terms of indirect benefits.

(3) The agreement between the board and the commissioner of higher education on the payback of a research and development project loan must guarantee a minimum annual payback of $250,000, commencing on June 30, 1994."

Section 8. Section 90-3-525, MCA, is amended to read:

"**90-3-525. Deposit of payback.** (1) The payback of principal and earnings on a research and development project loan from a source other than the Montana permanent coal tax trust fund must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

(2) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use by the ~~board~~ *department to cover the administrative costs of loans made pursuant to this chapter*. The paybacks include all those received after January 1, 1989.

(3) All paybacks of earnings to the board from loan agreements using permanent coal tax trust funds must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 to pay the department's administrative and accounting costs associated with the loans. The balance must be deposited to the permanent coal tax trust fund within 30 days."

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Effective date.** [This act] is effective July 1, 1993.

Approved April 13, 1993.

CHAPTER NO. 332

[HB 474]

AN ACT REQUIRING THAT THE BUDGET INFORMATION SUBMITTED BY THE DEPARTMENT OF JUSTICE INCLUDE INFORMATION CONCERNING THE STATE'S SHARE OF COUNTY ATTORNEY SALARIES; PROVIDING THAT A COUNTY IS RESPONSIBLE FOR ANY INCREASE IN SALARY IF IT FAILS TO PROVIDE THE NECESSARY INFORMATION TO THE DEPARTMENT OF JUSTICE; AND AMENDING SECTIONS 7-4-2502 AND 17-7-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2502, MCA, is amended to read:

"**7-4-2502. Payment of salaries of county officials and assistants.** (1) Except as provided in subsection (2), the salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The salaries of the county attorney and deputy county attorneys authorized by 7-4-2703 are payable monthly, with the salary of the county attorney payable one-half from the general fund of the county and, *if the county has supplied the information to the department of justice for inclusion in its budget,* the other one-half from the state treasury upon the warrant of the state auditor. *If the county has not supplied information concerning any scheduled or proposed increase in salary for the county attorney to the department of justice for inclusion in material submitted to the budget director under Title 17, chapter 7, part 1, the county is responsible for any increased salary.*

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the department of justice. The department shall notify the state auditor of the salary of the county attorney. The auditor shall draw warrants for the county attorney salaries in the same manner as for state officers. In case of a vacancy, the county commissioners shall immediately notify the department of justice, and the department shall compute the salary due on the basis of the notification.

(3) The board has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to fix the compensation of all county officers not otherwise fixed by law and to provide for the payment of the ~~same~~ *compensation* and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level."

Section 2. Section 17-7-112, MCA, is amended to read:

"**17-7-112. Submission deadline.** (1) It ~~shall be~~ *is* the duty of each department, agency, and office, including the Montana university system, to submit the information required under 17-7-111 to the budget director on or before September 1 in the even year preceding the convening of the legislature. *The department of justice shall submit information received from counties concerning the state's share of county attorney salaries.*

(2) Between August 15 and September 30 in the year preceding the convening of the legislature, the director must submit each state agency's budget request required under 17-7-111(2) to the legislative fiscal analyst. The transfer of budget information ~~shall~~ *must* be done on a schedule mutually agreed to by the budget director and the legislative fiscal analyst in a manner that facilitates an even transfer of budget information during the month of September and ~~which~~ *that* allows each office to maintain a reasonable staff workflow.

(3) If any department, institution, university unit, or agency ~~shall fail~~ *fails* to present ~~such~~ *the* information within the time ~~herein~~ specified *in this section,* the budget director shall note that fact in the budget submitted to the governor and the budget director shall prepare and submit to the legislative fiscal analyst and the governor by October 30 a budget request on behalf of ~~such~~ *the* department, institution, university unit, or agency, based upon ~~his~~ *the budget director's* studies of the operations, plans, and needs ~~thereof~~ *of the department, institution, university unit, or agency.*

(4) The proposed pay plan schedule required by 17-7-111(3) must be submitted to the legislative fiscal analyst no later than November 15 in the year preceding the convening of the legislature."

Approved April 13, 1993.

CHAPTER NO. 333

[HB 541]

AN ACT AUTHORIZING A COUNTY OR GROUP OF COUNTIES TO CREATE A RAIL AUTHORITY; ALLOWING A COUNTY TO LEVY UP TO 6 MILLS, WITH VOTER APPROVAL, FOR THE OPERATION OF A RAIL AUTHORITY; EXEMPTING THE MILLS LEVIED FOR A RAIL AUTHORITY FROM THE PROPERTY TAX LIMITATIONS OF TITLE 15, CHAPTER 10, PART 4; PLACING RAIL AUTHORITIES UNDER THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION; AMENDING SECTIONS 15-10-412 AND 69-14-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 19], the following definitions apply:

(1) "Authority" means a rail authority as provided in [sections 1 through 19].

(2) "Board" means a board of county commissioners.

(3) "Common carrier" means a railroad engaged in transportation for hire.

(4) "Directors" means the directors of the rail authority.

Section 2. **Purpose — public and governmental functions.** (1) The purpose of an authority is to provide for the preservation and improvement of abandoned rail service for agriculture, industry, or passenger traffic and to provide for the preservation of abandoned railroad right-of-way for future transportation uses, when determined to be practicable and necessary for the public welfare, particularly in the case of the abandonment of rail lines.

(2) The acquisition of land pursuant to [sections 1 through 19]; the planning, acquisition, establishment, construction, improvement, maintenance, equipment, operation, regulation, and protection of authority facilities; and the exercise of powers granted to authorities and other public agencies to be severally or jointly exercised are public and governmental functions, exercised for public purpose, and matters of public necessity. All land and other property acquired and used by or on behalf of an authority or other public agency, as provided in [sections 1 through 19], must be used for public and governmental purposes and as a matter of public necessity.

Section 3. **Resolution of intention to create rail authority.** (1) A board of county commissioners may create an authority encompassing an entire county or a portion of a county. Before creating an authority, the board shall pass a resolution of intention.

(2) The resolution must state:

(a) the proposed name of the authority;

(b) the proposed boundaries of the authority; and

(c) the number of directors of the authority.

Section 4. **Notice of resolution — hearing.** (1) The text of the resolution referred to in [section 3] must be published as provided in 7-1-2121.

(2) At the time for the hearing, the board shall hear testimony for and against the creation of the authority. The hearing may be adjourned from time to time for the determination of additional information or for hearing proponents or opponents, but an adjournment may not exceed 2 weeks after the date originally published for the hearing.

Section 5. **County rail authority.** (1) The board, upon completion of the public hearing, may pass a resolution creating an authority.

(2) At the same time, the board shall appoint five persons as directors of the authority. A director shall hold office for 2 years and until a successor is appointed. Three of the directors first appointed shall hold office for 1 year. A vacancy occurring other than by expiration of a term must be filled for the unexpired term by the board.

(3) A director must reside within the boundaries of the authority.

Section 6. **Regional rail authority.** (1) Two or more counties may by joint resolution create a regional rail authority. The resolution creating a regional rail authority must create a regional rail authority board of not less than five directors. The number of directors to be appointed, their term of office, and their qualifications must be provided for in the resolution.

(2) The text of the resolution must be published as provided in 7-1-2121 in each county in which the territory of the proposed authority lies. A county may not adopt a resolution authorized by this section without a public hearing.

(3) After passage of the resolution by the board of each county with territory included in the authority, the boards shall jointly appoint the initial directors of the regional rail authority.

Section 7. **Directors.** (1) The powers of an authority are vested in the directors of the authority. A majority of the directors constitutes a quorum for the purpose of conducting business of the authority and exercising its powers for all other purposes. Action may be taken by the authority upon a vote of not less than a majority of the directors present.

(2) There must be elected a presiding officer, a vice presiding officer, a treasurer, and a secretary from among the directors. An authority may employ an executive director, technical experts, and other officers, agents, and employees, permanent and temporary, as necessary and shall determine their qualifications, duties, and compensation. An authority may delegate to one or more of its agents or employees powers or duties as it considers proper.

(3) A director of an authority is entitled to receive expenses, as provided in 2-18-501 through 2-18-503, incurred in the performance of the director's duties.

Section 8. **Cooperation of county.** For the purpose of cooperating in the planning, construction, or operation of railroads pursuant to [sections 1 through 19], a county for which an authority has been created may:

(1) lend or donate money to the authority;

(2) provide that all or a portion of the taxes or funds available or required by law to be used by the county for railroad purposes be transferred to the authority as the funds become available to the county;

(3) furnish facilities or improvements that it is empowered to provide in connection with the railroad or railroad facilities;

(4) dedicate, sell, convey, or lease its interest in property or grant easements, licenses, or other rights or privileges to the authority;

(5) do all things, whether or not specifically authorized in this section and not otherwise prohibited by law, that are necessary or convenient to aid and cooperate with the authority in the planning, undertaking, construction, or operation of railroads and railroad facilities; and

(6) enter into agreements with the authority respecting action to be taken by the county pursuant to the provisions of this section.

Section 9. **General powers of authority.** An authority has all the powers necessary to carry out the purposes of [sections 1 through 19], including but not limited to the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute contracts and other instruments and take other action as may be necessary to carry out the purposes of [sections 1 through 19];

(3) receive and disburse federal, state, and other funds, public or private, made available by grant, loan, contribution, tax levy, or other source to accomplish the purposes of [sections 1 through 19]. Federal money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the United States and consistent with state law. All state money accepted under this section must be accepted and spent by the authority upon terms and conditions prescribed by the state.

(4) sell, lease, or otherwise dispose of real or personal property acquired pursuant to [sections 1 through 19]. The disposal must be in accordance with the laws of this state governing the disposition of other public property.

Section 10. **Railroad acquisition and operation — permits — eminent domain.** (1) Within the boundaries of the authority, the authority may establish, acquire, construct, purchase, improve, maintain, equip, operate, regulate, and protect railroads and railroad facilities, including but not limited to terminal buildings, roadways, crossings, bridges, causeways, tunnels, equipment, and rolling stock, as may be necessary to carry out the provisions of [sections 1 through 19].

(2) The authority may apply to a public agency for permits, consents, authorizations, and approvals required for the acquisition and operation of a railroad and take all actions necessary to comply with their conditions.

(3) The authority may acquire property for a public purpose in the same manner as a county, except that the authority does not have the power of eminent domain with respect to property owned by another authority or by a political subdivision or property owned by a railroad corporation unless the interstate commerce commission or another authority with power to make the finding has found that the public convenience and necessity permit discontinuance of rail service on the property.

Section 11. **Rules.** An authority may adopt, amend, and repeal reasonable resolutions, rules, and orders as it considers necessary for its own administration, management, and governance as well as for the management, governance, or use of a railroad or railroad facility owned by or under its control. A rule, order, or standard prescribed by the authority may not be inconsistent with or contrary to an act of the congress of the United States or a regulation promulgated or standard established pursuant to an act of congress. The authority shall keep a copy of its rules on file for public inspection at the principal office of the authority, as determined by the directors.

Section 12. **Mill levy authorized — limitation.** The authority may certify annually to the board of county commissioners the amount of money necessary for the operation of the authority. Upon approval by the electorate, the board shall annually, at the time of levying county taxes, fix and levy a tax in mills upon all property within the boundaries of the authority clearly sufficient to raise the amount certified by the authority. The tax levied for authority purposes other than for payment of bonded indebtedness may not in a year exceed 6 mills on each dollar of taxable valuation of property within the authority.

Section 13. **Election required to impose mill levy.** (1) Before the levy provided for in [section 12] may be made, the question must be submitted to a vote of the people at the next regular school election held in accordance with 20-3-304 or by mail ballot election as provided by Title 13, chapter 19, in the following form:

"Shall there be a levy of (specify number, not to exceed 6) mills upon the taxable property of the (specify rail authority) necessary to raise the sum of (specify the approximate amount to be raised by the tax levy) for the purpose of (specify purpose for which the levy is made)?

☐ FOR the tax levy.

☐ AGAINST the tax levy."

(2) Notice of the election, clearly stating the amount and the purpose of the levy, must be given and the election must be held and conducted and the returns must be made in the manner prescribed by law for the submission of questions to the electors under the general election laws.

Section 14. **Collection of tax and disposition of funds.** (1) The procedure for the collection of the tax must be in accordance with the existing laws of the state of Montana.

(2) The proceeds from the tax levy must be deposited in a special account in which other revenues of the authority are deposited and may be expended by the authority as provided for in [sections 1 through 19].

Section 15. **Contracts for operation and use of facilities.** (1) In connection with the operation of a railroad or a railroad facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements:

(a) granting the privilege of operating or using the railroad or railroad facility;

(b) leasing a railroad for operation by the lessee; however, a person may not be authorized to operate a railroad other than as a common carrier;

(c) granting the privilege of supplying goods, commodities, services, or facilities along rail lines or in or upon other property; and

(d) making available services to be furnished by the authority or its agents.

(2) In each case, the authority may establish the terms and conditions and fix the charges, rentals, or fees that must be reasonable and uniform for the same class of privilege or service and that must be established with regard to the property and improvements used and the expenses of operation to the authority.

(3) The authority may remit funds available for investment to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

Section 16. **Bonds and obligations.** (1) An authority may borrow money for any of its corporate purposes and issue bonds for its purposes, including refunding bonds, in a form and upon terms as it determines, payable out of any revenue of the authority, including revenue derived from:

(a) a railroad;

(b) taxes levied pursuant to [section 12];

(c) grants or contributions from the federal government; or

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except that bonds may not be issued at any time if the total amount of principal and interest to become due in a year on the bonds and on any then-outstanding bonds for which revenue from the same source is pledged exceeds the amount of the revenue to be received in that year, as estimated in the resolution authorizing the issuance of the bonds. The authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, and rentals and to request taxes, if any are pledged, sufficient to make the revenue from the pledged source in the year at least equal to the amount of principal and interest due in that year.

(3) The bonds may be sold at public or private sale and may bear interest as provided in 17-5-102. Bonds issued by an authority pursuant to [sections 1 through 19] may be payable as to principal and interest solely from revenue of the authority and must state on their face the applicable limitations or restrictions regarding the source from which the principal and interest are payable.

(4) Bonds issued by an authority pursuant to the provisions of [sections 1 through 19] are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 15-30-111(2)(a).

(5) For the security of the bonds, the authority may by resolution make and enter into any covenant, agreement, or indenture and may exercise any additional powers authorized to be exercised by a municipality under Title 7, chapter 7, parts 44 and 45. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be paid from the revenue referred to in [sections 1 through 19], prior to the payment of current costs of operation and maintenance of the facilities.

Section 17. **Debt service fund.** An authority may create a debt service fund and accumulate in the fund a sum determined by the directors, together with the interest on the sum, for the use, repair, maintenance, and capital outlay expenses of a railroad.

Section 18. **Tax exemption.** Property in this state acquired by an authority for railroad purposes pursuant to the provisions of [sections 1 through 19] and income derived by the authority from the ownership, operation, or control of property are exempt from taxation to the same extent as other property used for public purposes.

Section 19. **Procedure to enlarge authority.** (1) The directors of an authority may by resolution enlarge the boundaries of the authority in accordance with the procedures of notice and hearing in [section 4].

(2) The property within an addition to the authority is subject to the existing indebtedness of the authority.

Section 20. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that ~~no~~ *a* further increase may *not* be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not mean that ~~no~~ *a* further increase may *not* be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in classes four and eleven is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four or class eleven property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries

of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but ~~in no case may~~ the mills levied *may not* exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4);

(j) levies authorized under 7-6-502 for juvenile detention programs; and

(k) elementary and high school districts.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2)*; and*

(iii) a rail authority, as provided in [sections 1 through 19], authorized by a board of county commissioners. A levy for the support of a rail authority may not exceed the 6-mill limit established in [section 12].

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 21. Section 69-14-101, MCA, is amended to read:

"**69-14-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Paralleling" means the situation where the main tracks of parallel lines of railroad or railway are not more than 2,000 feet apart when measured from center to center.

(2) "Railroad" means a corporation, company, or individual owning or operating a railroad in whole or in part in this state. The term also includes express companies, ~~and~~ sleeping-car companies, *and a railroad authority established under [sections 1 through 19]*.

(3) "Transportation" includes instrumentalities of shipment or carriage."

Section 22. **Codification instruction.** [Sections 1 through 19] are intended to be codified as an integral part of Title 7, chapter 14, and the provisions of Title 7, chapter 14, apply to [sections 1 through 19].

Section 23. **Effective date.** [This act] is effective July 1, 1993.

Approved April 13, 1993.

CHAPTER NO. 334

[HB 575]

AN ACT REVISING THE LAWS RELATING TO FARM MUTUAL INSURERS; REMOVING THE REQUIREMENT FOR DEPARTMENT OF COMMERCE APPROVAL OF INVESTMENTS IN GENERAL OBLIGATION BONDS OR WARRANTS; ALLOWING A FARM MUTUAL INSURER TO INVEST IN CORPORATE BONDS AND MONEY MARKET FUNDS; REVISING THE TYPES OF BUILDINGS ON WHICH A FARM MUTUAL INSURER MAY PROVIDE COVERAGE; AND AMENDING SECTIONS 33-4-403 AND 33-4-501, MCA.

STATEMENT OF INTENT

This bill requires a statement of intent because 33-4-303(1)(g) directs the commissioner of insurance to define money market fund by administrative rule. In defining the term, the commissioner should take into consideration liquidity, duration, security, and rate of return.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-4-403, MCA, is amended to read:

"**33-4-403. Investments.** (1) When ~~so~~ directed by a majority vote of its members present at a ~~duly called and held~~ meeting of members, the directors of a farm mutual insurer ~~shall have power to~~ *may* invest the insurer's funds or any part ~~thereof~~ *of the funds* in any of the following:

(a) bonds or other securities issued by the United States government or by any agency ~~thereof~~ *of the United States*;

(b) bonds or other obligations the payment of the interest and principal of which is assumed or guaranteed by the United States government or any agency ~~thereof~~ *of the United States*;

(c) general obligation bonds or warrants of any state, county, or city, when ~~recommended~~ *approved* by the commissioner ~~and approved by the department of commerce~~;

(d) loans secured by a first mortgage on real estate situated in the state of Montana but subject to the provisions of subsection (3) ~~below~~;

(e) common stock of a domestic insurer formed as an affiliate company to two or more farm mutual insurers for the purpose of offering companion insurance products that farm mutual insurers are prohibited from selling. ~~Such~~ *The* investment may not exceed one-third of the assets of the farm mutual insurer.

(f) corporate bonds that are rated A3 or better by Moody's investor service, inc., or A- or better by Standard and Poor's corporation and that are issued with the full credit of the parent corporation. An investment in corporate bonds may not exceed 20% of the total assets of the mutual insurer, and no more than 5% of the total assets of the mutual insurer may be invested with one corporation.

(g) money market funds as defined by rules adopted by the commissioner. An investment in money market funds may not exceed 20% of the total assets of the mutual insurer, and no more than 5% of the total assets of the mutual insurer may be invested in a single money market fund.

(2) At the time of making ~~any such~~ *an* investment the document evidencing the ~~same~~ *investment* must be stamped with the name of the insurer with the following notation printed or written ~~thereon~~ *on the document*: "Negotiable only upon the order of the Board of Directors of .... (naming the insurer)."

(3) ~~No~~ *A* real estate loan ~~shall~~ *may not* be for more than 60% of the appraised value of the real estate securing the loan, and the appraisal must have been made within 30 days prior to the date of the loan. ~~No such~~ *The* loan ~~shall~~ *may not* be for a term longer than 10 years. ~~The foregoing provisions shall~~ *This subsection does* not ~~be deemed to~~ prevent the renewal or extension of loans already made and ~~shall~~ *does* not apply to real estate loans ~~which~~ *that* are insured under the provisions of any act of the congress of the United States or to the making, extension, or renewal of any loans ~~which~~ *that* are made under subchapter II of the act of congress known as the "Servicemen's Readjustment Act of 1944", or any amendment thereof or supplement thereto, as to any part of ~~such~~ *the* loans~~;~~. ~~nor shall such provisions be deemed to~~ *This subsection does not* prevent an insurer from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the same real estate or from accepting a second lien on real estate to secure the payment of a debt previously contracted in good faith~~;~~. ~~nor shall it~~ *This subsection does not* prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when in the judgment of the insurer's board of directors ~~such~~ *the* subsequent liens are necessary ~~further~~ to *further* secure the payment of any debts and save the insurer from loss."

Section 2. Section 33-4-501, MCA, is amended to read:

"**33-4-501. Insuring powers in general.** (1) In respect to property insurance as defined in 33-1-210, a farm mutual insurer shall insure against loss or damage by fire or other casualty only:

(a) ~~farm~~ *rural* dwellings and buildings, including the usual contents ~~therein~~, farm livestock, machinery, vehicles, growing crops, and other forms of farm property owned by a member of ~~such~~ *the* insurer or by ~~his~~ *the member's* spouse;

(b) residential dwellings, appurtenant structures, and personal property owned by a member of the insurer or by the member's spouse and located outside the boundaries of an incorporated city or town;

~~(b)~~*(c)* dwellings *and related buildings* designed for occupancy by not over two families, together with the usual contents ~~thereof~~, situated in an incorporated city or town if ~~such~~ *the* property is owned by a member of the insurer or by ~~his~~ *the member's* spouse and if ~~such~~ *the* member has other insurance of ~~farm~~ *rural* property with the insurer ~~for a substantial amount~~;

~~(c)~~*(d)* rural schoolhouses and buildings used in connection ~~therewith~~ *with the schoolhouse*, rural community houses, ~~or~~ rural churches, or other rural public buildings.

(2) A farm mutual insurer may insure against the liability risks provided in 33-1-206(1)(b) only to the extent of the limit of risks provided in 33-4-502(3) and only if every policy bears on its face in boldface type a statement that each member of the farm mutual insurer is subject to a contingent liability under 33-3-411.

(3) Except as provided in subsection (1)(c) ~~above~~, an insurer may not insure any property not owned by a member or by ~~his~~ *the member's* spouse.

(4) An insurer may not insure any property situated within the limits of incorporated towns or cities except as provided in subsection ~~(1)(b)~~ *(1)(c)* ~~above~~ and may not ~~so~~ insure *the property* unless it has and maintains the surplus funds as required under 33-4-401."

Approved April 13, 1993.

CHAPTER NO. 335

[HB 635]

AN ACT REVISING PROCEDURES FOR FILING LIENS WITH THE SECRETARY OF STATE; PROVIDING FOR REMOVAL OF IMPROPER OR FRAUDULENT LIENS; AND AMENDING SECTIONS 30-9-402, 30-9-407, AND 71-3-125, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-9-402, MCA, is amended to read:

"**30-9-402. Formal requisites of financing statement — amendments — mortgage as financing statement.** (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address and the county of residence of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. If the financing statement covers timber to be cut, minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or farm products or if the financing statement is filed as a fixture filing (30-9-313) and the collateral is goods which are or are to become fixtures, the statement must also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor.

(2) A financing statement which otherwise complies with subsection (1) is sufficient when it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in:

(a) collateral already subject to a security interest in another jurisdiction when it is brought into this state, or when the debtor's location is changed to this state. Such a financing statement must state that the collateral was brought into this state or that the debtor's location was changed to this state under such circumstances.

(b) proceeds under 30-9-306 if the security interest in the original collateral was perfected. Such a financing statement must describe the original collateral.

(c) collateral as to which the filing has lapsed, *if within 5 years of the lapse*; or

(d) collateral acquired after a change of name, identity, or corporate structure of the debtor (subsection (7)).

(3) A form substantially as follows is sufficient to comply with subsection (1):

Name of debtor (or assignor) . . . .
Social security number or tax identification number . . . .
Address . . . .
~~County of residence . . . .~~
Name of secured party (or assignee) . . . .
Address . . . .

1. This financing statement covers the following types (or items) of property:

(Describe) . . . .

2. (If collateral is crops, *livestock, or unmanufactured agricultural products*) The above described crops, *livestock, or unmanufactured agricultural products* are growing, *being raised, or being produced* or are to be grown, *raised, or produced* on:

(Describe Real Estate *and County Where Located*) . . . .

3. (If applicable) The above goods are to become fixtures on:

(Describe Real Estate) . . . .

and this financing statement is to be filed in the real estate record. (If the debtor does not have an interest or record) The name of a record owner is. . . . . .

4. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever Signature of Debtor (or Assignor) . . . .
is applicable) Signature of Secured Party (or Assignee) . . . .

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(5) (a) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to 30-9-103(5), or a financing statement filed as a fixture filing (30-9-313) when the debtor is not a transmitting utility, must show that it covers this type of collateral, must recite that it is to be filed in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

(b) A financing statement covering farm products must contain a reasonable description of the real estate upon which the farm products are produced or located. A legal description of the real estate is not required; a statement naming the county or counties in which the farm products are produced or located is sufficient to satisfy this subsection (b).

(6) (a) A mortgage is effective as a financing statement filed as a fixture filing from the date of its recording if:

(i) the goods are described in the mortgage by item or type;

(ii) the goods are or are to become fixtures related to the real estate described in the mortgage;

(iii) the mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be filed in the real estate records; and

(iv) the mortgage is duly recorded.

(b) No fee with reference to the financing statement is required other than the regular recording and satisfaction fees with respect to the mortgage.

(7) A financing statement sufficiently shows the name of the debtor if it gives the social security number or tax identification number of the debtor and the individual, partnership, or corporate name of the debtor, whether or not it adds other trade names or the names of partners. If the debtor so changes ~~his~~ *the debtor's* name or in the case of an organization its name, identity, or corporate structure that a filed financing statement becomes seriously misleading, the filing is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change unless a new appropriate financing statement is filed before the expiration of that time. A filed financing statement remains effective with respect to collateral transferred by the debtor even though the secured party knows of or consents to the transfer.

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors which are not seriously misleading."

Section 2. Section 30-9-407, MCA, is amended to read:

"**30-9-407. Information from filing officer.** (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy thereof, the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to such person.

(2) Upon request of any person, the filing officer shall issue his certificate showing whether there is on file on the date and hour stated therein, any presently effective financing statement naming a particular debtor and any statement of assignment thereof and, if there is, giving the date and hour of filing of each such statement and the name and address of each secured party therein. For financing statements recorded on the system described in 30-9-403(9), the filing officer shall, upon request of any person, also furnish written information concerning the collateral described for any presently effective financing statement covering collateral described in 30-9-403(8). However, such information is not a part of the filing officer's certificate and may not constitute a complete description of the collateral covered by the financing statement. The uniform fee for such a certificate and description of collateral shall be set pursuant to 30-9-403. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

(3) A computer printout from the system described in 30-9-403(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated thereon, such a financing statement covering the collateral described in 30-9-403(8). The fee for requesting a printout from the secretary of state must cover the cost of the printout. If a certificate is made on a requestor's own computer using telephone dial-up access, a fee commensurate with costs must be charged.

(4) ~~Within 30 days after July 1, 1987, the secretary of state shall provide a listing of all financing statements recorded on the system described in 30-9-403(9) covering collateral described in 30-9-403(8) to each county clerk and recorder.~~ The secretary of state shall compile the listing alphabetically by debtor's name and may distribute the listing on microfilm or microfiche. ~~The secretary of state shall provide the listing without charge to the county.~~

(5) The secretary of state shall ensure that the system described in 30-9-403(9) complies with the requirements for a central filing system as defined by 7 U.S.C. 1631 as that statute read on January 1, 1987. The secretary of state shall distribute portions of the master list to registered buyers at least once each month. ~~He~~ *The secretary of state* may distribute portions of the master list more frequently if ~~he~~ *the secretary of state* determines it is necessary to improve the flow of agricultural credit."

Section 3. Section 71-3-125, MCA, is amended to read:

"**71-3-125. Filing of agricultural lien statements.** (1) Unless a statement of an agricultural lien has been filed in the office of the secretary of state as provided in this chapter, a buyer who, in ordinary course of business as defined in 30-1-201(9), buys a farm product takes it free of any lien created by this chapter even though the lien is otherwise perfected.

(2) A statement of an agricultural lien is sufficient if it:

(a) gives the names and addresses of the debtor and lienor ~~and the county of residence of the debtor~~;

(b) describes the type of lien and its statutory authority;

(c) describes the collateral;

(d) contains the notation by the secretary of state of the date of filing and filing number;

(e) is signed by the lienor;

(f) describes the service or product furnished. If the collateral is farm products, the statement must state the county in which the farm products are located, designated by type of farm product.

(g) states the price or wage agreed upon or, if the price or wage was not agreed upon, the reasonable value of the service or product furnished;

(h) states the amount remaining unpaid;

(i) states the terms and period of employment if it is a farm laborer's lien filed pursuant to part 4 of this chapter;

(j) describes the land upon which seed or grain was or will be sown, planted, or used if it is a lien for seed or grain filed pursuant to part 7 of this chapter;

(k) describes the land upon which the grain or crops were grown and the place the grain or crops are presently stored if it is a thresher's lien filed pursuant to part 8 of this chapter;

(l) describes the land upon which the service was performed if it is a lien for spraying or dusting filed pursuant to part 9 of this chapter; and

(m) states the starting date of insurance coverage if it is a lien filed pursuant to part 7 of this chapter.

(3) The agricultural lien statement must be in the form prescribed by the secretary of state.

(4) The secretary of state shall:

(a) record the agricultural lien statement on the centralized computer system as set forth in 30-9-403; and

(b) establish fees for such recordings as set forth in 30-9-403.

(5) For the purposes of this section, an agricultural lien means a lien under part 4, 7, 8, or 9 of this chapter.

(6) A statement of an agricultural lien or continuation statement that has been filed at the office of the county clerk and recorder lapses on March 31, 1990, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement and all related documents on file with the county clerk and recorder."

Section 4. **Removal of improper or fraudulent liens.** (1) If a filing officer receives a complaint or has reason to believe that a lien submitted or filed with the filing officer's office is improper or fraudulent, the filing officer may reject the submission or remove the filing from existing files after giving notice and an opportunity to respond to the secured party.

(2) A person adversely affected by a lien that is determined to be improper or fraudulent by the filing officer may recover treble damages from the person responsible for submitting the lien.

Section 5. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 30, chapter 9, part 4, and the provisions of Title 30, chapter 9, part 4, apply to [section 4].

Approved April 13, 1993.

CHAPTER NO. 336

[HB 659]

AN ACT TRANSFERRING THE OFFICE ON AGING FROM THE GOVERNOR'S OFFICE TO THE DEPARTMENT OF FAMILY SERVICES; AMENDING SECTIONS 2-15-231 AND 2-15-232, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-231, MCA, is amended to read:

"**2-15-231. Office of aging.** (1) There is an office of aging, headed by a coordinator of aging. The office is in the ~~governor's office~~ *department of family services.*

(2) The governor shall appoint an advisory council on aging. The council is composed of 11 members, a majority of whom must be 60 years of age or older. Members shall serve staggered 3-year terms and until their successors are appointed. Vacancies must be filled by appointment for the unexpired term. The council is allocated to the ~~governor's office~~ *department of family services* for administrative purposes only.

~~(3) The coordinator of aging must be appointed by the governor after consultation with the advisory council and shall serve at the pleasure of the governor.~~

~~(4) The advisory council on aging shall act as the advisory board to the coordinator on aging.~~"

Section 2. Section 2-15-232, MCA, is amended to read:

"2-15-232. **Duties and assistance.** (1) The coordinator of aging shall, with the advice of the advisory council on aging, assist the governor *and the department of family services* in planning, coordination, and operation of programs within state government that affect senior citizens of the state.

(2) The coordinator shall meet with senior citizens and the general public to gather information on the needs of senior citizens and the effectiveness of state programs in meeting those needs.

(3) The coordinator shall advise the governor *and the director of the department of family services* as to ways to improve the effectiveness of programs that affect senior citizens."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 13, 1993.

CHAPTER NO. 337

[HB 448]

AN ACT REQUIRING A SEWAGE LAGOON TO BE SITED AND CONSTRUCTED NOT LESS THAN 500 FEET FROM A WATER WELL; AND AMENDING SECTIONS 75-5-103 AND 75-5-605, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-103, MCA, is amended to read:

"75-5-103. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(5) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(6) "Effluent standard" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(7) "Industrial waste" means any waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(8) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(9) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(10) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a point source.

(11) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(12) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(13) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

(14) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(15) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(16) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(17) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(18) "Treatment works" means works, *including sewage lagoons,* installed for treating or holding sewage, industrial wastes, or other wastes.

(19) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water."

Section 2. Section 75-5-605, MCA, is amended to read:

"**75-5-605. Prohibited activity.** (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained ~~therein~~ *in the permit*;

(c) site and construct a sewage lagoon less than 500 feet from an existing water well;

~~(c)~~*(d)* violate any order issued pursuant to this chapter; or

~~(d)~~*(e)* violate any provision of this chapter.

(2) It is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters."

Approved April 13, 1993.

CHAPTER NO. 338

[HB 454]

AN ACT AMENDING THE MEGALANDFILL SITING ACT; CLARIFYING THE DEFINITION OF "MEGALANDFILL"; AND AMENDING SECTIONS 75-10-903, 75-10-921, AND 75-10-950, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-903, MCA, is amended to read:

"**75-10-903. Definitions.** As used in 75-10-901 through 75-10-945, the following definitions apply:

(1) "Application" means an application for a certificate and license submitted in accordance with 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935 and the rules adopted under 75-10-916 through 75-10-930 and 75-10-933 through 75-10-935.

(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(3) "Certificate" means the certificate of site acceptability issued by the board under 75-10-916 that is required for siting a megalandfill.

(4) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site, except that the term does not mean changes for securing geological data, including necessary borings to ascertain subsurface conditions;

(b) the modification or upgrading of an existing solid waste disposal facility into a megalandfill, except that the term does not pertain to maintenance or repair of an existing facility.

(5) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(6) "Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste into or onto the land so that the solid waste or any constituent of it may enter the environment or be emitted into the air or discharged into any water, including ground waters.

(7) *(a)* "Megalandfill" or "facility" means, *except as provided in subsection (7)(b),* any new or existing solid waste landfill facility that accepts more than 200,000 tons a year of solid waste or any ash monofill that accepts 35,000 tons or more a year of solid waste incinerator ash, either fly ash or bottom ash.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(8) "Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity, whether organized for profit or not.

(9) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage; rubbish; refuse; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood products or wood byproducts; and inert materials.

(b) "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of state lands, or marketable byproducts.

(10) "Solid waste landfill" means any publicly or privately owned landfill or landfill unit that receives household waste or other types of waste, including commercial waste, nonhazardous sludge, and industrial solid waste. The term does not include land application units, surface impoundments, injection wells, or waste piles."

Section 2. Section 75-10-921, MCA, is amended to read:

"75-10-921. Filing fee — accountability — refund — use. (1) (a) The applicant shall pay to the department a filing fee as provided in this section based upon the department's estimated costs of processing the application for a certificate. The filing fee must be deposited in the solid waste management account for the use of the department in administering 75-10-901 through 75-10-945. The initial filing fee may not exceed the following scale based upon the megalandfill's projected annual tonnage of waste:

(i) a base fee of $40,000; plus

(ii) 20 cents per ton for every ton of waste over 200,000 tons *for a new or existing megalandfill or facility not subject to 75-10-903(7)(b); or*

(iii) 20 cents per ton of waste over 300,000 tons for an existing megalandfill or facility pursuant to 75-10-903(7)(b).

(b) The department may allow a credit against the fee payable under this section for the applicant's costs of developing information or providing services required under 75-10-901 through 75-10-945 or required for preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, part 1, or the National Environmental Policy Act, 42 U.S.C. 4321, et seq. The applicant may submit the information or a description of the services performed to the department, together with an accounting of the expenses incurred in preparing the information or performing the services. The department shall evaluate the applicability, validity, and usefulness of the data or services and determine the expenses that may be credited against the filing fee payable under this section. Upon 30 days' notice to the applicant, this credit may at any time be reduced if the department determines that the amount to be credited is necessary to carry out its responsibilities under 75-10-901 through 75-10-945.

(2) (a) The department may contract with an applicant after the filing of a formal application for the development of information or the provision of services required under 75-10-901 through 75-10-945. The contract may continue an agreement entered into pursuant to 75-10-908. Payments made to the department under a contract must be credited against the fee payable under this section. The revenue derived from the filing fee must be sufficient to enable the department and the board to carry out their responsibilities under 75-10-901 through 75-10-945. The department may amend a contract to require additional payments for necessary expenses up to the limits set forth in subsection (1)(a) upon 30 days' notice to the applicant. The department and applicant may enter into a contract that exceeds the scale provided in subsection (1)(a).

(b) If a contract is not entered into, the applicant shall pay the filing fee in installments in accordance with a schedule of installments developed by the department; however, an installment may not exceed 20% of the total filing fee provided for in subsection (1).

(3) The applicant is entitled to an accounting of money spent and to a refund with interest at the rate of 6% a year of the portion of the filing fee not spent by the department in carrying out its responsibilities under 75-10-901 through 75-10-945. A refund must be made after all administrative and judicial remedies have been exhausted by all parties to the certification proceedings.

(4) The revenue derived from the filing fees must be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out other responsibilities of the department and the board under 75-10-901 through 75-10-945."

Section 3. Section 75-10-950, MCA, is amended to read:

"**75-10-950. Definitions.** As used in 75-10-950 through 75-10-954, the following definitions apply:

(1) "Applicant" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity that applies for a license to operate a megalandfill pursuant to 75-10-221.

(2) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) *(a)* "Megalandfill" means, *except as provided in subsection (4)(b),* any new or existing solid waste management system licensed under 75-10-221 that accepts more than 200,000 tons of solid waste a year or an ash monofill that accepts more than 35,000 tons of ash a year.

(b) An existing solid waste landfill facility that accepted 100,000 tons a year of solid waste as of December 31, 1991, is not considered a megalandfill or facility until it accepts more than 300,000 tons a year of solid waste.

(5) "Natural resource" means ground water, surface water, soil, wildlife, and other physical and biological resources as determined by the department by rule."

Approved April 13, 1993.

CHAPTER NO. 339

[HB 512]

AN ACT REQUIRING THE PETROLEUM TANK RELEASE COMPENSATION BOARD TO REIMBURSE ELIGIBLE EXPENSES FOR ACCIDENTAL PETROLEUM RELEASES FROM PROPERLY INSTALLED DOUBLE-WALLED TANK SYSTEMS AT THE RATE OF 100 PERCENT; AMENDING SECTIONS 75-11-301, 75-11-302, 75-11-307, 75-11-308, AND 75-11-309, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the 1993 Legislature found that petroleum storage tanks and associated pipes connected to petroleum storage tanks must be regulated in order to protect public health and safety, the health of living organisms, and the environment; and

WHEREAS, the Department of Health and Environmental Sciences adopted rules in 1989 that included design and construction requirements for petroleum storage tanks and associated pipes; and

WHEREAS, double-walled construction of petroleum storage tanks and associated pipes should be encouraged because it provides superior prevention of releases of regulated substances to the environment over the operational life of a petroleum storage tank system as well as superior containment of regulated substances that are released from the interior vessel until the substances can be detected and removed.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide guidance to the department of health and environmental sciences concerning the adoption of rules to govern double-walled petroleum storage tank systems as defined in 75-11-302(8). Double-walled construction is to be encouraged because it provides superior prevention of releases of regulated substances to the environment over the operational life of a petroleum storage tank system as well as superior containment of regulated substances that are released from the interior vessel until the substances can be detected and removed. The department is directed to adopt rules that specify the types of materials or combination of materials that must be used to appropriately construct double-walled tank systems and that specify necessary design, construction, and installation techniques.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-301, MCA, is amended to read:

"**75-11-301. Findings and purposes.** (1) The legislature finds that the use of petroleum products stored in tanks contributes significantly to the economic well-being and quality of life of Montana citizens.

(2) The legislature finds that leaks, spills, and other releases of petroleum products from storage tanks endanger public health and safety, ground water quality, and other state resources.

(3) The legislature finds that current administrative and financial resources of the public and private sectors are inadequate to address problems caused by releases from petroleum storage tanks and need to be supplemented by a major program of release detection and corrective action.

(4) The legislature finds that proper funding for the program is through a petroleum storage tank cleanup fee paid by persons who use and receive the benefits of petroleum products. The legislature further finds that this general use fee, provided for in 75-11-314, is intended solely to support a program to pay for corrective action and damages caused by releases from petroleum storage tanks. The general use fee is collected from distributors for administrative convenience and is not intended as a method for collecting highway revenue pursuant to the provisions of Article VIII, section 6, of the Montana constitution. The fee is intended to implement the legislature's duty to provide for the administration and enforcement of maintaining and improving a clean and healthful environment for present and future generations, as required by Article IX, section 1, of the Montana constitution.

(5) The purposes of this part are to:

(a) protect public health and safety and the environment by providing prompt detection and cleanup of petroleum tank releases;

(b) provide adequate financial resources and effective procedures through which tank owners and operators may undertake and be reimbursed for corrective action and payment to third parties for damages caused by releases from petroleum storage tanks; ~~and~~

(c) assist certain tank owners and operators in meeting financial assurance requirements under state and federal law governing releases from petroleum storage tanks*; and*

(d) provide tank owners with incentives to improve petroleum storage tank facilities in order to minimize the likelihood of accidental releases."

Section 2. Section 75-11-302, MCA, is amended to read:

"**75-11-302. Definitions.** The following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third party bodily injury or property damage.

(2) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(3) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(4) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(5) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(6) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(7) "Distributor" means a distributor as defined in 15-70-201.

(8) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid to be stored in the system, and the system must be designed to prevent the release of any stored liquid.

~~(8)~~*(9)* "Eligible costs" means expenses reimbursable under 75-11-307.

~~(9)~~*(10)* "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

~~(10)~~*(11)* "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

~~(11)~~*(12)* "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to the federal defense fuel supply center.

~~(12)~~*(13)* "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

~~(13)~~*(14)* "Owner" means a person who holds title to, controls, or possesses an interest in a petroleum storage tank. The term does not include a person who holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

~~(14)~~*(15)* "Person" means an individual, firm, trust, estate, partnership, company, association, joint stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

~~(15)~~*(16)* "Petroleum" or "petroleum products" means crude oil or any fraction ~~thereof~~ *of crude oil* that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

~~(16)~~*(17)* "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-10-403;

(b) a storage tank that is situated in an underground area such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an above ground storage tank with a capacity less than 30,000 gallons; or

(d) above ground or underground pipes associated with tanks under subsections ~~(16)(b)~~ *(17)(b)* and ~~(16)(c)~~ *(17)(c)*, except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections ~~(16)(d)(i)~~ *(17)(d)(i)* and ~~(16)(d)(ii)~~ *(17)(d)(ii)*, if the facility is intrastate.

~~(17)~~*(18)* "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

~~(18)~~*(19)* "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils."

Section 3. Section 75-11-307, MCA, is amended to read:

"**75-11-307. Reimbursement for expenses caused by a release.** (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs; and

(b) compensation paid to third parties for bodily injury or property damage.

(2) An owner or operator may not be reimbursed from the fund for the following expenses:

(a) corrective action costs or the costs of bodily injury or property damage paid to third parties that are determined by the board to be ineligible for reimbursement;

(b) costs for bodily injury and property damage, other than corrective action costs, incurred by the owner or operator;

(c) penalties or payments for damages incurred under actions by the department, board, or federal, state, local, or tribal agencies or other government entities involving judicial or administrative enforcement activities and related negotiations;

(d) attorney fees and legal costs of the owner, operator, or a third party;

(e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment, or labor related to the operation, repair, or replacement of a tank or piping;

(f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

(g) expenses exceeding the maximum reimbursements provided for in subsection (4).

(3) An owner or operator may designate a person as ~~his~~ *an* agent to receive the reimbursement, provided that the owner or operator remains legally responsible for all costs and liabilities incurred as a result of the release.

(4) Subject to the availability of funds under subsection (5):

(a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or operator for:

(i) 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000:

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $500,000, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993; and

~~(a)~~*(b)* for *all other* releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for*:*

(i) 50% of the first $35,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $982,500*:*

(A) for single-walled tank system releases; and

(B) for double-walled tank system releases for which the release date was prior to October 1, 1993; or

(ii) 100% of the eligible costs, up to a maximum total reimbursement of $1 million, for properly designed and installed double-walled tank system accidental releases that were discovered and reported on or after October 1, 1993~~, except for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes; and~~.

~~(b) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator for 50% of the first $10,000 of eligible costs and 100% of subsequent eligible costs, up to a maximum total reimbursement of $495,000, for a tank storing heating oil for consumptive use on the premises where it is stored or a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes.~~

(5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a reimbursement may not be made and the fund and the board are not liable for making any reimbursement for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed subsequently in the order in which they were approved by the board."

Section 4. Section 75-11-308, MCA, is amended to read:

"**75-11-308. Eligibility.** (1) An owner or operator is eligible for reimbursement for *the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of* eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989;

(b) the department is notified of the release in the manner and within the time provided by law or rule;

(c) the department has been notified of the existence of the tank in the manner required by department rule or has waived the requirement for notification;

(d) the release was an accidental release; and

(e) with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules when the release occurred and remained in compliance following detection of the release.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad;

(d) a tank belonging to the federal government;

(e) a tank owned or operated by a person who has been convicted of a substantial violation of state or federal law or rule that relates to the installation, operation, or management of petroleum storage tanks; or

(f) a mobile storage tank used to transport petroleum or petroleum products from one location to another."

Section 5. Section 75-11-309, MCA, is amended to read:

"**75-11-309. Procedures for reimbursement of eligible costs.** (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from ~~his~~ *the owner or operator's* petroleum storage tank, ~~he~~ *the owner or operator* shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (where applicable), and federal corrective action requirements.

(c) (i) The department shall review the corrective action plan and forward a copy to a local government office and, where applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (c) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(d) The department shall notify the owner or operator and the board of its approval of a corrective action plan.

(e) The owner or operator shall implement the approved plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, parts 4 and 7, and other applicable law and rules.

(f) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board. The board shall forward each claim and appropriate documentation to the department. The department shall notify the board of any costs that the department considers not reimbursable because of any failure to meet the requirements of subsection (2). The department shall inform the owner or operator of any notification given to the board.

(g) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(h) In addition to the documentation in subsections (1)(f) and (1)(g), when the release is claimed to have originated from a double-walled tank system, the owner or operator shall document, in the manner required by the board, the following:

(i) the date the release was discovered;

(ii) that the originating tank was part of a double-walled tank system as defined in 75-11-302; and

(iii) that the double-walled tank system was properly installed and made of materials and constructed in accordance with applicable department regulations.

(2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section.

(3) If an owner or operator disagrees with a board determination under subsection (2), ~~he~~ *the owner or operator* may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(4) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(5) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

Section 6. **Applicability.** [This act] applies to releases discovered on or after October 1, 1993, from properly designed and installed double-walled petroleum storage tank systems.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved April 13, 1993.

CHAPTER NO. 340

[HB 571]

AN ACT CLARIFYING THE TERM "POLLUTION"; AUTHORIZING SHORT-TERM EXEMPTIONS FROM THE WATER QUALITY STANDARDS; AND AMENDING SECTION 75-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-103, MCA, is amended to read:

"**75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(5) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

(6) "Effluent standard" means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(7) "Industrial waste" means any waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(8) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(9) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(10) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a point source.

(11) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(12) "Point source" means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(13) "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter. *Activities conducted under the conditions imposed by the department in short-term authorizations pursuant to [section 2] are not considered pollution under this chapter.*

(14) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

(15) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(16) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(17) "State waters" means any body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(18) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes."

Section 2. **Short-term water authorizations — water quality standards.** The department may authorize short-term exemptions from the water quality standards or short-term use that exceeds the water quality standards for the purposes of allowing construction, emergency environmental remediation, pesticide application, elimination of undesirable and nonnative aquatic species, and treatment of water for the protection of public health. The authorization must include conditions that minimize to the extent possible the magnitude of any standard violation and the length of time during which any standard violation may occur. The authorization conditions must maximize the protection of state waters by ensuring the maintenance of beneficial uses immediately after the term of the authorization. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 2].

Approved April 13, 1993.

CHAPTER NO. 341

[HB 592]

AN ACT ESTABLISHING HAZARDOUS WASTE MANAGEMENT PERMIT FEES; ESTABLISHING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AMENDING SECTION 75-10-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of health and environmental sciences in promulgating rules. The intent of this bill is to clarify and extend the authority of the department to charge fees for the review and analysis of hazardous waste management permits and for ensuring compliance with hazardous waste laws, rules, and permit conditions.

The department may develop rules that establish the amount and procedure for collecting fees for:

(1) the filing and review of hazardous waste management facility permits;

(2) the management of hazardous waste, based upon the amount of waste managed;

(3) the reissuance and modification of hazardous waste management facility permits; and

(4) the registration of hazardous waste generators.

In adopting these rules, the department shall meet the criteria set forth in [sections 2 through 4]. In addition, the rules adopted by the department must reflect a maximum fee amount of $10,000 for permit reissuance or permit modification, except when the department's actual costs exceed that amount.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-405, MCA, is amended to read:

"**75-10-405. Administrative rules.** (1) The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, ~~renewal~~ *reissuance,* modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel and for financial assurance of facility owners and operators and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) *establishing* a schedule of fees *and procedures for the collection of fees* for*:* ~~hazardous waste management facility permits and registration of hazardous waste generators;~~

(i) the filing and review of hazardous waste management facility permits as provided in [section 3];

(ii) hazardous waste management as provided in [section 4];

(iii) the reissuance and modification of hazardous waste management facility permits; and

(iv) the registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes; and

(l) other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require generators and facilities to report on an annual rather than on a biennial basis;

(c) may adopt requirements for the prevention and correction of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and corrective action;

(iv) standards for design, construction, installation, and closure;

(v) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program; and

(vi) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(d) may adopt regulatory requirements for hazardous waste transfer facilities;

(e) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

(f) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations."

Section 2. **Definitions.** As used in [section 3], the following definitions apply:

(1) "Class I facility" means a hazardous waste management facility that:

(a) contains one or more regulated landfill units, surface impoundments, land treatment units, incinerators, boilers, or industrial furnaces; and

(b) primarily receives hazardous waste generated by offsite sources not owned, controlled, or operated by the facility owner or operator.

(2) "Class II facility" means a hazardous waste management facility that is neither a class I facility nor a class III facility.

(3) "Class III facility" means a hazardous waste management facility that:

(a) does not contain a regulated landfill unit, surface impoundment, land treatment unit, incinerator, boiler, or industrial furnace; and

(b) primarily receives hazardous waste generated either onsite or by offsite sources that are owned, controlled, or operated by the facility owner or operator.

Section 3. **Hazardous waste management facility filing and review fees.** (1) The department may establish and collect fees for the filing and review of hazardous waste management facility permits. The fees must be based upon the following schedule:

(a) for class I facilities, a maximum fee of $150,000, payable as follows:

(i) a nonrefundable payment of $50,000 due when an applicant files for a permit;

(ii) a payment of $50,000 due when the department notifies the applicant that the application is complete; and

(iii) an additional payment of up to $50,000 for the portion of the department's actual costs of review that exceed $100,000. This payment is due 30 days after the department's final decision on the application.

(b) for class II facilities, a maximum fee of $90,000, payable as follows:

(i) a nonrefundable payment of $40,000 due when an applicant files for a permit; and

(ii) an additional payment of up to $50,000 for the portion of the department's actual costs of review that exceed $40,000. This payment is due 30 days after the department's final decision on the application.

(c) for class III facilities, a maximum fee of $25,000, payable as follows:

(i) a nonrefundable payment of $10,000 due when an applicant files for a permit; and

(ii) an additional payment of up to $15,000 for the portion of the department's actual costs of review that exceed $10,000. This payment is due 30 days after the department's final decision on the application.

(2) If, after receipt of the payment required in subsection (1)(a)(ii), the applicant notifies the department in writing of its intent to withdraw the application, the department shall return to the applicant any portion of the payment received pursuant to subsection (1)(a)(ii) in excess of the department's actual costs of permit review.

(3) The department shall deposit all fees collected pursuant to this section into an account in the state special revenue fund as provided in [section 5].

Section 4. **Hazardous waste management fees.** (1) An owner or operator of a hazardous waste management facility that primarily receives waste generated by offsite sources that are not owned, controlled, or operated by the facility owner or operator or site owner shall collect from generators and remit quarterly to the department a fee of:

(a) $8 per ton on all hazardous waste received at the facility or site for management in regulated landfill units, surface impoundments, land treatment units, incinerators, boilers, or industrial furnaces; and

(b) $4 per ton on all hazardous waste received at the facility or site for management in any regulated unit or units other than those units described in subsection (1)(a).

(2) The fees established in subsection (1) may be prorated for amounts of hazardous waste received that are less than 1 ton in weight.

(3) The department shall remit 15% of the fees received under this section from a facility to the county in which the facility is located. The county may use the money for the purpose of implementing hazardous material or hazardous waste monitoring and response programs.

(4) The department shall deposit all fees collected under this section, except fees paid to a county, into an account in the state special revenue fund as provided in [section 5].

Section 5. **Deposit of hazardous waste management fees.** (1) There must be credited to an account within the state special revenue fund established in 17-2-102:

(a) all fees collected under [section 3]; and

(b) all fees collected under [section 4], except fees paid to a county.

(2) Money in the account may be used by the department only for the administration of the hazardous waste provisions of this part.

Section 6. **Codification instruction.** [Sections 2 through 5] are intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [sections 2 through 5].

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Retroactive applicability.** [Section 3] applies retroactively, within the meaning of 1-2-109, to applications for hazardous waste management facility permits received on or after January 1, 1993.

Section 9. **Effective date.** [This act] is effective on passage and approval.

Approved April 13, 1993.

CHAPTER NO. 342

[SB 398]

AN ACT ALLOWING A LANDLORD TO DEDUCT CLEANING CHARGES WITHOUT ADVANCE NOTICE IF THE TENANT VACATES WITHOUT NOTICE; REDUCING THE TIME FOR CLEANING BY A TENANT; REDUCING THE DAMAGES FOR WRONGFUL WITHHOLDING OF A SECURITY DEPOSIT; CLARIFYING THE TIME FOR FURNISHING A STATEMENT OF CONDITION OF THE PREMISES AND REVISING THE CONTENT OF THE

STATEMENT; AND AMENDING SECTIONS 70-25-201, 70-25-204, 70-25-205, AND 70-25-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-25-201, MCA, is amended to read:

"**70-25-201. Security deposit — deductions authorized therefrom.** (1) ~~Any~~ *A* landlord renting property covered by this chapter may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant, together with a sum equal to the unpaid rent owing to the landlord at the time of ~~such~~ deduction, including rent owed under 70-24-441(3), and a sum for actual cleaning expenses.

(2) At the request of either party, the premises may be inspected within 1 week prior to termination of the tenancy.

(3) ~~No cleaning~~ *Cleaning* charges may *not* be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time the tenant occupies the space unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, ~~no~~ cleaning charges may *not* be deducted until written notice has been given to the tenant. The notice ~~shall~~ *must* include the cleaning not accomplished by the tenant and the additional and type or types of cleaning which need to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice, the tenant has ~~48~~ *24* hours to complete the required cleaning. If notice is mailed by certified mail, service of the notice is considered to have been made 3 days after the date of the mailing. *A tenant who fails to notify the landlord of the intent to vacate or who vacates the premises without notice relieves the landlord of the requirement of giving notice and allows the landlord to deduct the cleaning charges from the deposit.*

(4) ~~No~~ *A* person may *not* deduct or withhold from the security deposit any amount for purposes other than those set forth in this section."

Section 2. Section 70-25-204, MCA, is amended to read:

"**70-25-204. Wrongful withholding of security deposit — action.** (1) ~~Any~~ *A* person who wrongfully withholds a residential property security deposit or any portion ~~thereof~~ *of the deposit* ~~shall be~~ *is* liable in damages to the tenant in a civil action for an amount equal to ~~double~~ the sum determined to have been wrongfully withheld or deducted. The ~~attorney's~~ *attorney* fees may be awarded the prevailing party at the discretion of the court. The burden of proof of damages caused by the tenant to the leasehold premises ~~shall be~~ *is* on the landlord.

(2) ~~No~~ *An* action may *not* be maintained by a tenant for any amount wrongfully withheld or deducted prior to:

(a) the tenant's receipt from the landlord or ~~his~~ *the landlord's* agent of a written denial of the sum alleged to be wrongfully detained;

(b) the expiration of a 30-day period after the termination of a tenancy;

(c) the expiration of a 30-day period after surrender and acceptance of the leasehold premises; or

(d) the expiration of a 10-day period after the landlord has indicated there were no damages to the premises, no cleaning was required, no rent was unpaid, and no utilities were unpaid by the tenant."

Section 3. Section 70-25-205, MCA, is amended to read:

"**70-25-205. Failure of departing tenant to furnish new address.** Failure by the departing tenant to provide the landlord with ~~his~~ *a* new address in writing upon termination of the tenancy or upon surrender and acceptance of the leasehold premises, whichever occurs first, ~~shall relieve~~ *relieves* the landlord from ~~double~~ liability as imposed by 70-25-204. ~~Such~~ *The* failure ~~shall~~ *may* not, however, bar the tenant from recovering the actual amount owing to ~~him~~ *the tenant* by the landlord."

Section 4. Section 70-25-206, MCA, is amended to read:

"**70-25-206. Landlord to furnish statement of condition of premises at beginning of lease.** (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each tenant, ~~prior to~~ *in conjunction with* execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let. At the written request of the tenant, a copy of the written list of damage and cleaning charges, if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question must be provided to the tenant.

(2) Each written statement of the present condition of a premises intended to be let shall contain at least the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or ~~his~~ *the landlord's* agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating ~~such~~ *the* fact; *and*

(c) ~~if any damage to the leasehold premises resulting from the immediately preceding leasehold agreement has not been restored, a statement indicating such fact and setting forth such unrestored damage; and~~

~~(d)~~ the signature of the landlord or ~~his~~ *the landlord's* agent.

(3) ~~Any~~ *A* person engaged in the rental of property for residential purposes who fails to furnish a tenant, ~~prior to~~ *in conjunction with* the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, upon the written request of the tenant, a written list of damage and cleaning charges provided to the tenant of the immediately preceding leasehold agreement ~~shall be~~ *is* barred from recovering any sum for damage to or cleaning of the leasehold premises unless ~~he~~ *the person* can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees, or invitees."

Approved April 14, 1993.

CHAPTER NO. 343

[SB 251]

AN ACT CLARIFYING THE LAW RELATING TO CITY COURT JURISDICTION; PROVIDING FOR THE SERVICE OF A SUMMONS OUTSIDE OF THE COUNTY IN WHICH A CITY COURT IS LOCATED; PROVIDING CONCURRENT JURISDICTION OVER LANDLORD-TENANT MATTERS; AND AMENDING SECTIONS 25-31-407 AND 70-24-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-31-407, MCA, is amended to read:

"**25-31-407. Requirements for summons served out of county.** When a summons issued by a justice of the peace *or city court judge* is to be served out of the county in which it was issued, the summons must have attached to it a certificate, under seal by the county clerk of the county in which it was issued, to the effect that the person issuing the summons was an acting justice of the peace *or city court judge* at the date of the summons."

Section 2. Section 70-24-103, MCA, is amended to read:

"**70-24-103. General definitions.** Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Court" means the appropriate district court, ~~or the appropriate~~ justice's court, *or city court.*

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part and also means a manager of the premises who fails to disclose his managerial position.

(6) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(7) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(8) "Person" includes an individual or organization.

(9) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(10) "Rent" means all payments to be made to the landlord under the rental agreement.

(11) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(12) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.

(13) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(14) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Approved April 14, 1993.

CHAPTER NO. 344

[SB 238]

AN ACT ELIMINATING CERTAIN WARRANT AND BOND REQUIREMENTS FOR OBTAINING POSSIBLE STOLEN PROPERTY FROM A PAWNBROKER OR DEALER; AMENDING SECTION 46-5-212, MCA; AND REPEALING SECTIONS 31-1-403, 31-1-404, 31-1-405, AND 31-1-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-5-212, MCA, is amended to read:

"**46-5-212. Pawnbroker to surrender stolen property.** When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to ~~him~~ or purchased by ~~him~~ *the pawnbroker or dealer* is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days *unless demanded by a peace officer* and, *upon demand,* shall surrender the property to the peace officer ~~upon service of a search warrant by a peace officer pursuant to 31-1-401 through 31-1-406~~. *The peace officer shall give the pawnbroker or dealer a receipt for any property surrendered by the pawnbroker or dealer.*"

Section 2. **Repealer.** Sections 31-1-403, 31-1-404, 31-1-405, and 31-1-406, MCA, are repealed.

Approved April 14, 1993.

CHAPTER NO. 345

[HB 241]

AN ACT PROVIDING FOR THE LICENSURE OF CLINICAL LABORATORY SCIENCE PRACTITIONERS; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is needed for this bill because it establishes a board of clinical laboratory science practitioners and gives the board rulemaking authority. The board is required to adopt rules to establish licensing and certification procedures, educational requirements for licensure, and continuing education requirements. The board is also required to establish rules for the renewal, suspension, and revocation of licenses. The board shall establish an investigation and hearing procedure for handling complaints and shall set fees for administration of the board's duties. The fees must be commensurate with the costs of administration. The board shall also adopt rules implementing the requirement that a supervisor of a clinical laboratory technician must be accessible at all times that testing is being performed in order to provide onsite, telephonic, or electronic consultation.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 5 and 7 through 13] may be cited as the "Clinical Laboratory Science Practice Act".

Section 2. **Declaration of policy and purpose.** The legislature finds and declares that because the practice of clinical laboratory science affects the public health, safety, and welfare of Montana citizens, it is the purpose of [sections 1 through 5 and 7 through 13] to provide for the common good by regulating and ensuring the qualified and professional practice of clinical laboratory science. The legislature further declares that because clinical laboratory science practitioners provide essential services to other health care providers by furnishing vital information that may be used in the assessment of human health and in the diagnosis, prevention, and treatment of disease or impairment, clinical laboratory tests must be performed by individuals who meet specific standards of competency.

Section 3. **Definitions.** As used in [sections 1 through 5 and 7 through 13], the following definitions apply:

(1) "Board" means the board of clinical laboratory science practitioners established in [section 6].

(2) "Clinical laboratory" or "laboratory" means any facility or office in which clinical laboratory tests are performed.

(3) (a) "Clinical laboratory science practitioner" means a health care professional who performs clinical laboratory tests or who is engaged in management, education, consulting, or research in clinical laboratory science.

(b) The term includes laboratory directors, managers, supervisors, clinical laboratory scientists, clinical laboratory specialists, and clinical laboratory technicians who work in a laboratory.

(c) The term does not include:

(i) persons employed by a clinical laboratory to perform supportive functions not related to direct performance of laboratory tests; or

(ii) clinical laboratory trainees.

(4) "Clinical laboratory scientist" means a person who:

(a) performs clinical laboratory tests pursuant to established and approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within a clinical laboratory setting.

(5) "Clinical laboratory specialist" means a person who:

(a) performs laboratory testing in a specialized testing area, such as microbiology, chemistry, immunology, or hematology, according to approved protocols requiring the exercise of independent judgment and responsibility;

(b) maintains equipment and records;

(c) performs quality assurance activities related to test performance; and

(d) may supervise and teach within the specific area of the clinical laboratory.

(6) "Clinical laboratory technician" means a person who performs laboratory tests pursuant to established and approved protocols that require limited exercise of independent judgment and that are performed under the supervision of a clinical laboratory scientist, laboratory supervisor, or laboratory director.

(7) "Clinical laboratory test" or "laboratory test" means:

(a) a microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination that is performed on material derived from the human body; or

(b) any other test or procedure conducted by a laboratory or facility that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease.

(8) "Department" means the department of commerce provided for in 2-15-1801.

(9) "License" means the clinical laboratory science license issued under [sections 1 through 5 and 7 through 13].

(10) "Practice of clinical laboratory science" means the performance and interpretation of microbiological, serological, chemical, hematological, radiobioassay, cytological, biophysical, immunological, cytogenetical, or other examination on material that is derived from the human body and that provides information for the assessment of a medical condition or for the diagnosis, prevention, or treatment of a disease.

Section 4. **License required.** A person may not engage in the practice of clinical laboratory science or hold out to the public that the person is a clinical laboratory science practitioner in this state unless the person is licensed pursuant to [sections 1 through 5 and 7 through 13].

Section 5. **Exemptions.** (1) [Sections 1 through 5 and 7 through 13] do not limit or regulate the practice of licensed physicians, including but not limited to pathologists.

(2) [Sections 1 through 5 and 7 through 13] do not apply to:

(a) any other profession licensed under Title 37 to the extent that the applicable scope of that practice, as defined by statute, rules of the board or agency governing the other profession, or both the statute and rules, authorizes the performance of a clinical laboratory test;

(b) clinical laboratory science practitioners employed by the United States or by any bureau, division, or agency of the United States, while in the discharge of the employee's official duties;

(c) clinical laboratory science practitioners engaged in teaching or research, provided that the results of any examination performed are not used in health maintenance, diagnosis, or treatment of disease;

(d) students or trainees enrolled in a clinical laboratory science education or training program, provided that:

(i) these activities constitute a planned course in the program;

(ii) the persons are designated by a title, such as intern, trainee, or student; and

(iii) the persons work directly under an individual licensed by this state to practice clinical laboratory science;

(e) any person performing only waived tests as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;

(f) a perfusionist or cardiopulmonary technician who, as part of a surgical team, performs laboratory tests in an operating room during surgery or during the perioperative and immediate postoperative period; or

(g) clinical laboratory science practitioners, employed by certified rural health clinics, who perform only those basic laboratory services required under federal regulations set forth in 42 CFR 491.9(c)(2).

Section 6. **Board — composition — allocation — quasi-judicial — compensation.** (1) There is a board of clinical laboratory science practitioners.

(2) The board is composed of five members who have been residents of this state for at least 2 years prior to appointment and who are actively engaged in their respective practices.

(3) Members are appointed by the governor, with consent of the senate. The members are:

(a) one physician who is qualified to direct a high complexity laboratory as provided for in the federal clinical laboratory regulations set forth in 42 CFR part 493;

(b) three clinical laboratory science practitioners who, except for the initial appointments, hold active licenses as clinical laboratory science practitioners in Montana; and

(c) one public member who is not associated with or financially interested in the practice of clinical laboratory science.

(4) Following the initial appointments of members to the board, all members shall serve 4-year terms. The terms of the initial appointments must be staggered, with three members serving a 4-year term and two members serving a 2-year term. A member may not serve more than two consecutive terms.

(5) Whenever a vacancy occurs on the board during a term of office, the governor shall appoint a successor with similar qualifications for the remainder of the unexpired term.

(6) The board is allocated to the department for administrative purposes only, as provided in 2-15-121.

(7) The board is designated a quasi-judicial board for the purposes of 2-15-124, except that a member of the board need not be an attorney licensed to practice law in this state.

(8) Members of the board are entitled to compensation and travel expenses as provided by law.

Section 7. **Powers and duties of the board — rulemaking authority.** (1) The board shall:

(a) meet at least once annually, and at other times as agreed upon, to elect officers and to perform the duties described in this section; and

(b) administer oaths, take affidavits, summon witnesses, and take testimony as to matters within the scope of the board's duties.

(2) The board has the authority to administer and enforce all the powers and duties granted statutorily or adopted administratively.

(3) The board shall adopt rules to administer [sections 1 through 5 and 7 through 13]. The rules must include but are not limited to:

(a) the development of a license application procedure and acceptable certifications for each category of license;

(b) the establishment of license fees commensurate with actual costs;

(c) the establishment of criteria for educational requirements that, at a minimum, meet the standards set forth in [section 8];

(d) the development of procedures for the issuance, renewal, suspension, revocation, and reciprocity of licenses;

(e) the adoption of disciplinary standards for licensees;

(f) the establishment of investigatory and hearing procedures for processing complaints received by the board;

(g) the establishment of continuing education requirements of at least 14 hours annually for license renewal for clinical laboratory practitioners; and

(h) a requirement that the supervisor of a clinical laboratory technician be accessible at all times that testing is being performed by the technician in order to provide onsite, telephonic, or electronic consultation.

Section 8. **Standards for licensure.** (1) The board shall issue a clinical laboratory scientist license to an individual who meets the qualifications as promulgated by rules of the board. At a minimum, a licensee must be a person who:

(a) has graduated with a baccalaureate degree, including a minimum number of hours in areas or disciplines established by rule by the board; and

(b) has passed a certifying examination approved by the board.

(2) The board shall issue a clinical laboratory specialist license to an individual who has graduated with a baccalaureate degree as described in subsection (1) and has passed a certifying examination covering those fields in which the applicant is eligible and approved by the board. The license must be issued as a clinical laboratory specialist license and must state the designation of the area of specialty.

(3) The board shall issue a clinical laboratory technician license to an individual who meets the qualifications promulgated by the board, including the following minimum qualifications:

(a) completion of an associate degree or 60 semester hours in a science-related discipline;

(b) completion of other equivalent formal education as approved by the board; and

(c) passing a certifying examination approved by the board.

Section 9. **Waiver of requirements — temporary license — reciprocity.** (1) Upon payment of a license fee, the board may issue a license to a person engaged in the practice of clinical laboratory science on [the effective date of this section] if the applicant can provide documentation, verified by oath, of at least 1 year of full-time experience in clinical laboratory science in Montana within the last 3 years. The applicant's level of practice on [the effective date of this section] determines the type of license issued. Application for licensure under this provision must be completed within 1 year of [the effective date of this section].

(2) (a) Upon payment of a license fee, the board may issue a temporary license to a person who engaged in the practice of clinical laboratory science in another state if that person can provide documentation, verified by oath, of at least 1 year of full-time experience in clinical laboratory science within the last 3 years. A temporary license may not be valid for more than 15 months.

(b) A temporary licensee shall pass a board-approved certification examination within 15 months of receiving a temporary license.

(3) Upon payment of the license fee, the board may issue a license to practice clinical laboratory science to an applicant who is currently licensed to practice clinical laboratory science in another state, territory, or country if the qualifications for the other license are considered by the board to be equal to or exceed the requirements of [sections 1 through 5 and 7 through 13] and if the other state, territory, or country extends similar privileges to clinical laboratory science practitioners licensed under [sections 1 through 5 and 7 through 13].

Section 10. **Licensure application procedures.** (1) An applicant shall submit an application for a license to the board upon the forms prescribed and furnished by the board and shall pay an application fee set by the board.

(2) Upon receipt of the application and fee, the board shall issue a license for a clinical laboratory scientist, a clinical laboratory specialist, or a clinical laboratory technician to any person who meets the qualifications specified by the board as set forth in rules adopted by the board pursuant to [sections 7 and 8].

(3) A license issued under [sections 1 through 5 and 7 through 13] must be renewed by May 1 of each year.

(4) Except for the assessment provided in 37-1-101(6), money paid for application, license, and license renewal fees must be deposited in the state special revenue fund for use by the board.

Section 11. **Disciplinary measures — grounds — fine.** (1) The board, after notice and hearing, may reprimand a licensee or deny, suspend, revoke, or refuse to renew the license of a licensee who:

(a) uses alcohol or other drugs to the extent that job performance is impaired;

(b) is guilty of immoral or unprofessional conduct as defined by board rule;

(c) is guilty of gross negligence in the practice of clinical laboratory science;

(d) has obtained or attempted to obtain a license by fraud or material misrepresentation;

(e) is guilty of conduct detrimental to the best interests of the public; or

(f) has violated a provision of [sections 1 through 5 and 7 through 13] or a rule adopted by the board.

(2) The board may impose an administrative fine of not more than $500 per incident for any violation that could result in the suspension or revocation of a

license. A fine collected under this subsection must be deposited in the state special revenue fund for use by the board.

Section 12. **Violation — penalties — injunction — manner of charging violation.** (1) A person who violates a provision of [sections 1 through 5 and 7 through 13] or a rule adopted pursuant to [sections 1 through 5 and 7 through 13] is guilty of a misdemeanor and is punishable by a fine not to exceed $500, by imprisonment in the county jail for a term of not more than 6 months, or both.

(2) Except as provided in [section 5], the board may maintain an action to enjoin a person from engaging in the practice of clinical laboratory science until a license to practice is obtained. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing clinical laboratory science without a license from criminal prosecution. The remedy by injunction is in addition to remedies provided for criminal prosecution of the offender.

(3) When charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of law by practicing clinical laboratory science without a license, it is sufficient to charge that the person did, on a certain day and in a certain county, engage in the practice of clinical laboratory science while not having a license to do so, without specifying particular facts concerning the violation.

Section 13. **Due process procedures — hearing — temporary suspension.** (1) The proceedings for the revocation, suspension, or limiting of a license may be initiated by the board or by any person, corporation, association, or public officer by filing written charges with the board. The board may in all cases conduct an investigation of the allegations in the written charges and dismiss those that it determines are frivolous or without sufficient factual foundation.

(2) A license may not be revoked, suspended, or limited without a hearing before the board after charges are filed. If the board finds that there is a significant threat to the public health, the board, upon notice to the licensee, may temporarily suspend the license without a hearing for a period not to exceed 30 days.

Section 14. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 15. **Codification instruction.** (1) [Section 6] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 6].

(2) [Sections 1 through 5 and 7 through 13] are intended to be codified as an integral part of Title 37, and the provisions of Title 37 apply to [sections 1 through 5 and 7 through 13].

Section 16. **Effective date.** [Sections 6, 7, 14, 15, and this section] are effective on passage and approval.

Approved April 16, 1993.

CHAPTER NO. 346

[HB 397]

AN ACT INCREASING THE FEES FOR COPIES OF MONTANA DRIVING RECORDS; PROVIDING FOR THE ISSUANCE OF AN IDENTIFICATION CARD TO ANY APPLICANT; INCREASING THE FEE FOR IDENTIFICATION CARDS; APPROPRIATING MONEY TO THE DEPARTMENT OF JUSTICE TO FUND IMPROVEMENTS IN THE SECURITY OF MONTANA DRIVER'S LICENSES; LIMITING INFORMATION THAT MAY BE PLACED ON A DRIVER'S LICENSE MAGNETIC STRIPE; AMENDING SECTIONS 61-11-105, 61-12-501, AND 61-12-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-11-105, MCA, is amended to read:

"**61-11-105. Release of information — fees.** (1) Except as provided in subsection (2), the department shall, upon request and with the licensee's approval, furnish a person the individual *Montana* driving record of a licensee, showing the following:

(a) licensee identification data, *which may not include the individual's residence address, or information provided through means of an electronic tracking device*;

(b) driver's license status and expiration date;

(c) convictions of the licensee; and

(d) traffic accidents in which the licensee was involved.

(2) Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena. The department shall, upon request, furnish a criminal justice agency or any person or firm having a legitimate purpose as determined by the department with the individual *Montana* driving record of a licensee showing the items listed in subsections (1)(a) through (1)(d).

(3) A fee of ~~$3~~ *$4* must be paid for each *individual Montana driving* record requested. A fee of $10 must be paid if a certified *Montana* record, as provided in 61-11-102(6), is requested. ~~Individual~~ *All* driving records must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency."

Section 2. Section 61-12-501, MCA, is amended to read:

"**61-12-501. Authority of department to issue identification cards.** The department ~~is hereby authorized to~~ *may* issue identification cards to any person~~:~~

~~(1) who is not the holder of a valid driver's license; or~~

~~(2) whose driver's license is suspended~~."

Section 3. Section 61-12-504, MCA, is amended to read:

"**61-12-504.** *(Temporary)* **Fees for identification cards — disposition of fees.** (1) Fees not in excess of $1 for identification cards issued pursuant to this part must be collected and credited to a state special revenue fund to be known as the Montana highway patrol identification card fund. Except as provided in subsection (2), the fund must be used by the department to defray the cost of issuing identification cards.

(2) On or before June 30, 1993, the balance in the Montana highway patrol identification card fund must be transferred to the general fund. *(Terminates July 1, 1993—sec. 7(1), Ch. 5, Sp. L. January 1992.)*

61-12-504. *(Effective July 1, 1993)* **Fees for identification cards.** *(1)* Fees not in excess of ~~$1~~ *$8* for identification cards issued pursuant to this part must be collected and deposited in the general fund. *A handicapped person, as defined in 39-30-103, may obtain a free identification card. An individual discharged from any correctional facility must be furnished a free identification card upon release, discharge, or parole.*

(2) Each identification card expires on the anniversary of the date of birth of the holder 4 years after the date of issue."

Section 4. **Appropriation.** There is appropriated from the general fund to the department of justice $178,200 in fiscal year 1994 and $195,000 in fiscal year 1995 to fund improvement of the security of Montana driver's licenses and to provide a means of automated access to license information through digitizing the license image, the addition of a magnetic reader stripe containing only the information shown on the face of the driver's license or identification card, and a hologram or other security device.

Section 5. **Effective date.** [This act] is effective July 1, 1993.

Approved April 16, 1993.

CHAPTER NO. 347

[SB 344]

AN ACT CLARIFYING THE CONDITIONS IN WHICH SPECIAL PROFESSIONAL EVALUATIONS ARE REQUIRED IN THE PREPARATION OF PRESENTENCE INVESTIGATIONS; CLARIFYING THE ENTITY RESPONSIBLE FOR THE COST OF EVALUATIONS; AMENDING SECTION 46-18-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-111, MCA, is amended to read:

"**46-18-111. Presentence investigation — when required.** (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court ~~may, in its discretion, order a~~ *shall consider the* presentence investigation *report* ~~for a defendant~~

~~convicted of a misdemeanor~~ *prior to sentencing.* ~~The~~ *If the defendant was convicted of an offense under 45-5-502, 45-5-503, 45-5-504, 45-5-505, 45-5-507, or 45-5-625 involving a victim who was less than 16 years of age when the offense was committed, the* investigation must include an evaluation of the defendant and a recommendation as to treatment *of the offender in the least restrictive environment, considering community safety and offender needs. The evaluation must be completed* by a person *who is determined to be* qualified under guidelines established by the department of corrections and human services. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the ~~department of commerce~~ *county or the state, or both,* under Title 3, chapter 5, part 9.

(2) ~~If the court finds that the record contains information sufficient to enable the meaningful exercise of discretion during sentencing, the defendant may waive a presentence investigation and report. Both the finding and the defendant's waiver must be made in open court on the record.~~ *Unless the district court makes a finding that a report is unnecessary, a defendant convicted of any offense not enumerated in subsection (1) that may result in incarceration for 1 year or more may not be sentenced before a written presentence investigation report by a probation officer is presented to and considered by the district court. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor.*"

Section 2. **Coordination instruction.** If Senate Bill No. 125 is passed and approved and if it amends 46-18-111 by:

(1) inserting in subsection (1) the words "against a victim", then the word "against" is changed to "involved";

(2) substituting in subsection (1) the words "supreme court administrator" for the words "department of commerce", then the words "supreme court administrator" are changed to "county or the state, or both,";

(3) inserting the word "district" before the word "court" near the beginning of the first sentence of subsection (2), then the word "district" is stricken.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1993.

CHAPTER NO. 348

[SB 217]

AN ACT PROVIDING FOR SUSPENSION OF PROFESSIONAL AND OCCUPATIONAL LICENSES OF PERSONS DETERMINED BY A COURT OR BY THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO BE DELINQUENT IN THE PAYMENT OF CHILD SUPPORT; PROVIDING FOR NOTICE AND AN OPPORTUNITY FOR A HEARING PENDING SUSPENSION OF A LICENSE; AND PROVIDING FOR A STAY OF SUSPENSION UPON A SHOWING OF HARDSHIP OR AN OBLIGOR'S AGREEMENT TO ENTER INTO A PAYMENT PLAN.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 9] requires the department of social and rehabilitation services to adopt rules necessary for the implementation and administration of [sections 1 through 9].

It is the intent of the legislature that rules adopted by the department be consistent with the purpose and policy stated in [section 1]. Rules may include rules regarding:

(1) a notice of intent to suspend a license;

(2) a hearing to review the cause for suspension of a license;

(3) approval of a payment plan agreed to by an obligor for payment of a support debt;

(4) the determination of circumstances creating a hardship that warrant a stay of action for suspension of a license; and

(5) procedures for implementing and enforcing an order suspending a license.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose and policy.** The purpose of [sections 1 through 9] is to provide a more effective and efficient way to ensure the support of the dependent children of persons who hold professional or occupational licenses issued in this state. Licensees who fail to support their children should not enjoy the privileges and benefits of licensure granted by the state of Montana. It is the policy of this state that the support of children receive the highest priority in the allocation of a responsible parent's income. The Montana supreme court is urged to consider adopting rules that apply [sections 1 through 9] to attorneys.

Section 2. **Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) (a) "Child" means any person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States, any person under 19 years of age who is still in high school, or any person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age and, in IV-D cases, for whom:

(i) support rights are assigned under 53-2-613;

(ii) a public assistance payment has been made;

(iii) the department is providing support enforcement services under 40-5-203; or

(iv) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "IV-D case" means a case in which the department of social and rehabilitation services is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(4) "License" means any license, certificate, registration, or authorization issued by a licensing agency that allows a person to engage in a business, occupation, or profession.

(5) "Licensing agency" means the department of commerce or any other department or board that issues a license under Title 37 but does not include the supreme court of Montana.

(6) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(7) "Obligor" means a person who owes a duty of support.

(8) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(9) "Payment plan" includes but is not limited to a plan, approved by the support enforcement entity, that provides sufficient security to ensure compliance and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(10) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child for whom the person awarded maintenance is the custodial parent.

(11) "Support enforcement entity" means:

(a) in IV-D cases, the department of social and rehabilitation services; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(12) "Support order" means an order providing a determinable amount for temporary or final periodic payment of a support debt or support obligation issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(c) an administrative agency pursuant to proceedings under [sections 1 through 9]; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department of social and rehabilitation services.

Section 3. **Notice of intent to suspend license.** (1) Upon the petition of an obligee alleging the existence of a delinquency, a support enforcement entity may issue a notice of intent to suspend a license.

(2) The notice must be served upon the obligor personally or by certified mail and may:

(a) in a IV-D case, be incorporated into any notice served under Title 17, chapter 4, part 1, or Title 40, chapter 5, part 2 or 4;

(b) in all other cases, be combined with any other enforcement proceeding.

(3) The notice must state that the obligor's license will be suspended 60 days after service unless, within that time, the obligor:

(a) pays the entire support debt stated in the notice;

(b) enters into a payment plan approved by the support enforcement entity; or

(c) appears and shows cause in a hearing before the support enforcement entity under [section 4] that suspension of a license is not appropriate.

(4) In a IV-D case, the notice must advise the obligor that hearings conducted under [section 4] are subject to the contested case provisions of the Montana Administrative Procedure Act.

Section 4. **Hearing — order suspending license.** (1) To show cause why suspension of a license would not be appropriate, the obligor shall request a hearing from the support enforcement entity that issued the notice of intent to suspend the license. The request must be made within 60 days of the date of service of the notice.

(2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall schedule a hearing for the purpose of determining if suspension of the obligor's license is appropriate. The support enforcement entity shall stay suspension of the license pending the outcome of the hearing.

(3) The only issues that may be determined in a hearing under this section are the amount of the support debt or support obligation, if any, whether or not a delinquency exists, and whether or not the obligor has entered into a payment plan.

(4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request for a payment plan must be considered to be without merit and the support enforcement entity shall enter a final decision and order accordingly.

(5) If the support enforcement entity determines that the obligor owes a delinquency and that the obligor has not entered into a payment plan, the support enforcement entity shall issue an order suspending the obligor's license. The support enforcement entity shall send a copy of the order suspending the license to the licensing agency and the obligor.

(6) The determinations of the department of social and rehabilitation services under this section are a final agency decision and are subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

(7) A determination of the department of social and rehabilitation services under [sections 1 through 9] does not affect any disciplinary proceeding of the licensing agency pursuant to Title 37.

Section 5. **Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of an order suspending a license, a licensing agency shall:

(a) determine if it has issued a license to the obligor whose name appears on the order;

(b) enter the suspension on the appropriate records; and

(c) report the suspension as appropriate.

(2) Further action by the licensing agency is not necessary to implement the suspension of the license.

(3) In the event that a license is suspended, any funds paid by the obligor to the licensing agency for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

(4) Unless an order staying suspension of a license is in effect, an obligor who continues to practice an occupation or profession while the license is suspended is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $500, by imprisonment for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be punished by a fine of not less than $500 or more than $2,000, by imprisonment for a term not to exceed 1 year, or both.

Section 6. **Stay of suspension of license — payment plan — hardship.** (1) An obligor may at the time of the hearing conducted under [section 4] or at any time after the hearing petition the support enforcement entity for an order staying suspension of the license.

(2) The support enforcement entity shall consider the obligor's petition for a stay separately from any determination on whether suspension of a license is appropriate.

(3) The support enforcement entity may stay suspension of a license upon a showing that suspension or continued suspension of a license would create a significant hardship to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor.

(4) A stay terminates upon:

(a) termination of the circumstances upon which a hardship is based;

(b) failure by the obligor to abide by the terms and conditions of a payment plan; or

(c) the date of termination, if any, provided in the order staying suspension of the license.

(5) If the licensing agency has been notified of an order suspending a license, the support enforcement entity shall send a copy of any order staying or reinstating suspension of the license to the licensing agency and the obligor.

(6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing agency shall:

(i) enter the information on appropriate records; and

(ii) report the action as appropriate.

(b) Further action by the licensing agency is not necessary to implement the stay or reinstatement of suspension of the license.

Section 7. **Termination of order to suspend license.** (1) When the support enforcement entity determines that the support debt or support obligation is paid in full, it shall terminate the order suspending the license. The support enforcement entity shall send a copy of the order terminating the suspension of the license to the licensing agency and the obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency.

Section 8. **Fees.** (1) Notwithstanding any other provisions of law, the licensing agencies subject to [sections 1 through 9] may charge the obligor a fee to cover the administrative costs incurred by the licensing agency under [sections 1 through 9].

(2) Fees collected pursuant to this section must be deposited in the state special revenue fund for the use of the licensing agency to pay the costs of administering [sections 1 through 9] subject to 37-1-101(6).

Section 9. **Rulemaking authority.** The department of social and rehabilitation services shall adopt rules as may be necessary for the implementation and administration of [sections 1 through 9].

Section 10. **Nondisciplinary suspension for failure to pay child support.** (1) Notwithstanding any other provisions of this title, the department of social and rehabilitation services has the authority to suspend a license under [sections 1 through 9] without action by the department of commerce, any other department, or any board issuing a license under this title. The department of commerce and any of its licensing boards or any other department issuing a license under this title shall, upon receipt of an order issued by the support enforcement entity under [sections 1 through 9], suspend the professional or occupational license of the named individual. The suspension must be nondisciplinary and the provisions of 2-4-631 do not apply.

(2) An order of nondisciplinary suspension continues until the support enforcement entity advises the appropriate department or licensing board that the nondisciplinary suspension has been stayed or terminated. The department or board shall advise the licensee that the license has been reinstated.

(3) An order of a support enforcement entity must be processed by the appropriate department or licensing board pursuant to the hearing process provided in [sections 3 and 4] but without an administrative hearing authorized or required under 37-1-131 or any other hearing for suspension, revocation, denial, or renewal of a license under this title.

(4) The department of commerce, any other department, or any board issuing a license under this title is exempt from any liability for activities conducted in compliance with [sections 1 through 9] or this section.

Section 11. **Codification instruction.** (1) [Sections 1 through 9] are intended to be codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to [sections 1 through 9].

(2) [Section 10] is intended to be codified as an integral part of Title 37, chapter 1, part 1, and the provisions of Title 37, chapter 1, part 1, apply to [section 10].

Section 12. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 16, 1993.

CHAPTER NO. 349

[SB 384]

AN ACT GENERALLY REVISING STATUTES GOVERNING AND REQUIRING REPORTS TO THE LEGISLATURE; REPEALING OBSOLETE OR REDUNDANT REPORTING REQUIREMENTS; SIMPLIFYING AND REDUCING BUDGET PUBLICATION REQUIREMENTS; AMENDING SECTIONS 1-11-204, 2-4-411, 2-7-104, 2-8-208, 2-15-108, 2-15-2021, 2-18-209, 2-18-301, 2-18-811, 2-18-1103, 3-1-702, 5-7-207, 5-11-210, 5-13-304, 5-17-103, 10-4-102, 13-37-120, 15-1-205, 17-4-107, 17-5-1650, 17-6-305, 17-7-123, 18-7-303, 19-4-201, 20-9-346, 20-25-236, 20-25-301, 33-22-1513, 37-1-106, 44-2-304, 44-12-206, 44-13-103, 53-2-1107, 53-6-110, 53-20-104, 53-21-104, 53-24-204, 53-30-133, 72-16-202, 75-1-203, 75-1-324, 75-1-1101, 75-10-533, 75-10-704, 76-11-203, 76-12-109, 82-11-161, 85-1-621, 87-2-722, 87-2-724, 90-3-203, 90-4-111, 90-4-606, AND 90-6-304, MCA; AND REPEALING SECTIONS 53-24-210, 69-1-404, 80-12-402, 80-12-403, AND 87-5-123, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-11-210, MCA, is amended to read:

"**5-11-210. Clearinghouse for reports to legislature.** (1) For the purposes of this section, "report" means~~:~~

~~(a) a document required to be prepared for the legislature as required in any of the sections listed in subsection (10); and~~

~~(b) unless otherwise provided by law, any other~~ *a* report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the executive director of the legislative council:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed ~~one page~~ *100 words*;

(c) a recommendation on how many copies of the report should be provided to the legislature;

(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies; *and*

(e) an estimated cost for each copy of the report~~; and~~

~~(f) the date on which the entity will deliver the final, published copies of the report to the legislature~~.

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the legislative council or the executive director shall, in writing, direct the reporting entity to provide a specific number of copies. The number of copies required is at the sole discretion of the legislative council. The legislative council or the executive director may require the reporting entity to mail the copies of the report.

(4) The legislative council may require that the report be submitted in an electronic format useable on the legislature's current computer hardware, in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of this section may not accrue to the legislative council.

(6) The executive director of the legislative council shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, mail to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b)~~, available from the legislative council~~. The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.

(8) The executive director or the legislative council shall make copies of reports requested pursuant to subsection (7) available to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative council may keep as many copies of a report as ~~he considers~~ *are* necessary~~,~~ and ~~copies of the report may be discarded at his discretion~~ *discard the rest.*

(10) ~~(a) A report to the legislature includes a report required to be made by a board, bureau, commission, committee, council, department, division, fund, authority, or officer of the state or a local government in 1-11-204, 2-4-411, 2-7-104, 2-8-112, 2-8-203, 2-8-207, 2-8-208, 2-15-2021, 2-18-209, 2-18-811, 2-18-1103, 3-1-702, 3-1-1126, 5-5-216, 5-13-304, 5-17-103, 5-18-203, 5-19-108, 10-4-102, 15-1-205, 17-4-107, 17-5-1650, 18-7-303, 19-4-201, 20-9-346, 20-25-236, 20-25-301, 22-3-107, 23-7-203, 33-22-1513, 37-1-106, 39-6-101, 39-51-407, 44-2-304, 44-13-103, 46-23-316, 53-2-1107, 53-6-110, 53-20-104, 53-21-104, 53-24-204, 53-24-210, 53-30-133, 69-1-404, 72-16-202, 75-1-203, 75-1-1101, 75-7-304, 75-10-533, 75-10-704, 76-11-203, 76-12-109, 80-7-713, 80-12-402, 82-11-161, 85-1-621, 85-2-105, 87-2-724, 87-5-123, 90-3-203, or 90-4-111.~~

~~(b)~~ The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201."

Section 2. Section 1-11-204, MCA, is amended to read:

"**1-11-204. Duties of code commissioner.** (1) Prior to November 1 immediately preceding each regular legislative session, the code commissioner shall prepare and~~, as provided in 5-11-210,~~ submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation that will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(2) The commissioner shall cause to be prepared for publication with the Montana Code Annotated the following material:

(a) the statutory history of each code section;

(b) annotations of state and federal court decisions relating to the subject matter of the code;

(c) editorial notes, cross-references, and other matter the commissioner considers desirable or advantageous;

(d) the Declaration of Independence;

(e) the Constitution of the United States of America and amendments to the constitution;

(f) acts of congress relating to the authentication of laws and records;

(g) the Organic Act of the Territory of Montana;

(h) The Enabling Act;

(i) The 1972 Constitution of the State of Montana and any amendments to the constitution;

(j) ordinances relating to federal relations and elections;

(k) rules of civil, criminal, and appellate procedure and other rules of procedure the Montana supreme court may adopt; and

(l) a complete subject index, a popular name index, and comparative disposition tables or cross-reference indexes relating sections of the Montana Code Annotated to prior compilations and session laws.

(3) After publication of the Montana Code Annotated, the code commissioner shall:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session and assign catchlines and code section numbers to each new section;

(b) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and publish a report entitled "Official Report of the Montana Code Commissioner—(year)" that indicates, in tabular or other form, all changes made during the continuous recodification, other than punctuation, spelling, and capitalization, to clearly indicate the character of each change made since the last report.

(4) From time to time, the commissioner shall confer with members of the judiciary and the state bar relative to recodification procedures."

Section 3. Section 2-4-411, MCA, is amended to read:

"**2-4-411. Report.** The committee ~~shall prepare and, as provided in 5-11-210, submit a report to the legislature and~~ may recommend amendments to the Montana Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 2-4-412 *and make other recommendations and reports as it considers advisable.*"

Section 4. Section 2-7-104, MCA, is amended to read:

"**2-7-104. Revenue ~~estimate~~ *studies* — report to governor and legislature.** The director of revenue shall ~~prepare revenue estimates of state revenue from all sources and shall continuously~~ study fiscal problems and tax structures of state and local governments and submit the studies to the governor and, as ~~provided in 5-11-210,~~ *requested,* to the legislature, *a legislative committee, or a member of the legislature.*"

Section 5. Section 2-8-208, MCA, is amended to read:

"**2-8-208. Boards or licensing functions instituted by initiative.** (1) If an initiative to establish a new licensing board or to add a new licensing responsibility to the duties of an existing licensing board is approved by the electorate, the committee shall:

(a) review the initiative to assess the degree to which it meets the criteria in 2-8-204(1);

(b) request that the petitioners provide sufficient information from practitioners or other persons to allow the committee to make an assessment as required by 2-8-204(3); and

(c) evaluate the petitioners' initiative in terms of:

(i) clarity and conciseness;

(ii) conformity to existing statutes and principles of administrative law; and

(iii) specificity of the delegation of authority to promulgate rules and set fees.

(2) The committee shall prepare ~~and, as provided in 5-11-210, submit~~ a report ~~to~~ *and make it available for* the legislature. The report must include:

(a) the committee's findings with respect to each of the criteria in 2-8-204;

(b) an estimate of the cost to the state of licensing the occupation or profession and a proposed schedule of fees that will cover the cost of the licensing program as required by 37-1-134;

(c) the committee's recommendation as to whether the initiative should be amended; and

(d) if amendments are recommended, a legislative proposal.

(3) Committee recommendations for amendments to the initiative must be incorporated in a bill introduced during the next session of the legislature."

Section 6. Section 2-15-108, MCA, is amended to read:

"**2-15-108. Gender and racial balance — report to legislature.** (1) As vacancies occur and appointments are made, all appointing authorities of all appointive boards, commissions, committees, and councils of state government shall take positive action to attain gender balance and proportional representation of minorities resident in Montana to the greatest extent possible.

(2) Pursuant to subsection (1), the secretary of state shall publish in the Montana Administrative Register on a monthly basis the recent appointments made by the executive branch and the upcoming vacancies on executive boards and commissions.

(3) ~~Prior to the 10th legislative day of each regular session, the~~ *The* governor shall report to the legislature, *as provided in 5-11-210,* on the progress made toward achieving the goals set forth in this section."

Section 7. Section 2-15-2021, MCA, is amended to read:

"**2-15-2021. Gaming advisory council — allocation — composition — compensation — biennial report.** (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office, except that three of the first-appointed original members shall serve a 1-year term, three (including both legislative members) shall serve a 2-year term, and three shall serve a 3-year term. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a ~~chairman~~ *presiding officer* from its members.

(6) Legislative members of the gaming advisory council are entitled to compensation and expenses, as provided in 5-2-302, while the council is meeting. The remaining members are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit a biennial report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified

department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The biennial report required under subsection (8)(a) must be affixed to the report on gambling in the state that the department submits that year. ~~The department and council shall, as provided in 5-11-210, submit the two most recent department and council reports to the legislature.~~

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change."

Section 8. Section 2-18-209, MCA, is amended to read:

"**2-18-209.** ~~**Status report**~~ ***Periodic evaluation.*** The department of administration shall~~, as provided in 5-11-210, report to the legislature the status of the study of the comparable worth standard and~~ *periodically evaluate* the extent to which Montana's classification plan, ~~and~~ pay schedules, *and statutes* adhere to or fall short of the standard of equal pay for comparable worth. The department ~~shall~~ *may* make recommendations to the legislature ~~as to what~~ *regarding* impediments ~~exist~~ to meeting this standard. ~~The department shall continue to make such reports until the standard is met.~~"

Section 9. Section 2-18-301, MCA, is amended to read:

"**2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and excluding employees compensated under 2-18-313, 2-18-314, and 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey. ~~report to the legislature at the start of each legislative session.~~ *The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.*

(3) Except as provided in 2-18-110 and 2-18-305(4), pay schedules provided for in 2-18-312 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the 52nd legislature.

(4) Pay levels provided for in 2-18-312 through 2-18-315 may not be increased through collective bargaining after adjournment of the 52nd legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the 52nd legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 10. Section 2-18-811, MCA, is amended to read:

"**2-18-811. General duties of the department.** The department shall:

(1) adopt rules for the conduct of its business under this part and to carry out the purposes of this part;

(2) negotiate and administer contracts for state employee group benefit plans;

(3) design state employee group benefit plans, establish specifications for bids, and make recommendations for acceptance or rejection of bids;

(4) prepare an annual report which describes the state employee group benefit plans being administered, details the historical and projected program costs and the status of reserve funds, and makes recommendations, if any, for change in existing state employee group benefit plans;

(5) prior to each legislative session, perform or obtain an analysis of rate adequacy of all state employee group benefit plans administered under this part; and

(6) ~~as provided in 5-11-210,~~ submit the report required in this section ~~to the legislature~~ *to the office of budget and program planning as a part of the information required by 17-7-111.*"

Section 11. Section 2-18-1103, MCA, is amended to read:

"**2-18-1103. Powers and duties of the department.** The department shall:

(1) adopt rules to equitably administer the employee incentive award program;

(2) provide an opportunity for all employees to participate in the program;

(3) assist agencies in making incentive awards under the program;

(4) grant or deny incentive awards in consultation with the incentive awards advisory council and determine the amount of each incentive award based on first-year monetary savings;

(5) hear appeals from employees on the operation of the program;

(6) prepare and submit, ~~as provided in 5-11-210, a biennial report to the legislature containing~~ *as a part of the information required by 17-7-111,* a list of incentive awards and the corresponding savings to the state resulting from each employee's suggestion or invention and providing a general review of and recommendations for improving the program; and

(7) send a copy of all suggestions or inventions submitted under this program to the office of the legislative fiscal analyst."

Section 12. Section 3-1-702, MCA, is amended to read:

"**3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature ~~pursuant to 5-11-210~~ *on request*;

(3) recommend to the supreme court improvements in the judiciary;

(4) administer state funding for district courts as provided in chapter 5, part 9; and

(5) perform ~~such~~ other duties ~~as~~ *that* the supreme court may assign."

Section 13. Section 5-7-207, MCA, is amended to read:

"**5-7-207. Report to legislature.** Beginning with the first Tuesday following the beginning of any regular or special session of the legislature and on the first Tuesday of every month thereafter during which the legislature is in session, the commissioner shall *make available* from ~~his~~ *the commissioner's* records *a* report to each member of each house of the legislature *containing* the names of lobbyists registered under this chapter, not previously reported, the names of the principals whom they represent as lobbyists, and the subjects of legislation in which each principal is interested."

Section 14. Section 5-13-304, MCA, is amended to read:

"**5-13-304. Powers and duties.** The legislative auditor shall:

(1) conduct a financial and compliance audit of every state agency every 2 years covering the 2-year period since the last audit, unless otherwise required by state law;

(2) conduct a special audit whenever ~~he~~ *the legislative auditor* determines it necessary and shall so advise the members of the legislative audit committee;

(3) make a complete written report of each audit. A copy of each report ~~shall~~ *must* be furnished to the department of administration, the state agency which was audited, each member of the committee, and the legislative council.

(4) report immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general with all information ~~in his possession~~ *available* relative to the violation;

(5) report immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(6) report immediately to the surety upon the bond of an official or employee when an audit discloses a shortage in the accounts of the official or employee. Failure to notify the surety does not release the surety from any obligation under the bond.

~~(7) report to the legislature as provided in 5-11-210. The report shall contain, among other things, copies of or summaries of audit reports on state agencies and any recommendations relating to such reports.~~

~~(8)~~*(7)* have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency ~~must~~ *shall* obtain the written consent of the grantee to the audit provided for in this subsection."

Section 15. Section 5-17-103, MCA, is amended to read:

"**5-17-103. Report to legislature.** The committee ~~shall~~ *may* prepare a written report of its activities and recommendations and present the report to the legislature as provided in 5-11-210 for the purpose of assisting the legislature in determining if ~~such~~ *the* recommendations should be implemented. To prepare its report and recommendations, the committee may receive assistance from the legislative council."

Section 16. Section 10-4-102, MCA, is amended to read:

"**10-4-102. Department of administration duties and powers.** (1) The department shall assist in the development of 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from minimum 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning an emergency 9-1-1 telephone system;

(c) establish criteria for evaluating plans;

(d) monitor implementation of approved plans for compliance with the plan and use of funding; and

(e) ~~as provided in 5-11-210,~~ *as it finds necessary,* report to the legislature the progress made in implementing a statewide emergency telephone system.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the

9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's departments, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council."

Section 17. Section 13-37-120, MCA, is amended to read:

"**13-37-120. Reports.** ~~The commissioner shall at the close of each fiscal year report to the legislature and the governor concerning the action he has taken, including the names, salaries, and duties of all individuals in his employ and the money he has disbursed.~~ The commissioner ~~shall also make further reports~~ *may report as necessary* on the matters within ~~his~~ *the commissioner's* jurisdiction that the legislature may prescribe and shall also make recommendations for further legislation that may appear desirable."

Section 18. Section 15-1-205, MCA, is amended to read:

"**15-1-205. Biennial report — contents.** (1) The department shall transmit to the governor 20 days before the meeting of the legislature and~~, as provided in 5-11-210, submit~~ *make available* to the legislature a report of the department showing all the taxable property of the state, counties, and cities and its value, in tabulated form, with recommendations for improvements in the system of taxation, together with alternative measures as may be formulated for the consideration of the legislature. *The department shall follow the provisions of 5-11-210 in preparing the report.*

(2) The report or supplements to the report may also include:

(a) the gross dollar amount of revenue loss attributable to:

(i) personal income and corporation license tax exemptions;

(ii) property tax exemptions for which application to the department or its agent is necessary;

(iii) deferral of income;

(iv) credits allowed against Montana personal income tax or Montana corporation license tax, reported separately;

(v) deductions from income; and

(vi) any other identifiable preferential treatment of income or property;

(b) any change in tax revenue of the state or any unit of local government attributable to a change in federal tax law; and

(c) any change in the revenue of any unit of local government attributable to a change in state tax law.

(3) The data described in subsection (2), if reported, must be related to the income and age of the taxpayer whenever ~~such~~ *the* information is available.

(4) (a) When reporting the data described in subsection (2)(a), the department shall identify any known purpose of the preferential treatment.

(b) Based upon the purpose of the preferential treatment, the department shall outline the available data necessary to determine the effectiveness of the preferential treatment.

(5) In reporting the data described in subsection (2), the department shall report any comparable data, if available, from Wyoming, Idaho, North Dakota, and South Dakota and from any other state the department may choose.

(6) The department must identify in a separate section of the report any changes that have been made or that are contemplated in property appraisal or assessment.

(7) The department may include a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(8) The department shall include the inheritance tax information required by 72-16-202 in a separate section of the report."

Section 19. Section 17-4-107, MCA, is amended to read:

"**17-4-107. Write-off procedures.** (1) The state auditor may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies ~~which~~ *that* have been transferred to ~~him~~ *the state auditor's office* pursuant to 17-4-104 and ~~which~~ *that* are uncollectible or the continued pursuance of the collection ~~thereof~~ *of accounts* would cost the state more than the amount collected. ~~Such~~ *The* procedures ~~shall~~ *must* be established in accordance with subsection (2).

(2) The department of administration may establish procedures for canceling and writing off accounts receivable carried on the books of various state agencies which are uncollectible or the continued pursuance of the collection would cost the state more than the amount collected. ~~Such~~ *The* procedures ~~shall~~ *must* include the reporting~~, as provided in 5-11-210,~~ *to the budget director* of any canceling and writing off of accounts receivable."

Section 20. Section 17-5-1650, MCA, is amended to read:

"**17-5-1650. Annual report.** By December 31 of each year, the board shall publish a financial report for distribution to the governor, the legislature ~~as provided in 5-11-210~~, and the public. *Distribution to the legislature is accomplished by providing two copies to the office of the legislative fiscal analyst, two copies to the legislative council, and a copy to a legislator on request.* The report must include a statement of the board's current financial position with respect to its activities under this part, a summary of its activities pursuant to this part during the previous year (including a listing of the local governmental securities purchased by the board, a listing of the bonds and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under this part), an estimate of the levels of ~~such~~ activities for the next year, and a comparison of ~~such~~ *the* activities during the previous year with the estimates of those activities that were made in the previous annual report."

Section 21. Section 17-6-305, MCA, is amended to read:

"**17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy — report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall *include a* report ~~biennially to the legislature~~ on the investments made under this section *as a part of the information required by 17-7-111.*"

Section 22. Section 17-7-123, MCA, is amended to read:

"**17-7-123. Form of executive budget.** The budget submitted ~~shall~~ *must* set forth a balanced financial plan for the state government for each fiscal year of the ensuing biennium, which plan ~~shall~~ *must* consist of:

(1) a consolidated budget summary setting forth the aggregate figures of the budget in ~~such~~ *a* manner ~~as to~~ *that shows* ~~show~~ a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary ~~shall~~ *must* be supported by explanatory schedules or statements, classifying receipts and disbursements contained therein by fund and, ~~where~~ *when* applicable, organizational unit;

(2) an analysis of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(3) a detailed analysis of receipts by accounting entity within fund indicating classification and source of funds;

(4) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information presented ~~shall~~ *must* include the following:

(a) a ~~statement~~ *summary* of departmental goals and objectives and a statement of goals and objectives for each program of the department;

(b) *actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and* the current funding level and the modified funding level, if any, for each department and each program of the department~~. The funding levels must show the number of employees who were given a pay grade change under the pay schedule adopted pursuant to 2-18-303 and the net cost to the agency for such grade changes for the biennium. The changes must be listed in tabular form by:~~

~~(i) position description;~~

~~(ii) grade assigned prior to the completed fiscal year;~~

~~(iii) grade assigned during the completed fiscal year;~~

~~(iv) grade assigned during the current fiscal year;~~

~~(v) recommended grade for the ensuing biennium;~~

~~(vi) dollar difference for the upgrade or downgrade for each position; and~~

~~(vii) net cost to the agency for grade changes;~~

~~(c) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by program;~~

~~(d) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and governor's recommendations for the ensuing biennium by disbursement category~~; and

~~(e)~~*(c)* a statement containing ~~further~~ recommendations of the governor *for the ensuing biennium by program and disbursement category and other matters considered* ~~should he deem it~~ necessary; *and*

(5) detailed recommendations for the state long-range building program. Each recommendation ~~shall~~ *must* be presented by department, institution, agency, or branch by funding source, with a description of each proposed project. An appropriation measure ~~shall~~ *must* be presented by project, source of funding, and department, agency, institution, or branch for which the project is primarily intended.

~~(6) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions thereto by department, institution, or agency of the state.~~"

Section 23. **Additional budget data.** In addition to the budget required in 17-7-123, the governor shall prepare and make available on request:

(1) a departmental analysis summarizing past and proposed spending plans by agency and the means of financing the proposed plan. Information available must include the following:

(a) a statement of departmental goals and objectives and a statement of goals and objectives for each program of the department; and

(b) schedules showing the number of employees who were given a pay grade change under the pay schedule implemented pursuant to 2-18-303 and the net cost to the agency for the grade changes for the biennium. The changes must be listed in tabular form by:

(i) position description;

(ii) grade assigned prior to the completed fiscal year;

(iii) grade assigned during the completed fiscal year;

(iv) grade assigned during the current fiscal year;

(v) recommended grade for the ensuing biennium;

(vi) dollar difference for the upgrade or downgrade for each position; and

(vii) net cost to the agency for grade changes.

(2) appropriation measures detailed by program, fund, and accounting entity, authorizing disbursements and related restrictions by department, institution, or agency of the state; and

(3) information submitted by agencies as required by 17-7-111.

Section 24. Section 18-7-303, MCA, is amended to read:

"**18-7-303. Duties of committee.** The committee shall:

(1) adopt standards for the efficient and economical publication of public documents;

(2) review proposals for publishing of all public documents prior to publication to determine:

(a) that the publication is necessary; and

(b) that the publication meets the standards of efficient and economical publication; and

(3) *at its discretion,* prepare a report for submission to the legislature~~, as provided in 5-11-210~~, detailing the savings to state government resulting from this part."

Section 25. Section 19-4-201, MCA, is amended to read:

"**19-4-201. Administration by retirement board.** The retirement board shall administer and operate the retirement system within the limitations prescribed by this chapter, and to this end, it is the duty of the retirement board to:

(1) establish rules necessary for the proper administration and operation of the retirement system;

(2) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(3) keep a record of all its proceedings, which must be open to public inspection;

(4) ~~publish a biennial report by January 1 of each year the legislature meets which reports in detail~~ *submit a report to the office of budget and program planning as a part of the information required by 17-7-111, detailing* the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system ~~and submit the biennial report to the governor and, as provided in 5-11-210, to the legislature~~;

(5) keep in convenient form that data which is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(6) prepare an annual valuation of the assets and liabilities of the retirement system;

(7) prescribe a form for membership application which will provide adequate and necessary information for the proper operation of the retirement system;

(8) annually determine the rate of regular interest as prescribed in 19-4-501;

(9) establish and maintain the funds of the retirement system in accordance with the provisions of part 6 of this chapter; and

(10) perform ~~such~~ other duties and functions as are required to properly administer and operate the retirement system."

Section 26. Section 20-9-346, MCA, is amended to read:

"**20-9-346. Duties of the superintendent of public instruction for state equalization aid distribution.** The superintendent of public instruction shall administer the distribution of the state equalization aid by:

(1) establishing the annual entitlement of each district and county to state equalization aid, based on the data reported in the retirement and general fund budgets for each district that have been duly adopted for the current school fiscal year and verified by the superintendent of public instruction and by applying the verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347;

(2) distributing by state warrant or electronic transfer the state equalization aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county or county where the district is located, in accordance with the distribution ordered by the board of public education;

(3) keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for state equalization aid of the districts of the state;

(4) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(5) reporting to the ~~legislature as provided in 5-11-210~~ *office of budget and program planning as provided in 17-7-111*:

(a) the figures and data available concerning distributions of state equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization."

Section 27. Section 20-25-236, MCA, is amended to read:

"**20-25-236. Report to legislature.** The Montana agricultural experiment station and the cooperative extension service ~~shall~~ *may*, as provided in 5-11-210, report to the legislature regarding the expenditures, activities, and outcomes of the program provided for in 20-25-233 through 20-25-236."

Section 28. Section 20-25-301, MCA, is amended to read:

"**20-25-301. Regents' powers and duties.** The board of regents of higher education shall serve as regents of the Montana university system, shall use and adopt this style in all its dealings ~~therewith~~ *with the university system*, and shall:

(1) have general control and supervision of the units of the Montana university system, which ~~shall be~~ *is* considered for all purposes one university;

(2) adopt rules, not inconsistent with the constitution and the laws of the state, for its own government which are proper and necessary for the execution of the powers and duties conferred upon it by law;

(3) provide, subject to the laws of the state, rules for the government of the system;

(4) grant diplomas and degrees to the graduates of the system upon the recommendation of the faculties and have discretion to confer honorary degrees upon persons other than graduates upon the recommendation of the faculty of ~~such~~ *the* institutions;

(5) keep a record of its proceedings;

(6) have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the system;

(7) receive from the board of land commissioners, other boards, persons, or from the government of the United States all funds, incomes, and other property the system may be entitled to and use and appropriate the property for the specific purpose of the grant or donation;

(8) have general control of all receipts and disbursements of the system;

(9) appoint a president and faculty for each of the institutions of the system, appoint any other necessary officers, agents, and employees, and fix their compensation;

(10) confer upon the executive board of each of the units of the system ~~such~~ authority ~~as~~ *that* may be ~~deemed~~ *considered* expedient relating to immediate control and management, other than authority relating to financial matters or the selection of the teachers, employees, and faculty;

(11) confer, at the regents' discretion, upon the president and faculty of each of the units of the system for the best interest of the unit ~~such~~ authority relating

to the immediate control and management, other than financial, and the selection of teachers and employees;

(12) prevent unnecessary duplication of courses at the units of the system;

(13) appoint a certified professional geologist or registered mining engineer as the director of the Montana state bureau of mines and geology, who ~~shall be designated~~ *is* the state geologist, and appoint any other necessary assistants and employees and fix their compensation. ~~The regents shall prepare and, as provided in 5-11-210, submit a report to each regular session of the legislature showing the progress and condition of the bureau, including any other necessary or required information.~~

(14) supervise and control the agricultural experiment station, along with any executive or subordinate board or authority which may be appointed by the governor with the advice and consent of the regents;

(15) adopt a seal bearing on its face the words "Montana university system", which must be affixed to all diplomas and all other papers, instruments, or documents which may require it;

(16) assure an adequate level of security for data and information technology resources, as defined in 2-15-102, within the state university system. In carrying out this responsibility, the board of regents shall, at a minimum, address the responsibilities prescribed in 2-15-114."

Section 29. Section 33-22-1513, MCA, is amended to read:

"**33-22-1513. Operation of association plan.** (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(3) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan or be allocated to reduce association plan premiums.

(4) (a) Each participating member of the association shall share the losses due to claims expenses of the association plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs. Claims expenses of the association plan that exceed the premium payments allocated to the payment of benefits are the liability of the association members. Association members shall share in the claims expenses of the association plan and operating and administrative expenses of the association in an amount equal to the ratio of the association member's total disability insurance premium received from or on behalf of Montana residents divided by the total disability insurance premium received by all association members from or on behalf of Montana residents as determined by the commissioner.

(b) For purposes of this subsection (4), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, or life insurance.

(5) The association shall make an annual determination of each association member's liability, if any, and may make an annual fiscal yearend assessment if necessary. The association may also, subject to the approval of the commissioner, provide for interim assessments against the association members as may be necessary to assure the financial capability of the association in meeting the incurred or estimated claims expenses of the association plan and operating and administrative expenses of the association until the association's next annual fiscal yearend assessment. Payment of an assessment is due within 30 days of receipt by an association member of a written notice of a fiscal yearend or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days is grounds for termination of membership. An association member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year during which disability insurance business ceased. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(6) Any annual fiscal yearend or interim assessment levied against an association member may be offset, in an amount equal to the assessment paid to the association, against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual fiscal yearend or interim assessment is levied. The insurance commissioner shall~~, as provided in 5-11-210, report to the legislature~~ *report to the office of budget and program planning, as a part of the information required by 17-7-111,* the total amount of premium tax offset claimed by association members during the preceding biennium."

Section 30. Section 37-1-106, MCA, is amended to read:

"**37-1-106. Biennial report ~~to governor and legislature~~.** The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant. The department shall ~~provide a copy of~~ *submit* the report to ~~the governor and, as provided in 5-11-210, to the legislature~~ *the office of budget and program planning as a part of the information required by 17-7-111.*"

Section 31. Section 44-2-304, MCA, is amended to read:

"**44-2-304. Report by attorney general.** The attorney general shall ~~prepare~~ *submit, as a part of the information required by 17-7-111,* a report in detail covering the operations of the communications network, the accounting of all ~~moneys~~ *money* received and expended, and the need to expand or improve the system. ~~As provided in 5-11-210, he shall submit the report to the legislature.~~"

Section 32. Section 44-12-206, MCA, is amended to read:

"**44-12-206. Disposition of proceeds of sale** — ***report.*** (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(c) through (1)(e);

(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(d) and (1)(e);

(d) if the property was seized by an employee of the state, the remainder, if any, to the account established in subsection (3), except as provided in subsection (1)(e); and

(e) if the property was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation, as determined by the attorney general.

(2) All proceeds from any source that are deposited into a county, city, or town drug forfeiture account must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug laws enforcement and education concerning drugs.

(3) Net proceeds received by the state under subsections (1)(d) and (1)(e) must be deposited in an account in the state special revenue fund to the credit of the department of justice. The department may expend the money in the account only for purposes of enforcement of drug laws. An amount up to $125,000 each year is statutorily appropriated, as provided in 17-7-502, to the attorney general for enforcement of drug laws. Any expenditure in excess of $125,000 each fiscal year requires approval through budget amendment, as provided in Title 17, chapter 7, part 4.

(4) The attorney general shall provide the ~~legislature~~ *legislative finance committee and the legislative auditor* with a detailed, written report of the amounts and property credited to the account no later than 4 months after the end of each fiscal year. The attorney general may not disclose any information that would compromise any investigation or prosecution."

Section 33. Section 44-13-103, MCA, is amended to read:

"**44-13-103. Limitations on use of special law enforcement assistance account** — ***report.*** (1) After property is credited to the account, the attorney general may:

(a) transfer the property to any local or state law enforcement agency to be used for criminal investigation purposes;

(b) sell the property by public sale;

(c) destroy any illegal or controlled substances and sell or destroy raw materials, products, and equipment used or intended for use in manufacturing, compounding, or processing a controlled substance;

(d) compromise and pay claims against the property; and

(e) make any other disposition of the property authorized by law.

(2) Money and proceeds from property credited to the account may be used by the attorney general for:

(a) the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell seized, detained, or forfeited property, including but not limited to payment for contract services and reimbursement to a federal, state, or local agency for its expenses;

(b) the payment of awards for information or assistance leading to a criminal proceeding or a civil forfeiture proceeding;

(c) the compromise and payment of claims against property;

(d) the payment of sums for criminal investigation purposes, including but not limited to:

(i) payment of informants;

(ii) use by undercover agents to purchase unlawful substances, including, without limitation, counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;

(iii) use by undercover agents as gambling front money; and

(iv) payment of overtime to state or local law enforcement officers when engaged in special criminal investigations;

(e) the payment of funds into the account created by 53-9-109; and

(f) matching federal grants for criminal investigation purposes.

(3) The attorney general shall~~, as provided in 5-11-210,~~ submit to the ~~legislature~~ *legislative finance committee and the legislative auditor* a detailed written report of the amounts and property credited to the account and of the disposition of money and property credited to the account, but may not make any disclosure that would compromise any investigation or prosecution."

Section 34. Section 53-2-1107, MCA, is amended to read:

"**53-2-1107. Job training plan — requirements.** (1) Each private industry council shall prepare for the service delivery area a job training plan that has been prepared in accordance with this part and sections 103 through 105 of the Job Training Partnership Act (29 U.S.C. 1513 through 1515).

(2) Each job training plan must include:

(a) the council's priorities for services and groups to be served within the service delivery area;

(b) procedures to be used in identifying and selecting program participants and in determining and verifying their eligibility;

(c) the type of services and training to be provided, including the estimated cost per participant;

(d) criteria for evaluating the content and quality of services and training;

(e) performance standards as required under 53-2-1108;

(f) procedures for selecting service providers as required under section 107 of the Job Training Partnership Act (29 U.S.C. 1517);

(g) a plan for the coordination of services and training with other programs as required in 53-2-1109;

(h) a procedure for preparing and submitting to the governor ~~and, as provided in 5-11-210 if practical, the legislature~~ an annual report that describes the activities conducted in the service delivery area during the program year and the extent to which activities exceeded or failed to meet the performance standards adopted in the job training plan; and

(i) all other information required under section 104 of the Job Training Partnership Act (29 U.S.C. 1514)."

Section 35. Section 53-6-110, MCA, is amended to read:

"**53-6-110. Report and recommendations ~~to legislature~~ on medicaid funding.** (1) ~~At the commencement of each legislative session~~ *As a part of the information required in 17-7-111,* the department of social and rehabilitation services shall submit a report~~, as provided in 5-11-210, to the legislature~~ concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections ~~shall~~ *must* identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) As an integral part of the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of health and environmental sciences.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services."

Section 36. Section 53-20-104, MCA, is amended to read:

"**53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board of inquiry and review to ensure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to a residential facility to ensure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services. An experimental research project involving persons admitted to a residential facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility that is providing a course of residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the facility.

(5) The board shall inspect the file of each person admitted to a residential facility pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist a resident at a residential facility in resolving any grievance ~~he~~ *the resident* may have concerning ~~his~~ *the resident's* admission or ~~his~~ course of treatment and habilitation in the facility.

(7) If the board believes that a facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the superintendent of the facility and the director of the department of corrections and human services. If appropriate, after waiting a reasonable time for a response from the superintendent or the director, the board may notify the parents or guardian of the

resident involved, the next of kin, if known, the responsible person appointed by the court for the resident involved, and the district court that has jurisdiction over the facility.

(8) The board shall report annually to the governor ~~and shall, as provided in 5-11-210, report to the legislature~~ concerning the status of the residential facilities and habilitation programs that it has inspected."

Section 37. Section 53-21-104, MCA, is amended to read:

"**53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board ~~shall be~~ *is* an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. ~~No~~ *An* experimental research project involving persons admitted to a mental health facility affected by this part may *not* be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health facility in resolving any grievance ~~he~~ *the patient* may have concerning ~~his~~ *the patient's* commitment or ~~his~~ course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility ~~shall be~~ *is* to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine ~~his~~ *the patient's* files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after

waiting a reasonable time for a response from ~~such~~ *the* professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor ~~and shall, as provided in 5-11-210, report to the legislature~~ concerning the status of the mental health facilities and treatment programs which it has inspected."

Section 38. Section 53-24-204, MCA, is amended to read:

"**53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium~~.~~*;* ~~These updates or any part thereof may be included in the department's report to the legislature required in 53-24-210.~~

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to chemically dependent persons;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of:

(i) chemical dependency counselors; and

(ii) instructors providing chemical dependency educational courses;

(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(i) cooperate with the board of pardons in establishing and conducting programs to provide treatment for chemically dependent and intoxicated persons in or on parole from penal institutions;

(j) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses; and

(k) assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency."

Section 39. Section 53-30-133, MCA, is amended to read:

"**53-30-133. Administration of prison industries training program.** (1) (a) The prison industries training program need not be a self-supporting program. The department of corrections and human services may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates. All revenue raised through the program may be used only for the program.

(b) State agencies, local governments, school districts, authorities, and other local government entities are encouraged to explore the possibilities of using the prison industries training program. State agencies shall cooperate with the department of corrections and human services in notifying governmental entities within the state of the program and of the services and products that are available.

(2) (a) The department of corrections and human services shall adopt rules implementing this program ~~and shall, as provided in 5-11-210, report to the legislature its continuing plans and recommendations in implementing this program~~. Any price lists established by the department are exempt from the provisions of Title 2, chapter 4 (the Montana Administrative Procedure Act), but the department may, if it considers it an effective method of dissemination, publish ~~such~~ *the* price lists in the Montana Administrative Register or the Administrative Rules of Montana, or both.

(b) The department of corrections and human services is subject to program audits of the prison industries training program by the legislative auditor."

Section 40. Section 72-16-202, MCA, is amended to read:

"**72-16-202. Report to governor and legislature.** The department of revenue shall biennially report ~~to the governor and, as provided in 5-11-210, to the legislature~~ the general result of its labors and investigations in inheritance tax matters during the previous biennial period, together with specific reports of the several counties where the administration of the inheritance tax laws has been lax and unsatisfactory, with ~~such~~ recommendations for action by the legislature as the department considers advisable and proper. *The report required in this section must be consolidated with and made a part of the biennial report submitted by the department of revenue under 15-1-205.*"

Section 41. Section 75-1-203, MCA, is amended to read:

"**75-1-203. Fee schedule — maximums.** (1) In prescribing fees to be assessed against applicants for a lease, permit, contract, license, or certificate as specified in 75-1-202, an agency may adopt a fee schedule which may be adjusted depending upon the size and complexity of the proposed project. ~~No~~ *A* fee may *not* be assessed unless the application for a lease, permit, contract, license, or certificate will result in the agency incurring expenses in excess of $2,500 to compile an environmental impact statement.

(2) The maximum fee that may be imposed by an agency ~~shall~~ *may* not exceed 2% of any estimated cost up to $1 million, plus 1% of any estimated cost over $1 million and up to $20 million, plus 1/2 of 1% of any estimated cost over $20 million and up to $100 million, plus 1/4 of 1% of any estimated cost over $100 million and up to $300 million, plus 1/8 of 1% of any estimated cost in excess of $300 million.

(3) If an application consists of two or more facilities, the filing fee ~~shall~~ *must* be based on the total estimated cost of the combined facilities. The estimated cost ~~shall~~ *must* be determined by the agency and the applicant at the time the application is filed.

(4) Each agency shall review and revise its rules imposing fees as authorized by this part at least every 2 years. ~~Furthermore, each agency shall, pursuant to 5-11-210, provide the legislature with a complete report on the fees collected prior to the time that a request for an appropriation is made to the legislature.~~"

Section 42. Section 75-1-324, MCA, is amended to read:

"**75-1-324. Duties of executive director and staff.** It shall be the duty and function of the executive director and ~~his~~ *the* staff to:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to such conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy and make recommendations to the governor and the legislature with respect thereto;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields where legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan; *and*

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among such activities and with a general ecologic perspective, and suggest legislation to remedy such situations~~;~~.

~~(10) annually, beginning July 1, 1972, transmit to the governor and the legislature and make available to the general public an environmental quality report concerning the state of the environment, which shall contain:~~

~~(a) the status and condition of the major natural, manmade, or altered environmental classes of the state, including but not limited to the air, the aquatic (including surface water and ground water) and the terrestrial environments, including but not limited to the forest, dryland, wetland, range, urban, suburban, and rural environments;~~

~~(b) the adequacy of available natural resources for fulfilling human and economic requirements of the state in the light of expected population pressures;~~

~~(c) current and foreseeable trends in the quality, management, and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the state in the light of expected population pressures;~~

~~(d) a review of the programs and activities (including regulatory activities) of the state and local governments and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development, and utilization of natural resources; and~~

~~(e) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.~~"

Section 43. Section 75-1-1101, MCA, is amended to read:

"**75-1-1101. Environmental contingency account objectives.** (1) There is created an environmental contingency account within the state special revenue fund established in 17-2-102. The environmental contingency account is controlled by the governor.

(2) At the beginning of each biennium, $175,000 must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund with the following exceptions:

(a) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account equals or exceeds $750,000, no allocation will be made; and

(b) if at the beginning of any biennium the unobligated cash balance in the environmental contingency account is less than $750,000, then an amount less than or equal to the difference between the unobligated cash balance and $750,000, but not to exceed $175,000, must be allocated to the environmental contingency account from the interest income of the resource indemnity trust fund.

(3) Funds are statutorily appropriated, as provided in 17-7-502, from the environmental contingency account upon the authorization of the governor to meet unanticipated public needs consistent with the following objectives:

(a) to support water development projects in communities that face an emergency or imminent need for ~~such~~ *the* services or to prevent the physical failure of a water project;

(b) to preserve vegetation, water, soil, fish, wildlife, or other renewable resources from an imminent physical threat or during an emergency, not including:

(i) natural disasters adequately covered by other funding sources; or

(ii) fire;

(c) to respond to an emergency or imminent threat to persons, property, or the environment caused by mineral development; and

(d) to fund the environmental quality protection fund provided for in 75-10-704 or to take other necessary actions, including the construction of facilities, to respond to actual or potential threats to persons, property, or the environment caused by hazardous wastes or other hazardous materials.

(4) Interest from funds in the environmental contingency account accrues to the resource indemnity trust interest account.

(5) The governor shall~~, as provided in 5-11-210, submit to the legislature~~ *submit, as a part of the information required by 17-7-111,* a complete financial report on the environmental contingency account, including a description of all expenditures made since the preceding report."

Section 44. Section 75-10-533, MCA, is amended to read:

"**75-10-533. Department to report fees ~~to legislature~~.** The department shall~~, as provided in 5-11-210,~~ report to ~~each legislature~~ *the office of budget and program planning, as a part of the information required by 17-7-111,* the amount collected under this part and 61-3-508 and the cost of administration of this part, except 75-10-520, to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected."

Section 45. Section 75-10-704, MCA, is amended to read:

"**75-10-704. Environmental quality protection fund.** (1) There is ~~created~~ in the state special revenue fund an environmental quality protection fund to be administered as a revolving fund by the department. The department is authorized to expend amounts from the fund necessary to carry out the purposes of this part.

(2) The fund may be used by the department only to carry out the provisions of this part and for remedial actions taken by the department pursuant to this part in response to a release of hazardous or deleterious substances.

(3) The department shall:

(a) establish and implement a system for prioritizing sites for remedial action based on potential effects on human health and the environment; and

(b) investigate, negotiate, and take legal action, as appropriate, to identify liable persons, to obtain the participation and financial contribution of liable persons for the remedial action, to achieve remedial action, and to recover costs and damages incurred by the state.

(4) There must be deposited in the fund:

(a) all penalties, forfeited financial assurance, natural resource damages, and remedial action costs recovered pursuant to 75-10-715;

(b) all administrative penalties assessed pursuant to 75-10-714 and all civil penalties assessed pursuant to 75-10-711(5);

(c) funds appropriated to the fund by the legislature; and

(d) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202.

(5) Whenever a legislative appropriation is insufficient to carry out the provisions of this part and additional money remains in the fund, the department shall seek additional authority to spend money from the fund through the budget amendment process provided for in Title 17, chapter 7, part 4.

(6) Whenever the amount of money in the fund is insufficient to carry out remedial action, the department may apply to the governor for a grant from the environmental contingency account established pursuant to 75-1-1101.

~~(7) The department shall, as provided in 5-11-210, submit to the legislature a complete financial report on the fund, including a description of all expenditures made since the preceding report.~~"

Section 46. Section 76-11-203, MCA, is amended to read:

"**76-11-203. Direction to state agencies.** (1) The department of natural resources and conservation shall develop a plan for completing the soil survey and mapping program in cooperation with and according to the standards set forth by the national cooperative soil survey program and the Montana state agricultural experiment station.

(2) The soil survey plan ~~shall~~ *must* identify all projected local participation, all funds available from state and federal agencies, including planning grants, and any and all additional equipment, personnel, facilities, supplies, maps and ~~such~~ other material necessary to complete the soil survey and mapping program.

(3) The soil survey plan ~~shall~~ *must* determine geographic areas without modern soil survey information and ~~shall~~ *must* establish in cooperation with the

national cooperative soil survey program priorities for completing soil surveys based upon the needs of the geographic areas.

(4) The department of natural resources and conservation shall oversee the plan for completing the soil survey and mapping program and shall report annually on its progress to the governor not later than January 1 of each year ~~and, as provided in 5-11-210, to the legislature.~~"

Section 47. Section 76-12-109, MCA, is amended to read:

"**76-12-109. Report to legislature.** The board ~~shall~~ *may*, as provided in 5-11-210, submit to each legislature a report on its designation and acquisition activities."

Section 48. Section 82-11-161, MCA, is amended to read:

"**82-11-161. Oil and gas production damage mitigation account — statutory appropriation.** (1) There is an oil and gas production damage mitigation account within the state special revenue fund established in 17-2-102. The oil and gas production damage mitigation account is controlled by the board.

(2) ~~On July 1, 1991, and at~~ *At* the beginning of each ~~succeeding~~ biennium, there must be allocated to the oil and gas production damage mitigation account $50,000 from the interest income of the resource indemnity trust fund, except if at the beginning of a biennium the unobligated cash balance in the oil and gas production damage mitigation account:

(a) equals or exceeds $200,000, no allocation will be made; or

(b) is less than $200,000, then an amount less than or equal to the difference between the unobligated cash balance and $200,000, but not more than $50,000, must be allocated to the oil and gas production damage mitigation account from the interest income of the resource indemnity trust fund.

(3) In addition to the allocation provided in subsection (2), there must be deposited in the oil and gas production damage mitigation account:

(a) all funds received by the board pursuant to 82-11-136; and

(b) all fees received by the board from owners of producing wells pursuant to 82-11-162.

(4) If a sufficient balance exists in the account, funds are statutorily appropriated, as provided in 17-7-502, from the oil and gas production damage mitigation account, upon the authorization of the board, to pay the reasonable costs of properly plugging a well and either reclaiming or restoring, or both, a drill site or other drilling or producing area damaged by oil and gas operations if the board determines that the well, sump, hole, drill site, or drilling or producing area has been abandoned and the responsible person cannot be identified or located or if the responsible person fails or refuses to properly plug, reclaim, or restore the well, drill site, or drilling or producing area within a reasonable time after demand by the board. The responsible person shall, however, pay costs to the extent of ~~his~~ *that person's* available resources and is subsequently liable to fully reimburse the account or is subject to a lien on property as provided in 82-11-164 for costs expended from the account to

properly plug, reclaim, or restore the well, drill site, or drilling or producing area and to mitigate any damage for which ~~he~~ *the person* is responsible.

(5) Interest from funds in the oil and gas production damage mitigation account accrues to that account.

~~(6) The board shall, as provided in 5-11-210, submit to the legislature a complete financial report on the oil and gas production damage mitigation account, including a description of all expenditures made since the preceding report.~~"

Section 49. Section 85-1-621, MCA, is amended to read:

"**85-1-621. Report ~~to the legislature~~.** The department shall prepare a biennial report ~~to the legislature~~ describing the status of the water development program. The report must describe ongoing projects and activities and those which have been completed during the biennium. The report must identify and rank in order of priority the projects for which the department desires to seek congressional authorization and funding and the efforts the department will undertake in attempting to secure such authorization and funding. The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report shall be submitted ~~to the president of the senate and the speaker of the house,~~ to ~~the members of~~ the water policy committee established in 85-2-105~~, and, as provided in 5-11-210, to the legislature~~."

Section 50. Section 87-2-722, MCA, is amended to read:

"**87-2-722. Auction of mountain sheep license.** (1) The commission may issue one male mountain sheep license each year through a competitive auction. The commission shall promulgate rules for the use of the license and conduct of the auction. A wildlife conservation organization involved in the conservation of mountain sheep may be authorized by the commission to conduct the license auction, in which case the authorized organization may retain proceeds of the sale, not to exceed 10%, to cover reasonable auction expenses.

(2) All proceeds remaining from the auction, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of mountain sheep. The proceeds from the auction must be used in addition to any other funds the department uses for the management of mountain sheep. The department shall report ~~to each legislature concerning~~ the use or investment of auction proceeds *to the office of budget and program planning as a part of the information required by 17-7-111.*"

Section 51. Section 87-2-724, MCA, is amended to read:

"**87-2-724. Auction of Shiras moose license.** (1) The commission may issue one male Shiras moose license each year through a competitive auction. The commission shall promulgate rules for the use of the license and conduct of the auction. A wildlife conservation organization involved in the conservation of moose may be authorized by the commission to conduct the license auction, in which case the authorized organization may retain up to 10% of the proceeds of the sale to cover reasonable auction expenses.

(2) All proceeds remaining from the auction, whether conducted by the commission or as otherwise authorized by the commission, must be used by the department for the substantial benefit of moose. The proceeds from the auction must be used in addition to any other funds the department uses for the management of moose. ~~The department shall, as provided in 5-11-210, report to each legislature concerning the use or investment of auction proceeds.~~"

Section 52. Section 90-3-203, MCA, is amended to read:

"**90-3-203. Powers and duties of board.** The board shall:

(1) make loans in science and technology development projects pursuant to the provisions of this act in the following areas that have potential to stimulate economic development in Montana:

(a) research capability development;

(b) applied technology research;

(c) technology transfer and assistance; and

(d) startup capital or expansion capital projects for development and commercialization of innovative products and processes;

(2) accept grants or receive devises of money or property to be used in Montana for loans made pursuant to this chapter; and

(3) submit to the governor by January 1 of each odd-numbered year or *when otherwise requested by the governor* ~~at his request and, as provided in 5-11-210, to the legislature~~ a report describing the board's programs and accomplishments."

Section 53. Section 90-4-606, MCA, is amended to read:

"**90-4-606.** ~~**Submission to the legislature**~~ ***Program report and recommendations.*** ~~During the first week of the regular legislative session, the~~ *The* governor shall submit ~~to the legislature for its approval~~ the proposed projects to be funded by the energy conservation program for the next biennium *as a part of the budget required by 17-7-123.* ~~In his recommendation, the~~ *The* governor shall ~~include~~ *make available, as provided by [section 23]*:

(1) the report prepared by the department;

(2) a description of the improvements to be financed;

(3) the estimated cost of each project and the total cost of the program; and

(4) the proposed method of financing the improvement. If energy conservation program bonds are proposed to be issued to finance the program improvements, the governor shall include within ~~his~~ *the* report a written statement by the department that the estimated annual energy savings to be derived from the installation of the energy saving equipment or improvements, upon completion, are expected to equal or exceed the annual debt service to be paid on the energy conservation program bonds proposed to be issued to fund the costs of such equipment or improvements."

Section 54. Section 90-4-111, MCA, is amended to read:

"**90-4-111. Biennial report.** The department shall monitor the grants awarded under 90-4-106 and 90-4-109 and shall, as ~~provided in 5-11-210~~ *requested,* report its expenditures and other information concerning the implementation and effectiveness of specific projects or programs for which grants were awarded under this part to the ~~legislature~~ *environmental quality council.*"

Section 55. Section 90-6-304, MCA, is amended to read:

"**90-6-304. Accounts established.** (1) There is within the state agency fund type a hard-rock mining impact account. Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this trust account, there is established a reserve account not to exceed $100,000.

(a) Money within the hard-rock mining impact trust account may be used:

(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

(ii) to establish and maintain the reserve account; and

(iii) for distribution to the counties of origin, as provided by 90-6-331(1) and this section.

(b) Money within the hard-rock mining impact trust reserve account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve account revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

~~(c) The board shall report to the legislature any expenditure from the hard-rock mining impact trust reserve account.~~

(3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117. After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then establishing and maintaining the reserve account in the amount of $100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the board."

Section 56. **Repealer.** Sections 53-24-210, 69-1-404, 80-12-402, 80-12-403, and 87-5-123, MCA, are repealed.

Section 57. **Codification instruction.** [Section 23] is intended to be codified as an integral part of Title 17, chapter 7, part 1, and the provisions of Title 17, chapter 7, part 1, apply to [section 23].

Approved April 16, 1993.

CHAPTER NO. 350

[HB 97]

AN ACT APPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION AND LIGHTING RETROFIT PROJECTS FOR FISCAL YEARS 1994 AND 1995; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; PROVIDING A METHOD FOR ALLOCATING ENERGY COST SAVINGS; AMENDING SECTION 90-4-607, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Chapter 473, Laws of 1989, established the state building energy conservation program; and

WHEREAS, recommended projects for the state building energy conservation program for fiscal years 1994 and 1995 have been analyzed and are submitted to the Legislature as required by Title 90, chapter 4, part 6.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Stripper-well payments — appropriation — definition — priority.** (1) There is appropriated from the stripper-well payments contained in the federal special revenue fund to the department of natural resources and conservation $100,000 to fulfill duties under 90-4-605 and 90-4-607. This appropriation is a biennial appropriation.

(2) (a) "Stripper-well payments" means the oil overcharge payments made to the United States treasury for distribution to the state of Montana as the result of the final settlement agreement in the United States district court for the district of Kansas, Cause No. M.D.L. 378, and any interest accrued on the payments.

(b) The term does not include stripper-well payments that have been expended or legally obligated or have been incorporated into any of the existing federal energy programs as the result of prior appropriations by the legislature.

(3) The stripper-well payments appropriated in this section have a higher priority than any other appropriation of stripper-well payments for fiscal years 1994 and 1995.

Section 2. **Appropriation.** There is appropriated from bond proceeds authorized by Chapter 571, Laws of 1991, $350,000 to the department of natural resources and conservation to fulfill duties under 90-4-605 and 90-4-607. This appropriation is a biennial appropriation.

Section 3. **Approval of energy conservation projects and lighting retrofit projects.** (1) Pursuant to Title 90, chapter 4, part 6, the legislature approves the following energy conservation projects for fiscal years 1994 and 1995:

FACILITY

University of Montana:

  Field House

  Performing Arts and TV

  Social Science

  Old Business Administration

  Schreiber Gym

Northern Montana College:

  Physical Education Building

Eastern Montana College:

  Liberal Arts Building/Library Building

  Special Education Building

(2) In addition to the energy conservation projects listed in subsection (1), the department of natural resources and conservation shall implement cost-effective lighting retrofit projects, in conjunction with utility rebate programs, on buildings to be identified by the department of natural resources and conservation.

(3) In addition to the projects listed in subsections (1) and (2), the department of natural resources and conservation may expend funds appropriated under [section 4] to respond to unanticipated situations that provide an opportunity to finance, acquire, construct, or install energy-saving equipment, systems, or improvements in a state facility in circumstances in which the opportunity will be lost whenever the department is delayed in providing the necessary funds until specific legislative approval can be obtained.

(4) If the lighting retrofit costs of the projects referred to in subsection (2) are substantially below the bond amount authorized in [section 4], the department of natural resources and conservation may fund projects that otherwise would be proposed as part of the state building energy conservation retrofit package for fiscal years 1996 and 1997.

Section 4. **Bond authorization — appropriation of bond proceeds.** (1) The board of examiners may, pursuant to 90-4-611, issue and sell bonds of the state in an aggregate principal amount not to exceed $3 million for the energy conservation and lighting retrofit projects approved in [section 3] for fiscal years 1994 and 1995. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account established by 90-4-612. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the energy conservation program account may be used to pay the costs of issuing the bonds and to fund the projects approved by the legislature in [section 3]. For purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. The bond proceeds must be available to the department of natural resources and conservation and may be used for the purposes authorized in this section without further budgetary authorization.

Section 5. Section 90-4-607, MCA, is amended to read:

"**90-4-607. Duties of department.** In addition to the duties set forth in 90-4-605, the department is authorized to:

(1) analyze state utility data to identify high-potential energy conservation projects;

(2) perform comprehensive energy analyses on state-owned buildings, structures, and facilities, contracting with private engineers when necessary;

(3) ~~administratively~~ transfer funds *and authority* to the department of administration to procure design and construction of cost-effective energy improvements;

(4) train facility maintenance staff in energy saving techniques and maintenance of energy improvements and monitor energy conservation projects to ensure that cost savings are realized and are adequate to cover the debt service if bonds have been issued to fund the improvements."

Section 6. **Appropriation of energy cost savings.** (1) In preparing the executive budget each biennium, the governor shall include for each state agency participating in the state energy conservation program:

(a) an estimate of the energy cost savings expected for that agency in each year of the biennium; and

(b) a projection of the debt service on energy conservation program bonds that should be apportioned to that agency in each year of the biennium.

(2) Each session, the legislature shall review the governor's submission pursuant to 90-4-606 and subsection (1) of this section and appropriate in the general appropriations act the following:

(a) authority for each participating state agency to transfer funds in an amount equal to the agency's projected debt service to the energy conservation program account established in 90-4-612; and

(b) authority for each participating state agency to transfer funds to the long-range building program fund in an amount equal to the difference between the estimated energy cost savings to the agency and the projected debt service apportioned to that agency.

(3) The current level utility appropriations of state agencies participating in the energy conservation program must be reduced by the sum of the amounts appropriated in subsections (2)(a) and (2)(b).

(4) Each participating state agency shall transfer upon request of the department the amounts appropriated in accordance with subsection (2).

Section 7. **Requirements for approval of state debt.** Because [section 4] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 4].

Section 8. **Codification instruction.** [Section 6] is intended to be codified as an integral part of Title 90, chapter 4, part 6, and the provisions of Title 90, chapter 4, part 6, apply to [section 6].

Section 9. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1993.

CHAPTER NO. 351

[HB 281]

AN ACT GENERALLY REVISING THE LAWS RELATING TO SNOWMOBILES; EXEMPTING RACING SNOWMOBILES FROM CERTIFICATION AND REGISTRATION REQUIREMENTS; PROVIDING FOR REGISTRATION OF A SNOWMOBILE OWNED AND OPERATED SOLELY AS A COLLECTOR'S ITEM; AMENDING SECTIONS 23-2-602, 23-2-611, 23-2-615, 23-2-616, 23-2-619, 23-2-632, 23-2-634, 23-2-635, 23-2-641, 23-2-642, AND 23-2-654, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-602, MCA, is amended to read:

"**23-2-602. Report of stolen and recovered snowmobiles.** ~~The sheriff of every county of the state and the chief of police or commissioner of police of every city shall make an immediate report to the department of justice of all snowmobiles reported to him as stolen or recovered, upon forms provided by the department of justice. Upon receipt of such information, the department of justice shall file the same in an index to be known as the "stolen and recovered snowmobile index". The department of justice shall file reports of stolen and recovered snowmobiles reported to it from other states. Once a month the department of justice shall prepare a list of all snowmobiles stolen or recovered during the previous month and forward a copy of the same to every sheriff and all police departments in cities of the first, second, and third class. Such list shall also be forwarded to the secretary of state or other proper official in each state of the United States. Before a certificate of ownership may be issued under 23-2-601 through 23-2-644, the motor and serial number on the snowmobile for which such certificate is to be issued shall be checked against the stolen and recovered snowmobile index.~~ *The reporting of stolen and recovered snowmobiles must be conducted in the same manner as the reporting of stolen and recovered motor vehicles provided for in 61-3-106.*"

Section 2. Section 23-2-611, MCA, is amended to read:

"**23-2-611. Certificate of ownership — filing of security interests.** (1) A snowmobile may not be operated upon any *private or* public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state. *A certificate of ownership is not required for a snowmobile purchased prior to [the effective date of this act] if use of the snowmobile is restricted to private land.*

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) *the* name of the owner;

(b) *the* residence of the owner, by town and county;

(c) *the* business or home ~~mail~~ *mailing* address of the owner;

(d) *the* name and address of any lienholder;

(e) *the* amount due under any contract or lien;

(f) *the* name of the manufacturer;

(g) *the* model number or name;

(h) *the* identification number; and

(i) *the* name and address of the dealer or other person from whom acquired.

(3) *The application must be accompanied by documentation of ownership, such as an invoice, notarized bill of sale from the immediately previous owner, foreign title, official certificate of snowmobile number, or fee in lieu of tax receipt.*

(4) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

~~(4)~~*(5)* If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

~~(5)~~*(6)* Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership, which must contain that information in the application considered necessary by the department of justice~~,~~ and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

~~(6)~~*(7)* The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

~~(7)~~*(8)* Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, $3.50 of which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

~~(8)~~*(9)* A security interest in a snowmobile is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been perfected as provided in this section. The lien notice must be filed on a form approved by the department of justice. The department of justice may not file a security interest or other lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file the security interest or lien by entering the name and address of the secured party upon the face of the certificate of ownership. The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.

~~(9)~~*(10)* A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9, and ~~no~~ endorsement on the certificate of title is *not* necessary for perfection.

~~(10)~~*(11)* Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice". ~~No other~~ *Other* information regarding the additional security interests need *not* be endorsed on the certificate.

~~(11)~~*(12)* Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

~~(12)~~*(13)* A security interest or other lien as provided in this section is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

~~(13)~~*(14)* Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

~~(14)~~*(15)* A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that ~~he fails to file~~ the satisfaction *is not filed.*

~~(15)~~*(16)* Upon receipt of any liens, notice of liens dependent on possession, or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

~~(16)~~*(17)* It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

~~(17)~~*(18)* A fee of $4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 3. Section 23-2-615, MCA, is amended to read:

"**23-2-615. Nonresident temporary-use permits — use of fees.** (1) The requirements pertaining to the nonresident temporary-snowmobile-use permit are as follows:

(a) Application for the issuance of the permit ~~shall~~ *must* be made at locations and upon forms prescribed by the department. The forms ~~shall~~ *must* include but are not limited to:

(i) *the* applicant's name and permanent address;

(ii) *the* make, model, year, and serial number of the snowmobile; and

(iii) *an* affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $6, a nonresident temporary-snowmobile-use sticker ~~shall~~ *must* be issued. The sticker ~~shall~~ *must* be displayed in a conspicuous manner on the snowmobile.

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership, and ~~no~~ *a* certificate of ownership may *not* be issued.

(4) A nonresident temporary-snowmobile-use permit is not required for a snowmobile that qualifies as a racing snowmobile under [section 12].

(5) All money collected by payment of fees under this section ~~shall~~ *must* be turned over to the state treasurer and placed in the state special revenue fund to the credit of the department of fish, wildlife, and parks, with one-half to be used in administering this section and one-half to be used in the development, maintenance, and operation of snowmobile facilities.

~~(5)~~*(6)* The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100."

Section 4. Section 23-2-616, MCA, is amended to read:

"**23-2-616. Registration and decals — application and issuance — use of certain fees.** (1) ~~No~~ *Except for a snowmobile registered under [section 13], a* snowmobile may *not* be operated on public lands by any person in Montana unless it has been registered and there is displayed in a conspicuous place on both sides of the cowl a decal as visual proof that the fee in lieu of property tax has been paid on it for the current year and the immediately previous year as required by 15-16-202.

(2) Application for registration ~~shall~~ *must* be made to the county treasurer upon forms to be furnished by the department of justice for this purpose, which may be obtained at the county treasurer's office in the county where the owner resides. The application shall contain the following information:

(a) *the* name and address of the owner;

(b) *the* certificate of ownership number;

(c) *the* make of the snowmobile;

(d) *the* model name of the snowmobile;

(e) *the* year of manufacture;

(f) a statement evidencing payment of the fee in lieu of property tax as required by 15-16-202; and

(g) ~~such~~ other information as the department of justice may require.

(3) The application ~~shall~~ *must* be accompanied by a decal fee of ~~$2~~ *$5*, a registration fee of 50 cents, and, if the snowmobile has previously been registered, by the registration certificate for the most recent year in which the snowmobile was registered. The treasurer shall sign the application and issue

a registration receipt ~~which shall~~ *that must* contain information considered necessary by the department of justice and a listing of fees paid. The owner shall retain possession of the registration receipt until it is surrendered to the county treasurer for reregistration or to a purchaser or subsequent owner pursuant to a transfer of ownership.

(4) The county treasurer shall forward the signed application to the department of justice and shall issue to the applicant a decal in the style and design prescribed by the department of justice and of a different color than the preceding year, numbered in sequence.

(5) The county treasurer may not accept any application under this section until the applicant has paid the decal and registration fees and the fee in lieu of property tax on the snowmobile for the current year and the immediately previous year as required by 15-16-202.

(6) All money collected from payment of the decal fees and all interest accruing from use of this money ~~shall~~ *must* be forwarded to the state treasurer and placed in the state special revenue fund to the credit of the department, with ~~$1~~ *$2.50* designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and ~~$1~~ *$2.50* designated for use in the development, maintenance, and operation of snowmobile facilities. All money collected from payment of the registration fee ~~shall~~ *must* be forwarded to the state treasurer and deposited in the general fund.

(7) The county treasurer shall credit all fees in lieu of tax collected on snowmobiles to the county motor vehicle suspense fund provided for in 61-3-509."

Section 5. Section 23-2-619, MCA, is amended to read:

"**23-2-619. Dealer registration certificate — use of fees.** (1) A dealer registration certificate ~~shall~~ *must* be issued in accordance with 23-2-601 through 23-2-644.

(2) The dealer application ~~shall~~ *must* be accompanied by an application fee of $5 and a registration fee of $5. Upon receipt of the dealer application and payment of fees, the dealer shall be issued two dealer snowmobile identification cards ~~which shall~~ *that must* be carried by the dealer or the dealer's customer when demonstrating the dealer's snowmobiles.

(3) ~~No~~ *A* bond is *not* required of the dealer.

(4) The dealer shall have a principal place of business where ~~he~~ *the dealer* shall maintain all ~~his~~ business records and display and sell merchandise.

(5) An applicant for renewal of a snowmobile dealer registration shall certify that ~~he~~ *the applicant* has sold ~~3~~ *5* or more snowmobiles during the preceding year or pay an additional $50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards as required by need justified to the department of justice may be purchased by the dealer for a fee of $2.

(7) Dealer registration certificates and identification cards expire on June 30 following the date of issuance.

(8) (a) The dealer application fees and all interest accruing from use of this money ~~shall~~ *must* be deposited in the state special revenue fund to the credit of the department, with one-half designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees ~~shall~~ *must* be deposited in the general fund."

Section 6. Section 23-2-632, MCA, is amended to read:

"**23-2-632. Unlawful operation ~~on streets and highways~~ *of snowmobiles*.** (1) It is unlawful for a person to operate a snowmobile on a public street, ~~or~~ *public* highway, *established snowmobile trail, public snowmobile area on public lands or waters, or lands or waters under easement or lease for snowmobiling and adjacent snowmobiling areas on private lands or waters where public snowmobiling is permitted*:

(a) at a rate of speed greater than provided by law for motor vehicles, *unless travel on the street, highway, or trail has been closed to motor vehicle traffic or unless drifting snow or snow cover has rendered travel by motor vehicles impractical or impossible*;

~~(b) while under the influence of intoxicating liquor or narcotics or habit-forming drugs;~~

~~(c)~~*(b)* in a careless or reckless manner so as to endanger the person or property of another or to cause injury or damage to either; or

~~(d)~~*(c)* if that person by reason of age or mental or physical disability is incapable of operating the snowmobile safely under the prevailing circumstances.

(2) It is unlawful to permit the operation of a snowmobile ~~on a public street or highway~~ *in violation of subsection (1)* by a person who by reason of age or physical or mental disability is incapable of operating the snowmobile safely under the prevailing circumstances."

Section 7. Section 23-2-634, MCA, is amended to read:

"**23-2-634. Regulation of snowmobile noise.** (1) Except as provided in this section, every snowmobile ~~shall~~ *must* be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. ~~No~~ *A* snowmobile may *not* be modified by any person in any manner that will amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(2) Every person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain ~~his~~ *the* machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(3) ~~No new~~ *A* snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may *not* be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Every person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain ~~his~~ *the* machine in such a manner that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(4) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of 23-2-601 through 23-2-644 shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(5) In certifying that a new snowmobile can comply with the noise limitation requirements of 23-2-601 through 23-2-644, a manufacturer shall make ~~such a~~ *the* certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The department, in enforcing the provisions of this section, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "Procedure for Sound Level Measurements of Snowmobiles" (January, 1969), as amended, used by the international snowmobile industry association or with ~~such~~ other standards for measurement of sound level as the department may adopt.

(6) This section does not apply to organized races or similar competitive events held on:

(a) private lands *or waters*, with the permission of the owner, lessee, or custodian of the land *or waters*; or

(b) public lands *or waters*, with the consent of the public agency having the authority to grant ~~such~~ consent~~, provided that total sound produced by such an event may not exceed 50 dbA at any point 50 feet or more outside the area under the control of the sponsoring entity~~."

Section 8. Section 23-2-635, MCA, is amended to read:

"**23-2-635. Accidents involving snowmobiles.** The owner or operator of a snowmobile~~, which~~ *that* is involved in any accident, collision, or upset ~~upon a public street or highway where~~ *in which* personal injury occurs to any person ~~or where property damage exceeds $100,~~ shall report the accident or occurrence to ~~a state or local~~ *the nearest* law enforcement agency ~~responsible for collecting reports of accidents involving motor vehicles~~. *An accident involving personal injury or a fatality must be reported immediately or as soon as practicable.*"

Section 9. Section 23-2-641, MCA, is amended to read:

"**23-2-641. Enforcement.** (1) ~~The following persons may enforce the provisions of 23-2-601 through 23-2-644: the enforcement officers employed by the department, with respect to violations relating to wildlife or birds, discharging firearms, or sound level limitations. However, with~~ *With* respect to the sale of any new snowmobile ~~which~~ *that* is subject to the provisions of 23-2-601 through 23-2-644, the attorney general ~~of the state of Montana~~ shall, upon the request of the department, sue for the recovery of the penalties provided in 23-2-642 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by 23-2-601 through 23-2-644.

(2) (a) The department is a criminal justice agency for the purpose of obtaining the technical assistance and support services provided by the board of crime control under the provisions of 44-4-301. Authorized officers of the department are granted peace officer status with the power:

(i) of search, seizure, and arrest;

(ii) to investigate activities in this state regulated by this part and rules of the department and the fish, wildlife, and parks commission; and

(iii) to report violations to the county attorney of the county in which they occur.

(b) Sheriffs and their deputies of the various counties of the state, the Montana highway patrol, *authorized officers of the department,* and the police of each municipality shall enforce the provisions of ~~23-2-601 through 23-2-644~~ *this part.*"

Section 10. Section 23-2-642, MCA, is amended to read:

"**23-2-642. Penalties.** (1) The failure to display a current decal indicating that the fee in lieu of property tax has been paid on the snowmobile for the current year during the time provided in 23-2-601 through 23-2-644 is a misdemeanor, punishable by a fine ~~of not less than $10 or more than $50~~ *in an amount equal to five times the applicable fee in lieu of tax payable under 23-2-615.1.*

(2) A person who violates any other provision of 23-2-601 through 23-2-644 or a rule adopted pursuant ~~thereto~~ *to those sections* shall pay a civil penalty of not less than $15 or more than $500 for each separate violation.

~~(3) A person who willfully violates any other provision of 23-2-601 through 23-2-644 or a rule adopted pursuant thereto~~ *If the violation is willful, the person* shall pay a civil penalty of not less than $50 or more than $1,000 for each separate violation.

~~(4)~~*(3)* A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by 23-2-601 through 23-2-644 ~~shall be~~ *is* subject to the penalty provisions of ~~subsections~~ *subsection* (2) ~~and (3)~~ if any machine so certified does not meet the appropriate sound level limitation. For the purposes of this section, every sale of a new snowmobile that does not meet the sound level limitations imposed by 23-2-601 through 23-2-644 constitutes a separate violation."

Section 11. Section 23-2-654, MCA, is amended to read:

"**23-2-654. Snowmobiler's assumption of responsibility — duties.** (1) A snowmobiler ~~assumes the risk and~~ *shall accept* all legal responsibility for ~~death or~~ *injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of snowmobiling and has the duty to regulate personal conduct at all times so that* injury to ~~himself~~ *self* or other persons or property that results from the risks inherent in the sport of snowmobiling *is avoided.* The ~~assumption of risk includes but is not limited to death~~

~~or injury caused by the following:~~ *risks inherent in the sport of snowmobiling include* variations in terrain, surface or subsurface snow or ice conditions, cornices, avalanches, poor visibility, bare spots, rocks, trees, other forms of forest growth or debris, and plainly marked trail maintenance equipment.

(2) A snowmobiler is responsible for:

(a) knowing the range of ~~his~~ *the snowmobiler's* own ability to snowmobile any slope, trail, or area and for snowmobiling within the limits of ~~his~~ *the snowmobiler's* ability considering the conditions;

(b) maintaining control of ~~his~~ speed and course at all times while snowmobiling;

(c) heeding all posted warnings; and

(d) refraining from acting in a manner that may cause or contribute to the injury of anyone.

(3) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile."

Section 12. **Registration of racing snowmobile not required.** A snowmobile built or used exclusively for racing in sanctioned competitive events or organized races, including testing areas designated by the sponsoring entity, is exempt from the certificate of ownership requirements of 23-6-611 and registration under 23-2-616.

Section 13. **Registration of a snowmobile owned and operated solely as a collector's item.** (1) An owner of a snowmobile that is more than 25 years old and that is used solely as a collector's item and not for general recreational purposes may file with the county treasurer an application for the registration of the snowmobile. The application must be sworn to before an officer authorized to administer oaths. The application must state:

(a) the name and address of the owner;

(b) the name and address of the person from whom the snowmobile was purchased;

(c) the make, the year and number of the model, and the manufacturer's identification number and serial number of the snowmobile; and

(d) that the snowmobile is owned and operated solely as a collector's item and not for general recreational purposes.

(2) The registration fee for a snowmobile registered under subsection (1) is $10.

(3) Upon receipt of the application for registration and payment of the registration fee, the county treasurer shall file the application, register the snowmobile in the manner specified in 23-2-616, and deliver to the applicant a license plate or decal bearing the inscription "Vintage—Montana" and the registration number.

(4) The year of issuance may not be shown on the plate or decal.

(5) Annual renewal of the registration of a snowmobile registered under this section is not required, and the registration is valid as long as the snowmobile is in existence. Upon sale of the snowmobile, the purchaser shall renew the registration and pay the license fee required in subsection (2).

Section 14. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1993.

CHAPTER NO. 352

[HB 283]

AN ACT GENERALLY REVISING THE CIGARETTE TAX LAWS; APPLYING THE CIGARETTE SALES TAX TO ALL USE AND CONSUMPTION OF CIGARETTES ON AN INDIAN RESERVATION; PROVIDING AN EXCEPTION TO THE TAX FOR USE AND CONSUMPTION OF CIGARETTES BY A MEMBER OF AN INDIAN TRIBE ON AN INDIAN RESERVATION; PROVIDING A REFUND OR CREDIT TO A WHOLESALER FOR TAXES PAID ON CIGARETTES SOLD TO A TRIBAL MEMBER; REQUIRING THE DEPARTMENT OF REVENUE TO SHARE REVENUE WITH A TRIBAL GOVERNMENT THAT HAS ENACTED A CIGARETTE TAX SIMILAR TO THE STATE TAX; PROVIDING A CIVIL PENALTY FOR THE UNAUTHORIZED POSSESSION OR TRANSPORTATION OF UNSTAMPED CIGARETTES; PROVIDING FOR SEARCH, SEIZURE, AND FORFEITURE OF UNSTAMPED CIGARETTES; PROVIDING FOR A DISTRIBUTION OF PROCEEDS FROM A SALE OF PROPERTY SEIZED; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 16-11-111, 16-11-131, 16-11-147, AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

WHEREAS, the Legislature proposes to eliminate unfair competitive business advantages now enjoyed by retailers operating on Indian reservations in direct competition with businesses operating off the reservations by providing that cigarettes sold on an Indian reservation have a Montana cigarette tax stamp affixed to the cigarette package or container that requires purchasers who are not members of the tribe residing on the reservation to pay the state cigarette tax; and

WHEREAS, the Legislature also recognizes that Indian tribes in Montana view as unlawful certain state taxes being assessed against the tribes and tribal members on the reservation; and

WHEREAS, although the Legislature proposes to exercise its authority to seek assistance from tribal governments in collecting cigarette taxes from nonmembers on the reservation, the Legislature also recognizes the need for negotiation with Montana Indian tribes in order to avoid dual taxation and to develop a comprehensive resolution of the cigarette taxation issues affecting both the state and the tribes.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in 16-11-111 and [sections 1 through 7], the following definitions apply:

(1) "Indian reservation" means lands declared to be a reservation for an Indian tribe or tribes:

(a) by a treaty between the tribe and a territorial government, a state government, or the United States;

(b) through an act of the United States congress; or

(c) through an executive order of the United States.

(2) "Quota" means 150% of the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made or any other formula or amount agreed to in a state-tribal cooperative agreement.

Section 2. **Stamps affixed on cigarettes — exception.** Except for cigarettes sold on a military reservation, cigarettes sold in Montana must have a Montana cigarette tax stamp affixed prior to sale.

Section 3. **Cooperative agreement — revenue sharing of cigarette taxes with tribal government.** (1) In order to prevent the possibility of dual taxation of cigarettes purchased on an Indian reservation, the department and an Indian tribe may enter into a cooperative agreement providing for revenue sharing of cigarette taxes with the tribe or enlisting the tribe's assistance in enforcing the provisions of this chapter. An agreement sharing revenue of cigarette taxes with a tribe must provide that the state and the tribe are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically provided for in the agreement.

(2) If a tribal government in the state adopts an ordinance imposing a cigarette tax on cigarettes sold on the Indian reservation and requires that the tax be paid under identical conditions as those imposed by the state, the department shall collect the tax for the tribe. However, the tax rate determined by a tribal government on a negotiated quota amount need not equal the tax rate imposed by the state. The consumer is not required to pay both the state tax and the tribal tax but shall pay only one tax to the state in an amount equal to the tax paid on cigarettes pursuant to 16-11-111. A tribal tax must be distributed to the tribe as determined in a negotiated formula based on population.

(3) After deducting administrative expenses of not more than 5% of the amount of the tax determined in subsection (2), the department shall on a monthly basis distribute the remaining amount to the tribal government.

Section 4. **Tribal cigarette administration account.** (1) There is a special revenue account called the tribal cigarette administration account.

(2) The money received for administrative expenses and deducted by the department under [section 3] must be deposited in the tribal cigarette administration account.

(3) Money in the tribal cigarette administration account is statutorily appropriated, as provided in 17-7-502, to the department and may be expended only for administering collection of the cigarette tax.

Section 5. **Tribal cigarette tax account.** (1) There is a special revenue account called the tribal cigarette tax account.

(2) The tax collected under [section 3], less the administrative expenses deducted under [section 3], must be deposited in the tribal cigarette tax account.

(3) The money in the tribal cigarette tax account is statutorily appropriated, as provided in 17-7-502, to the department and must be disbursed on a monthly basis to the tribe as provided for in the agreement entered into pursuant to [section 3].

Section 6. **Possession or unauthorized transportation of unstamped cigarettes — civil penalty.** (1) In lieu of the criminal penalties provided in 16-11-131, 16-11-146, and 16-11-148, the department may assess a person who unlawfully possesses or transports unstamped cigarettes a civil penalty of $250 for the first full or partial pack of unstamped cigarettes and $10 for each additional full or partial pack of unstamped cigarettes.

(2) The department shall determine the amount of the penalty provided in subsection (1) and notify the person who unlawfully possessed or transported the unstamped cigarettes of the amount. The penalty is due and payable on the date of the notice. A penalty not paid when due is subject to interest at the rate of 10% a year.

Section 7. **Sale or retention of forfeited property — use of sale proceeds.** (1) When property is forfeited under 16-11-147, the department may:

(a) retain the property or any part of the property for official use or, upon application by a law enforcement agency of this state, another state, the District of Columbia, or the United States, for the exclusive use of enforcing the provisions of 16-11-111, 16-11-131, 16-11-147, and [sections 1 through 7] or the laws of another state, the District of Columbia, or the United States; or

(b) after advertising, sell the property at public auction to the highest bidder. The department, before delivering a seized item, shall first require stamps to be affixed.

(2) The proceeds of a sale under this section must be applied first to paying the expenses of any investigation leading to the seizure of the items, including costs incurred by a local, state, tribal, or federal law enforcement agency, and of the forfeiture and sale proceedings, including the expenses of seizure, maintenance, custody, and court costs. The balance of the proceeds, less an amount that is based on the value of the property seized on an Indian reservation and that is allocated to a tribe pursuant to a state-tribal cooperative agreement, must be deposited in the state general fund.

Section 8. Section 16-11-111, MCA, is amended to read:

"**16-11-111.** *(Temporary)* **Cigarette sales tax —** ***exemption for sale to tribal member.*** ~~There~~ *(1) A tax on the purchase of cigarettes for consumption,* *use, or any purpose other than resale in the regular course of business* is ~~levied,~~ imposed~~, and assessed~~ and ~~there~~ must be ~~collected~~ *precollected by the wholesaler* and paid to the state of Montana ~~upon cigarettes sold or possessed in this state an excise tax of~~. *The tax is* 19.26 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to a cigarette sale if the sale is made:

(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana; and

(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

16-11-111. *(Effective August 15, 1993)* **Cigarette sales tax — *exemption for sale to tribal member.*** ~~There~~ *(1) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business* is ~~levied,~~ imposed~~, and assessed~~ and ~~there~~ must be ~~collected~~ *precol-*

lected by the wholesaler and paid to the state of Montana ~~upon cigarettes sold or possessed in this state an excise tax of~~. *The tax is* 18 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to a cigarette sale if the sale is made:

(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana; and

(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation."

Section 9. Section 16-11-131, MCA, is amended to read:

"16-11-131. Transporting cigarettes without insignia a misdemeanor — *invoices and delivery tickets required — stop and inspection authorized.* *(1)* It ~~shall be~~ *is* unlawful for ~~any~~ *a* person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any cigarettes ~~which~~ *that* do not bear the insignia *(stamps)* required by this part, except for a person specifically exempted in 16-11-132(2).

(2) (a) When transporting unstamped cigarettes, a person shall possess invoices or delivery tickets for the cigarettes that show the name and address of the consignor or seller, the name of the consignee or purchaser, and the quantity and brands of the cigarettes being transported. If the cigarettes are consigned to or purchased by a person in this state, the consignee or purchaser must be authorized by 16-11-132 to possess unstamped cigarettes in this state.

(b) The cigarettes transported are subject to seizure, forfeiture, and sale as provided in 16-11-141, 16-11-147, [section 7], and this section if:

(i) there are no invoices or delivery tickets;

(ii) the name or address of the consignee or purchaser is falsified; or

(iii) the consignee or purchaser is not authorized to possess unstamped cigarettes.

(3) Transportation of cigarettes from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, [the department of justice,] or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this section, the department, its agent, [the department of justice,] or a peace officer may stop and inspect the vehicle.

(5) ~~Any~~ *A* person violating the provisions of this section is guilty of a misdemeanor ~~and shall be punished as hereinafter provided~~."

Section 10. Section 16-11-147, MCA, is amended to read:

"**16-11-147. Seizure and forfeiture of unlawful cigarettes.** (1) ~~Any~~ *A* motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department, its ~~duly~~ authorized agent, ~~any~~ *a* sheriff or deputy, or other peace officer and is subject to forfeiture in the manner provided in subsection (2).

(2) Upon the seizure of any cigarettes and within 2 days ~~thereafter~~ *of the seizure,* the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, *or any other person having a right or interest in the seized property,* if known, and file a copy of the inventory with the department. ~~The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in 46-5-305, 46-5-311, and 46-5-312.~~

(3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim

of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.

(4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee[, with the assistance of the department of justice,] in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than $500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized."

Section 11. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; *[section 4]; [section 5];* 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient*

eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.) "

Section 12. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 16, chapter 11, part 1, and the provisions of Title 16, chapter 11, part 1, apply to [sections 1 through 7].

Section 13. **Coordination instruction.** (1) If House Bill No. 92 is passed and approved and if it amends the State-Tribal Cooperative Agreements Act to specifically include the assessment and collection of a tax or license or permit fee and provides for revenue sharing, then [sections 3 through 5 of this act] are void.

(2) If House Bill No. 609 and [this act] are both passed and approved, then the bracketed references to the department of justice in [sections 9 and 10 of this act] are effective. If House Bill No. 609 is not passed and approved, then the bracketed references to the department of justice in [sections 9 and 10] are void.

Section 14. **Effective dates.** (1) [Sections 3 through 5 and 11 through 15] are effective on passage and approval.

(2) [Sections 1, 2, and 6 through 10] are effective July 1, 1993.

Section 15. **Applicability.** [Sections 1, 2, and 6 through 10] apply to cigarette sales made by a wholesaler after September 30, 1993.

Approved April 16, 1993.

CHAPTER NO. 353

[HB 307]

AN ACT AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT RULES ALLOWING NEW AMUSEMENT GAMES TO BE OFFERED FOR PLAY AND PLAYED; AND AMENDING SECTION 23-6-104, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of justice authority to adopt administrative rules. It is intended that rules be adopted, or at least considered, on a cyclical basis that takes the state's fair and carnival season into account. Unless the department, in conjunction with the fair and carnival industry and others offering amusement games for play, works out a better arrangement and timetable for proposing and adopting rules, the department should accept, research, and consider rule requests during the first 9 months of each year and, after the fair and carnival season has ended, propose to adopt by rule new amusement games and file an adoption notice in approximately mid-December.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-6-104, MCA, is amended to read:

"23-6-104. Amusement games allowed. (1) Crane games, as defined in 23-6-101, and the games described in subsection (2) may be made available for public play.

(2) (a) Fish pond (duck pond). The player catches a fish or other object floating in a pond of water by using a pole, hand, net, or string. All fish or objects are marked on the bottom, indicating the size of prize the player wins. The player is awarded a prize each time, and the player must be allowed to continue playing until a prize is won.

(b) Hoop or ring toss. The player tosses a hoop or ring over a target that must consist of bottles, pegs, blocks, or prizes. The operator shall specifically advise the player as to the degree that the hoop or ring must go over the target. All hoops of the same color used at an individual stand must be the same size. All targets used at an individual booth must be the same size, or the operator shall advise the player by posting signs or using color codes denoting the different sizes.

(c) Dart games. The target area for all dart games must be of a material capable of being penetrated and of retaining a metal tip dart. The target area must be in the rear of the stand and must be at least 3 feet but not more than 15 feet from the foul line. A target must be stationary at all times.

(i) Balloon (poparoo) (balloon smash). The targets are inflated balloons. The player throws one or more darts to burst a predetermined number of balloons. If the predetermined number of balloons are burst by the darts, the player receives the prize indicated.

(ii) Dart throw. The targets are various sizes and shapes located on the target area. The player throws darts individually at the target. A dart must stick in a predetermined target to win the prize as designated.

(iii) Tic tac toe dart. The target is a tic tac toe board located in the target area. The player throws darts at the target and wins a designated prize when the thrown darts line up in a row in the target. The darts may line up vertically, horizontally, or diagonally to win.

(iv) Add-um-up darts. The target consists of numbered squares located in the target area. Prizes are awarded based on the total score obtained by the player by throwing and sticking the darts in the numbered squares. A dart that sticks on a line must be thrown again. The player may add up the score of the darts thrown.

(d) Ball tosses. In all ball toss games, the balls used at a specific stand must be of the same weight and size. Targets must be of the same weight and size, or the operator shall color code the targets and advise the player of the difference in targets by posting a sign or providing a duplicate of the target showing the limitations or restrictions. The sign or duplicate target must be readily visible to the player.

(i) Milk bottle toss. The player tosses or throws balls at simulated milk bottles. The player wins by either tipping over or knocking bottles off the raised platform as designated by the operator. The bottles may be constructed of wood, metal, or plastic or a combination of the three. Operators may vary the number of bottles and balls used in each game. Floating or loose weights in bottles are not allowed. The weight of individual bottles may not exceed 7 1/2 pounds.

(ii) Milk can (Mexican hat) (cone). The player tosses a ball into the opening of a milk can, into a fiberglass Mexican hat turned upside down, or through a cone to win.

(iii) Football toss (tire toss). The player tosses or throws a football through a stationary tire or hoop to win.

(iv) Basketball toss/throw. The player tosses or throws a basketball through a hoop to win.

(v) Bushel baskets. The player tosses balls into a bushel basket mounted on a stationary backdrop at a fixed angle. The balls must stay in the basket to win. Rim shots are allowed, except the operator may designate the top 6 inches of the basket rim by color and disallow balls striking this area as winning tosses.

(vi) Cat-ball-toss (star/diamond toss). The player tosses balls into a simulated cat's mouth or a round, diamond, or star-shaped hole to win.

(vii) Ping pong toss. The player tosses ping pong balls into dishes, saucers, cups, or ashtrays floating in water. A predetermined number of balls must remain in the dishes, saucers, cups, or ashtrays for the player to win. The dishes, saucers, cups, or ashtrays must have water covering the bottom of the surface that is facing up.

(viii) Fishbowl game. The player tosses ping pong balls into a water-filled fish bowl to win.

(ix) Volleyball toss (soccer ball). The player tosses a volley or soccer ball into a keg-type container mounted on a stationary backdrop at a fixed angle. The ball must stay in the keg to win a prize. Rim shots are authorized as stated in subsection (2)(d)(v) for bushel baskets.

(x) Goblet ball (whiffle ball). The player tosses a whiffle ball into a target area of glass or plastic goblets. Located in the target area are colored goblets that determine the type of prize the player wins. At least 33% of the goblets in the target area must be winners. The ball must stay in the goblet to win a prize.

(xi) Break the plate/bottle. The player tosses or throws a ball at a plate, phonograph record, or bottle. The type of prize won is determined by the number of targets broken by the player.

(xii) Punk rack. The targets for this game are rows of dolls or cats on a ledge at the rear of the stand. The dolls or cats must be filled with sawdust, styrofoam, cotton, or other like material that provides a firm base for the ball to strike. The hair protruding from the side of the dolls or cats may not exceed 3 inches. The prize is determined by how many dolls or cats the player knocks over or off the ledge, as posted by the operator.

(xiii) Teeth game. The target consists of a large face with wooden teeth. The prize is determined by how many teeth the player knocks down by throwing a ball.

(xiv) Toilet game (doniker). To win, the player tosses or throws a ball or other object through a toilet seat located at the rear of the stand.

(xv) Coke roll. The player rolls a ball down an alley with the object of knocking over two coke bottles standing at the end of the alley. The player must tip over both bottles to win. Bottles must be placed on predetermined spots painted on the surface of the alley.

(xvi) Rolldown. The player rolls balls down an alley with the object of putting the balls in numbered slots at the end of the alley. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Scores above or below a predetermined score win. The alley surface must be smooth and free from defects at all times.

(xvii) Fascination (I got it). Fascination is a group game that involves competition among the players. The target area consists of 25 holes, and the player tosses or rolls a ball into one of the holes. The object of the game is to get five balls in a row either vertically, horizontally, or diagonally. The first player to accomplish this is the winner. Prize size is determined by the number of players participating in each game.

(xviii) Cakewalk. The players walk on a predetermined route with designated spots, and when the operator stops the walk, the player on a predetermined spot wins a prize.

(xix) Batter-up. The player uses a whiffle ball bat to swing and strike whiffle balls that are pitched at medium speed from a pitching machine. The player wins when ~~he~~ *the player* hits a ball into the home run shelf. The home run shelf is located at the back of the batting cage approximately 15 feet from the player.

(xx) Sky bowling. Two bowling pins are set on predetermined painted spots on a shelf. A ball is attached to a chain suspended from a stationary support at least 6 inches to the right or left of the bowling pins. The object is to swing the ball, miss the pins with the ball as it goes forward, and knock the pins over as the ball returns.

(xxi) Clown rolldown. A ball is tossed through the open mouth of a moving clown or animal head. The ball then rolls down a chute to numbered slots at the rear of the clown or animal head. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Prizes are awarded on the points achieved.

(xxii) Skee ball. The player rolls a ball up the mechanical bowling alley into targets. A computer adds up the scores, and the predetermined scores win.

(xxiii) Speedball radar game. The player gets four balls and throws three balls through radar to establish speeds and to estimate at what speed the fourth ball will pass through the radar. The player wins a prize if ~~he~~ *the player* accurately estimates the speed of the fourth ball. The radar must be mounted and stationary.

(e) Shooting games. These games are conducted by the player using a weapon of some type to shoot at a target in the rear of the stand. The safety requirements of local city or county ordinances must be observed by the operator and player. The target may be stationary or mobile.

(i) Short range (shooting gallery). In this game, the player is given four rounds to shoot at a spot target 1/4 inch or less in diameter. The player wins when the spot target is completely shot out, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. The prize is determined by the number of targets struck by the player, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. Within each target is a bull's eye. The player must hit the bull's eye without touching the outer surface of the target. The prize is determined by the number of bull's eyes correctly hit.

(ii) Shoot-out-the-star (machine gun). The player, using an automatic air pellet gun, is given 100 pellets to shoot at a star-shaped target. The player must shoot out all of the target to win. The star cannot be more than 1 1/4 inches from point-to-point.

(iii) Water racer. This group game involves a competition, with the player winning a prize based on the number of players competing. The player, using a water pistol, shoots the water into a target. The water that strikes the target causes a balloon to inflate or advances an object to ring a bell. The first player who bursts the balloon or rings the bell is the winner.

(iv) Rapid fire. This group game involves competition similar to the water racer game described in subsection (2)(e)(iii). The player uses an electronic pistol to shoot at a target. Hits on the target give the player a score. The first player to reach a predetermined score is the winner.

(v) Cork gallery. The player uses a cork gun or similar device to propel objects, including but not limited to corks, suction cup darts, or styrofoam balls, to shoot at targets located on a shelf or at a bull's eye target. The player must hit the bull's eye or knock the target over or off the shelf to win a prize. The prize is determined by the target knocked over or off the shelf, by the number of targets knocked over or off the shelf, or by the player accomplishing other tasks, as stated in the posted rules. When suction cup darts or other darts are used and fail to stay on or in the target, the player must shoot the dart again. The base of each target must be uniform, front and rear.

(vi) Boomball. The player uses a cannon with compressed air to propel balls into a target area. The targets have varied point value. If the ball remains in the target, a computer adds up the score. Prizes are awarded based on the points achieved.

(f) Coin pitchers.

(i) Spot pitch (lucky strike). The player pitches a coin at colored spots located on a table in the center of the stand. The coin must touch or stay inside of a spot to win a prize.

(ii) Plate pitch. The player pitches a coin onto a glass plate to win a prize as designated.

(iii) Glass pitch (bowl). The player pitches a coin into or onto dishes or glasses. If the coin remains in a top target glass item, then the player wins that item.

(g) Miscellaneous games.

(i) Skill chute (bulldozer) (penny fall). The player inserts a coin or token into a chute, aiming the coin or token so that it will fall in front of a continuous sweeper (bulldozer). If the coin or token is aimed correctly, the sweeper (bulldozer) will push additional tokens or prizes into a hole or chute that sends them to the player. Tokens are exchanged for prizes. If there is a hidden ledge, tip, or similar obstruction that inhibits the passage of tokens or prizes into the hole or chute that sends them to the player, the operator shall post a sign to advise the players.

(ii) Tip-em-up bottle. The player is provided with a pole and a string that has a hoop or ring attached at the end. The player, using the pole with a ring, must raise a bottle lying on its side to an upright position to win.

(iii) Hi-striker. The player, using a wooden maul, must strike a lever target that causes a metal weight to rise on a guideline or track and ring a bell. The player must ring the bell a predetermined number of times to win a prize.

(iv) Rope ladder. The player must climb up a rope ladder, which is anchored at both ends by a swivel, and ring a bell or buzzer to win a prize.

(v) Whac-a-mole. This is a group game that has a target surface with five holes through which animated moles pop up and down at random. The player must hit as many moles as possible with a mallet. The first player to hit a predetermined number of moles wins.

(vi) Dip bowling game. The player rolls a bowling-type ball over a hump in the track. If the ball stays on the back side of the hump, the player wins.

(vii) Horserace derby. This is a group game in which a player advances ~~his~~ *a* horse by shooting or rolling a ball in the target area. The faster and more skillfully the player shoots or rolls ~~his~~ *the* ball, the faster ~~his~~ *the player's* horse will run. The first horse to cross the finish line wins.

(viii) Shuffleboard. The player pushes a puck down a shuffleboard alley to knock over poly pins at the end of an alley. The player wins by knocking down all the pins.

(ix) Bean bag. The player tosses or throws a bean bag or a simulated bean bag at cans, bottles, or other objects on a raised platform. The player wins a prize when ~~he~~ *the player* either knocks the object off the raised platform or tips the target over.

(x) Soccer kick. The player kicks a soccer ball through a hole in the target area to win.

(xi) Frog game. A plastic frog or similar object sits on a small end of a teeter-totter. The opposite end of the teeter-totter is struck with a mallet, causing the frog to fly off the teeter-totter. If the frog lands in a pail or similar receptacle, the player wins a prize.

(xii) Cover the spot. The object of this game is for the player to drop five circular discs onto a circular spot, completely covering the spot. The diameter of each of the discs used to cover the spot must be a minimum of 64% of the diameter of the spot to be covered. The spot to be covered must be painted or drawn on a permanent, solid material, such as metal or wood, or may be a lighted circle. The spot and each disc must have a uniform diameter.

(xiii) Pocket billiards. Using a regulation pocket billiard table, a player must run a consecutive number of balls to win a prize. The number of balls is set by the operator.

(3) In addition to the amusement games allowed by subsections (1) and (2), the department of justice may adopt rules allowing games that may be operated at a fair or carnival and that meet the requirements of this part and may set and collect fees to offset the costs associated with review and approval."

Approved April 15, 1993.

CHAPTER NO. 354

[HB 401]

AN ACT AUTHORIZING THE ISSUANCE OF A LOAN TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FROM THE COAL SEVERANCE TAX PERMANENT FUND TO BE APPROPRIATED FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE LITIGATION IN THE CLARK FORK RIVER BASIN AND OTHER POTENTIAL SITES IN THE STATE; REAUTHORIZING THE 1992-93 BIENNIUM INTERENTITY LOAN FROM THE GENERAL FUND AS A LOAN FROM THE COAL SEVERANCE TAX PERMANENT FUND; EXTENDING REPAYMENT OF THE LOANS THROUGH THE 1995 BIENNIUM IN ACCORDANCE WITH SECTION 17-2-107, MCA; REQUIRING AN IRREVOCABLE AGREEMENT TO REPAY THE COAL SEVERANCE TAX PERMANENT FUND FROM ANY AMOUNT RECOVERED IN THE LITIGATION; AMENDING SECTION 17-6-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 authorizes the state, as trustee, to collect damages for state natural resources injured by the release of hazardous substances; and

WHEREAS, Chapter 711, Laws of 1985, as amended by Chapter 709, Laws of 1989, and Chapter 752, Laws of 1991, established the state proceedings for claims and actions for damages to natural resources from releases of hazardous substances, known as the Comprehensive Environmental Cleanup and Responsibility Act; and

WHEREAS, the State of Montana filed suit in United States District Court on December 22, 1983, against Atlantic Richfield Company for damages to natural resources in the Clark Fork River Basin; and

WHEREAS, a natural resource damage litigation program policy committee has been formed to oversee the litigation and the expenditure of the funds; and

WHEREAS, the court-ordered schedule requires the parties to complete discovery by September 27, 1994, and be prepared for trial in this matter by July 14, 1995.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Natural resource damage program authorization and appropriation of loan proceeds.** There is authorized to the department of health and environmental sciences from the coal severance tax permanent fund for fiscal years 1994 and 1995 a loan in the amount of $2,619,076, the proceeds of which are appropriated for the biennium ending June 30, 1995, for the purpose of conducting the litigation and natural resource damage claim against the atlantic richfield company (ARCO). Repayment of this loan is extended through the end of the 1995 biennium in accordance with 17-2-107. The repayment must include interest on the amount loaned at a rate commensurate with rates earned in the long-term investment pool.

Section 2. **Natural resource damage program reauthorization.** (1) There is authorized to the department of health and environmental sciences from the coal severance tax permanent fund for fiscal years 1994 and 1995 a loan that was authorized for fiscal years 1992 and 1993 from the general fund in the amount of $4,928,894, for the purpose of conducting the natural resource damage assessment and the litigation of the natural resource damage claim against the atlantic richfield company (ARCO). There is also authorized to the department for fiscal year 1994 a loan from the coal severance tax permanent fund in the amount of $246,135, which represents the interest lost by the general fund because of the $4,928,894 loan for fiscal years 1992 and 1993.

(2) The department shall repay to the general fund the amount of $4,928,894, plus interest in the amount of $246,135 that was lost by the general fund because of the loan, from the proceeds of the loans authorized in subsection (1). The repayment to the general fund must be made upon receipt of the loans authorized by subsection (1).

Section 3. **Loan authorization — appropriation of loan proceeds.** In addition to the litigation listed in [sections 1 and 2], loan proceeds are authorized for the purpose of conducting any other natural resource damage assessment, litigation, or administration as provided by Title 75, chapter 10, part 7.

Section 4. Section 17-6-310, MCA, is amended to read:

"**17-6-310. Limits on direct loans.** (1) Except as provided in 20-9-466, *[section 1], and [section 2],* the state may not use the portion of the permanent coal tax trust fund designated for investment in the Montana economy to make direct loans.

(2) Except as provided in 20-9-466, *[section 1], and [section 2],* the permanent coal tax trust fund may not be used by the board of investments to make direct loans to individual borrowers. The purchase of debentures issued by a capital company and loans or portions of loans originated by a financial institution that are sold to the trust are not direct loans."

Section 5. **Loan contract.** In order to make the loans authorized in [sections 1 and 2], the board of investments shall enter into an irrevocable contract with the department of health and environmental sciences pledging the amount recovered in the litigation to the repayment of the loans. The contract must provide that loan repayments must be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loans from the portion of the coal severance tax permanent fund invested in the short-term investment pool. The loans authorized in [sections 1 and 2] may not be made until the contract required by this section has been entered into by the board and the department.

Section 6. **Three-fourths vote.** Because [section 3] appropriates money from the coal severance tax trust fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 7. **Legislative oversight.** The speaker of the house and the president of the senate shall each appoint two members of their respective bodies, one from each party, to meet quarterly for briefings on the progress of the Montana-ARCO litigation and negotiations. The committee shall also consider plans for appropriate utilization of any money received by the state as a result of the litigation. Staff assistance for the committee must be provided by the department of health and environmental sciences. Committee expenses must be paid from the appropriation in [section 1].

Section 8. **Effective date.** [This act] is effective July 1, 1993.

Approved April 16, 1993.

CHAPTER NO. 355

[HB 423]

AN ACT CLARIFYING THE PETROLEUM TANK RELEASE COMPENSATION BOARD HEARING REQUIREMENTS FOR REIMBURSEMENT OF ELIGIBLE COSTS; AND AMENDING SECTION 75-11-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-309, MCA, is amended to read:

"75-11-309. Procedures for reimbursement of eligible costs. (1) An owner or operator seeking reimbursement for eligible costs and the department shall comply with the following procedures:

(a) If an owner or operator discovers or is provided evidence that a release may have occurred from ~~his~~ *the owner's or operator's* petroleum storage tank, ~~he~~ *the owner or operator* shall immediately notify the department of the release and conduct an initial response to the release in accordance with state and federal laws and rules to protect public health and safety and the environment.

(b) The owner or operator shall conduct a thorough investigation of the release, report the findings to the department, and, as determined necessary by the department, prepare and submit for approval by the department a corrective action plan that conforms with state, tribal (where applicable), and federal corrective action requirements.

(c) (i) The department shall review the corrective action plan and forward a copy to a local government office and, where applicable, a tribal government office with jurisdiction over a corrective action for the release. The local or tribal government office shall inform the department if it wants any modification of the proposed plan.

(ii) Based on its own review and comments received from a local government, tribal government, or other source, the department may approve the proposed corrective action plan, make or request the owner or operator to modify the proposed plan, or prepare its own plan for compliance by the owner or operator. A plan finally approved by the department through any process provided in this subsection (c) is the approved corrective action plan.

(iii) After the department approves a corrective action plan, a local government or tribal government may not impose different corrective action requirements on the owner or operator.

(d) The department shall notify the owner or operator and the board of its approval of a corrective action plan.

(e) The owner or operator shall implement the approved plan. The department may oversee the implementation of the plan, require reports and monitoring from the owner or operator, undertake inspections, and otherwise exercise its authority concerning corrective action under Title 75, chapter 10, parts 4 and 7, and other applicable law and rules.

(f) The owner or operator shall document in the manner required by the board all expenses incurred in preparing and implementing the corrective action plan. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board. The board shall forward each claim and appropriate documentation to the department. The department shall notify the board of any costs that the department considers not reimbursable because of any failure to meet the requirements of subsection (2). The department shall inform the owner or operator of any notification given to the board.

(g) The owner or operator shall document, in the manner required by the board, any payments to a third party for bodily injury or property damage caused by a release. The owner or operator shall submit claims and substantiating documents to the board in the form and manner required by the board.

(2) The board shall review each claim received under subsections (1)(f) and (1)(g), make the determination required by this subsection, inform the owner or operator of its determination, and, as appropriate, reimburse the owner or operator from the fund. Before approving a reimbursement, the board shall affirmatively determine that:

(a) the expenses for which reimbursement is claimed:

(i) are eligible costs; and

(ii) were actually, necessarily, and reasonably incurred for the preparation or implementation of a corrective action plan approved by the department or for payments to a third party for bodily injury or property damage; and

(b) the owner or operator:

(i) is eligible for reimbursement under 75-11-308; and

(ii) has complied with this section and any rules adopted pursuant to this section.

(3) If an owner or operator disagrees with a board determination under subsection (2), ~~he~~ *the owner or operator* may submit a written request for a hearing before the board. The hearing must be held at a meeting of the board *or as otherwise permitted under the Montana Administrative Procedure Act* no later than 120 days following receipt of the request or at a time mutually agreed to by the board and the owner or operator.

(4) The board shall obligate money for reimbursement of eligible costs of owners and operators in the order that the costs are finally approved by the board.

(5) (a) The board may, at the request of an owner or operator, guarantee in writing the reimbursement of eligible costs that have been approved by the board but for which money is not currently available from the fund for reimbursement.

(b) The board may, at the request of an owner or operator, guarantee in writing reimbursement of eligible costs not yet approved by the board, including estimated costs not yet incurred. A guarantee for payment under this subsection (5)(b) does not affect the order in which money in the fund is obligated under subsection (4).

(c) When considering a request for a guarantee of payment, the board may require pertinent information or documentation from the owner or operator. The board may grant or deny, in whole or in part, any request for a guarantee."

Approved April 16, 1993.

CHAPTER NO. 356

[HB 494]

AN ACT GENERALLY REVISING THE SPECIAL EDUCATION LAWS TO COMPLY WITH THE REQUIREMENTS OF THE FEDERAL INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-401, 20-7-403, 20-7-411, 20-7-414, 20-7-461, AND 52-2-101, MCA; REPEALING SECTIONS 20-7-413 AND 20-7-415, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-401, MCA, is amended to read:

"**20-7-401. Definitions.** In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities.

(2) "Assistive technology service" means any service that directly assists a child with disabilities in the selection, acquisition, or use of an assistive technology device. The term includes:

(a) the evaluation of the needs of a child with disabilities, including a functional evaluation of the child in the child's customary environment;

(b) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by a child with disabilities;

(c) selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing an assistive technology device;

(d) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) training or technical assistance for a child with disabilities or, if appropriate, training or technical assistance for that child's family; and

(f) training or technical assistance for professionals, including individuals providing education or rehabilitation services, for employers, or for other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities.

(3) "Autism" means a ~~condition that is manifested by severe communication and other developmental and educational problems~~ *developmental disability that significantly affects verbal and nonverbal communication and social interaction, that is generally evident before 3 years of age, and that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environment change or to change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has a serious emotional disturbance.*

~~(2)~~*(4)* "Child with disabilities" means a child ~~with~~ *evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having* cognitive delay; hearing impairment, including deafness; ~~speech-language~~ *speech or language* impairment; visual impairment, including blindness; emotional disturbance; orthopedic impairment; autism; traumatic brain injury; other health impairments; *deaf-blindness; multiple disabilities;* or specific learning disabilities~~,~~ *and* who because of those impairments needs special education and related services. A child who is 5 years of age or younger may be identified as a child with disabilities without the specific disabilities being specified.

~~(3)~~*(5)* "Cognitive delay" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

(6) "Deaf-blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication problems and other developmental and educational problems that the problems cannot be accommodated in special education programs solely for children with deafness or for children with blindness.

~~(4)~~*(7)* "Deafness" means a hearing impairment that is so severe that the ~~child's hearing is nonfunctional for the purpose of~~ *child is impaired in processing linguistic information through hearing, with or without amplification, in a manner that adversely affects the child's* educational performance.

~~(5)~~*(8)* "Emotional disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time that adversely affects educational performance: an inability to learn that cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms or fears associated with personal or school problems. The term includes schizophrenia. The term does not include social maladjustment, unless it is determined that the child is emotionally disturbed.

~~(6)~~*(9)* "Free appropriate public education" means ~~the provision of regular or special education and related aids and services that are designed to meet individual educational needs of children with disabilities as adequately as the needs of children without disabilities are met~~ *special education and related services that:*

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

~~(7)~~*(10)* "Hearing impairment" means an impairment *in hearing,* whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included within the definition of deafness.

~~(8)~~*(11)* "Orthopedic impairment" means a severe orthopedic disability that adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis or bone tuberculosis), and impairments from other causes (e.g., fractures or burns that cause contractures, amputation, cerebral palsy).

~~(9)~~*(12)* "Other health impairment" means limited strength, vitality, or alertness due to chronic or acute health problems, such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, that adversely affects a child's educational performance.

~~(10)~~*(13)* "Related services" means transportation and any developmental, corrective, and other supportive services that are required to assist a child with disabilities to benefit from special education and includes speech-language pathology, audiology, occupational therapy, ~~and~~ physical therapy, *recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parental counseling and training.*

~~(11)~~*(14)* "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with disabilities, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

~~(12)~~*(15)* "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems that are primarily the result of visual , hearing, or motor handicaps; cognitive delay; or environmental, cultural, or economic disadvantages.

~~(13)~~*(16)* "Speech-language impairment" means a communication disorder, such as stuttering, impaired articulation, or a language or voice impairment, that adversely affects a child's interpersonal relationships or educational performance.

~~(14)~~*(17)* "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child.

~~(15)~~*(18) "Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term does not apply to brain injuries that are congenital or degenerative or to brain injuries that are induced by birth trauma.*

(19) "Visual impairment" means an impairment that, after correction, adversely affects a child's educational performance. The term includes both partial blindness and blindness."

Section 2. Section 20-7-403, MCA, is amended to read:

"**20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying children with disabilities;

(5) recommending to districts the type of special education class or program needed to serve the children with disabilities of the districts and preparing appropriate guides for developing ~~individual~~ *individualized* education programs;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for all children with disabilities;

(8) approving, as they are proposed and annually ~~thereafter~~ *after approval,* those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

(9) providing technical assistance to district superintendents, principals, teachers, and trustees;

(10) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) ~~preparing~~ *ensuring* appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(12) ~~acting as the coordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education,~~ *ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for children with disabilities administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction,* reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education *or for providing or paying for some or all of the costs of a free appropriate public education to children with disabilities within the state*;

(13) ~~administering regional special education services for children in need of special education in accordance with policies of the board of public education;~~

~~(14)~~ contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

~~(15)~~*(14)* contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child when a state agency places a child with disabilities who is in need of special education in:

(a) an in-state residential facility or children's psychiatric hospital; or

(b) an out-of-state public school or private residential facility."

Section 3. Section 20-7-411, MCA, is amended to read:

"**20-7-411. Regular classes preferred — obligation to establish special education program.** (1) All children with disabilities in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, must be educated with children who do not have disabilities. Separate schooling or other removal of children with disabilities from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) ~~After September 1, 1977, the~~ *The* board of trustees of every school district shall provide or establish and maintain a special education program for ~~every person~~ *each child* with ~~a disability as herein defined~~ *disabilities* between the ages of 6 and 18, inclusive.

(3) ~~On or before September 1, 1990, the~~ *The* board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with disabilities between the ages of 3 and 6, inclusive.

(4) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

(5) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with disabilities if required as a part of the child's special education services, related services, or supplementary aids."

Section 4. Section 20-7-414, MCA, is amended to read:

"**20-7-414. Determination of children in need and type of special education needed — approval of classes and programs by superintendent.** (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the ~~trustees~~ *school district,* and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. ~~Whenever the trustees of a school district or the governing authority~~

~~of an institution learn of a child with disabilities in their jurisdiction who is in need of special education, they shall determine that the child is in need of a surrogate parent if the parents or guardian cannot be identified or, after reasonable efforts, the whereabouts of the parents cannot be discovered or if the child is a ward of the state. The determination must be made within 10 days of the date on which the trustees of a school district or the governing authority of an institution learned of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or the governing authority of an institution shall nominate a surrogate parent for the child as provided in 20-7-461~~ *The school district shall make available a free appropriate public education to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.*

(2) Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually to be funded as part of the foundation program for special education."

Section 5. Section 20-7-461, MCA, is amended to read:

"**20-7-461. Appointment and termination of appointment of surrogate parent.** (1) ~~Any person may advise the trustees of a school district or the governing authority of an institution of a child with disabilities within the district who may be in need of a surrogate parent. The trustees of a school district or the governing authority of an institution shall determine whether the child is in need of a surrogate parent as provided in 20-7-414. If the trustees of a school district or the governing authority of an institution determine that the child is in need of a surrogate parent, they shall nominate a surrogate parent for the child within 30 days of that determination.~~ *A school district or institution that provides education to a child with disabilities shall adopt procedures to assign an individual to act as a surrogate parent for a child with disabilities whenever the parents or guardian cannot be identified or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state. The determination of need for a surrogate parent must be made within 10 days of the date on which the school district or its designee or the governing authority of an institution or its designee learns of the presence of the child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days of that determination.*

(2) The person nominated as a surrogate parent must be an adult who is not an employee of a state or local educational agency. The surrogate parent may not have a vested interest that will conflict with ~~his~~ *the person's* representation and protection of the child. The surrogate, whenever practicable, must be knowledgeable about the educational system, special education requirements, and the legal rights of the child in relation to the educational system.

Whenever practicable, the surrogate parent must be familiar with the cultural or language background of the child.

(3) The nomination for appointment of a surrogate parent, along with all necessary supporting documents, must be submitted to the youth court for official appointment of the surrogate parent by the court. The trustees of a school district *or their designee* or the governing authority of an institution *or its designee* shall take all reasonable action to ensure that the youth court appoints or denies the appointment of a person nominated as a surrogate parent within 45 days of the court's receipt of all necessary supporting documents. If the youth court denies an appointment, the trustees of a district *or their designee* or the governing authority of an institution *or its designee* shall nominate another person to be appointed as the surrogate parent.

(4) The superintendent of public instruction shall adopt rules for a procedure to terminate the appointment of a surrogate parent when:

(a) a child's parents are identified;

(b) the ~~whereabouts~~ *location* of the parents ~~are~~ *is* discovered;

(c) the child is no longer a ward of the state; or

(d) the surrogate parent wishes to discontinue ~~his~~ *the* appointment."

Section 6. Section 52-2-101, MCA, is amended to read:

"**52-2-101. Definitions.** As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of abused, dependent, or neglected children.

(2) "Department" means the department of family services provided for in 2-15-2401.

(3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist, licensed social worker, or special education child study team (established under rules adopted by the superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:

(i) an identifiable mental health problem as identified in a nationally recognized classification system or as defined in 20-7-401~~(5)~~*(8)*; and

(ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a dysfunction in any of the following areas:

(A) relationships;

(B) behavior;

(C) cognition; or

(D) education.

(b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one recognized by rules established by the department.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance."

Section 7. **Repealer.** Sections 20-7-413 and 20-7-415, MCA, are repealed.

Section 8. **Effective date.** [This act] is effective July 1, 1993.

Approved April 16, 1993.

CHAPTER NO. 357

[HB 500]

AN ACT REQUIRING THAT A PROPOSED SUPPLEMENTAL APPROPRIATION MUST CONTAIN A PLAN FOR REDUCING EXPENDITURES IN THE SECOND YEAR OF THE BIENNIUM THAT ALLOWS THE AGENCY TO CONTAIN EXPENDITURES WITHIN APPROPRIATIONS; PROVIDING CERTAIN EXCEPTIONS; AUTHORIZING THE GOVERNOR TO IMPLEMENT THE PLAN; PROHIBITING DURING THE SECOND FISCAL YEAR OF A BIENNIUM NONMANDATORY EXPENDITURES THAT WILL CAUSE EXPENDITURES TO EXCEED APPROPRIATIONS; AND AMENDING SECTIONS 17-7-301 AND 17-7-311, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-301, MCA, is amended to read:

"**17-7-301. Authorization to expend during first year of biennium from appropriation for second year — proposed supplemental appropriation defined — *limit on second-year expenditures.*** (1) A state department, institution, or agency of the executive branch desiring authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium shall submit a proposed supplemental appropriation to the governor through the budget director. *The proposal submitted to the governor must include a plan for reducing expenditures in the second year of the biennium that allows the agency to contain expenditures within appropriations.* If the governor finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other income will be insufficient for the operation and maintenance of ~~said~~ *the* department, institution, or agency during the year for which the appropriation was made, ~~he~~ *the governor* shall, after careful study and examination of the request and upon review of the recommendation of the budget director, submit the proposed supplemental appropriation to the legislative fiscal analyst.

(2) The plan for reducing expenditures required by subsection (1) is not required if the proposed supplemental appropriation is:

(a) due to an unforeseen and unanticipated emergency for fire suppression;

(b) requested by the superintendent of public instruction, in accordance with the provisions of 20-9-351, and is to complete the state's funding of guaranteed tax base aid, transportation aid, or equalization aid to elementary and secondary schools for the current biennium; or

(c) requested by the attorney general and:

(i) is to pay the costs associated with litigation in which the department of justice must provide representation to the state of Montana; or

(ii) in accordance with the provisions of 7-32-2242, is to pay costs for which the department of justice is responsible for confinement of an arrested person in a detention center.

(3) Upon receipt of the recommendation of the legislative finance committee pursuant to 17-7-311, the governor may authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium. *Except as provided in subsection (2), the governor shall require the agency to implement the plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations.*

~~(2)~~*(4)* The department, institution, or agency may expend the amount authorized by the governor only for the purposes specified in the authorization.

~~(3)~~*(5)* The governor shall report to the next legislature in a special section of the budget the amounts expended as a result of all ~~such~~ authorizations granted by ~~him~~ *the governor* and shall request that any necessary supplemental appropriation bills be passed.

~~(4)~~*(6)* As used in this part, "proposed supplemental appropriation" means an application for authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium.

(7) (a) Except as provided in subsections (2) and (7)(b), an agency may not make expenditures in the second year of the biennium that, if carried on for the full year, will require a deficiency appropriation, commonly referred to as a "supplemental appropriation".

(b) An agency shall prepare and, to the extent feasible, implement a plan for reducing expenditures in the second year of the biennium that contains agency expenditures within appropriations. The approving authority is responsible for ensuring the implementation of the plan. If, in the second year of a biennium, mandated expenditures that are required by state or federal law will cause an agency to exceed appropriations or available funds, the agency shall reduce all nonmandated expenditures pursuant to the plan in order to reduce to the greatest extent possible the expenditures in excess of appropriations or funding. An agency may not transfer funds between fund types in order to implement a plan."

Section 2. Section 17-7-311, MCA, is amended to read:

"**17-7-311. Proposed supplemental appropriation — procedure.** (1) A proposed supplemental appropriation and all supporting documentation must be submitted to the legislative fiscal analyst. The governor may not approve a proposed supplemental appropriation until the governor receives the legislative finance committee's written report for that proposed supplemental appropriation unless:

(a) the report is not received within 90 calendar days from the date the proposed supplemental appropriation and supporting documentation were forwarded to the legislative finance committee, in which case the governor may approve the proposed supplemental appropriation; or

(b) there has been a waiver of the review and report requirements, as provided in subsection (4).

(2) The legislative fiscal analyst shall review each proposed supplemental appropriation submitted by the governor for compliance with statutory requirements and standards *and to determine the expenditures that will be reduced in order to contain spending within legislative appropriations.* ~~and~~ *The legislative fiscal analyst* shall present a written report of this review to the legislative finance committee. Within 10 days after the legislative finance committee's consideration of the proposed supplemental appropriation, the legislative fiscal analyst shall submit the legislative finance committee's report to the governor.

(3) Upon receipt of the legislative finance committee's written report, the governor may approve or deny the proposed supplemental appropriation or may return the proposed supplemental appropriation to the requesting agency for further information. If the governor has returned the proposed supplemental appropriation to the requesting agency and the requesting agency resubmits the proposed supplemental appropriation to the governor, all procedures provided in this section apply to the resubmitted proposed supplemental appropriation.

(4) (a) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive the written review and the legislative finance committee's written report required by this section. After a waiver, the legislative fiscal analyst may complete the written review.

(b) Upon receipt of the waiver, the governor may approve the proposed supplemental appropriation.

(c) A waiver affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the proposed supplemental appropriation. All other proposed supplemental appropriation requirements and standards remain in effect.

(5) Nothing in this part confers on the legislative finance committee authority to approve or deny a proposed supplemental appropriation."

Approved April 16, 1993.

CHAPTER NO. 358

[HB 638]

AN ACT PROHIBITING THE PLACEMENT OF A STATUS OFFENDER IN A STATE YOUTH CORRECTIONAL FACILITY; PROHIBITING THE INITIAL COMMITMENT OR PROLONGED CONFINEMENT OF A MENTALLY ILL YOUTH IN A STATE YOUTH CORRECTIONAL FACILITY; CLARIFYING

WHO SUPERVISES A YOUTH FOLLOWING A MENTAL HEALTH COMMITMENT; AMENDING SECTIONS 41-5-523, 52-5-126, AND 52-5-127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-523, MCA, is amended to read:

"**41-5-523. Disposition — commitment to department — placement and evaluation of youth — restrictions.** (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home, provided that:

(i) ~~in the case of a youth in need of supervision,~~ the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from ~~his~~ *the youth's* home. The court shall include a determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public~~;~~. *The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.*

(c) order restitution by the youth or ~~his~~ *the youth's* parents;

(d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(e) require the performance of community service;

(f) require the youth, ~~his~~ *the youth's* parents~~, his~~ *or* guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, ~~his~~ *the youth's* parents~~, his~~ *or* guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. ~~Upon release or discharge from the mental health facility, the youth must be returned to the court for further disposition in accordance with this section unless the court order has expired or the court no longer retains jurisdiction under 41-5-205.~~ *A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.*

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision *or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult* may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a state youth correctional facility *or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126* must be supervised by the department. A youth *who is* placed in any other placement *by the department, the youth court, or the youth court's juvenile probation officer* must be supervised by the ~~youth~~ probation officer of the youth court having jurisdiction over the youth *under 41-5-205* whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives ~~his~~ *the youth's* constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of ~~a~~ medical ~~report~~ *reports, social history material, education records,* and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 2. Section 52-5-126, MCA, is amended to read:

"**52-5-126. Youth aftercare agreement.** (1) A youth released by the department of family services from one of the state youth correctional facilities to the supervision, custody, and control of the department shall, before ~~his~~ *the youth's* release, sign an aftercare agreement containing:

(a) a statement of the terms and conditions of ~~his~~ *the* release, including a list of the acts ~~which~~ *that*, if committed by the youth, may result in ~~his~~ *a* return to the facility; and

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before ~~he may be~~ *being* returned to the facility.

(2) A youth ~~who is~~ released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign an aftercare agreement that will remain in effect until *the department no longer has custody of* the youth ~~is returned to the court for further disposition as provided in 41-5-523(1)(j). If the youth is not returned to a state youth~~

~~correctional facility following the hearing for further disposition, the aftercare agreement becomes void unless amended or extended by the department or the court.~~"

Section 3. Section 52-5-127, MCA, is amended to read:

"**52-5-127. Control over youth released under aftercare agreement.** The department of family services has control over a youth released under 52-5-126 until ~~he~~ *the youth* attains the age of 19 years unless the youth is discharged by the department before age 19. However, the youth is subject to the ~~general~~ *continuing* jurisdiction of the ~~various~~ *youth* courts of Montana, *pursuant to 41-5-205,* for acts committed by the youth while under the control of the department."

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1993.

CHAPTER NO. 359

[SB 31]

AN ACT CLARIFYING REIMBURSEMENT RATES IN SCHOOL DISTRICT TRANSPORTATION LAWS; ELIMINATING A REFERENCE TO THE COUNTY TRANSPORTATION FUND OPERATING RESERVE; AMENDING SECTIONS 20-10-101, 20-10-142, AND 20-10-146, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-101, MCA, is amended to read:

"**20-10-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) An "eligible transportee" means a public school pupil who:

(a) is 5 years of age or older and has not attained his 21st birthday or who is a preschool child with disabilities between the ages of 3 and 5;

(b) is a resident of the state of Montana;

(c) regardless of district and county boundaries, resides at least 3 miles, over the shortest practical route, from the nearest operating public elementary school or public high school, whichever the case may be; and

(d) is considered to reside with his parent or guardian who maintains legal residence within the boundaries of the district furnishing the transportation regardless of where the eligible transportee actually lives when attending school.

(2) (a) A "school bus" means, except as provided in subsection (2)(b), any motor vehicle that:

(i) complies with the bus standards established by the board of public education as verified by the Montana department of justice's semiannual inspection of school buses and the superintendent of public instruction; and

(ii) is owned by a district or other public agency and operated for the transportation of pupils to or from school or owned by a carrier under contract with a district or public agency to provide transportation of pupils to or from school.

(b) A school bus does not include a vehicle that is:

(i) privately owned and not operated for compensation under this title;

(ii) privately owned and operated for reimbursement under 20-10-142;

(iii) either district-owned or privately owned, designed to carry not more than nine passengers, and used to transport pupils to or from activity events or to transport pupils to their homes in case of illness or other emergency situations; or

(iv) an over-the-road passenger coach used only to transport pupils to activity events.

(3) "Transportation" means:

(a) a district's conveyance of a pupil by a school bus between his legal residence *or an officially designated bus stop* and the school designated by the trustees for his attendance; or

(b) "individual transportation" whereby a district is relieved of actually conveying a pupil. Individual transportation may include paying the parent or guardian for conveying the pupil, reimbursing the parent or guardian for the pupil's board and room, or providing supervised correspondence study or supervised home study."

Section 2. Section 20-10-142, MCA, is amended to read:

"20-10-142. Schedule of maximum reimbursement for individual transportation. The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of 20-10-145 and 20-10-146. These rates ~~also shall~~ constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section ~~shall~~ *may* not be altered by any authority other than the legislature of the state of Montana. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement per day of attendance ~~shall be~~ *is* determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product ~~so obtained~~, and multiplying the difference by 21.25 cents, provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if ~~such~~ *the* schools are operated by different school districts, the total amount of the reimbursement ~~shall~~ *must* be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian ~~shall~~ *must* be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop ~~which school and bus stop~~ *that* are located within 3 miles of one another, the total reimbursement ~~shall~~ *must* be determined under the provisions of this subsection and ~~shall~~ *must* be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section ~~shall be~~ *is* limited to one round trip per day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), ~~no~~ *a* reimbursement may *not* be less than 25 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance ~~shall be~~ *is* determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 3 miles from the product ~~so obtained~~, and multiplying the difference by ~~22.5~~ *21.25* cents, provided that:

(a) if the eligible transportees ~~transported~~ attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian ~~shall~~ *must* be separately reimbursed for transportation to each bus.

(3) ~~Where~~ *When*, due to excessive distances, impassable roads, or other special circumstances of isolation the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a physical hardship for the eligible transportee, ~~his~~ *a* parent or guardian may request an increase in the reimbursement rate. ~~Such a~~ *A* request for increased rates due to isolation ~~shall~~ *must* be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances ~~which~~ *that* exist to justify the increase. Before ~~any~~ *an* increased rate due to isolation ~~can~~ *may* be paid to the requesting parent or guardian, ~~such~~ *the* rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation

committee and the superintendent of public instruction, the trustees shall pay ~~such~~ *the* increased rate due to isolation. The increased rate ~~shall be~~ *is* 1 ½ times the rate prescribed in subsection (1) ~~above~~.

(4) When the isolated conditions of the household where an eligible transportee resides require ~~such~~ *an* eligible transportee to live away from the household in order to attend school, ~~he shall be~~ *the eligible transportee is* eligible for the room and board reimbursement. Approval to receive the room and board reimbursement ~~shall~~ *must* be obtained in the same manner prescribed in subsection (3) ~~above~~. The per diem rate for room and board ~~shall be~~ *is* $5.31 for one eligible transportee and $3.19 for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate ~~shall be~~ *is* the cost of ~~such~~ *the* study, provided that the course of instruction is approved by the trustees and supervised by the district."

Section 3. Section 20-10-146, MCA, is amended to read:

"**20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount; and

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund~~.~~; ~~The county transportation fund operating reserve may not be more than 35% of the final county transportation fund budget for the ensuing school fiscal year and must be used for the purpose of paying transportation fund warrants under the county transportation fund budget.~~

(v) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vi) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) notwithstanding the provisions of subsection (3), subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the second Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved April 16, 1993.

CHAPTER NO. 360

[SB 39]

AN ACT PROVIDING FOR DISCONTINUING LICENSED ACUTE HOSPITAL CARE ON THE GALEN CAMPUS OF THE MONTANA STATE HOSPITAL; AMENDING SECTION 53-21-601, MCA; REPEALING SECTION 50-17-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 52nd Legislature created a study committee to make recommendations on the future role of the Montana State Hospital; and

WHEREAS, the Committee on the Montana State Hospital, by majority vote, has recommended that the Montana State Hospital discontinue licensed acute hospital care on the Galen campus; and

WHEREAS, two independent physicians, contracted by the Committee on the Montana State Hospital, found, after reviewing patient files and the capabilities of the Galen acute care hospital, that the acute care capabilities of the Galen hospital are very limited and that the great majority of the residents of Galen, Warm Springs, and the Montana State Prison can be effectively served in a subacute infirmary setting; and

WHEREAS, these two physicians expressed concerns about whether institutional residents who do require acute care receive the level of care they need at the Galen acute care hospital; and

WHEREAS, the continued operation of a licensed acute care hospital in aging facilities that are costly to maintain is inefficient and unnecessary; and

WHEREAS, an infirmary will be established at Warm Springs to provide for the subacute medical needs of residents of Galen, Warm Springs, and the Montana State Prison; and

WHEREAS, the medical detoxification of clients of the Galen chemical dependency program can be accomplished in a subacute setting.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-601, MCA, is amended to read:

"**53-21-601. Location and primary function of hospital.** (1) The ~~agency~~ *facility* providing ~~comprehensive~~ health care services at Galen and Warm Springs, Montana, is the Montana state hospital and as its primary function provides:

(a) care and treatment of mentally ill persons;

(b) diagnosis, care, evaluation, treatment, referral, and rehabilitation of persons afflicted with chemical dependency;

(c) care and treatment of institutional residents or clients of the department's community and residential programs who require ~~acute hospital care or~~ nursing care;

~~(d) treatment of tuberculosis and silicosis (commonly called miner's consumption);~~ *and*

~~(e)~~*(d)* detoxification of those persons who seek relief from the disabling effects of alcohol and other chemical substances~~; and~~

~~(f) contingent upon space and funds, the treatment of pulmonary diseases and other medical or organic disorders~~.

(2) The campus facility at Warm Springs, Montana, is the component designated as the mental health facility, as defined in 53-21-102, of the department of corrections and human services for the care and treatment of mentally ill persons.

(3) The ~~designated~~ campus facilities at Galen, Montana, are the components designated as the department's residential treatment facilities for ~~those~~ persons suffering from chemical dependency.

(4) The campus facility at Galen, Montana, licensed to provide ~~acute hospital and~~ intermediate nursing care, is the facility component designated for the care and treatment of ~~the medical and organic disorders described in this section~~

clients of the department's community and residential programs who require nursing care."

Section 2. **Repealer.** Section 50-17-104, MCA, is repealed.

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 16, 1993.

CHAPTER NO. 361

[SB 40]

AN ACT PROVIDING THAT THE MONTANA STATE HOSPITAL AT GALEN CEASE TO PROVIDE INTERMEDIATE NURSING CARE; AMENDING SECTION 53-21-601, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 52nd Legislature created an interim committee to study the role of the Montana State Hospital; and

WHEREAS, the interim study Committee on the Montana State Hospital, by majority vote, has recommended that the intermediate care nursing home on the Galen campus of the Montana State Hospital be closed; and

WHEREAS, the occupancy rate at the Galen nursing home is low, and the buildings and facilities that support the program are aging and costly to maintain; and

WHEREAS, nursing home patients at Galen may be effectively cared for at other state or private nursing home facilities; and

WHEREAS, the continued operation of the Galen intermediate care nursing home would be an inefficient and unnecessary use of state resources.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-601, MCA, is amended to read:

"**53-21-601. Location and primary function of hospital.** (1) The ~~agency~~ *facility* providing ~~comprehensive~~ health care services at Galen and Warm Springs, Montana, is the Montana state hospital and as its primary function provides:

(a) care and treatment of mentally ill persons;

(b) diagnosis, care, evaluation, treatment, referral, and rehabilitation of persons afflicted with chemical dependency;

(c) care and treatment of institutional residents or clients of the department's community and residential programs who require acute hospital care ~~or nursing care~~;

(d) treatment of tuberculosis and silicosis (commonly called miner's consumption);

(e) detoxification of those persons who seek relief from the disabling effects of alcohol and other chemical substances; and

(f) contingent upon space and funds, the treatment of pulmonary diseases and other medical or organic disorders.

(2) The campus facility at Warm Springs, Montana, is the component designated as the mental health facility, as defined in 53-21-102, of the department of corrections and human services for the care and treatment of mentally ill persons.

(3) The ~~designated~~ campus facilities at Galen, Montana, are the components designated as the department's residential treatment facilities for ~~those~~ persons suffering from chemical dependency.

(4) The campus facility at Galen, Montana, licensed to provide acute hospital ~~and intermediate nursing~~ care, is the facility component designated for the care and treatment of the medical and organic disorders described in this section."

Section 2. **Coordination instruction.** If Senate Bill No. 39 is passed and approved and if it includes a section discontinuing the Galen acute care hospital, then [section 1 of this act], amending 53-21-601, must read:

"Section 1. Section 53-21-601, MCA, is amended to read:

"53-21-601. Location and primary function of hospital. (1) The ~~agency~~ *facility* providing ~~comprehensive~~ health care services at Galen and Warm Springs, Montana, is the Montana state hospital and as its primary function provides:

(a) care and treatment of mentally ill persons;

(b) diagnosis, care, evaluation, treatment, referral, and rehabilitation of persons afflicted with chemical dependency;

~~(c) care and treatment of institutional residents or clients of the department's community and residential programs who require acute hospital care or nursing care;~~

~~(d)~~*(c)* treatment of tuberculosis and silicosis (commonly called miner's consumption);

~~(e)~~*(d)* detoxification of those persons who seek relief from the disabling effects of alcohol and other chemical substances; and

~~(f)~~*(e)* contingent upon space and funds, the treatment of pulmonary diseases and other medical or organic disorders.

(2) The campus facility at Warm Springs, Montana, is the component designated as the mental health facility, as defined in 53-21-102, of the department of corrections and human services for the care and treatment of mentally ill persons.

(3) The ~~designated~~ campus facilities at Galen, Montana, are the components designated as the department's residential treatment facilities for ~~those~~ persons suffering from chemical dependency.

~~(4) The campus facility at Galen, Montana, licensed to provide acute hospital and intermediate nursing care, is the facility component designated for the care and treatment of the medical and organic disorders described in this section.~~""

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 16, 1993.

CHAPTER NO. 362

[SB 70]

AN ACT PROVIDING THAT A COURT MAY NOT MAKE A DISPOSITION IN A CHILD ABUSE, NEGLECT, OR DEPENDENCY PROCEEDING THAT REQUIRES AN EXPENDITURE OF MONEY BY THE DEPARTMENT OF FAMILY SERVICES UNLESS THE DEPARTMENT IS NOTIFIED AND A TIMELY COURT HEARING IS SET; PROVIDING THAT THE DEPARTMENT IS THE PAYOR OF LAST RESORT; AMENDING SECTIONS 41-3-403 AND 41-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-403, MCA, is amended to read:

"**41-3-403. Order for immediate protection of youth.** (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting ~~such~~ relief as may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, ~~shall~~ *must* be served by a peace officer or a representative of the department ~~of family services~~ on the person or persons named ~~therein~~ *in the order*. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon ~~thereafter~~ *after placement* as possible.

(c) The order ~~shall~~ *must* require the person served to comply immediately with the terms ~~thereof~~ *of the order* or to appear before the court issuing the order on the date specified and show cause why ~~he~~ *the person* has not complied with the order. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. Except as otherwise provided ~~herein~~ *in this section*, the rules of civil procedure ~~shall~~ apply.

(d) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary legal custody of the youth with the department ~~of family services~~ until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department ~~of family services~~ worker;

(b) medical and psychological evaluation of *the* youth or parents, guardians, or person having legal custody;

(c) ~~require~~ *requirement that* the youth, parents, guardians, or person having legal custody ~~to~~ receive counseling services;

(d) ~~place~~ *placement of* the youth in *a* temporary medical facility or *a* facility for protection of the youth;

(e) ~~require~~ *requirement that* the parents, guardian, or other person having custody ~~to~~ furnish ~~such~~ services as the court may designate;

(f) ~~inquire~~ *inquiry* into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and ~~order~~ *requirement of a* contribution for those costs pursuant to the requirements of 41-3-406(3) through (6);

(g) ~~such~~ other temporary disposition as may be required in the best interest of the youth *that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.*"

Section 2. Section 41-3-406, MCA, is amended to read:

"**41-3-406. Dispositional hearing — contributions by parents or guardians for youth's care.** (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with ~~his~~ *the youth's* parents or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(c) transfer legal custody to any of the following:

(i) the department ~~of family services~~;

(ii) a child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(d) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling~~;~~ *that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.*

(e) order ~~such~~ further care and treatment as the court considers in the best interest of the youth *that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.*

(2) If the youth is transferred to the custody of the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (2), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for *a* contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds *that* there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1993.

CHAPTER NO. 363

[SB 73]

AN ACT CREATING A PENALTY FOR FAILURE OF A RAILROAD CORPORATION TO MAINTAIN FENCES; CREATING A PROCESS OF NOTIFICATION TO A RAILROAD CORPORATION WHEN FENCES ARE IN DISREPAIR; SETTING A TIME LIMIT FOR PAYMENT ON A JUDGMENT OF LIABILITY FOR THE VALUE OF A KILLED OR MAIMED ANIMAL AND PROVIDING FOR CHARGING INTEREST WHEN THAT TIME LIMIT IS EXCEEDED; AND AMENDING SECTION 69-14-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-701, MCA, is amended to read:

"69-14-701. Maintenance of fences — *exception — penalty.* (1) Railroad corporations ~~must make~~ *shall build* and maintain a ~~good and~~ legal fence on both sides of their track and property and maintain cattle guards at all crossings over which cattle or other domestic animals cannot pass, *except that a fence is not required in places where water ditches, embankments, terrain, or other sufficient protection prevents domestic animals from straying onto the right-of-way. An affected landowner or lessee may construct, maintain, or repair a fence subject to approval and reimbursement by the railroad corporation.*

(2) ~~In case they do not make~~ *If a railroad corporation does not build* and maintain ~~such~~ *the* fence and guards~~, if~~ *and* ~~their~~ *its* engines or cars, *because of the lack of a fence or maintenance of a fence,* ~~shall~~ kill or maim ~~any~~ cattle or other domestic animals upon ~~their~~ *its* line of road, ~~they~~ *it* must pay to the owner of ~~such~~ *the* cattle or other domestic animals, in all cases, a fair market price for the ~~same~~ *animal,* unless it occurred through the neglect or fault of the owner of the animal ~~so~~ killed or maimed; ~~provided, that~~ *however,* nothing ~~herein shall~~ *in this section may* be construed ~~so as~~ to prevent ~~any~~ *a* person from recovering damages from ~~any~~ *a* railroad corporation for its negligent killing or injury to ~~any~~ cattle or other domestic animals at spurs, sidings, ~~Y's~~ *Ys,* crossings, and turntables.

(3) An affected landowner or lessee may file a complaint with the public service commission when a fence is in disrepair or in need of maintenance. The public service commission shall certify that the fence is in need of repair and notify the railroad corporation responsible for the fence. The public service commission shall forward a copy of the complaint, a certification that the fence is in need of repair, and a verification that the railroad corporation was notified to the county attorney of the county within which the site of the fence in disrepair is located. Upon notice, the railroad corporation responsible for the fence shall repair the fence within 30 days, weather permitting. A railroad corporation failing to repair the fence within 30 days of notification shall pay a fine of $100 plus $50 a day each day after the 30th day of notification, for failure to repair the fence. The fine must be recovered in a civil action and deposited in the county general fund. It is the duty of the county attorney of the county within which the site of the fence in disrepair is located to prosecute the action."

Section 2. **Payment of claim — penalty.** Upon determining liability for the amount of the value of an animal killed or maimed under the circumstances described in 69-14-701, the railroad corporation shall pay the plaintiff within 30 days. Upon failure to pay the plaintiff within 30 days, interest at a rate of 10% a year accrues on the amount due until the claim is paid.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 69, chapter 14, part 7, and the provisions of Title 69, chapter 14, part 7, apply to [section 2].

Approved April 16, 1993.

CHAPTER NO. 364

[SB 105]

AN ACT ELIMINATING THE CLASS E MOTOR CARRIER CATEGORY AND THE REGULATIONS RELATED TO TRANSPORTING LOGS; AMENDING SECTIONS 69-12-101, 69-12-102, 69-12-201, 69-12-205, 69-12-301, 69-12-321, 69-12-322, 69-12-407, AND 69-12-611, MCA; AND REPEALING SECTIONS 69-12-315, 69-12-333, 69-12-334, AND 69-12-335, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-12-101, MCA, is amended to read:

"69-12-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Between fixed termini" or "over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route.

(2) "Certificate" means the certificate of public convenience and necessity issued under this chapter.

(3) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers under 69-12-421.

(4) "Corporation" means a corporation, company, association, or joint-stock association.

(5) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service.

~~(6) "Log" means a fallen or felled tree, delimbed and cut to length for transportation to a point for storage or processing.~~

~~(7)~~*(6)* "Motor carrier" means a person or corporation, or its lessees, trustees, or receivers appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire on a commercial basis, either as a common carrier or under private contract, agreement, charter, or undertaking. The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.

~~(8)~~*(7)* "Motor vehicle" includes vehicles or machines, motor trucks, tractors, or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state.

~~(9)~~*(8)* "Person" means an individual, firm, or partnership.

~~(10)~~*(9)* "Public highway" means a public street, road, highway, or way in this state.

~~(11)~~*(10)* "Railroad" means the movement of cars on rails, regardless of the motive power used.

~~(12)~~*(11)* "Recyclable" means any material diverted from the solid waste stream that can be reused as raw material for new products and for which markets exist."

Section 2. Section 69-12-102, MCA, is amended to read:

"**69-12-102. Scope of chapter — exemptions.** (1) This chapter does not affect:

(a) motor vehicles used in carrying property consisting of agricultural commodities ~~other than logs~~ (not including manufactured products of agricultural commodities) if the motor vehicles are not used in carrying other property or passengers for compensation;

(b) the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools or in transportation movements related to school activities which are sponsored or supervised by school authorities;

(c) the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person or corporation engaged exclusively in the construction or maintenance of highways or engaged exclusively in logging or mining operations, insofar as the use of employees, supplies, and materials in construction and production is concerned;

(d) the transportation of property by motor vehicle in a city, town, or village with a population of less than 500 persons according to the latest United States census or in the commercial areas thereof, as determined by the commission;

(e) the transportation of newspapers, newspaper supplements, periodicals, or magazines;

(f) tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles;

(g) motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard;

(h) ambulances;

(i) the transportation of pit run or processed sand and gravel, concrete mix, aggregate, plant mix asphalt pavement, aggregate mix, dirt, rock, material from demolished buildings and structures, used paving materials, used concrete, broken concrete, riprap, and other forms and types of materials transported solely for the purpose of excavation or fill;

(j) the transportation by motor vehicle of not more than 15 passengers between their places of residence or termini near their residences and their places of employment in a single daily round trip if the driver is also ~~on his way~~ *going* to or from ~~his~~ *the driver's* place of employment;

(k) the transportation of property by motor carrier as part of a continuous movement if ~~such~~ *that* property, prior or subsequent to ~~such~~ part of a continuous movement, has been or will be transported by an air carrier;

(l) the operation of:

(i) a transportation system by a municipality or transportation district as provided in Title 7, chapter 14, part 2; or

(ii) municipal bus service pursuant to Title 7, chapter 14, part 44;

(m) armored motor vehicles used exclusively for the transportation of coins, currency, silver bullion, gold bullion, and other precious metals, precious stones, valuable paintings, and other items of unusual value requiring special handling and security;

(n) the transportation of a commodity under an agreement between a motor carrier and an office or agency of the United States government; or

(o) the transportation of handicapped or elderly persons provided by private, nonprofit organizations. As used in this subsection:

(i) "handicapped" means an individual who has a physical or mental impairment that substantially limits one or more major life activities;

(ii) "elderly" means a person 60 years of age or older; and

(iii) "private, nonprofit organization" means an organization recognized as nonprofit under section 501(c) of the Internal Revenue Code.

(2) This chapter does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements."

Section 3. Section 69-12-201, MCA, is amended to read:

"**69-12-201. Supervision and regulation of motor carriers.** (1) The commission has the power and authority and it is its duty to:

(a) supervise and regulate every motor carrier in this state;

(b) fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory, and sufficient rates, fares, charges, and classifications for Class A and Class B motor carriers;

(c) regulate the properties, facilities, operations, accounts, service, practices, and affairs of all motor carriers;

(d) require the filing of annual and other reports, tariffs, schedules, or other data by ~~such~~ motor carriers;

(e) supervise and regulate motor carriers in all matters affecting the relationship between ~~such~~ motor carriers and the traveling and shipping public.

(2) The commission may, by general order or otherwise, prescribe rules in conformity with this chapter and applicable to any and all motor carriers.

(3) The commission may fix and determine reasonable maximum or minimum rates for the operations of any Class C motor carrier when rates are required for the best interests of public transportation.

~~(4) The commission may fix and determine reasonable maximum or minimum rates for the operations of any Class E motor carrier operating under contract when rates are required for the best interests of public transportation.~~"

Section 4. Section 69-12-205, MCA, is amended to read:

"**69-12-205. Rules to reflect differences between carrier classes.** All rules in relation to schedules, service, tariffs, rates, facilities, accounts, and reports must have due regard for the differences existing between Class A, Class B, Class C, *and* Class D~~, and Class E~~ motor carriers, as defined in this chapter, and must be just, fair, and reasonable to the classes of motor carriers in their relations to each other and to the public. In fixing the tariff or rates to be charged by Class A and Class B motor carriers for the carrying of persons or property, or both, the commission shall take into consideration the kind and character of service to be performed, the public necessity of the service, and the effect of the tariff and rates upon other transportation agencies, if any, and shall, as far as possible, avoid detrimental or unreasonable competition with existing railroad service or service furnished by a motor carrier."

Section 5. Section 69-12-301, MCA, is amended to read:

"**69-12-301. Classification of motor carriers.** (1) Motor carriers are divided into ~~five~~ *four* classes to be known as:

(a) Class A motor carriers;

(b) Class B motor carriers;

(c) Class C motor carriers; *and*

(d) Class D motor carriers~~; and~~

~~(e) Class E motor carriers~~.

(2) Class A motor carriers include all motor carriers operating between fixed termini or over a regular route and under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

(3) Class B motor carriers include all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale and not between fixed termini or over a regular route.

(4) Class C motor carriers include all motor carriers operating motor vehicles for distributing, delivering, or collecting wares, merchandise, or commodities or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement, or undertaking.

(5) Class D motor carriers include all motor carriers operating motor vehicles transporting (including pickup and disposal) ashes, trash, waste, refuse, rubbish, garbage, organic and inorganic matter, and recyclables.

~~(6) Class E motor carriers include all motor carriers operating motor vehicles transporting logs if the remuneration is fixed in and transportation services are furnished under a written contract or agreement.~~"

Section 6. Section 69-12-321, MCA, is amended to read:

"**69-12-321. Hearing on application for motor carrier certificate.** (1) Upon the filing of an application by a Class A, Class B, Class C, *or* Class D~~, or Class E~~ motor carrier, except a Class C motor carrier authorized to operate under the terms of a contract as provided in 69-12-324, or upon the filing of a request for a transfer of authority, the commission shall give notice of the filing of the application to any interested party. The commission shall fix a time and place for a hearing on the application whenever a protest or a request for a hearing is received. The hearing must be set for a date not later than 60 days after receipt of a protest or a hearing request by the commission. Whenever no protests or hearing requests are received, the commission may act on the application without a hearing as prescribed by commission rules.

(2) A motor carrier referred to in 69-12-322, the department of transportation, the governing board or boards of any county, town, or city into or through which the route or service as proposed may extend, and any person or corporation concerned are interested parties to the proceedings and may offer testimony for or against the granting of the certificate.

(3) The contracting parties referred to in 69-12-313(4) must appear and offer testimony in support of the applicant.

(4) However, an application by a Class A, Class B, Class C, *or* Class D~~, or Class E~~ motor carrier for a certificate may be disallowed without a public hearing when it appears from the records of the commission that the route or territory sought to be served by the applicant has previously been made the basis of a public investigation and finding by the commission that public

convenience and necessity do not require the proposed motor carrier service unless it is made to affirmatively appear in the application by a recital of the facts that conditions obtaining over the route or in the territory and affecting transportation facilities have materially changed since the previous public investigation and finding and that public convenience and necessity now require the motor carrier operation."

Section 7. Section 69-12-322, MCA, is amended to read:

"**69-12-322. Notice of hearing.** (1) Whenever a hearing is scheduled, whether as a result of a protest or request or upon the commission's own motion, the commission shall cause a copy of the petition and notice of hearing to be served upon an officer or owner of any motor carrier that in the opinion of the commission might be affected by the granting of the certificate and shall notify any other affected party at least 10 days before the date of hearing.

(2) Notice of the hearing must be published:

(a) in the legal advertising section of a local newspaper or newspapers determined by the commission to have a circulation sufficient to reach the consuming public in the area under consideration for applications for Class C ~~or Class E~~ authority and geographically limited Class B authority; and

(b) in appropriate newspapers determined by the commission to have sufficient statewide circulation in the case of applications for Class A authority and geographically broad contemplated Class B authority."

Section 8. Section 69-12-407, MCA, is amended to read:

"**69-12-407. Records and reports.** (1) All records, books, accounts, and files of every Class A, Class B, Class C, *and* Class D~~, and Class E~~ motor carrier in this state, so far as they relate to the business of transportation conducted by the motor carrier, must at all times be subject to examination by the commission or by any authorized agent or employee of the commission. The commission shall prescribe a uniform system of accounts and uniform reports covering the operations of Class A, Class B, Class C, *and* Class D~~, and Class E~~ motor carriers, and every motor carrier authorized to operate in accordance with the provisions of this chapter shall keep its records, books, and accounts according to the uniform system, insofar as possible.

(2) Before April 1 of each year, unless this deadline has been extended for good cause by the commission, every motor carrier authorized to engage in business shall file with the commission a report, under oath, on a form prescribed and furnished by the commission. Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission. In addition to annual reports every motor carrier shall prepare and file with the commission, at the time or times and in the form to be prescribed by the commission, annual reports, special reports, and statements giving to the commission information it requires in order to perform its duties under this chapter.

(3) In addition to other reporting requirements, the commission shall require the holder of a Class D motor carrier certificate to provide sufficient

information to show that the carrier is entitled to possess the Class D motor carrier certificate under the requirements of 69-12-314.

~~(4) In addition to other reporting requirements, the commission shall require the holder of a Class E motor carrier certificate to demonstrate that the carrier is entitled to possess the Class E motor certificate under the requirements of 69-12-315.~~"

Section 9. Section 69-12-611, MCA, is amended to read:

"**69-12-611. Leasing of power equipment.** (1) All Class A, Class B, Class C, *and* Class D~~, and Class E~~ motor carriers subject to the jurisdiction of the commission may lease power equipment for the purpose of performing transportation movements within the state. The leasing of power units must be in writing.

(2) All leases must contain:

(a) the full names and addresses of negotiating parties;

(b) a complete description of each vehicle involved;

(c) a provision that the sole possession, responsibility, control, and direction of each vehicle resides with the lessee for the entire term of the lease;

(d) a provision that the lessee assumes full responsibility for all regulatory fees;

(e) the amount of compensation to be paid for use of the vehicle while under the lease and the method by which the compensation is determined;

(f) the renewal conditions of the lease, if any; and

(g) the term length of the lease.

(3) A copy of the lease must be maintained in each leased vehicle at all times. Each leased power unit must display in a conspicuous place on both sides of the vehicle the identity and address of the lessor and lessee and the certificate number under which the power unit is operating.

(4) The leasing of power units by an authorized carrier to a noncertificated carrier is prohibited."

Section 10. **Repealer.** Sections 69-12-315, 69-12-333, 69-12-334, and 69-12-335, MCA, are repealed.

Approved April 16, 1993.

CHAPTER NO. 365

[SB 153]

AN ACT REVISING THE MANDATORY MOTOR VEHICLE REGISTRATION AND LIABILITY PROTECTION LAWS; PROVIDING THAT THE SENTENCE FOR DRIVING WITHOUT INSURANCE MAY NOT BE DEFERRED; ABOLISHING THE REQUIREMENT THAT A MOTOR VEHICLE

REGISTRATION RECEIPT AND PROOF OF INSURANCE CERTIFICATE BE SIGNED BY THE OWNER; REVISING THE PROOF OF INSURANCE REQUIREMENTS; INCREASING THE PENALTY FOR DRIVING WITHOUT INSURANCE; ADDING ADDITIONAL PENALTIES; AND AMENDING SECTIONS 46-18-201, 61-3-322, 61-3-535, 61-6-302, 61-6-304, 61-11-203, AND 61-13-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs *or as provided in 61-6-304*, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to

the state prison or a women's correctional facility, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 2. Section 61-3-322, MCA, is amended to read:

"**61-3-322. Certificates of registration — issuance.** (1) Upon completion of the application for registration on forms furnished by the department, the county treasurer shall file one copy in ~~his~~ *the treasurer's* office and issue to the applicant two copies of the application marked "Owner's Certificate of Registration and Payment Receipt", one of which ~~shall~~ *must* be marked "file copy".

(2) The certificate of registration ~~shall~~ *must* contain upon the face ~~thereof~~ *of the certificate* the information described in 61-3-202(2).

(3) ~~Every owner, upon receiving a registration receipt, shall write his signature on the receipt with pen and ink in the space provided.~~ The registration receipt, a photostatic copy of the receipt acknowledged by the county treasurer or a deputy county treasurer, a notarized photostatic copy, or a duplicate furnished by the department ~~shall~~ *must* at all times be carried in the vehicle to which it refers or ~~shall~~ *must* be carried by the person driving or in control of the vehicle, who shall display it upon demand of a police officer or any officer or employee of the department or the transportation department.

(4) The county treasurer shall daily forward to the department one copy of all applications for registration received that day.

(5) It is not necessary for the county treasurer to segregate the amount of taxes or fees for state, county, school district, and municipal purposes in the receipt."

Section 3. Section 61-3-535, MCA, is amended to read:

"**61-3-535. Vehicle reregistration by mail — renewal cards and reregistration notice by mail.** (1) Except as provided in subsection (2), an owner of the following types of motor vehicles may reregister by mail:

(a) light vehicles, motorcycles, quadricycles, and other vehicles subject to tax under 61-3-504(2); and

(b) travel trailers, campers, and motor homes subject to a fee in lieu of tax under 61-3-521.

(2) The option to reregister by mail need only be made available for vehicles, motor homes, and travel trailers registered at the close of the expiring registration period in the name of the applicant for reregistration and only if the value, age, length, or other criteria used to determine the tax or fee is available to the department.

(3) The department shall develop a procedure to facilitate the reregistration by mail of the vehicles listed in subsection (1). The mail reregistration procedure developed by the department must include a procedure to facilitate automated handling of mail reregistration or recertification.

~~(4) In the case of light vehicles, the form to be returned to the county treasurer by the applicant, with the appropriate tax and fees, is to contain a statement that the applicant is in compliance with the financial liability requirements of 61-6-301.~~

~~(5)~~*(4)* The procedure implemented by the department to permit reregistration or camper decal application by mail ~~shall~~ *must* provide for a written reminder notice by mail to a vehicle owner of the requirement to reregister ~~his~~ *the owner's* vehicle with the county treasurer or to apply for the annual camper decal.

~~(6)~~*(5)* The department shall adopt rules to implement the mail reregistration and decal application procedure."

Section 4. Section 61-6-302, MCA, is amended to read:

"**61-6-302. Proof of compliance.** (1) ~~Except as provided in subsection (2), before any applicant required to register his motor vehicle may do so, the applicant must certify to the county treasurer that he possesses an automobile liability insurance policy, a certificate of self-insurance, or a posted indemnity bond or that he is eligible for an exemption under 61-6-303 covering the motor vehicle. The certification shall be on a form prescribed by the department. The department may immediately cancel the registration and license plates of the vehicle upon notification that the insurance certification was not correctly represented. Any person who intentionally provides false information on an insurance certification is guilty of unsworn falsification to authorities, punishable as provided in 45-7-203.~~ *The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303 it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required in 61-6-301.*

~~(2) An applicant for registration of a motor vehicle who wishes to register the vehicle by mail must sign a statement on the application stating that the applicant is in compliance with the financial liability requirements of 61-6-301.~~

~~(3)~~*(2)* An owner of a motor vehicle who ceases to maintain the insurance or bond required or whose certificate of self-insurance is canceled or whose vehicle ceases to be exempt shall immediately surrender the registration and license plates for the vehicle to the county treasurer for delivery to the department and may not operate or permit operation of the vehicle in Montana until insurance has again been furnished as required and the vehicle is again registered and licensed.

~~(4)~~*(3)* Every person shall carry in a motor vehicle being operated by ~~him~~ *the person* an insurance card approved by the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. A motor vehicle operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. However, ~~no~~ *a* person charged with violating this subsection may *not* be convicted if ~~he~~ *the person* produces in court or the office of the arresting officer proof of insurance valid at the time of ~~his~~ arrest."

Section 5. Section 61-6-304, MCA, is amended to read:

"**61-6-304. Penalties.** *(1)* It is unlawful for any person to operate a motor vehicle upon ways of this state open to the public without a valid policy of liability insurance in effect in an amount not less than that provided in 61-6-301 or unless ~~such~~ *the* person has been issued a certificate of self-insurance pursuant to 61-6-143 or has previously posted an indemnity bond with the department as provided by 61-6-301 or is operating a vehicle exempt under 61-6-303.

(2) ~~A violation of~~ *Conviction of a first offense under* 61-6-301 through 61-6-304 is ~~a misdemeanor~~ punishable by a fine of not less than $250 *or more than* ~~and not to exceed~~ $500 or by imprisonment in the county jail for not more than 10 days, or both. *A second conviction is punishable by a fine of $350 or by imprisonment in the county jail for not more than 10 days, or both. A third or subsequent conviction is punishable by a fine of $500 or by imprisonment in the county jail for not more than 10 days, or both.*

(3) Upon a second or subsequent conviction, the sentencing court shall order the surrender of the vehicle registration receipt and license plates for the vehicle operated at the time of the offense if that vehicle was operated by the registered owner or a member of the registered owner's immediate family or by a person whose operation of that vehicle was authorized by the registered owner. The court shall send the receipt and plates, along with a copy of the complaint and dispositional order, to the department, which shall immediately suspend the receipt and plates for a period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction. The receipt and plates may not be reinstated until the expiration of that period, but if the vehicle is transferred to a new owner, the new owner is entitled to register the vehicle.

(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(5) A court may not defer imposition of penalties provided by this section."

Section 6. Section 61-11-203, MCA, is amended to read:

"**61-11-203. Definitions.** As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) a mandatory motor vehicle liability protection offense under 61-6-304, 5 points;

~~(j)~~*(k)* operating a motor vehicle without a license to do so, 2 points (this subsection ~~(j)~~*(k)* does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

~~(k)~~*(l)* speeding, 3 points;

~~(l)~~*(m)* all other moving violations, 2 points.

(3) There shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle."

Section 7. Section 61-13-104, MCA, is amended to read:

"**61-13-104. Penalty — no record permitted.** (1) A driver who violates 61-13-103 must be fined $20, but the violation is not a misdemeanor pursuant to 45-2-101, 46-18-236, 61-8-104, or 61-8-711. A violation of 61-13-103 may not be counted as a moving violation for purposes of suspending a driver's license under 61-11-203~~(2)(l)~~*(2)(m)*. Bond for this offense is $20, and no jail sentence may be imposed.

(2) No violation of 61-13-103 may be recorded or charged against the driver's record of a person violating 61-13-103, and no insurance company shall

hold a violation of 61-13-103 against the insured, and there may be no increase in premiums due to a violation of 61-13-103."

Approved April 16, 1993.

CHAPTER NO. 366

[SB 189]

AN ACT REQUIRING THAT CURRENT AND DELINQUENT TAXES BE PAID BEFORE REAL PROPERTY MAY BE SPLIT OR COMBINED AND BEFORE A DIVISION OR MERGER OF REAL PROPERTY MAY BE RECORDED; ELIMINATING THE REQUIREMENT THAT THE DEPARTMENT OF REVENUE AND THE COUNTY TREASURER KEEP RECORDS OF THE SEPARATION OF THE TAXES BETWEEN THE PORTION OF THE PROPERTY BEING SOLD AND THE REMAINING PARCELS; AND AMENDING SECTIONS 7-4-2613, 15-8-702, AND 76-3-207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2613, MCA, is amended to read:

"**7-4-2613. Documents subject to recording.** The county clerk ~~must~~ *shall*, upon *the* payment of ~~his~~ *the required* fees ~~for the same~~, record, photograph, or correctly copy, separately, in large and well-bound or to be bound separate books, either in a fair hand or by printing, typewriting, or photographic process or by the use of prepared blank forms:

(1) *(a) subject to subsection (1)(b),* deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases ~~which~~ *that* have been acknowledged or proved, and abstracts of ~~such~~ instruments ~~which~~ *that* have been acknowledged or proved*;*

(b) an instrument or deed evidencing either a division of real property or a merger of real property only if the instrument or deed is accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest; however, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

(3) a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is deceased and that ~~his~~ *the deceased person's* interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest not requiring probate. The document may be on the form used by the department of revenue for responding to the application for determination of inheritance or estate tax. It ~~shall~~ *must* contain:

(a) a statement that the holder of the nonprobate interest has died and that ~~his~~ *the holder's* interest in the property is terminated;

(b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due, has been paid or that ~~no~~ inheritance or estate tax was *not* due;

(c) a description of the property;

(4) certificates of births and deaths;

(5) wills devising real estate admitted to probate;

(6) official bonds;

(7) transcripts of judgments which by law are made liens upon real estate;

(8) instruments describing or relating to the individual property of married persons;

(9) all orders and decrees made by the district court in probate matters affecting real estate and which are required to be recorded;

(10) notice of preemption claims;

(11) notice and declaration of water rights;

(12) assignments for the benefit of creditors;

(13) affidavits of annual work done on mining claims;

(14) notices of mining locations and declaratory statements;

(15) estrays and lost property;

(16) a book containing appraisement of state lands;

(17) ~~such~~ other writings as are required or permitted by law to be recorded."

Section 2. Section 15-8-702, MCA, is amended to read:

"**15-8-702. Persons desiring to be listed.** ~~(1)~~ Lands once described on the assessment book need not be described a second time, but any person claiming the same and desiring to be assessed therefor may have ~~his~~ *the person's* name inserted with that of the person to whom such land is assessed.

~~(2) When the owner of one or more parcels of real property conveys a portion of his interests to a buyer in a recorded transaction, the buyer may require the county treasurer to accept payment from the buyer on such portion of the taxes already levied against such property as may then be due and payable. The department of revenue or its agent shall cooperate with and assist the buyer and the county treasurer in keeping necessary records of the separation or division of a parcel or parcels listed together on the assessment lists.~~"

Section 3. Section 76-3-207, MCA, is amended to read:

"**76-3-207. Subdivisions exempted from review but subject to survey requirements — exceptions.** (1) Except as provided in subsection (2), unless the method of disposition is adopted for the purpose of evading this chapter, the following divisions of land are not subdivisions under this chapter but are subject to the surveying requirements of 76-3-401 for divisions of land not amounting to subdivisions:

(a) divisions made outside of platted subdivisions for the purpose of relocating common boundary lines between adjoining properties;

(b) divisions made outside of platted subdivisions for the purpose of a gift or sale to any member of the landowner's immediate family;

(c) divisions made outside of platted subdivisions by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes;

(d) a single division of a parcel outside of platted subdivisions when the transaction is an occasional sale;

(e) for five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots; and

(f) divisions made for the purpose of relocating a common boundary line between a single lot within a platted subdivision and adjoining land outside a platted subdivision. Any restrictions or requirements on the original platted lot or original unplatted parcel continue to apply to those areas.

(2) Notwithstanding the provisions of subsection (1):

(a) within a platted subdivision filed with the county clerk and recorder, any division of lots which results in an increase in the number of lots or which redesigns or rearranges six or more lots must be reviewed and approved by the governing body, and an amended plat must be filed with the county clerk and recorder;

(b) any change in use of the land exempted under subsection (1)(c) for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(3) ~~No~~ *A* division of land may *not* be made under this section unless the county treasurer has certified that ~~no~~ *all* real property taxes *and special assessments* assessed and levied on the land to be divided ~~are delinquent~~ *have been paid.*"

Section 4. **Taxes paid before recording division or merger of real property.** An instrument or deed evidencing either a division of real property or a merger of real property may not be accepted for recordation unless accompanied by a certification from the county treasurer that taxes and special assessments that have been assessed and levied have been paid.

Section 5. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 70, chapter 21, and the provisions of Title 70, chapter 21, apply to [section 4].

Approved April 15, 1993.

CHAPTER NO. 367

[SB 203]

AN ACT TO PROVIDE A ONE-TIME, AD HOC COST-OF-LIVING INCREASE IN THE MONTHLY SERVICE, DISABILITY, OR SURVIVORSHIP BENEFIT BEING PAID TO CERTAIN RETIRED MEMBERS BY THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Ad hoc cost-of-living increase.** A member of the retirement system who retired on or before July 1, 1991, or the member's beneficiary is entitled to a 5% increase in the monthly service, disability, or survivorship benefit paid to the member or the member's beneficiary.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, part 11, and the provisions of Title 19, chapter 3, part 11, apply to [section 1].

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 16, 1993.

CHAPTER NO. 368

[SB 206]

AN ACT CLARIFYING THAT AVERAGE DAILY PRODUCTION OF 60,000 CUBIC FEET OR LESS FROM A NATURAL GAS WELL IS EXEMPT FROM THE 7 PERCENT SEVERANCE TAX SURTAX; AMENDING SECTION 15-36-126, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-126, MCA, is amended to read:

"**15-36-126.** *(Temporary)* **Surtax.** (1) Each person required to pay the severance tax under this chapter on oil and gas production, other than production from a stripper well *and production from a natural gas well taxed as provided in 15-36-121*, shall pay, in addition to the tax liability computed as required in 15-36-101 ~~and 15-36-121~~, a surtax of 7% of the tax liability.

(2) The additional tax must be deposited to the credit of the state general fund."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to natural gas production occurring after June 30, 1992.

Approved April 15, 1993.

CHAPTER NO. 369

[SB 215]

AN ACT ALLOWING A COUNTY OR A MUNICIPALITY TO DONATE TAX-DEED LAND TO A NONPROFIT CORPORATION FOR THE CONSTRUCTION OF RESIDENTIAL HOUSING; AMENDING SECTIONS 7-8-2301 AND 15-17-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2301, MCA, is amended to read:

"**7-8-2301. ~~Auction sale~~ *Disposal* of county tax-deed land.** (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to*:*

(a) make and enter an order for sale of the lands at public auction at the front door of the courthouse*; or*

(b) donate the lands to a nonprofit corporation as provided in subsection (6).

(2) A sale may not be made for a price less than the fair market value of the land, as determined and fixed by the board prior to making the order of sale. In determining fair market value, the board shall subtract the amount of outstanding assessments that are a lien on the land from the unencumbered value of the land, but the minimum sale price for a parcel of land may not be less than $10.

(3) If no bids are received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the fair market value of the land under subsection (2). In the period of time between the auction conducted under subsection (1), in which there were no qualifying bids for the property, and an auction held pursuant to this subsection, the board may sell the land by negotiated sale at a price that is not less than the fair market value that was fixed for the original auction under subsection (1).

(4) If no bid is received at the sale conducted under subsection (3), the board may dispose of the land as provided in 7-8-2218.

(5) Notwithstanding the amount of the fair market value fixed by the board prior to the auction, if the successful sale bidder is the delinquent taxpayer or ~~his~~ *the taxpayer's* successor in interest, ~~his~~ *the taxpayer's* agent, or a member of ~~his~~ *the taxpayer's* immediate family, the purchase price may not be less than the amount necessary to pay, in full, all county costs of conducting the sale, delinquent taxes, assessments, and all interest and penalties.

(6) A board of county commissioners may, upon expiration of the redemption period provided for in 15-18-111, donate the land to a nonprofit corporation for the purpose of constructing:

(a) a multi-family housing development operated by the corporation; or

(b) single-family houses. Upon completion of a house, the nonprofit corporation shall sell the property to a low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the property becomes subject to taxation."

Section 2. Section 15-17-319, MCA, is amended to read:

"**15-17-319. Sale or lease and disposition of proceeds from lands acquired by municipality.** A municipality may sell, *donate*, or lease property it acquires under 15-17-317 in the same manner as a county may sell, *donate*, or lease tax-deed property under Title 7, chapter 8, part 23. All money received by the municipality from the sale or lease of ~~such~~ *the* land, after payment of the cost of sale, not to exceed $25, must be paid into the improvement fund to the extent of the delinquent assessments, interest, and penalties. The surplus, if any, must be paid into any revolving fund that secures payment of ~~such~~ special assessments or, if *there are* none, to the general fund of the municipality."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1993.

CHAPTER NO. 370

[SB 231]

AN ACT REVISING AND CLARIFYING THE BURDENS OF PROOF AND STANDARDS OF PROOF UNDER WHICH APPLICATIONS FOR BENEFICIAL WATER USE PERMITS, CHANGE AUTHORIZATIONS, AND RESERVATIONS ARE PROCESSED PURSUANT TO MONTANA WATER USE LAWS; CLARIFYING THE PROCESS FOR EXTENSION OF TIME FOR A WATER USE PERMITTEE TO COMPLETE PERMIT CONDITIONS; CLARIFYING THE VERIFICATION PROCESS FOR ISSUANCE OF A PERMIT; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-307, 85-2-308, 85-2-311, 85-2-312, 85-2-315, 85-2-316, 85-2-402, AND 85-2-436, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 85-2-312 grants the department of natural resources and conservation rulemaking authority to establish a procedure for extending time limits for completing work under a water use permit. The legislature intends that the department provide necessary procedural and substantive safeguards to protect existing water users and permitholders from adverse impacts that may be caused by extending time limits for perfecting new water uses.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"**85-2-102.** *(Temporary)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(7) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(7)~~*(8)* "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(8)~~*(9)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(9)~~*(10)* "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

~~(10)~~*(11)* "Ground water" means any water that is beneath the ground surface.

~~(11)~~*(12)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(12)~~*(13)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

~~(13)~~*(14)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

~~(14)~~*(15)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "Substantial credible information" means probable believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(15)~~*(17)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(16)~~*(18)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(17)~~*(19)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(18)~~*(20)* "Water division" means a drainage basin as defined in 3-7-102.

~~(19)~~*(21)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(20)~~*(22)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(21)~~*(23)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)*

85-2-102. *(Effective July 1, 1999)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

~~(6)~~*(7)* "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

~~(7)~~*(8)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(8)~~*(9)* "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

~~(9)~~*(10)* "Ground water" means any water that is beneath the ground surface.

~~(10)~~*(11)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(11)~~*(12)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

~~(12)~~*(13)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

~~(13)~~*(14)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(15) "Substantial credible information" means probable believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

~~(14)~~*(16)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(15)~~*(17)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(16)~~*(18)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(17)~~*(19)* "Water division" means a drainage basin as defined in 3-7-102.

~~(18)~~*(20)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(19)~~*(21)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(20)~~*(22)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-302, MCA, is amended to read:

"**85-2-302.** *(Temporary)* **Application for permit — fee.** (1) Except as otherwise provided in (1) through (3) of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. *The applicant shall submit a correct and complete application.* The department shall return a defective application for correction or completion, together with the reasons for returning it. An application does not lose priority of filing because of defects if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 3 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 3 months shall be terminated.

(2) In addition to the application filing fee prescribed by the board by rule pursuant to 85-2-113, a person applying for a permit under subsection (1) shall pay a fee of $1 per acre-foot of ground water appropriated. The fees collected by the department under this subsection must be deposited in the ground water assessment account, established in 85-2-905, within the state special revenue fund. *(Terminates July 1, 1993—sec. 22, Ch. 769, L. 1991.)*

85-2-302. *(Effective July 1, 1993)* **Application for permit.** Except as otherwise provided in (1) through (3) of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. *The applicant shall submit a correct and complete application.* The department shall return a defective application for correction or completion, together with the reasons for returning it. An application does not lose priority of filing because of defects if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 3 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 3 months shall be terminated."

Section 3. Section 85-2-307, MCA, is amended to read:

"**85-2-307. Notice of application.** (1) (a) Upon receipt of a ~~proper~~ *correct and complete* application for a permit, the department shall prepare a notice containing the facts pertinent to the application and shall publish the notice once in a newspaper of general circulation in the area of the source.

(b) Before the date of publication, the department shall also serve the notice by first-class mail upon:

(i) an appropriator of water or applicant for or holder of a permit who, according to the records of the department, may be affected by the proposed appropriation;

(ii) any purchaser under contract for deed, as defined in 70-20-115, of property that, according to the records of the department, may be affected by the proposed appropriation; and

(iii) any public agency that has reserved waters in the source under 85-2-316.

(c) The department may, in its discretion, also serve notice upon any state agency or other person the department feels may be interested in or affected by the proposed appropriation.

(d) The department shall file in its records proof of service by affidavit of the publisher in the case of notice by publication and by its own affidavit in the case of service by mail.

(2) The notice shall state that by a date set by the department (not less than 15 days or more than 60 days after the date of publication) persons may file with the department written objections to the application.

(3) The requirements of subsections (1) and (2) of this section do not apply if the department finds, on the basis of information reasonably available to it, that the appropriation as proposed in the application will not adversely affect the rights of other persons."

Section 4. Section 85-2-308, MCA, is amended to read:

"**85-2-308. Objections.** (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts tending to show that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall timely file a correct and complete objection on a form prescribed by the department."

Section 5. Section 85-2-311, MCA, is amended to read:

"**85-2-311. Criteria for issuance of permit.** (1) Except as provided in subsections (2) and (3), the department shall issue a permit if the applicant proves by ~~substantial credible~~ *a preponderance of* evidence that the following criteria are met:

(a) there are unappropriated waters in the source of supply at the proposed point of diversion:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) during the period in which the applicant seeks to appropriate, the amount requested is reasonably available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; and

(f) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(2) The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed appropriation is a reasonable use. Such a finding shall be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(3) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection (3) must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or (2) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (3)(b)(ii) and (3)(b)(iii) are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

(4) To meet the ~~substantial credible~~ *preponderance of* evidence standard in this section, the applicant, *in addition to other evidence demonstrating that the criteria of subsection (1) have been met,* shall submit ~~independent~~ hydrologic or

other evidence, including *but not limited to* water supply data, field reports, and other information developed by the *applicant, the* department, the U.S. geological survey, or the U.S. soil conservation service and other specific field studies~~,~~ ~~demonstrating that the criteria are met~~.

(5) An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section."

Section 6. Section 85-2-316, MCA, is amended to read:

"**85-2-316. Reservation of waters.** (1) The state or any political subdivision or agency thereof or the United States or any agency thereof may apply to the board to reserve waters for existing or future beneficial uses or to maintain a minimum flow, level, or quality of water throughout the year or at periods or for a length of time as the board designates.

(2) (a) Water may be reserved for existing or future beneficial uses in the basin where it is reserved, as described by the following basins:

(i) the Clark Fork River and its tributaries to its confluence with Lake Pend Oreille in Idaho;

(ii) the Kootenai River and its tributaries to its confluence with Kootenay Lake in British Columbia;

(iii) the St. Mary River and its tributaries to its confluence with the Oldman River in Alberta;

(iv) the Little Missouri River and its tributaries to its confluence with Lake Sakakawea in North Dakota;

(v) the Missouri River and its tributaries to its confluence with the Yellowstone River in North Dakota; and

(vi) the Yellowstone River and its tributaries to its confluence with the Missouri River in North Dakota.

(b) A water reservation may be made for an existing or future beneficial use outside the basin where the diversion occurs only if stored water is not reasonably available for water leasing under 85-2-141 and the proposed use would occur in a basin designated in subsection (2)(a).

(3) Upon receiving ~~an~~ *a correct and complete* application, the department shall proceed in accordance with 85-2-307 through 85-2-309. After the hearing provided in 85-2-309, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, must be paid by the applicant. In addition, a reasonable proportion

of the department's cost of preparing an environmental impact statement must be paid by the applicant unless waived by the department upon a showing of good cause by the applicant.

(4) (a) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board *by a preponderance of evidence*:

(i) the purpose of the reservation;

(ii) the need for the reservation;

(iii) the amount of water necessary for the purpose of the reservation;

(iv) that the reservation is in the public interest.

(b) In determining the public interest under subsection (4)(a)(iv), the board may not adopt an order reserving water for withdrawal and transport for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(ii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections (4)(b)(i) and (4)(b)(ii) are met, the board shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a reservation to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, use, and reservation of water.

(5) If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board *by a preponderance of evidence* that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(6) The board shall limit any reservations after May 9, 1979, for maintenance of minimum flow, level, or quality of water that it awards at any point on a stream or river to a maximum of 50% of the average annual flow of record

on gauged streams. Ungauged streams can be allocated at the discretion of the board.

(7) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters or may, with the approval of the board, issue the permit subject to terms and conditions it considers necessary for the protection of the objectives of the reservation.

(8) (a) Any person desiring to use water reserved to a conservation district for agricultural purposes shall make application for the use with the district, and the district, upon approval of the application, shall inform the department of the approved use and issue the applicant an authorization for the use. The department shall maintain records of all uses of water reserved to conservation districts and be responsible, when requested by the districts, for rendering technical and administrative assistance within the department's staffing and budgeting limitations in the preparation and processing of such applications for the conservation districts. The department shall, within its staffing and budgeting limitations, complete any feasibility study requested by the districts within 12 months of the time the request was made. The board shall extend the time allowed to develop a plan identifying projects for utilizing a district's reservation so long as the conservation district makes a good faith effort, within its staffing and budget limitations, to develop a plan.

(b) Upon actual application of water to the proposed beneficial use the authorized user shall notify the conservation district. The notification must contain a certified statement by a person with experience in the design, construction, or operation of project works for agricultural purposes ~~that~~ *describing how* the reserved water ~~has been~~ *was* put to use ~~in substantial accordance with the terms and conditions of the authorization to use reserved water~~. The department or the district may then inspect the appropriation to determine if it has been completed in substantial accordance with the authorization.

(9) Except as provided in 85-2-331, the priority of appropriation of a water reservation and the relative priority of the reservation to permits with a later priority of appropriation must be determined according to this subsection (9).

(a) A reservation under this section has a priority of appropriation dating from the filing with the department of a notice of intention to apply for a water reservation in a basin in which no other notice of intention to apply is currently pending. The notice of intention to apply must specify the basin in which the applicant is seeking a reservation.

(b) Upon receiving a notice of intention to apply for a water reservation, the department shall identify all potential water reservation applicants in the basin specified in the notice and notify each potential applicant of the opportunity to submit an application and to receive a reservation with the priority of appropriation as described in subsection (9)(a).

(c) To receive the priority of appropriation described in subsection (9)(a), the applicant shall submit a correct and complete water reservation application within 1 year after the filing of the notice of intention to apply. Upon a showing of good cause, the board may extend the time for preparing the application.

(d) The board may by order subordinate a water reservation to a permit issued pursuant to this part if:

(i) the permit application was accepted by the department before the date of the board order granting the reservation; and

(ii) the effect of subordinating the reservation to one or more permits does not interfere substantially with the purpose of the reservation.

(e) The board shall by order establish the relative priority of reservations approved under this section that have the same day of priority. A reservation may not adversely affect any rights in existence at that time.

(10) The board shall, periodically but at least once every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke, or modify the reservation. Any undeveloped water made available as a result of a revocation or modification under this subsection is available for appropriation by others pursuant to this part.

(11) The board may modify an existing or future order originally adopted to reserve water for the purpose of maintaining minimum flow, level, or quality of water, so as to reallocate the reservation or portion of the reservation to an applicant who is a qualified reservant under this section. Reallocation of reserved water may be made by the board following notice and hearing wherein the board finds that all or part of the reservation is not required for its purpose and that the need for the reallocation has been shown by the applicant to outweigh the need shown by the original reservant. Reallocation of reserved water may not adversely affect the priority date of the reservation, and the reservation shall retain its priority date despite reallocation to a different entity for a different use. The board may not reallocate water reserved under this section on any stream or river more frequently than once every 5 years.

(12) A reservant may not make a change in a reservation under this section except as permitted under 85-2-402 and this subsection. If the department approves a change, the board, upon notification by the department of its approval, shall give notice and require the reservant to establish that the criteria in subsection (4) will be met under the approved change.

(13) A reservation may be transferred to another entity qualified to hold a reservation under subsection (1). Only the entity holding the reservation may initiate a transfer. The transfer occurs upon the filing of a water right transfer certificate with the board together with an affidavit from the entity receiving the reservation establishing that the entity is a qualified reservant under subsection (1), that the entity agrees to comply with the requirements of this section and the conditions of the reservation, and that the entity can meet the objectives of the reservation as granted. If the transfer of a reservation involves a change in an appropriation right, the necessary approvals must be acquired pursuant to subsection (12).

(14) Nothing in this section vests the board with the authority to alter a water right that is not a reservation.

(15) The department shall undertake a program to educate the public, other state agencies, and political subdivisions of the state as to the benefits of the

reservation process and the procedures to be followed to secure the reservation of water. The department shall provide technical assistance to other state agencies and political subdivisions in applying for reservations under this section.

(16) Water reserved under this section is not subject to the state water leasing program established under 85-2-141."

Section 7. Section 85-2-402, MCA, is amended to read:

"**85-2-402.** *(Temporary)* **Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except, as permitted under this section, ~~and with~~ *by applying for and receiving* the approval of the department or, if applicable, of the legislature. *An applicant shall submit a correct and complete application.*

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by ~~substantial credible~~ *a preponderance of* evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by ~~substantial credible~~ *a preponderance of* evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been ~~properly~~ completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works ~~that~~ *describing how* the appropriation ~~has been properly~~ *was* completed ~~in substantial accordance with the terms and conditions of the change approval~~.

(9) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(10) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(11) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(12) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in

appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)*

85-2-402. *(Effective July 1, 1999)* **Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except, as permitted under this section, ~~and with~~ *by applying for and receiving* the approval of the department or, if applicable, of the legislature. *An applicant shall submit a correct and complete application.*

(2) Except as provided in subsections (3) through (5), the department shall approve a change in appropriation right if the appropriator proves by ~~substantial credible~~ *a preponderance of* evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(3) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by ~~substantial credible~~ *a preponderance of* evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(4) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (3) are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(5) (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (3) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (5)(b)(ii) and (5)(b)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(6) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

(7) The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(8) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been ~~properly~~ completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works ~~that~~ *describing how* the appropriation ~~has been properly~~ *was* completed ~~in substantial accordance with the terms and conditions of the change approval~~.

(9) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(10) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(11) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(12) A change in appropriation right contrary to the provisions of this section is invalid. No officer, agent, agency, or employee of the state may knowingly permit, aid, or assist in any manner such unauthorized change in appropriation right. No person or corporation may, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section."

Section 8. Section 85-2-436, MCA, is amended to read:

"**85-2-436.** *(Temporary)* **Water leasing study.** (1) The department of fish, wildlife, and parks and the department, in consultation with the water policy committee, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection. For purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

(a) The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the board pursuant to 85-2-437.

(b) Upon receipt of ~~an~~ *a correct and complete* application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a *correct and* complete application and meets the requirements of 85-2-402.

(c) The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

(d) The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

(e) The lease may not be issued for a term of more than 10 years, but it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term of not more than 20 years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection (2)(i) submits evidence of adverse effects to ~~his~~ *the appropriator's* rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

(f) During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection (2)(i) proves by ~~substantial credible~~ *a preponderance of* evidence that ~~his~~ *the appropriator's* water right is adversely affected.

(g) The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

(h) Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

(i) A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

(j) The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the board, commission, and water policy committee an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease. If the department of fish, wildlife, and parks has not leased water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the board and commission and submitted to the water policy committee, which shall complete the final report by December 1, 1998.

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)* "

Section 9. Section 85-2-312, MCA, is amended to read:

"**85-2-312. Terms of permit.** (1) The department may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311, and it may issue temporary or seasonal permits. A permit shall be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) ~~The department may, upon a showing of good cause, extend time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. All requests for extensions of time must be by affidavit and must be filed with the department prior to the expiration of the time limit specified in the permit or any previously authorized extension of time. The department may issue an order temporarily extending the time limit specified in the permit for 120 days or until the department has completed its action under this section, whichever is greater. Upon receipt of a proper request for extension of time, the department shall prepare a notice containing the facts pertinent to the request for extension of time and shall publish the notice in a newspaper of general circulation in the area of the source. The department may serve notice by first-class mail upon any public agency or other person the department determines may be interested in or affected by the request for extension of time. The department shall hold a hearing on the request for extension of time on its own motion or if requested by an interested party. The department may grant the extension of time in the absence of a hearing if no requests for a hearing are received and the extension of time is granted as requested, or the department may grant the extension of time in a modified form by following the process established in 85-2-310(2). Subsequent extensions of time may be made in the same manner.~~ *The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use. The department may not accept a request for extension of time that is filed less than 30 days prior to the time limit specified in the permit. If a permit is not completed within the time limit specified or within an extension of that time limit the permit is void upon lapse of the time limit.*

(4) The original of the permit shall be sent to the permittee, and a copy shall be kept in the office of the department in Helena."

Section 10. Section 85-2-315, MCA, is amended to read:

"**85-2-315. Certificate of water right.** Upon actual application of water to the proposed beneficial use within the time allowed, the permittee shall notify the department that the appropriation has been ~~properly~~ completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works ~~that~~ *describing how* the appropriation ~~has been~~ *was* ~~properly~~ completed ~~in substantial accordance with the terms and conditions of the permit~~. The department *shall review the certified statement and* may then inspect the appropriation, and if it determines that the appropriation has been completed in substantial accordance with the permit, it shall issue the permittee a certificate of water right. The original of the certificate shall be sent to the permittee, and a duplicate shall be kept in the office of the department in Helena."

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Retroactive applicability.** [Sections 1 through 8] apply retroactively, within the meaning of 1-2-109, to all applications and objections pending on [the effective date of this act] that are subject to the provisions of Title 85, chapter 2.

Section 13. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1993.

CHAPTER NO. 371

[SB 248]

AN ACT ELIMINATING THE REQUIREMENT THAT A SURFACE OWNER OF PROPERTY CONSENT TO COMMENCEMENT OF STRIP-MINING OPERATIONS BY THE OWNER OF THE MINERAL ESTATE IN THE PROPERTY; AND REPEALING SECTION 82-4-224, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 82-4-224, MCA, is repealed.

Approved April 16, 1993.

CHAPTER NO. 372

[SB 249]

AN ACT CLARIFYING THE REQUIREMENT FOR REAR-END TELEMETRY DEVICES ON TRAINS; AND AMENDING SECTION 69-14-116, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-14-116, MCA, is amended to read:

"69-14-116. General protection of health and safety on railroads — rear-end telemetry systems — exemption for a caboose-equipped train. (1) The commission has full authority:

(a) after notice and hearing, to make and enforce rules providing for the installation on and equipment of trains, cars, or engines with safety appliances and providing for sanitation and adequate shelter as it affects the health of all railroad employees~~, including but not limited to trainmen, enginemen, yardmen, maintenance-of-way employees, highway crossing watchmen, and clerical, platform, freight house, and express employees~~; and

(b) to inspect the safety appliances, sanitation facilities, and shelters and enforce regulations with regard to the provisions of subsection (1)(a).

(2) (a) Except as provided in subsection (4), the commission shall, *to the extent permitted by federal law,* require a railroad operating trains in Montana to install a rear-end train telemetry system on all trains operating within mountain grade territory as geographically defined and designated by mile posts in the railroad's official timetable and operating rules on file with the commission.

(b) As used in this section, "telemetry system" means a radio transmitter and receiver system with one device placed on the last car of a train and a second device placed in the cab of the controlling locomotive. The second device must be visible to the locomotive engineer and capable of indicating through electronic communication with the device located on the last car of the train the following:

(i) brake pipe pressure at the rear of the train, in increments of 1 pound per square inch;

(ii) rear car movement;

(iii) operation or nonoperation of the rear marker light;

(iv) remaining battery life powering the telemetry system;

(v) interruption of the communication link between the device located on the last car of the train and the device located in the cab of the controlling locomotive; and

(vi) total distance travelled in feet by the locomotive to which the device is attached.

(c) A train operating in the area defined under this subsection (2) may not depart a crew change point or its local point of origin unless the train is equipped with the telemetry system required under the rules established pursuant to this section.

(d) Telemetry systems installed on a train in conformity with rules made under this section must be equipped so that an emergency application of brakes of the train can be initiated by activation of the device placed on the last car at the rear end of the train.

(e) Disciplinary action or other adverse administrative or employment action may not be instituted against a person who reports a violation of this subsection (2) or who acts to enforce the provisions of this subsection (2).

(3) The inspection, rules, and regulations required under subsections (1) and (2) must be compatible with any federal provisions and may not create an undue burden on interstate commerce.

(4) The commission may not require the installation and use of a telemetry system as described in this section on a train equipped with a caboose that:

(a) meets the requirements of Montana law;

(b) is placed as the last car of the train; and

(c) is occupied by a member of the train crew."

Approved April 15, 1993.

CHAPTER NO. 373

[SB 260]

AN ACT CLARIFYING THE STATUTE OF LIMITATIONS IN PATERNITY ACTIONS; AND AMENDING SECTION 40-6-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-6-108, MCA, is amended to read:

"**40-6-108. Statute of limitations.** (1) An action may be commenced~~:~~

~~(a)~~ at any time for the purpose of declaring the existence *or nonexistence* of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1)~~;~~

~~(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but not later than 5 years after the child's birth~~.

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if ~~he~~ *the other man* has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105:

(a) may not be brought by the child later than 2 years after the child attains the age of majority;

(b) may be brought by a state agency at any time after the first application is made under Title IV-D of the Social Security Act for services to the child and before the child attains the age of majority. This subsection is intended to apply retroactively, within the meaning of 1-2-109, to any child for whom a paternity action was barred or could have been barred by a shorter limitation period. However, in previously barred actions that are revived by this subsection, the father ~~shall have no liability~~ *is not liable* to the state agency for support of the child.

(4) The father's liability for a statutory debt created by the payment of public assistance is limited to the amount of assistance paid during the 2-year period preceding commencement of the action. This subsection does not limit the subsequent accrual of a statutory debt.

(5) ~~Sections~~ *Section* 40-6-107 and ~~40-6-108~~ *this section* do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(6) After the conclusion of an adoption proceeding under ~~chapter 8,~~ Title 40, *chapter 8,* ~~no~~ *a* further action to declare the existence or nonexistence of the father and child relationship of the adopted child may *not* be commenced, except as provided in 40-8-112."

Approved April 16, 1993.

CHAPTER NO. 374

[SB 264]

AN ACT ABOLISHING THE REQUIREMENT THAT NOTICE BE GIVEN OF RELEASES FROM JAIL; AND AMENDING SECTION 44-2-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-2-601, MCA, is amended to read:

"**44-2-601. Notification of escape *or release* from confinement.** (1) The notice required by subsection (2) must be given if ~~any of the following persons escapes or is released from confinement~~:

(a) a person committed to a hospital or mental health facility under Title 46, chapter 14, *escapes or is released from confinement*; ~~or~~

(b) a person confined in ~~a jail or other~~ *an* institution *other than a jail* pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a ~~jail,~~ prison~~,~~ or other *state* institution after conviction of a criminal offense involving the use or threat of physical force or violence or after being designated as a dangerous offender under 46-18-404 *escapes or is released from confinement*~~.~~*; or*

(c) a person confined in a jail pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a jail after conviction of a criminal offense involving the use or threat of physical force or violence or after being designated as a dangerous offender under 46-18-404 escapes from confinement.

(2) If a person referred to in subsection (1) escapes or is released from confinement, the institution in which ~~he~~ *the person* was confined shall notify:

(a) the sheriff or other law enforcement officials in the county in which the offense occurred;

(b) the sheriff or other law enforcement officials in the county or counties, if known, in which a victim or the victims of the offense reside at the time of the escape or release;

(c) the sheriff or other law enforcement officials in the county, if known, in which the person intends to reside upon leaving confinement;

(d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital, mental health facility, or other institution from which the person escaped or was released is located; and

(e) a court that has requested that it be notified in the event of a release or *an* escape of the person."

Approved April 15, 1993.

CHAPTER NO. 375

[SB 278]

AN ACT GENERALLY REVISING THE LAWS RELATED TO EDUCATIONAL SERVICES IN CHILDREN'S PSYCHIATRIC HOSPITALS AND RESIDENTIAL TREATMENT FACILITIES; LIMITING STATE APPROPRIATIONS TO COSTS THAT ARE NOT REIMBURSABLE UNDER OTHER PROVISIONS OF STATE OR FEDERAL LAW; CLARIFYING RESPONSIBILITIES AMONG AGENCIES; AMENDING SECTIONS 20-7-420, 20-7-421, 20-7-422, 20-7-435, 20-7-436, AND 20-9-343, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 7] gives the superintendent of public instruction authority to adopt rules, including but not limited to the calculation of tuition, the calculation and distribution of funding, and the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-420, MCA, is amended to read:

"**20-7-420. Residency requirements — financial responsibility for special education.** (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of ~~his~~ *the child's* parents or of ~~his~~ *the child's* guardian *if the parents are deceased,* unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last known district of residence is the child's district of residence.

(2) The district of residence is financially responsible for tuition as established under 20-5-305 and 20-5-312 for a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state. The district of residence is not financially responsible for tuition for a child with disabilities who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If ~~a child with disabilities who is in need of special education is placed~~ *an eligible child, as defined in 20-7-436, is receiving inpatient treatment* in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, ~~but~~ *and* the educational ~~placement is in~~ *services are provided by* a public school district *under the provisions of 20-7-411 or 20-7-435*, the ~~district of residence is responsible for tuition for the proportion of time the child is served in the public school district unless the public school district is operated primarily for the purpose of providing education to children who attend the residential facility or hospital.~~ *superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount paid on the foundation program schedules as provided in 20-9-318 through 20-9-320, the superintendent of public instruction shall pay the remaining balance from the state equalization aid account. However, the amount spent from the state equalization aid account for this purpose may not exceed $500,000 during any biennium.*

(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education *and related services* and is placed by a state agency in an out-of-state private residential facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402.

(5) A state agency that makes a placement of a child with disabilities is responsible for the *financial costs of* room and board and the treatment of the child."

Section 2. Section 20-7-421, MCA, is amended to read:

"**20-7-421. Arranging attendance in another district in lieu of a special education program — tuition.** (1) In accordance with a placement decision made by persons determining an individualized education program for a child with disabilities, the trustees may arrange for the attendance of a child in need of special education *and related services* in another district within the state of Montana.

(2) Tuition as required under 20-5-305 and 20-5-312 may be charged as provided in 20-7-420."

Section 3. Section 20-7-422, MCA, is amended to read:

"**20-7-422. Out-of-state placement of children with disabilities — payment of costs.** (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana. The arrangements are not subject to the out-of-state attendance provisions in 20-5-301 and 20-5-311.

(2) (a) Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

(b) If the placement of the child with disabilities has met the requirements of 20-7-402, the superintendent of public instruction shall approve the amount of special education instructional fees to be included as a contracted service. Only the special education instructional fees may be included as a contracted service for the purposes of 20-7-431(1)(a)(iii)(A).

(3) Whenever a child with disabilities who is in need of special education *and related services* is adjudicated by a court of competent jurisdiction to be an abused, neglected, or dependent child as defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and is placed by a state agency in an out-of-state private residential facility, the superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program.

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation."

Section 4. Section 20-7-435, MCA, is amended to read:

"**20-7-435. Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children with emotional disturbances.** (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner, *including the provision of a free appropriate public education for eligible children with disabilities that is consistent with state standards for the provision of special education and related services. General education programs for eligible children without disabilities must be provided in accordance with the requirements for a nonpublic school under the provisions of 20-5-109.*

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) ~~monitor~~ *ensure* the provision of ~~an~~ *a free* appropriate ~~educational opportunity for the child~~ *public education and an education that is consistent with the requirements for a nonpublic school in 20-5-109 for children* attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance; ~~and~~

~~(c) fund 100% of any approved allowable costs under this section from funds appropriated for this purpose. An appropriation in excess of the allowable costs required under the provisions of this section must revert to the state equalization aid account.~~

(c) from appropriations provided for this purpose, fund any approved allowable costs under this section, with the exception of services for which reimbursement is made under any provision of state or federal law or an insurance policy;

(d) provide funding for allowable costs according to a proration based on average daily membership.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment ~~in~~ *and an education under contract with* an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an ~~appropriate educational opportunity~~ *education in accordance with 20-5-109 or a free appropriate public education under the provisions of this part* for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program ~~for a child~~ *that is consistent with accreditation standards provided for in 20-7-111 and with the provisions of 20-7-402 for children* attending the children's psychiatric hospital or residential treatment facility. ~~The amount negotiated with the school district must be consistent with allowable costs that may be negotiated under the provisions of subsection (3).~~ *The amount negotiated with the school district must include all education and related services costs that may be negotiated under the provisions of subsection (3) and all education and related services costs necessary to fulfill the requirements of providing the child with an education.*

(6) Funds provided to a district under this section, *including funds received under the provisions of 20-7-420*:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract;

(b) are not subject to the budget limitations in 20-9-315; and

(c) may not be included in the foundation program amount of the district."

Section 5. Section 20-7-436, MCA, is amended to read:

"**20-7-436. Definitions.** For the purposes of 20-7-435 and this section, the following definitions apply:

(1) (a) "Children's psychiatric hospital" means a freestanding hospital in Montana that:

(i) has the primary purpose of providing clinical care for children whose clinical diagnosis and resulting treatment plan require in-house residential psychiatric care; and

(ii) is accredited by the joint commission on accreditation of healthcare organizations, the standards of the health care financing administration, or other comparable accreditation.

(b) The term does not include programs for children and youth that have the treatment of chemical dependency as the primary reason for treatment.

(2) "Eligible child" means a child or youth who is less than 19 years of age and is emotionally disturbed as defined in *20-7-401 or* 52-2-101 and whose emotional problem is so severe that the child or youth has been placed in a children's psychiatric hospital or residential treatment facility for inpatient treatment of emotional problems.

(3) (a) "Residential treatment facility" means a facility in the state that*:*

(i) provides services for children with emotional disturbances ~~and that is licensed by the state and operated for the primary purpose of providing long-term treatment services for mental illness, in a residential setting, to persons under 21 years of age~~*;*

(ii) operates for the primary purpose of providing residential psychiatric care to persons under 21 years of age;

(iii) is licensed by the department of health and environmental sciences; and

(iv) participates in the Montana medicaid program for psychiatric facilities or programs providing psychiatric services to individuals under 21 years of age~~.~~*; or*

(v) notwithstanding the provisions of subsections (3)(a)(iii) and (3)(a)(iv), has received a certificate of need from the department of health and environmental sciences pursuant to Title 50, chapter 5, part 3, prior to January 1, 1993.

(b) The term does not include programs for children and youth who have the treatment of chemical dependency as a primary reason for treatment."

Section 6. Section 20-9-343, MCA, is amended to read:

"**20-9-343.** *(Temporary)* **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the payment of guaranteed tax base aid and for equalization of the foundation program;

(b) the Montana educational telecommunications network as provided in 20-32-101; and

(c) filing fees for school district audits as required by 2-7-514(2).

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid, as required by subsections (1)(a) and (1)(b), throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium. *(Terminates June 30, 1993—sec. 5, Ch. 729, L. 1991.)*

20-9-343. *(Effective July 1, 1993)* **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for*:*

(a) distribution to the public schools for the purposes of payment of guaranteed tax base aid and equalization of the foundation program*;*

(b) negotiated payments authorized under 20-7-420(3) up to $500,000 per biennium; and

(c) ~~for~~ the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid as required for the purposes of guaranteed tax base aid, the foundation program, *negotiated payments authorized under 20-7-420(3),* and the Montana educational telecommunications network, throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium."

Section 7. **Rules.** The superintendent of public instruction shall adopt rules for the implementation of 20-7-420, 20-7-421, 20-7-422, 20-7-435, and 20-7-436, including but not limited to:

(1) the calculation of tuition under 20-7-420;

(2) the calculation and distribution of funds under 20-7-435; and

(3) the determination of responsibilities of children's psychiatric hospitals, residential treatment facilities, and public schools.

Section 8. **Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 20, chapter 7, and the provisions of Title 20, chapter 7, apply to [section 7].

Section 9. **Effective date.** [This act] is effective July 1, 1993.

Approved April 16, 1993.

CHAPTER NO. 376

[HB 288]

AN ACT GENERALLY REVISING THE REQUIREMENTS FOR OIL AND GAS OPERATIONS; REQUIRING THE FILING OF GEOLOGICAL SAMPLE LOGS, MUD LOGS, CORE DESCRIPTIONS, AND ORDINARY CORE ANALYSIS, IF ANY ARE MADE; CLARIFYING THAT THE ENTIRE BOND MAY BE FORFEITED; AMENDING SECTION 82-11-123, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND FOR RETROACTIVE APPLICABILITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-123, MCA, is amended to read:

"**82-11-123. Requirements for oil and gas operations.** Subject to the administrative control of the department under 2-15-121, the board shall require:

(1) identification of ownership of oil or gas wells, producing properties, and tanks;

(2) the making and filing of acceptable well logs, including bottom-hole temperatures~~,~~ *(in order* to facilitate the discovery of potential geothermal energy sources*), the making and filing of* reports on well locations, and the filing of directional surveys, *geological sample logs, mud logs, core descriptions, and ordinary core analysis,* if made; however, logs of exploratory or wildcat wells need not be filed for a period of 6 months following completion of those wells;

(3) the drilling, casing, producing, and plugging of wells and class II injection wells in ~~such~~ *a* manner ~~as to prevent~~ *that prevents* the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas strata, blowouts, cave-ins, seepages, and fires and the pollution of fresh water supplies by oil, gas, salt, or brackish water;

(4) the restoration of surface lands to their previous grade and productive capability after a well is plugged or a seismographic shot hole has been utilized and necessary measures to prevent adverse hydrological effects from ~~such~~ *the* well or hole, unless the surface owner agrees in writing, with the approval of the board or its representatives, to a different plan of restoration;

(5) the furnishing of a reasonable bond with good and sufficient surety, conditioned for performance of the duty to properly plug each dry or abandoned well~~,~~. ~~which~~ *The* bond *may be forfeited in its entirety by the board for failure to perform the duty to properly plug each dry or abandoned well and* may not be canceled or absolved:

(a) if the well fails to produce oil or gas in commercial quantities, until:

(i) the board determines the well is properly plugged and abandoned as provided in the board's rules; or

(ii) the requirements of 82-11-163 are met; or

(b) if the well is completed after June 30, 1989, until the owner notifies the board that the well is producing oil and gas in commercial quantities and meets the requirements of 82-11-162;

(6) proper gauging or other measuring of oil and gas produced and saved to determine the quantity and quality ~~thereof~~ *of oil and gas*;

(7) that every person who produces, transports, or stores oil or gas or injects or disposes of water in this state shall make available within this state for a period of 5 years complete and accurate records of the quantities ~~thereof,~~. ~~which~~ *The* records ~~shall~~ *must* be available for examination by the board or its employees at all reasonable times~~,~~. ~~and that that~~ *The* person *shall* file with the board ~~such~~ reports as it may prescribe with respect to quantities, transportations, and storages of the oil, ~~or~~ gas, or water; and

(8) the installation, use, and maintenance of monitoring equipment or methods in the operation of class II injection wells."

Section 2. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all wells.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 16, 1993.

CHAPTER NO. 377

[SB 425]

AN ACT REVISING JUDICIAL SELECTION PROCEDURES TO CONFORM TO RECENT CONSTITUTIONAL AMENDMENTS; PROVIDING FOR SENATE CONFIRMATION OF APPOINTMENTS EXCEPT IN CERTAIN CASES; REQUIRING AN APPOINTED JUDGE OR JUSTICE TO STAND FOR ELECTION AT THE FIRST GENERAL ELECTION FOLLOWING APPOINTMENT, EXCEPT IN CASES IN WHICH THE APPOINTMENT IS MADE AFTER THE CANDIDATE FILING DEADLINE FOR THE OFFICE; PROVIDING FOR RETENTION ELECTIONS IN CASES IN WHICH AN INCUMBENT DOES NOT FACE AN ELECTION CHALLENGER; AMENDING SECTIONS 3-1-1013 AND 3-1-1014, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-1-1013, MCA, is amended to read:

"**3-1-1013. Senate confirmation — *exception* — nomination in the interim — appointment contingent on vacancy.** (1) *(a)* ~~Each nomination~~ *Except as provided in subsection (2):*

(i) each appointment must be confirmed ~~as an appointment~~ by the senate~~,~~ ~~but a nomination~~*; and*

(ii) an appointment made while the senate is not in session is effective ~~as an appointment~~ until the end of the next *special or regular legislative* session.

(b) If the ~~nomination~~ *appointment is subject to senate confirmation under subsection (1)(a) and* is not confirmed, the office ~~shall be~~ *is* vacant and another selection of nominees and ~~nomination~~ *appointment* ~~shall~~ *must* be made.

(2) The following appointments are not subject to senate confirmation, and there must be an election for the office at the general election immediately preceding the scheduled expiration of the term or following the appointment, as applicable:

(a) an appointment made while the senate is not in session if the term to which the appointee is appointed expires prior to the next legislative session, regardless of the time of the appointment in relation to the candidate filing deadlines for the office; and

(b) an appointment made while the senate is not in session if a general election will be held prior to the next legislative session and the appointment is made prior to the candidate filing deadline for primary elections held pursuant to 13-1-107, in which case the position is subject to election at the next primary and general elections.

~~(2)~~*(3)* ~~No~~ *A* nomination is *not* effective unless a vacancy in office occurs."

Section 2. Section 3-1-1014, MCA, is amended to read:

"**3-1-1014. Duration of appointment — election for remainder of term.** *(1)* ~~An~~ *If an appointment subject to 3-1-1013(1) is confirmed by the senate, the* appointee ~~confirmed by the senate serves~~ *shall serve* until the ~~next succeeding~~ *appointee or another person elected at the first* general election *after confirmation is elected and qualified.* The candidate elected at that election holds the office for the remainder of the unexpired term.

(2) If an appointment is subject to 3-1-1013(2), the appointee shall serve until the day before the first Monday of January following the first general election after appointment. The candidate elected at that election holds the office for the full term to which elected or for the remainder of the unexpired term, as applicable.

(3) If an incumbent judge or justice files for election to the office to which the judge or justice was elected or appointed and no other candidate files for election to that office, the name of the incumbent must nevertheless be placed on the general election ballot to allow voters of the district or state to approve or reject the incumbent. If an incumbent is rejected at an election for approval or rejection, the incumbent shall serve until the day before the first Monday of January

following the election, at which time the office is vacant and another selection and appointment must be made."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1993.

CHAPTER NO. 378

[SB 291]

AN ACT REVISING UTILIZATION REVIEW PROVISIONS; AND AMENDING SECTION 33-32-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-32-201, MCA, is amended to read:

"**33-32-201. Conduct of utilization review.** A program of utilization review with regard to health care services provided or to be provided in this state must comply with the following:

(1) The insurer, health maintenance organization, or their agents conducting the utilization review of outpatient mental health treatment may request only information that is relevant to the payment of the claim.

(2) When a utilization review requires disclosure of personal information regarding the patient or client, including personal and family history or current and past symptoms of a mental disorder, then the identity of that individual must be concealed from anyone having access to that information in order that the patient or client may remain anonymous.

~~(1)~~*(3)* A determination that is made on appeal or reconsideration as provided in 33-32-203 and that is adverse to a patient or to an affected health care provider may not be made on a question relating to the necessity or appropriateness of a health care service without prior written findings, evaluation, and concurrence in the adverse determination by a health care professional trained in the relevant area of health care. Copies of the written findings, evaluation, and concurrence must be provided to the patient on request as provided in Title 33, chapter 19.

~~(2)~~*(4)* A determination made on appeal or reconsideration, as provided in 33-32-203, that health care services rendered or to be rendered are medically inappropriate may not be made unless the health care professional performing the utilization review has made a reasonable attempt to consult with the patient's attending health care provider concerning the necessity or appropriateness of the health care service.

(5) The following provisions must govern the conduct of a utilization review of health care services rendered to a patient by a health care provider who is a licensed social worker, licensed professional counselor, licensed psychiatric nurse, licensed psychiatrist, or a licensed psychologist:

(a) If a review of the patient's or the health care provider's records is required by the insurer in the course of an appeal or a redetermination of an adverse

determination of medical necessity or appropriateness made pursuant to an insurer's review, the review must be conducted by a person trained in the field of the provider.

(b) During an appeal or redetermination, the patient may, at the patient's expense, request an independent review of the patient's or the provider's records by a health care provider licensed in the field of the provider that rendered the health care service and may require that review to be considered by the insurer in reaching its decision. If the initial adverse determination of medical necessity or appropriateness is reversed, the insurer shall bear the expense of the independent review."

Approved April 16, 1993.

CHAPTER NO. 379

[SB 294]

AN ACT PROVIDING FOR THE DEFINITION OF THE TERMS "COAL", "GAS", AND "OIL"; CLARIFYING THAT THE DEFINITION OF "GAS" IN THIS ACT ALSO APPLIES TO TITLE 15; CLARIFYING THE NATURE OF HYDROCARBON GASES FOUND IN COAL FORMATIONS; AND AMENDING SECTIONS 15-1-101 AND 82-11-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Coal" means a combustible carbonaceaous rock formed from the compaction and induration of variously altered plant remains. Coal does not include:

(a) methane gas or any other natural gas that may be found in any coal formation;

(b) oil shale; or

(c) gilsonite.

(2) "Gas" means all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation, as produced at the wellhead and not defined as oil in subsection (3).

(3) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form by ordinary production methods and that are not the result of condensation of gas before or after it leaves the reservoir.

Section 2. **Hydrocarbons distinguished.** When used in any instrument, unless the clear and express terms of the instrument provide otherwise, the terms "coal", "gas", and "oil" must be construed as defined in [section 1].

Section 3. Section 82-11-101, MCA, is amended to read:

"**82-11-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Administrator" means the administrator of the division of oil and gas conservation.

(2) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(3) "Class II injection well" means a well, as defined by the federal environmental protection agency or any successor agency, that injects fluids:

(a) that have been brought to the surface in connection with oil or natural gas production;

(b) for purposes of enhancing the ultimate recovery of oil or natural gas; or

(c) for purposes of storing liquid hydrocarbons.

(4) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(5) "Determinations" means those decisions delegated to the state by or under authority of the Natural Gas Policy Act of 1978 or any successor or similar legislation relating to oil and gas.

(6) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means.

(7) "Field" means the general area underlaid by one or more pools.

(8) "Fluid" means any material or substance that flows or moves, whether in a semisolid, liquid, sludge, gas, or any other form or state.

~~(9) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (10) of this section.~~

~~(10) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods and which are not the result of condensation of gas before or after it leaves the reservoir.~~

~~(11)~~*(9)* "Owner" means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas ~~he~~ *the person* produces from a pool either for ~~himself~~ *the person* or others or for ~~himself~~ *the person* and others, and the term includes all persons holding that authority by or through ~~him~~ *the person with the right to drill.*

~~(12)~~*(10)* "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind and includes any agency or instrumentality of the state or any governmental subdivision of the state.

~~(13)~~*(11)* "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of any state waters that exceeds that permitted by state water quality standards or standards adopted by the board, including but not limited to the disposal, discharge, seepage, drainage, infiltration, flow, or injection of any liquid, gaseous, solid, or other substance into any state waters that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A disposal, discharge, seepage, drainage, infiltration, flow, or injection of fluid that is authorized under a rule, permit, or order of the board is not pollution under this chapter.

~~(14)~~*(12)* "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

~~(15)~~*(13)* "Producer" means the owner of a well or wells capable of producing oil or gas or both.

~~(16)~~*(14)* "Responsible person" means a person who is determined by the board under 82-10-402 to have abandoned an oil or gas well, injection well, disposal well, water source well, drill site, sump, seismographic shot hole, or other area where oil and gas drilling and production operations were conducted.

~~(17)~~*(15)* "State waters" means any body of water, either surface or underground.

~~(18)~~*(16) (a)* "Waste" means:

~~(a)~~*(i)* physical waste, as that term is generally understood in the oil and gas industry;

~~(b)~~*(ii)* the inefficient, excessive, or improper use of or the unnecessary dissipation of reservoir energy;

~~(c)~~*(iii)* the location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes or tends to cause reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and

~~(d)~~*(iv)* the inefficient storing of oil or gas. (The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.)

(b) The loss of gas to the atmosphere during coal mining operations is not waste within the meaning of this definition."

Section 4. Section 15-1-101, MCA, is amended to read:

"**15-1-101.** *(Temporary)* **Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and, beginning January 1, 1994, forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

(j) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(o) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(p) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(q) The term "weighted mean assessment ratio" means the total of the assessed values divided by the total of the selling prices of all area sales in the stratum.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board.

15-1-101. *(Effective July 1, 1993)* **Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and, beginning January 1, 1994, forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The terms "gas" and "natural gas" are synonymous and mean gas as defined in [section 1(2)]. The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

~~(g)~~*(h)* The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

~~(h)~~*(i)* The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

~~(i)~~*(j)* The term "livestock" means cattle, sheep, swine, goats, horses, mules, and asses.

~~(j)~~*(k)* The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

~~(k)~~*(l)* The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

~~(l)~~*(m)* The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

~~(m)~~*(n)* The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

~~(n)~~*(o)* The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

~~(o)~~*(p)* "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

~~(p)~~*(q)* The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 5. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 82, chapter 1, part 1, and the provisions of Title 82 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 1, chapter 4, and the provisions of Title 1, chapter 4, apply to [section 2].

Section 6. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 16, 1993.

CHAPTER NO. 380

[SB 298]

AN ACT AMENDING THE MUNICIPAL FINANCE CONSOLIDATION ACT OF 1983 TO INCLUDE AN ASSESSMENT OR SERVICE DISTRICT IN THE DEFINITION OF "LOCAL GOVERNMENT UNIT"; AMENDING SECTION 17-5-1604, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1604, MCA, is amended to read:

"**17-5-1604. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Local government unit" means any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, other special taxing district, *an assessment or service district authorized by law to borrow money,* or the board of regents of the Montana university system.

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 15, 1993.

CHAPTER NO. 381

[SB 321]

AN ACT REVISING THE CRITERIA FOR MEDICAL PAROLE; AND AMENDING SECTION 46-23-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-210, MCA, is amended to read:

"**46-23-210. Medical parole.** (1) The board may release on medical parole by appropriate order a person placed in a correctional institution or program, except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:

(a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome that renders the person ~~incapable of presenting~~ *highly unlikely to present* a *clear and present* danger to ~~society~~ *public safety*;

(b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the physical condition, disease, or syndrome and the extent of any potential recovery.

(2) The diagnosis must be reviewed and accepted by the department before the board may consider granting a medical parole.

(3) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity has improved to the extent that the person ~~poses~~ *is likely to pose* a possible detriment to society, the board may revoke the parole and return the person to the custody of the department.

(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(6) Sections 46-23-203 through 46-23-207 and 46-23-215 through 46-23-218 apply to nonmedical parole."

Approved April 15, 1993.

CHAPTER NO. 382

[SB 330]

AN ACT REVISING AND CLARIFYING THE LAW CONCERNING SUSPENSION AND REVOCATION OF TEACHER, ADMINISTRATOR, OR SPECIALIST CERTIFICATES; PROVIDING A PENALTY FOR FAILING TO REPORT; AMENDING SECTION 20-4-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-110, MCA, is amended to read:

"**20-4-110. Suspension, revocation, and denial of certificate ~~—appeals~~.** (1) The board of public education may suspend or revoke the teacher, *administrator,* or specialist certificate of any person for ~~any of~~ the following reasons:

(a) making any statement of material fact in ~~the application~~ *applying* for a certificate ~~which~~ *that* the applicant knows to be false;

(b) any reason that would have required or authorized the denial of the teacher, *administrator,* or specialist certificate to the person if it had been known at the time the certificate was issued;

(c) incompetency;

(d) gross neglect of duty;

(e) conviction of, entry of a guilty verdict, a plea of guilty, or a plea of no contest to a criminal offense involving moral turpitude in this state or any other state or country;

(f) immoral conduct related to the teaching profession;

(g) substantial and material nonperformance of the employment contract between the teacher, *administrator,* or specialist and the trustees of a *school or school* district without good cause or the written consent of the trustees; or

(h) denial, revocation, suspension, or surrender of a teacher, *administrator,* or specialist certificate in another state for any reason constituting grounds for similar action in this state.

(2) The board may initiate proceedings under this section if a request for the suspension or revocation of the teacher, *administrator,* or specialist certificate of any person is made to it by:

(a) the trustees of a district as to a teacher, *administrator,* or specialist employed by that *school or school* district within the 12 months immediately preceding receipt of the request by the board of public education; or

(b) the superintendent of public instruction.

(3) (a) If the employment relationship between a school district and a teacher, *administrator,* or specialist is terminated or not renewed *or if a teacher, administrator, or specialist resigns to prevent termination or nonrenewal* because the trustees have reason to believe that the teacher, *administrator,* or

specialist engaged in conduct described in subsection (1)(e) or (1)(f), the trustees shall make a written report to the superintendent of public instruction describing the circumstances of the termination, ~~or~~ nonrenewal ~~of the employment relationship~~, *or resignation.*

(b) The superintendent shall review the report *and any supporting evidence included in the report* and may conduct further investigation. If ~~he~~ *the superintendent* is satisfied that sufficient grounds exist, ~~he~~ *the superintendent* may request action by the board of public education under subsection ~~(2)(b)~~ *(1)*. The request must be brought within 1 year after discovery of the events that gave rise to the report.

(c) The trustees and the superintendent shall ensure the confidentiality of the report.

(d) The trustees and the superintendent and their agents and employees are immune from suit for actions taken in good faith under this section with respect to the report.

(4) The board shall give a 30-day written notification to any person when the board intends to consider the suspension or revocation of ~~his~~ *a* certificate. The board shall conduct an investigation of the reasons for the suspension or revocation charge and then, if the investigation warrants further action, conduct a hearing in the manner provided by board policies. At the hearing, the board shall afford the person an opportunity ~~to defend himself and his qualifications~~ *for defense* against the charge.

(5) After a hearing, the board may suspend or revoke the person's teacher or specialist certificate, except that in the case of a first violation under subsection (1)(g), the maximum penalty is a 2-year suspension of the person's certificate.

(6) Whenever the superintendent of public instruction denies the issuance or the renewal of a teacher or specialist certificate, the applicant may appeal the denial to the board of public education. The board shall hear the appeal in the same manner provided in this section for suspension or revocation and in accordance with the policies of the board. The decision of the board ~~shall be~~ *is* final."

Section 2. **Access to materials — superintendent of public instruction.** The superintendent of public instruction has access to all material considered by or available to the school or school district that may be relevant to an allegation that a teacher, administrator, or specialist has engaged in conduct described in 20-4-110(1)(e) or (1)(f) or that may lead to the discovery of relevant evidence.

Section 3. **Access to criminal justice information.** (1) Either the trustees of a school district or the superintendent of public instruction may apply to a district court pursuant to 44-5-302 to review confidential criminal justice information that is relevant to the investigation of grounds for suspension or revocation of a teacher, administrator, or specialist certificate under 20-4-110.

(2) The district court shall provide the trustees or the superintendent of public instruction access to any confidential criminal justice information that is relevant to an investigation into possible grounds for suspension or revocation

of a teacher, administrator, or specialist certificate. The court shall issue a protective order to protect the confidentiality of the information released.

Section 4. **Penalty for failure to report.** The failure of a school trustee to report as required in 20-4-110 constitutes official misconduct within the meaning of 2-16-603.

Section 5. **Codification instruction.** [Sections 2 through 4] are intended to be codified as an integral part of Title 20, chapter 4, part 1, and the provisions of Title 20, chapter 4, part 1, apply to [sections 2 through 4].

Section 6. **Effective date.** [This act] is effective July 1, 1993.

Approved April 16, 1993.

CHAPTER NO. 383

[SB 340]

AN ACT ESTABLISHING A POLICY ON RESIDENTIAL ENERGY EFFICIENCY; PROVIDING FOR THE APPLICABILITY OF THE ENERGY CONSERVATION PROVISIONS OF THE STATE BUILDING CODE TO RESIDENTIAL BUILDINGS; REQUIRING THAT THE ADOPTION OF RULES FOR ENERGY CONSERVATION IN BUILDINGS CONFORM TO CERTAIN POLICIES; PROVIDING FOR THE CERTIFICATION OF INSTALLATION OF ENERGY EFFICIENCY FEATURES BY BUILDERS; PROVIDING FOR THE LABELING OF ENERGY EFFICIENCY FEATURES IN NEW HOMES; AND AMENDING SECTIONS 50-60-102 AND 50-60-203, MCA.

WHEREAS, the Environmental Quality Council, as part of its study of energy policy under the requirements of House Joint Resolution No. 31, adopted in the 1991 Legislative Session, created a Residential Energy Efficiency Working Group (Working Group) to address a long-standing controversy surrounding residential energy efficiency and specifically the energy provisions of the state building code; and

WHEREAS, the Working Group included broad representation from energy utilities, the home building industry, energy consumers, state and local governments, the lending and real estate industries, low-income and conservation groups, and the building supply industry; and

WHEREAS, the Working Group met nine times during the 1992 interim and agreed that any final recommendations must be adopted by consensus and supported by all participants as a package, with all elements to be adopted or none at all; and

WHEREAS, the Working Group adopted by consensus the policy statement embodied in [section 1] and then adopted by consensus a package of implementation strategies; and

WHEREAS, the implementation strategies include:

(1) information strategies for consumers, builders, building code officials, home inspectors, bankers, realtors, and appraisers, specifically encompassing education, training, and technical assessment and demonstration of conserva-

tion measures, as well as an energy labeling sticker and initiation of first steps toward a home energy rating system;

(2) financial strategies geared toward making energy- efficient new homes more affordable, including:

(a) petitioning the Federal Home Administration (FHA) to increase the upper limits of FHA home mortgages;

(b) initiating a residential mortgage program for energy-efficient homes under the Montana Board of Housing that would maintain a low down payment requirement and raise mortgage ceiling levels above FHA limits; and

(c) establishing a loan reserve account in the Department of Natural Resources and Conservation that allows the Board of Housing to sell bonds to enable it to offer loans above the FHA limit that would be funded by home buyers, utilities, and the State of Montana as provided in House Bill No. 10;

(3) energy provider strategies in which utilities would continue to offer on a voluntary basis incentive programs to their customers to purchase energy-efficient products or services; and

(4) building code strategies, including enforcement of the energy conservation provisions of the state building code in certain residential buildings through a combination of builder self-certification and state and local government enforcement for those residences currently subject to the state building code, as well as increasing the efficiency standards in the energy code according to the consensus levels adopted by the Working Group; and

WHEREAS, it is the consensus of the Working Group that implementation of the building code strategies relating to the applicability of the energy code to certain residences is contingent on the establishment, funding, and operation of the financial strategy concerning the Board of Housing program promoting the affordability of energy-efficient new homes; and

WHEREAS, this bill embodies those consensus recommendations of the Working Group requiring statutory authorization.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because it directs the department of commerce, in adopting rules pertaining to energy conservation in buildings under the provisions of 50-60-203, to conform those rules to the policy provided in [section 1] and to the relevant policies that may be developed according to the provisions of Senate Bill No. 225.

This bill also requires that the department of commerce design a labeling sticker describing the energy efficiency measures in newly constructed homes. In designing this energy labeling sticker, the department of commerce should consult with the department of natural resources and conservation and with interested building industry and consumer groups.

It is the intent of the legislature that the department of commerce adhere to the recommendations related to energy efficiency in residential buildings developed under the auspices of House Joint Resolution No. 31, adopted by the 1991 legislature.

In accordance with the recommendations resulting from the directive of House Joint Resolution No. 31, the legislature intends that rules pertaining to energy conservation in certain residential buildings may not apply to those buildings containing less than five dwelling units and not otherwise subject to the state building code unless an affordable energy-efficient housing program is established as provided by House Bill No. 10. The coordination instruction in [section 7] reflects this intent.

It is further the intent of the legislature that in applying the energy conservation provisions of the state building code to certain residential buildings as provided in [section 2], the enforcement of those provisions be accomplished through builder self-certification as provided in [section 4] and not through enforcement by the department of commerce, except for those residential structures containing five or more dwelling units or for those residential structures otherwise subject to the state building code.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Statement of policy on residential energy efficiency.** The legislature finds that the people of Montana have an interest in energy efficiency in certain residential buildings for the purpose of protecting and improving their economic and environmental well-being and energy security, while recognizing the basic need for safe and affordable shelter. It is the policy of the state of Montana to encourage energy efficiency in residential buildings through strategies that ensure that:

(1) the housing consumer has access to the information required to make informed choices about structures and energy efficiency measures;

(2) energy efficiency measures are safe, reliable, and readily available for use in Montana;

(3) investments in energy efficiency measures are cost- effective;

(4) the cost of energy efficiency measures on the combination of down payments, monthly mortgage payments, and monthly utility bills does not adversely affect the affordability of housing to prospective home buyers and renters; and

(5) energy efficiency measures do not place an undue or inequitable burden on residential building owners or renters, the residential construction industry, financial institutions, real estate salespersons and appraisers, energy providers, or state and local governments.

Section 2. Section 50-60-102, MCA, is amended to read:

"**50-60-102. Applicability.** (1) ~~The~~ *Except as provided in subsection (5),* state building codes do not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures; or

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act.

(2) ~~The~~ *Except as provided in subsection (5), the* state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state building codes applicable to the ~~aforementioned~~ buildings *referred to in subsection (1)* may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) ~~Where~~ *When* good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing ~~therein~~ *in the area*, or other factors ~~which~~ *that* make differentiation or separate classification or regulation necessary, proper, or desirable.

(5) (a) For purposes of promoting the energy efficiency of home design and operation, the provisions of the state building code relating to energy conservation adopted pursuant to 50-60-203(1) apply to residential buildings, except:

(i) farm and ranch buildings; and

(ii) any private garage or private storage structure attached to a residential building and used only for the owner's own use.

(b) The provisions of the state building code relating to energy conservation in residential buildings are enforceable:

(i) by the department only for those residential buildings containing five or more dwelling units or otherwise subject to the state building code; and

(ii) through the builder self-certification program provided for in [section 4] for those residential buildings containing less than five dwelling units and not otherwise subject to the state building code."

Section 3. Section 50-60-203, MCA, is amended to read:

"**50-60-203. Department to adopt state building code by rule.** (1) *(a)* The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. The department may amend or repeal ~~such~~ *the* rules.

(b) In adopting rules concerning the conservation of energy, the department shall conform those rules to the policy established in [section 1] [and to relevant policies developed under the provisions of Senate Bill No. 225].

(2) The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in ~~such~~ *national* codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances in single-family dwellings."

Section 4. **Enforcement of energy code through builder self-certification.** A person who begins construction on a residential building in Montana after [the effective date of this act] shall certify in writing to the building owner at the conclusion of construction that the residential building has been constructed in compliance with the energy-efficient construction standards adopted under the provisions of 50-60-203(1).

Section 5. **Energy labeling sticker.** (1) The department, in consultation with the department of natural resources and conservation, shall prescribe by rule requirements for a labeling sticker to be affixed to a new residential building that describes the energy efficiency components of the home, including but not limited to heating appliance efficiencies and R-value or U-value of ceilings, walls, floors, windows, and doors in new residential buildings.

(2) A person constructing a new residential building shall affix to that residential building in a manner prescribed by the department a labeling sticker as described in subsection (1).

Section 6. **Codification instruction.** [Sections 1, 4, and 5] are intended to be codified as an integral part of Title 50, chapter 60, part 2, and the provisions of Title 50, chapter 60, part 2, apply to [sections 1, 4, and 5].

Section 7. **Coordination instruction.** (1) If an appropriation is not provided to the department of natural resources and conservation to establish a housing loan reserve account for energy-efficient homes as provided in House Bill No. 10, then [sections 2 and 4 of this act] are void.

(2) If Senate Bill No. 225 is not passed and approved, the bracketed language in [section 3 of this act], amending 50-60-203, is void.

Approved April 16, 1993.

CHAPTER NO. 384

[SB 352]

AN ACT AMENDING THE PHYSICIAN, NURSE, PHYSICAL THERAPIST, OCCUPATIONAL THERAPIST, CHIROPRACTOR, DENTIST, AND HOSPITAL LIEN ACT TO INCLUDE PSYCHOLOGISTS, LICENSED SOCIAL WORKERS, AND LICENSED PROFESSIONAL COUNSELORS; AND AMENDING SECTIONS 71-3-1111, 71-3-1112, 71-3-1114, 71-3-1115, 71-3-1117, AND 71-3-1118, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1111, MCA, is amended to read:

"**71-3-1111. Short title.** This part may be cited as the "Physician, Nurse, Physical Therapist, Occupational Therapist, Chiropractor, Dentist, *Psychologist, Licensed Social Worker, Licensed Professional Counselor,* and Hospital Lien Act"."

Section 2. Section 71-3-1112, MCA, is amended to read:

"**71-3-1112. Purpose.** The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, *psychologists, licensed social workers, licensed professional counselors,* and hospitals when a person receiving medical *or other* treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance."

Section 3. Section 71-3-1114, MCA, is amended to read:

"**71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, *psychologists, licensed social workers, licensed professional counselors,* and hospitals.** (1) Whenever a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, *psychologist, licensed social worker, licensed professional counselor,* or hospital renders services to a person injured through the fault or neglect of another, the physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, *psychologist, licensed social worker, licensed professional counselor,* or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on:

(a) any claim or cause of action the injured person, ~~his~~ *the person's* estate, or successors may have for injury, disease, *counseling service,* or death;

(b) any judgment the injured person, ~~his~~ *the person's* estate, or successors may obtain for injury, disease, *counseling service,* or death; and

(c) all money paid in satisfaction of ~~such~~ *the* judgment or in settlement of the claim or cause of action.

(2) If a person is an insured or a beneficiary under insurance which provides coverage in the event of injury or disease, a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, *psychologist, licensed social worker, licensed professional counselor,* or hospital, upon giving the required notice of lien, has a lien for the value of services rendered on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420."

Section 4. Section 71-3-1115, MCA, is amended to read:

"**71-3-1115. Notice of lien.** (1) A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, *psychologist,* *licensed social worker, licensed professional counselor,* or hospital claiming a lien shall serve written notice upon the person and upon ~~his~~ *the* insurer, if any, against whom liability for injury, disease, *counseling service,* or death is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed.

(2) A physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, *psychologist, licensed social worker, licensed professional counselor,* or hospital claiming a lien upon proceeds or payments payable by an insurer shall serve written notice upon the insurer against whom the lien is asserted, stating the nature of the services, for whom and when rendered, the value of the services, and that a lien is claimed."

Section 5. Section 71-3-1117, MCA, is amended to read:

"**71-3-1117. Liability for failure to recognize lien.** If any insurer or person, after receiving notice of lien, makes payment on account of injury, disease, *counseling service,* or death and the amount of the lien claimed by any physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, *psychologist, licensed social worker, licensed professional counselor,* or hospital has not been paid, the insurer or person is liable to the physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, *psychologist, licensed social worker, licensed professional counselor,* or hospital for the reasonable value of the services."

Section 6. Section 71-3-1118, MCA, is amended to read:

"**71-3-1118.** *(Temporary)* **Applicability.** (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, *counseling,* and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under a policy of life insurance or group life insurance; a contract of disability insurance, except benefits payable in reimbursement for services rendered by a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, *psychologist, licensed social worker, licensed professional counselor,* or hospital; or an annuity contract or to pension benefits payable under a qualified pension plan. *(Terminates April 17, 1993—sec. 4, Ch. 469, L. 1991.)*

71-3-1118. *(Effective April 17, 1993)* **Applicability.** (1) Except as provided in subsection (2), this part does not apply to compensation awarded to workers for injury, disease, or death pursuant to the Workers' Compensation Act or the Occupational Disease Act of Montana.

(2) This part applies to all payments awarded for medical, therapy, chiropractic, dentistry, *counseling,* and hospital services pursuant to the acts referred to in subsection (1).

(3) This part does not apply to any benefits payable under a policy of life insurance or group life insurance, a contract of disability insurance, or an annuity contract or to pension benefits payable under a qualified pension plan."

Approved April 15, 1993.

CHAPTER NO. 385

[HB 395]

AN ACT TEMPORARILY CLOSING THE UPPER MISSOURI RIVER BASIN TO FURTHER APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER, NONCONSUMPTIVE WATER USE, DOMESTIC, MUNICIPAL, OR STOCK USE, AND STORAGE PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** Unless the context requires otherwise, in [sections 1 and 2], the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(4) "Upper Missouri River basin" means the drainage area of the Missouri River and its tributaries above Morony dam.

Section 2. **Basin closure — exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2) of this section, the department and the board may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the upper Missouri River basin during the period from [the effective date of this act] until the final decrees have been issued in accordance with part 2 of this chapter for all of the subbasins of the upper Missouri River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) temporary emergency appropriations as provided for in 85-2-113(3).

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections 1 and 2].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Section 5. **Applicability.** [This act] applies to all applications received by the department of natural resources and conservation after [the effective date of this act].

Approved April 16, 1993.

CHAPTER NO. 386

[SB 399]

AN ACT AUTHORIZING A LOCAL GOVERNMENT TO LEVY 1 MILL FOR ECONOMIC DEVELOPMENT BY A VOTE OF THE GOVERNING BODY; SUBJECTING THE LEVY TO THE PROVISIONS OF TITLE 15, CHAPTER 10, PART 4, UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTION 90-5-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-5-112, MCA, is amended to read:

"90-5-112. Economic development levy. (1) ~~Upon an affirmative vote of a majority of the qualified voters voting in a city, county, or town on the question of whether the governing body may levy a tax for economic development, the governing body of that city, county, or town is authorized to levy in any one election up to 1 mill upon the taxable value of all the property in the county, city, or town subject to taxation for the purpose of economic development for a period not to exceed 5 years.~~ *The governing body of a city, county, or town is authorized to levy up to 1 mill upon the taxable value of all the property in the city, county, or town subject to taxation for the purpose of economic development. The governing body may:*

(a) submit the question of the mill levy to the qualified voters voting in a city, county, or town election; or

(b) approve the mill levy by a vote of the governing body.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

(4) ~~The authorization to levy up to 1 mill for the purpose of economic development, as provided in subsection (1),~~ *A tax authorized by a vote of the electorate, as provided in subsection (1)(a), may be levied for a period not to exceed 5 years and* is not subject to the provisions of Title 15, chapter 10, part 4."

Approved April 16, 1993.

CHAPTER NO. 387

[SB 77]

AN ACT CONTINUING THE JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Committee" means the joint committee on postsecondary education policy and budget created in [section 2].

(2) "University system" means those units listed in 20-25-201 and the vocational-technical centers designated in 20-16-106.

Section 2. **Joint committee on postsecondary education policy and budget — appointment and composition.** (1) There is a joint committee on postsecondary education policy and budget.

(2) The committee is composed of:

(a) four members of the senate, appointed by the committee on committees on a bipartisan basis, and four members of the house of representatives, appointed by the speaker of the house on a bipartisan basis. One of the legislative members shall serve as presiding officer upon election by a vote of committee members.

(b) two regents appointed by the chairman of the board of regents and one student of the university system appointed by the governor; and

(c) a representative from the executive branch appointed by the governor.

(3) Legislative appointments must be made before final adjournment of a regular session.

(4) All other appointments must be made prior to the first committee meeting following adjournment of a regular session.

Section 3. **Term of office.** (1) Legislative appointments to the committee are for 2 years. A legislative member of the committee shall serve until the legislator's term of office is ended.

(2) Appointments of members of the board of regents and the student to the committee are for 2 years or until the expiration of the members' terms on the board of regents, whichever occurs first.

(3) The appointment of an executive branch representative to the committee is for 2 years.

Section 4. **Vacancies.** (1) A legislative vacancy occurring during a legislative session must be filled in the same manner as the original appointment.

(2) A legislative vacancy occurring when the legislature is not in session must be filled by the selection of a member from the appropriate house and political party by the remaining members of the committee.

(3) All other vacancies must be filled in the same manner as the original appointment.

(4) An appointment to the committee under this section is for the unexpired term of the original member.

Section 5. **Officers — quorum — meetings.** (1) The committee shall select one of its legislative members as presiding officer and may elect other officers it considers necessary.

(2) A simple majority of the committee constitutes a quorum to do business.

(3) The committee shall meet at least quarterly.

Section 6. **Compensation.** (1) Legislative members are entitled to receive compensation and expenses as provided in 5-2-302.

(2) Members appointed by the board of regents are entitled to:

(a) $50 for each day in which a member is actually and necessarily engaged in the performance of committee duties; and

(b) travel expenses, as provided for in 2-18-501 through 2-18-503.

Section 7. **Staff assistance.** The legislative fiscal analyst shall provide staff assistance to the committee. The legislative fiscal analyst has the same authority of investigation and examination on behalf of the committee as provided under 5-12-303.

Section 8. **Powers and duties of committee.** (1) The committee may:

(a) organize and adopt rules to govern its proceedings; and

(b) exercise the investigatory powers of a standing committee under Title 5, chapter 5, part 1.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual goal statement development;

(iii) long-range planning;

(iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop mechanisms to ensure strict accountability of the revenues and expenditures of the university system;

(e) study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;

(f) act as a liaison between both the legislative and executive branches and the board of regents;

(g) encourage cooperation between the legislative and executive branches and the board of regents; and

(h) report its activities, findings, recommendations, and any proposed legislation to the legislature.

Section 9. **Appropriation.** There is appropriated from the general fund to the office of the legislative fiscal analyst $15,000 in the 1995 biennium for use by the joint committee on postsecondary education policy and budget.

Section 10. **Effective date.** [This act] is effective on passage and approval.

Section 11. **Termination.** [This act] terminates July 1, 1995.

Approved April 19, 1993.

CHAPTER NO. 388

[SB 78]

AN ACT PROVIDING THAT IN A HEARING REQUESTED BY A PERSON WHOSE DRIVER'S LICENSE HAS BEEN SUSPENDED OR REVOKED FOLLOWING A DUI CHARGE, THE CITY ATTORNEY MAY REPRESENT THE STATE IF THE INCIDENT LEADING TO THE SUSPENSION OR REVOCATION RESULTED IN A CITY OR MUNICIPAL CHARGE; AND AMENDING SECTION 61-8-403, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-403, MCA, is amended to read:

"**61-8-403. Right of appeal to court.** The department shall immediately notify *in writing* any person whose license or privilege to drive has been suspended or revoked, ~~as hereinbefore authorized, in writing~~ and ~~such~~ *the* person ~~shall have the right to~~ *may* file a petition within 30 days thereafter for a hearing ~~in~~ *on* the matter in the district court in the county ~~wherein such~~ *where the* person resides or in the district court in the county in which this arrest was made. ~~Such~~ *The* court is ~~hereby~~ vested with jurisdiction and ~~it~~ shall ~~be its duty~~

~~to~~ set the matter for hearing. ~~upon~~ *The court shall give* 10 days' written notice *of the hearing* to the county attorney of the county ~~wherein~~ *where* the appeal is filed *and to the city attorney if the incident leading to the suspension or revocation resulted in a charge filed in a city or municipal court,* and ~~such~~ *the* county attorney *or city attorney* ~~shall~~ *may* represent the state~~, and thereupon the~~. *If the county attorney and the city attorney cannot agree on who will represent the state, the county attorney shall represent the state. The* court shall take testimony and examine ~~into~~ the facts of the case, except that the issues ~~shall~~ *must* be limited to whether a peace officer had reasonable grounds to believe *that* the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public~~,~~ while under the influence of alcohol, drugs, or a combination of the two, whether the person was placed under arrest, and whether ~~such~~ *the* person refused to submit to the test. The court shall ~~thereupon~~ determine whether the petitioner is entitled to a license or is subject to suspension ~~as heretofore provided~~ *or revocation.*"

Approved April 19, 1993.

CHAPTER NO. 389

[SB 100]

AN ACT DEFINING THE TERM "DESIGNATED SMOKING AREA"; RESTRICTING ALL SMOKING AREAS TO DESIGNATED SMOKING AREAS; EXEMPTING MONTANA UNIVERSITY SYSTEM BUILDINGS AND CERTAIN OTHER BUILDINGS FROM THE REQUIREMENT TO DESIGNATE SMOKING AREAS; CLARIFYING WHICH BUILDINGS MUST HAVE DESIGNATED SMOKING AREAS; REVISING RESPONSIBILITY FOR DESIGNATING SMOKING AREAS AND PLACING SIGNS; PROVIDING A STATUTORY APPROPRIATION; AND AMENDING SECTIONS 17-7-502, 50-40-202, 50-40-203, 50-40-204, AND 50-40-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Special revenue account — donations for smoking areas — statutory appropriation.** (1) There is an account in the state special revenue fund for the establishment of designated smoking areas pursuant to 50-40-204.

(2) The department of administration is authorized to accept donations to pay for the establishment of or improvements to designated smoking areas in state buildings and shall deposit any donations into the special revenue account established in subsection (1).

(3) The money in the special revenue account established in subsection (1) is statutorily appropriated, as provided in 17-7-502, to the department of administration to pay for the establishment of or improvements to designated smoking areas pursuant to 50-40-204.

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. **Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; *[section 1]*; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 3. Section 50-40-203, MCA, is amended to read:

"**50-40-203. Definitions.** As used in 50-40-202 through 50-40-205, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or of an agency of the Montana university system.

(2) ~~"Department" means the department of administration provided for in Title 2, chapter 15, part 10.~~

~~(3)~~ "Smoking" means any lighted cigar, cigarette, or pipe or any other lighted tobacco product.

(3) "Designated smoking area" means an enclosed, comfortable area that maintains adequate ventilation to minimize the circulation of smoke to surrounding areas and that has been designated as a smoking area under 50-40-204."

Section 4. Section 50-40-202, MCA, is amended to read:

"**50-40-202. Public policy.** In recognition of the increased health hazards of passive smoke on the nonsmoker, it is the declared public policy of the state of Montana that ~~all~~ *certain* buildings ~~maintained~~ *both owned and occupied* by the state ~~are to~~ *may* be smoke-free. *It is further the policy of the state that designated smoking areas be established in certain other state buildings pursuant to 50-40-204.*"

Section 5. Section 50-40-204, MCA, is amended to read:

"**50-40-204. Smoke-free buildings — designated smoking areas.** (1) In buildings ~~maintained~~ *both owned and occupied* by the state, smoking is prohibited in the following areas:

(a) general office space;

(b) auditoriums, classrooms, and conference rooms;

(c) elevators;

(d) corridors, lobbies, restrooms, and stairways~~, except as provided in subsections (2)(b) and (4)~~;

(e) medical care facilities;

(f) libraries; and

(g) hazardous areas.

(2) *(a)* ~~An agency head~~ ~~shall~~ *Subject to subsection (1), in state-owned buildings, an agency head shall* establish at least one "designated smoking area" in ~~each~~ *the* building~~, except in those areas listed in subsection (1),~~ *occupied by the agency, provided that the building is* suited by architectural design and functional purpose to ~~be used as~~ *have* a *designated* smoking area *as defined in 50-40-203.*

(b) Buildings in the Montana university system, including the vocational-technical centers, and buildings housing items of artistic or historic value that may be damaged by smoke are exempt from the provisions of subsection (2)(a).

~~(a) An agency head may designate a smoking area in a cafeteria. The size of the area must be determined by an estimate of the number of smoking and nonsmoking patrons served.~~

~~(b) An agency head may designate a corridor, lobby, or restroom as a smoking area when it is not possible to designate another smoking area.~~

(3) In establishing designated smoking areas, as provided in subsection (2), an agency head shall consider:

(a) the number of smokers and nonsmokers in the agency;

(b) the building ventilation system;

(c) the availability of space; ~~and~~

(d) the protection of nonsmokers from involuntary exposure to smoke*; and*

(e) available resources.

(4) *(a)* Agencies in multitenant buildings are encouraged to work together to identify designated smoking areas.

(b) The legislature shall establish designated smoking areas in the capitol in areas used by the legislature."

Section 6. Section 50-40-205, MCA, is amended to read:

"**50-40-205. Signing — smoking receptacles.** ~~(1) The department shall place signs near each entrance to a building stating that the building is smoke-free.~~

~~(2)~~*(1)* An agency head shall place signs stating where the designated smoking areas are located.

~~(3)~~*(2)* An agency head is responsible for providing adequate ash trays or receptacles in the designated smoking areas.

~~(4)~~*(3)* In buildings of historical significance, ~~the department shall place~~ *agency* signs ~~that are~~ *must be* aesthetically pleasing and ~~that~~ *must* fit the architectural style of the building."

Section 7. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 40, part 2, and the provisions of Title 50, chapter 40, part 2, apply to [section 1].

Approved April 19, 1993.

CHAPTER NO. 390

[SB 318]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ELECTIONS; PROVIDING A DEFINITION OF "REGULAR ELECTION"; REVISING REGISTRATION OF ELECTORS; REQUIRING THAT AFFIDAVITS OF CIRCULATION ACCOMPANY PETITIONS FOR NOMINATION OF PRESIDENTIAL CANDIDATES; PROVIDING FOR AMENDMENT OF NOMINATING PETITIONS; REVISING THE STAMPING OF BALLOTS; AUTHORIZING THE SECRETARY OF STATE TO PRESCRIBE THE FORM OF THE VOTER INFORMATION PAMPHLET AND PROVIDING FOR THE MAILING OF THE PAMPHLET; AMENDING SECTIONS 13-1-101, 13-2-202, 13-2-203, 13-10-405, 13-10-503, 13-10-504, 13-10-601, 13-13-116, 13-25-101, 13-27-401, AND 13-27-410, MCA; REPEALING SECTION 13-2-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 13-27-401 authorizes the secretary of state to prescribe the format for the voter information pamphlet. These rules must permit the orderly, efficient presentation of the arguments that will help in reducing the costs of preparation of the voter information pamphlet.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-101, MCA, is amended to read:

"**13-1-101. Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(2) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination or appointment as a candidate for public office as required by law;

(b) for the purposes of chapters 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on ~~his~~ *the individual's* behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(3) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, ~~so~~ *as* long as ~~such~~ *the* organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

(4) "Election" means a general, *regular*, special, or primary election held pursuant to the requirements of state law, regardless of the time ~~and/or~~ *or* purpose.

(5) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(6) "Elector" means an individual qualified and registered to vote under state law.

(7) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (3);

(ii) payments by a candidate for ~~his~~ *a* filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for ~~himself~~ *the candidate* and ~~his~~ *the candidate's* family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, ~~so~~ *as* long as ~~such~~ *the* organization is not a primary political committee.

(8) "General election" *or "regular election"* means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). *For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).*

(9) "Individual" means a human being.

(10) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, or 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.

(11) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (2) of this section.

(12) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(13) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(14) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for ~~such~~ nominations is set on the same date for all similar subdivisions in the state.

(15) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(16) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(17) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(18) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

Section 2. Section 13-2-202, MCA, is amended to read:

"**13-2-202. Registration by personal appearance.** An elector may register by appearing before the registrar ~~or a deputy registrar~~ and~~:~~

~~(1) answering any questions asked by the official concerning items of information called for in the registration form;~~

~~(2) signing and verifying or affirming the affidavit or affidavits on the form~~ *completing and signing the registration form.*"

Section 3. Section 13-2-203, MCA, is amended to read:

"**13-2-203. Registration by mail.** (1) A qualified individual may register by mailing, postage paid, a properly completed registration form to the election administrator in the county in which ~~he~~ *the individual* resides.

(2) The election administrator shall send registration forms for mail registrations to all qualified individuals requesting them and shall, in addition,

arrange for the forms to be widely and conveniently available within the county. The mail registration form ~~shall~~ *must* be designed as prescribed by the secretary of state. A form prescribed by the secretary of state explaining voter registration qualifications, deadlines, and purge information ~~shall~~ *must* be distributed with the mail registration form.

(3) The elector shall complete, sign, and~~, except as provided in 13-2-212, either verify or affirm the mail registration form before a notary public or other officer empowered to administer oaths or complete and sign the form and obtain the signature, address, and voting precinct of at least one registered voter in the county who shall witness the facts stated on~~ *return* the *mail* registration form.

(4) The registration form must be received by the election administrator on or before the day of the close of registration and must be returned to the administrator no later than 15 days after the date it is signed ~~by the witness or officer before whom signed~~.

(5) Registration forms properly executed before the close of registration must be accepted for 3 days after the close of registration."

Section 4. Section 13-10-405, MCA, is amended to read:

"**13-10-405. Submission and verification of petition.** Petitions of nomination for the presidential preference primary election *and the affidavits of circulation required by 13-27-302* must be presented to the election administrator of the county in which the signatures are gathered *at least 1 week before the primary election filing deadline prescribed in 13-10-201(6). A filing fee is not required.* The election administrator ~~must~~ *shall* verify the signatures in the manner prescribed in 13-27-303 through 13-27-308 and must forward the petitions to the secretary of state. ~~The petitions must be submitted to the election administrator before the filing deadline established in 13-10-201(6). No filing fee is required.~~"

Section 5. Section 13-10-503, MCA, is amended to read:

"**13-10-503. Filing deadlines.** (1) A petition for nomination *and the affidavits of circulation required by 13-27-302*, accompanied by the required filing fee, ~~shall~~ *must* be filed with the same officer with whom other nominations for the office sought are filed. Petitions must be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306. In the event there are insufficient signatures on the petition, additional signatures may be submitted before the deadline for filing.

(2) Except as provided in 13-10-504, each petition ~~shall~~ *must* be filed before the scheduled primary election or the filing deadline for the special or general election if ~~no~~ *a* primary election is *not* scheduled."

Section 6. Section 13-10-504, MCA, is amended to read:

"**13-10-504. Independent or minor party candidates for president or vice president.** (1) An individual who desires to run for president or vice president as an independent candidate or as a candidate of a party not qualified under 13-10-601 must file a petition for nomination with the secretary of state 90 days prior to the date of the general election.

(2) The petition *and the affidavits of circulation required by 13-27-302* must first be submitted, at least 1 week before the deadline for filing, to the election administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.

(3) The petition must have the signatures of electors equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election. The names of the candidates for the required number of presidential electors allowable to Montana ~~shall~~ *must* be certified to the secretary of state when the petition for nomination is filed.

(4) A qualified independent presidential candidate may amend the petition and designate or choose a named vice-presidential candidate until the filing date provided in 13-25-101."

Section 7. Section 13-10-601, MCA, is amended to read:

"**13-10-601. Parties eligible for primary election — petitions by minor parties.** (1) Each political party that had a candidate for a statewide office who received a total vote that was 5% or more of the total votes cast for the successful candidate for governor in either of the last two general elections shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election and signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the total votes cast for the successful candidate for governor at the last general election in those districts. The petition *and the affidavits of circulation required by 13-27-302* must be presented to the election administrator of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306. The election administrator shall forward the verified petition to the secretary of state at least 75 days before the date of the primary. The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified petition to the secretary of state."

Section 8. Section 13-13-116, MCA, is amended to read:

"**13-13-116. Ballots to be stamped — one ballot to elector.** (1) Before delivering ballots to an elector, the election judges shall stamp the words "official ballot" on the ballot. ~~No~~ *A* part of the stamp may *not* appear on the stub. They shall also stamp the name of the county, the number of the precinct, ~~the date of the election,~~ and any other information the election administrator believes necessary to distinguish the ballots from those used in any other election.

(2) Each elector shall receive from the election judges one of each type of ballot being used at the election."

Section 9. Section 13-25-101, MCA, is amended to read:

"**13-25-101. Nomination of electors — ballot.** (1) Each political party qualified under 13-10-601 shall nominate presidential electors for this state and file certificates of nomination for these candidates with the secretary of state *in a form prescribed by the secretary of state* no later than 75 days before the general election, in the manner and number provided by law.

(2) The secretary of state shall certify to the election administrator the names of the candidates for president and vice president of the several political parties, which ~~shall~~ *must* be printed on the ballot.

(3) The names of candidates for electors of president and vice president may not be printed upon the ballot."

Section 10. Section 13-27-401, MCA, is amended to read:

"**13-27-401. Voter information pamphlet.** (1) The secretary of state shall prepare for printing a voter information pamphlet containing the following information for each ballot issue to be voted on at an election, as applicable:

(a) ballot title, fiscal statement if applicable, and complete text of the issue;

(b) the form in which the issue will appear on the ballot;

(c) arguments advocating approval and rejection of the issue; and

(d) rebuttal arguments.

(2) The pamphlet ~~shall~~ *must* also contain a notice advising the recipient where additional copies of the pamphlet may be obtained.

(3) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues. The secretary of state may arrange the information in the order which seems most appropriate, but the information for all issues in the pamphlet ~~shall~~ *must* be presented in the same order.

(4) The secretary of state may prescribe by rule the format and manner of submission of the arguments concerning the ballot issue."

Section 11. Section 13-27-410, MCA, is amended to read:

"**13-27-410. Printing and distribution of voter information pamphlet.** (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 90 days before the election at which they will be submitted. The requisition ~~shall~~ *must* include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to every voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract ~~shall~~ *must* require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 30 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing ~~shall~~ *must* take place no later than 2 weeks ~~after the pamphlets are received from the printer~~ *before the election.*

(5) Ten copies of the voter information pamphlet ~~shall~~ *must* be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues."

Section 12. **Repealer.** Section 13-2-102, MCA, is repealed.

Section 13. **Effective date.** [This act] is effective July 1, 1993.

Approved April 19, 1993.

CHAPTER NO. 391

[SB 223]

AN ACT GENERALLY REVISING THE LAWS RELATING TO CHILD LABOR; AND REPEALING SECTIONS 41-2-101, 41-2-111, 41-2-113, 41-2-114, AND 41-2-121, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 12] requires the department of labor and industry to adopt rules to define terms, to implement the purposes of the child labor laws, and to prevent the circumvention or evasion of the child labor laws.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 13] may be cited as the "Child Labor Standards Act".

Section 2. **Definitions.** As used in [sections 1 through 13], the following definitions apply:

(1) "Agriculture" means:

(a) all aspects of farming, including the cultivation and tillage of the soil;

(b) (i) dairying; and

(ii) the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, including commodities defined as agricultural commodities in the federal Agricultural Marketing Act (12 U.S.C. 1141j(g));

(c) the raising of livestock, bees, fur-bearing animals, or poultry; and

(d) any practices, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market or delivery to storage, to market, or to carriers for transportation to market.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

(3) "Domestic service" means an occasional, irregular, or incidental non-hazardous occupational activity related to and conducted in or around a private residence, including but not limited to babysitting, pet sitting or similar household chore, and manual yard work. Domestic service specifically excludes industrial homework.

(4) (a) "Employed" or "employment" means an occupation engaged in, permitted, or suffered, with or without compensation in money or other valuable consideration, whether paid to the minor or to some other person, including but not limited to occupations as servant, agent, subagent, or independent contractor.

(b) The term does not include casual, community service, nonrevenue raising, uncompensated activities.

(5) "Employer" includes an individual, partnership, association, corporation, business trust, person, or group of persons acting directly or indirectly in the interest of an employer in relation to an employee.

(6) "Minor" means an individual under 18 years of age, except for an individual who:

(a) has received a high school diploma or has received a passing score on the general education development examination; or

(b) is 16 years of age or older and is enrolled in a registered state or federal apprenticeship program.

(7) "Occupation" means:

(a) an occupation, service, trade, business, or industry in which employees are employed;

(b) any branch or group of industries in which employees are employed; or

(c) any employment or class of employment in which employees are employed.

Section 3. **Exemptions.** The provisions of [sections 1 through 13] do not apply to a minor who is employed:

(1) in an agricultural occupation not otherwise prohibited by [sections 1 through 13] and who has received written consent from the minor's parents or a person standing in place of the parent who works on a farm or ranch where the parent or person is also employed;

(2) in domestic service or an agricultural pursuit performed outside school hours in connection with a home or a farm owned or operated by the minor's parent or by a person standing in place of the parent;

(3) by the parent or a person standing in place of the parent;

(4) during periods of school vacations on a campsite of a nonprofit corporation engaged in citizenship training and character building;

(5) as an actor, model, or performer;

(6) outside school hours by a homeowner in casual work usual to the home of the homeowner and not in connection with the homeowner's business, trade, or profession;

(7) by the legislature as a legislative aide or page; or

(8) in the distribution or sale of or in the collection for newspapers, periodicals, or circulars.

Section 4. **Prohibited employment of minors under fourteen years of age.** Except as provided in [section 3], a minor who is under 14 years of age may not be employed in or in connection with an occupation.

Section 5. **Prohibited employment of minors who are fourteen and fifteen years old.** Unless otherwise exempted, a minor 14 or 15 years of age may not be employed in the prohibited occupations in [section 6] or in:

(1) a manufacturing occupation;

(2) a processing occupation, including but not limited to filleting fish, dressing poultry, cracking nuts, or laundering and drycleaning;

(3) an occupation that requires the performance of duties in a workroom or workplace where goods are manufactured, mined, or processed;

(4) the operation or tending of a hoisting apparatus or of power-driven machinery;

(5) an occupation in connection with:

(a) transporting persons or property by rail, highway, air, water, pipeline, or other means;

(b) warehousing and storage;

(c) communication and public utilities; or

(d) construction or repair;

(6) an occupation in a retail, food service, or gasoline establishment, including:

(a) work performed in or around a boiler or an engine room;

(b) work in connection with the maintenance or the repair of an establishment, machine, or equipment;

(c) outside window washing that involves working from windowsills and all work requiring the use of ladders, scaffolds, or their substitutes at a height of more than 20 feet;

(d) an occupation that involves operating, assembling, adjusting, cleaning, oiling, or repairing power-driven food slicers and grinders, food choppers and cutters, or bakery-type mixers;

(e) work in freezers and meat coolers and all work preparing meat for sale, except wrapping, scaling, labeling, weighing, pricing, and stacking when performed in other areas;

(f) loading or unloading goods to and from a truck, railroad car, or conveyor; or

(g) an occupation in a warehouse, except for office or clerical work;

(7) the following agricultural occupations, unless otherwise exempt or working as a student-learner pursuant to [section 8]:

(a) felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than 9 inches;

(b) repairing a building from a ladder or scaffold at a height of more than 20 feet;

(c) working inside:

(i) a fruit, forage, or grain storage structure designed to retain an oxygen-deficient or toxic atmosphere; or

(ii) an upright silo within 2 weeks after silage has been added or when a top unloading device is in operating position;

(d) handling or using agricultural chemicals classified as poisonous;

(e) handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, or primer cord; or

(f) transporting, transferring, or applying anhydrous ammonia.

Section 6. **Prohibited employment of minors who are sixteen and seventeen years old.** Unless working as an apprentice or student-learner under the provisions of [section 9], a minor 16 or 17 years of age may not be employed in or in connection with any of the following occupations:

(1) manufacturing or storing explosives or articles containing explosive components;

(2) logging and the operation of a sawmill, lath mill, or shingle mill;

(3) the operation of power-driven woodworking machines;

(4) an occupation involving exposure to a radioactive substance or ionizing radiation;

(5) the operation of a freight elevator, except for a freight elevator permitted for use under the child labor provisions of the federal Fair Labor Standards Act of 1938, or other power-driven hoisting apparatus;

(6) the operation of a power-driven metal forming, punching, and shearing machine;

(7) a mining occupation;

(8) slaughtering, meatpacking, meat processing, or rendering;

(9) the operation of a power-driven bakery machine;

(10) the operation of a power-driven paper products machine;

(11) the manufacture of brick, tile, or similar products;

(12) the operation of a circular saw, bandsaw, or guillotine shears;

(13) a wrecking or demolition operation;

(14) an excavation operation;

(15) a roofing operation;

(16) riding outside a motor vehicle to assist in transporting or delivering goods; and

(17) a coal mining operation.

Section 7. **Employment of minors who are fourteen and fifteen years old.** (1) Unless enrolled in and employed pursuant to a school supervised and school administered work experience or career exploration program pursuant to [section 10(2)], a minor 14 or 15 years of age may not be employed in any occupation during school hours.

(2) A minor 14 or 15 years of age may be employed outside school hours in:

(a) the distribution or sale of or in the collection for newspapers, magazines, periodicals, or circulars; and

(b) the following occupations in retail, food service, and gasoline service establishments:

(i) office and clerical work, including the operation of an office machine;

(ii) cashiering, selling, modeling, art work, work in an advertising department, window trimming, and comparative shopping;

(iii) price marking and tagging by hand or by machine, assembling orders, packing, and shelving;

(iv) bagging and carrying out a customer's order;

(v) errand and delivery work by foot, bicycle, or public transportation;

(vi) cleanup work, including the use of a vacuum cleaner and a floor waxer, and maintenance of grounds, but not including the use of a power-driven mower or cutter;

(vii) kitchen work and other work involved in preparing and serving food and beverages, including the operation of machines and devices used in the performance of the work, which may include but are not limited to a dishwasher, toaster, dumbwaiter, popcorn popper, milkshake blender, and coffee grinder; or

(viii) work in connection with cars and trucks if confined to dispensing gasoline and oil; courtesy service; car cleaning, washing, and polishing; but not including work involving the use of a pit, a rack, or a lifting apparatus or involving the inflation of a tire mounted on a rim equipped with a removable ring.

Section 8. **Exemptions from prohibited occupations in agriculture.** (1) The prohibitions from employment in agricultural operations provided for in [section 5(7)] do not apply to the employment of a student-learner who is 14 or 15 years of age if all of the following requirements are met:

(a) The student-learner is enrolled in a vocational education training program in agriculture under a recognized state or local educational authority or in a substantially similar program conducted by a private school.

(b) The student-learner is employed under a written agreement, providing that:

(i) the work is incidental to training;

(ii) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(iii) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(iv) a schedule of organized and progressive work processes to be performed on the job has been prepared.

(c) The written agreement contains the name of the student-learner and is signed by the employer and by a person authorized to represent the educational authority or school.

(d) Copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) The prohibitions in [section 5(7)] do not apply to the employment of a minor who is 14 or 15 years of age in those occupations in which the minor has successfully completed a work training program, including safety instruction and training in the use of machinery, under the 4-H program of the federal extension service, a program of the United States department of education, or a similar program if the safety program has been approved by the department and if the minor is employed outside school hours on the equipment for which the minor has been trained.

Section 9. **Exemptions from prohibited employment of minors who are sixteen or seventeen years old.** (1) The prohibitions in [section 6] do not apply to the employment of an apprentice or student-learner who is 16 or 17 years of age if the minor is employed under the following conditions:

(a) for an apprentice, if:

(i) the minor is employed in a craft recognized as an apprenticeable trade;

(ii) the work is incidental to the minor's training;

(iii) the work is intermittent, for short periods of time, and under the direct and close supervision of a journeyman as a necessary part of the apprentice training; and

(iv) the minor is registered by the bureau of apprenticeship and training of the United States department of labor as employed in accordance with the standards established by that bureau or is registered by the department as employed in accordance with the standards of the department;

(b) for a student-learner, if:

(i) the student-learner is enrolled in a course of study and training in a cooperative vocational training program under a recognized state or local educational authority or in a course of study in a substantially similar program conducted by a private school;

(ii) the student-learner is employed under a written agreement, providing that:

(A) the work of the student-learner is incidental to the student-learner's training;

(B) the work is intermittent, for short periods of time, and under the direct and close supervision of a qualified and experienced person;

(C) safety instruction is given by the school and correlated by the employer with on-the-job training; and

(D) a schedule of organized and progressive work processes to be performed on the job has been prepared;

(iii) the written agreement contains the name of the student-learner and is signed by the employer and the school coordinator or principal; and

(iv) copies of each agreement are kept on file both by the educational authority or school and by the employer.

(2) This exemption for the employment of student-learners may be revoked by the department in any situation if the department finds that reasonable precautions have not been observed for the safety of minors employed under the exemption.

(3) A high school graduate who is 16 or 17 years of age may be employed in an occupation in which the graduate has completed training as a student-learner as provided in this section.

Section 10. **Working hours.** (1) Unless otherwise exempt or as provided in subsection (2), a minor who is 14 or 15 years of age:

(a) may not be employed before 7 a.m. or after 7 p.m., except that the minor may be employed until 9 p.m. during periods outside the school year (June 1 through Labor Day, depending on local standards); or

(b) may not be employed more than:

(i) 3 hours on a school day;

(ii) 18 hours in a school week;

(iii) 8 hours on a nonschool day; or

(iv) 40 hours in a week in a nonschool week.

(2) A minor who is 14 or 15 years of age and who is enrolled in and employed pursuant to a school-supervised and school-administered work experience or career exploration program approved by the department or the office of public instruction may be employed up to 23 hours in 1 week when the program is in session, any portion of which may be during school hours.

Section 11. **Enforcement — right to enter and inspect premises and records — subpoena power.** The department shall enforce the provisions of [sections 1 through 13] and file a complaint against a person who violates the provisions of [sections 1 through 13]. The department may at any time enter and inspect any place or establishment governed by the provisions of [sections 1 through 13] and have access to employment records kept on file by the employer that may aid in the enforcement of [sections 1 through 13]. The department may subpoena documentary evidence relating to an investigation under [sections 1 through 13].

Section 12. **Power to adopt rules.** The department shall adopt rules, including definitions of terms, to carry out the purposes of [sections 1 through 13] and to prevent the circumvention or evasion of [sections 1 through 13].

Section 13. **Penalties.** An employer who violates any of the provisions of [sections 1 through 13] is guilty of a misdemeanor and is punishable as provided in 46-18-212. Each day during which a violation of [sections 1 through 13] continues constitutes a separate offense, and the employment of a minor in violation of [sections 1 through 13] constitutes, with respect to each minor employed, a separate offense.

Section 14. **Repealer.** Sections 41-2-101, 41-2-111, 41-2-113, 41-2-114, and 41-2-121, MCA, are repealed.

Section 15. **Codification instruction.** [Sections 1 through 13] are intended to be codified as an integral part of Title 41, chapter 2, part 1, and the provisions of Title 41, chapter 2, part 1, apply to [sections 1 through 13].

Section 16. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 19, 1993.

CHAPTER NO. 392

[HB 27]

AN ACT RELATING TO LICENSING OF RESPIRATORY CARE PRACTITIONERS; ESTABLISHING A UNIFORM DATE FOR RENEWING LICENSES TO PRACTICE RESPIRATORY CARE THERAPY; PROVIDING QUALIFICATIONS FOR A TEMPORARY PERMIT; AMENDING SECTIONS 37-28-203 AND 37-28-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-28-203, MCA, is amended to read:

"**37-28-203. Renewal of license — application and fee.** (1) A respiratory care practitioner's license expires ~~1 year from the date of issuance~~ *annually on May 1.*

(2) A licensee may renew ~~his~~ *a* license by:

(a) filing an application with the board on a form approved by the board;

(b) paying a renewal fee in an amount established by the board; and

(c) documenting ~~that he has completed~~ *the completion of* the continuing education requirements prescribed by the board.

(3) An application for renewal of a license made within 90 days after expiration of the license is timely, and the rights and privileges of the applicant remain in effect during that period."

Section 2. Section 37-28-206, MCA, is amended to read:

"**37-28-206. Temporary permit.** (1) The board may issue a temporary permit to practice respiratory care for a period of 1 year, pending receipt of an application for licensure and upon payment of a temporary permit fee in an amount established by the board. To receive the permit, the applicant shall demonstrate in writing, confirmed by oath, that ~~he~~ *the applicant*:

(a) has applied for licensure by reciprocity pursuant to 37-28-202(2). If the board considers the application and denies it, the temporary permit shall lapse.

(b) has taken the examination for licensure and is awaiting the results; or

(c) is a student respiratory care practitioner who expects to graduate within 30 calendar days of ~~his~~ application *for a license or who applies for a license within 6 months after the person has graduated.*

(2) Upon expiration of the permit and payment of an additional fee in an amount established by the board, the board may issue a permit for an additional period not to exceed 1 year pending reexamination or compliance with the provisions of 37-28-202.

(3) An applicant who reapplies for a temporary permit after ~~he has abandoned~~ *abandoning* a previous application is not entitled to a permit."

Section 3. **Saving clause.** All licenses scheduled to expire between [the effective date of this act] and May 1, 1993, remain in effect until May 1, 1993.

Section 4. **Transition.** All licenses subject to renewal under [this act] must be renewed on May 1, 1993. The amount of the renewal fee to be assessed each licensee must be prorated to correspond to the time period of licensure. A license scheduled to expire prior to May 1, 1993, is valid until May 1, 1993.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 19, 1993.

CHAPTER NO. 393

[HB 139]

AN ACT EXEMPTING LAND SURVEYORS WHO ARE HAND DIGGING FOR CERTAIN PURPOSES FROM THE PROVISION REQUIRING EXCAVATORS TO OBTAIN INFORMATION ON THE LOCATION OF UTILITIES; DETERMINING LIABILITY FOR DAMAGES INCURRED, SUFFERED, OR CAUSED BY LAND SURVEYORS OR PERSONS UNDER THE LAND SURVEYORS' CONTROL; DETERMINING LIABILITY FOR GOVERNING AUTHORITIES FOR DAMAGES CAUSED OR SUFFERED BY LAND SURVEYORS OR PERSONS UNDER THE LAND SURVEYORS' CONTROL; DETERMINING LIABILITY FOR PUBLIC UTILITIES, MUNICIPAL CORPORATIONS, OR OTHER PERSONS HAVING THE RIGHT TO BURY UNDERGROUND FACILITIES FOR DAMAGES SUFFERED BY LAND SURVEYORS OR PERSONS UNDER THE LAND SURVEYORS' CONTROL; AND AMENDING SECTION 69-4-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4-502, MCA, is amended to read:

"69-4-502. Information to be sought before excavation — notification — ~~exception~~ *exceptions*. (1) *(a)* ~~No~~ *Except as provided in subsection (1)(b), a* person ~~shall~~ *may not* make or begin any excavation in ~~any~~ *a* public street, alley, right-of-way dedicated to the public use, or utility easement without first obtaining information concerning the possible location of any underground facility from each ~~and every~~ public utility, municipal corporation, or other person having the right to bury ~~such~~ underground facilities within the public street, alley, right-of-way, or utility easement.

(b) A registered land surveyor or a person under the supervision of a registered land surveyor may hand dig for shallow survey monuments at a depth of 12 inches or less below the road surface of a highway or at the intersection of the center lines of public streets. The registered land surveyor, prior to hand digging, shall obtain proper approval from the appropriate governing authority regarding safety and pavement repair and, when appropriate, shall reference the monument upon exposure. The governing authority is not liable for any damages caused or suffered by the registered land surveyor or any person under the supervision of the registered land surveyor. The registered land surveyor is liable for damages incurred regarding utility destruction, and any public utility, municipal corporation, or other person having the right to bury underground

facilities within the public street, alley, right-of-way, or utility easement is not liable for any damages suffered by the registered land surveyor or any person under the control of the registered land surveyor.

(2) Every public utility, municipal corporation, or other person having the right to bury underground facilities shall file with the county clerk and recorder in each county where the underground facilities are located, the name, address, and telephone number of the person or persons from whom the necessary information may be obtained unless a one-call notification center is available.

(3) (a) A public utility, municipal corporation, underground facility owner, or person having the right to bury underground facilities must be a member of a one-call notification center covering the service area in which the entity or person has underground facilities.

(b) Subsection (3)(a) does not apply to an owner or occupant of real property where underground facilities are buried if the facilities are used solely to furnish services or commodities to that property and no part of the facilities are located in a public street, alley, or right-of-way dedicated to the public use."

Approved April 19, 1993.

CHAPTER NO. 394

[HB 170]

AN ACT REVISING THE MEMBERSHIP ON THE BOARD OF AERONAUTICS; AND AMENDING SECTION 2-15-2506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2506, MCA, is amended to read:

"2-15-2506. Board of aeronautics — qualification — allocation — quasi-judicial. (1) There is a board of aeronautics.

(2) The board consists of nine members. The members are:

(a) one member of the Montana pilots' association;

(b) one member of the Montana chamber of commerce;

(c) one representative of the Montana airport management association;

(d) one member of the Montana county commissioners association *or the Montana league of cities and towns*;

(e) one person actively engaged in aviation education in this state;

(f) one person representative of interstate commercial airline operators, who must at the time of appointment be an employee or official of an interstate commercial airline operator and a resident of this state;

~~(g) one member of the Montana league of cities and towns;~~

~~(h)~~*(g)* one person representing the general public;

(h) one member of the association of Montana aerial applicators; and

(i) one person who must at the time of appointment be an active fixed base operator in this state, or an official of a fixed base operator in this state, of flying services or flying schools.

(3) The board is allocated to the department of transportation for administrative purposes only as prescribed in 2-15-121.

(4) The board is designated as a quasi-judicial board for purposes of 2-15-124.

(5) The administrator of the aeronautics division shall act as liaison between the board and the department of transportation."

Approved April 19, 1993.

CHAPTER NO. 395

[HB 201]

AN ACT GENERALLY REVISING THE LAWS RELATING TO BANKING; REVISING THE LAWS RELATING TO THE STATE BANKING BOARD; REMOVING THE DIRECTOR OF THE DEPARTMENT OF COMMERCE AS THE CHAIRMAN OF THE BOARD; AUTHORIZING THE BOARD TO ELECT A PRESIDING OFFICER; REDUCING THE TIME BETWEEN BANK INSPECTIONS; AUTHORIZING THE ACCEPTANCE OF FEDERAL REPORTS IN LIEU OF EXAMINATIONS; CLARIFYING THE PURPOSE OF THE BANKING LAWS; APPLYING GENERAL CORPORATE LAW TO THE FORMATION AND REORGANIZATION OF BANKS; EXCLUDING REPURCHASE AGREEMENTS FROM THE LIMITATION ON BORROWING; REVISING BANK INVESTMENTS; REMOVING THE LIMIT ON SAFE DEPOSIT FUNCTIONS; REVISING RESERVE REQUIREMENTS; REVISING DISSOLUTION, CLOSING, AND LIQUIDATION PROCEDURES; STATUTORILY APPROPRIATING UNCLAIMED FUNDS FOR THE PAYMENT OF CLAIMS; AMENDING SECTIONS 2-15-1803, 2-18-103, 17-7-502, 32-1-101, 32-1-109, 32-1-201, 32-1-202, 32-1-211, 32-1-218, 32-1-234, 32-1-301, 32-1-302, 32-1-307, 32-1-308, 32-1-322, 32-1-325, 32-1-339, 32-1-340, 32-1-361, 32-1-374, 32-1-402, 32-1-412, 32-1-422, 32-1-423, 32-1-424, 32-1-432, 32-1-446, 32-1-452, 32-1-455, 32-1-465, 32-1-467, 32-1-484, 32-1-507, 32-1-513, 32-1-515, 32-1-518, 32-1-531, 32-1-532, 32-1-534, 32-1-537, 32-1-538, 32-1-551, 32-1-552, 32-1-553, 32-1-606, AND 32-1-803, MCA; REPEALING SECTIONS 32-1-217, 32-1-305, 32-1-306, 32-1-323, 32-1-331, 32-1-332, 32-1-333, 32-1-334, 32-1-336, 32-1-337, 32-1-338, 32-1-351, 32-1-352, 32-1-353, 32-1-354, 32-1-355, 32-1-356, AND 32-1-431, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of commerce authority to adopt administrative rules to implement the purposes of the banking laws. The banking and financial division, in consultation with the state banking board, should adopt rules that allow state-chartered banks to operate efficiently and in conformity with the standards and procedures governing national banks. The department shall also adopt rules governing the combination of obligations for lending limit calculation purposes. The rules should address the purpose of the loan, the ultimate common user of funds, the source of repayment, the percentage of ownership, and other relevant considerations.

The rules on loan limitations may include limits or requirements for particular classes or categories of loans or extensions of credit, including a rule governing the combination of obligations for lending limit calculation purposes. These rules may address the purpose of the loan, the ultimate user of the funds, the source of repayment, the percentage of ownership of the entity, and other relevant considerations. The department may determine when a loan putatively made to a person is attributable to another.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1803, MCA, is amended to read:

"**2-15-1803. State banking board — composition — allocation.** (1) There is a state banking board.

(2) The board is composed of ~~seven~~ *six* members~~, including the director of commerce, or his designee, who is the chairman of the board~~. The ~~remaining six~~ members of the board ~~shall~~ *must* be appointed with consideration given banks of small, medium, and large size and to geographical distribution. ~~At least one banker member and one public member shall be appointed from each congressional district of the state.~~ Two of the six members ~~shall~~ *must* be active officers in state banks of Montana~~,~~*;* one ~~shall~~ *must* be an active officer of a national bank doing business in Montana~~,~~*;* and three ~~shall~~ *must* be members of the public, none of whom ~~shall be~~ *is* an officer, director, or shareholder of any state or national bank. *The board shall elect a presiding officer from its members.*

(3) The members ~~shall~~ *must* be appointed by the governor with the consent of the senate for terms of 3 years. Vacancies ~~shall~~ *must* be filled by appointment for the unexpired term. ~~No~~ *A* member ~~other than the director of commerce~~ may *not* serve more than two consecutive terms.

(4) The board is allocated to the department for administrative purposes only as provided in 2-15-121."

Section 2. Section 2-18-103, MCA, is amended to read:

"**2-18-103. Officers and employees excepted.** Parts 1 and 2 do not apply to the following positions in state government:

(1) elected officials;

(2) county assessors and their chief deputy;

(3) officers and employees of the legislative branch;

(4) judges and employees of the judicial branch;

(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of corrections and human services or family services;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation;

(13) assistant director for security of the Montana state lottery;

(14) executive director and senior investment officer of the Montana board of science and technology development;

(15) executive director and employees of the state compensation mutual insurance fund;

(16) state racing stewards employed by the executive secretary of the Montana board of horseracing; ~~and~~

(17) executive director of the Montana wheat and barley committee*; and*

(18) commissioner of banking and financial institutions."

Section 3. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; *32-1-537;* 37-43-204;

37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 4. Section 32-1-101, MCA, is amended to read:

"**32-1-101. Short title — application** ***— purpose.*** *(1)* Parts 1 ~~to~~ *through* 5~~, inclusive,~~ of this chapter shall be known as the "Bank Act".

(2) ~~and shall be~~ *The bank act is* applicable to*:*

(a) all corporations and persons specified in 32-1-102*;* ~~and to such other~~

(b) corporations ~~as shall~~ *that* subject themselves to ~~special provisions and sections thereof~~ *the bank act;* and ~~to such other~~

(c) persons, partnerships, or corporations who ~~shall~~ by violating ~~any of its provisions~~ *the bank act* become subject to the penalties provided ~~therein~~ *in the bank act.*

(3) (a) The purpose of the bank act is to provide Montana with a sound system of state-chartered banks by providing for and encouraging the development of state-chartered banks while restricting their activities to the extent necessary to protect the interests of depositors. The purpose includes:

(i) the sound conduct of the business of banks;

(ii) the conservation of bank assets;

(iii) the maintenance of adequate reserves against deposits;

(iv) the opportunity for banks to compete with other businesses, including but not limited to other financial organizations existing under the laws of this state, other states, the United States, and foreign countries;

(v) the opportunity for banks to serve the citizens of this state;

(vi) the opportunity for banks to participate in and promote the economic progress of Montana and the United States;

(vii) the opportunity for the management of banks to exercise business judgment in conducting the affairs of their institutions; and

(viii) modernization and simplification of the law governing banking by providing that banks have all the rights and powers granted corporations, except as otherwise provided in this chapter.

(b) The bank act does not restrict the activities of banks for the purpose of protecting any person from competition from banks and does not confer any right or cause of action upon any competitor.

(c) The purpose contained in this subsection (3) constitutes the standards to be observed by the commissioner of banking and financial institutions in the exercise of authority under the bank act and provides guidelines in the construction and application of the bank act."

Section 5. Section 32-1-109, MCA, is amended to read:

"**32-1-109. Definitions.** ~~Unless~~ *As used in this chapter, unless* the context requires otherwise, the following definitions apply:

(1) "Bank holding company" means a bank holding company registered under the federal Bank Holding Company Act of 1956, as amended.

~~(1)~~*(2)* "Board" means the state banking board provided for in 2-15-1803.

~~(2)~~*(3)* "Branch bank" means a banking house, other than the main banking house, maintained and operated by a bank doing business in the state but does not include a detached facility, as provided for in 32-1-372, or a satellite terminal, as defined in 32-6-103.

~~(3)~~*(4)* "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

~~(4)~~*(5)* "City" means a city, town, or municipality, incorporated or unincorporated, that is an aggregation of inhabitants and structures sufficient to constitute a distinct place.

~~(5)~~*(6)* "City limits" means, in the case of:

(a) an incorporated city, the corporate limits as provided for in 7-2-4101; or

(b) an unincorporated place, the boundaries that under the circumstances define the city as a distinct place.

~~(6)~~*(7)* "Common ownership" means the ownership, directly or indirectly, of 80% or more of the voting stock of each of two or more banks by an individual, group of individuals, entity, or corporation.

~~(7)~~*(8)* "Community advisory board" means a group of citizens to advise the management of a branch bank, a majority of whom must be residents of the county in which the branch bank is located.

~~(8)~~*(9)* "Consolidate" and "merge" mean the same thing and may be used interchangeably in this chapter.

~~(9)~~*(10)* "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

~~(10)~~*(11)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(12) "Division" means the division of banking and financial institutions of the department.

~~(11)~~*(13)* "Main banking house" means the principal place of business of a bank in the state.

~~(12)~~*(14)* "Net earnings" means the excess of the gross earnings of a bank over expenses and losses chargeable against those earnings during any one year.

(15) "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

~~(13)~~*(16)* "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

~~(14)~~*(17)* "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits which, when set apart and designated as such, is not available for the payment of dividends and cannot be used for the payment of expenses or losses so long as such bank has undivided profits.

~~(15)~~*(18)* "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

~~(16)~~*(19)* "Undivided profits" means the credit balance of the profit and loss account of a bank."

Section 6. Section 32-1-211, MCA, is amended to read:

"**32-1-211. Examination and supervision by department — *division of banking and financial institutions — commissioner.*** (1) The department shall exercise constant supervision over the books and affairs of all banks *and trust companies* doing business in this state.

(2) ~~It~~ *Except as provided in subsection (9), the department* shall:

(a) examine, at least once every ~~30~~ *24* months, each ~~of those banks~~ *bank or trust company* and verify the assets and liabilities of each and investigate the character and value of the assets of each as to ascertain with reasonable certainty that the values are correctly carried on the books; and

(b) submit in writing to the examined bank *or trust company* a report of the examination's findings no later than ~~120~~ *60* days after the completion of the examination.

(3) ~~It~~ *The department* shall ~~further~~ investigate the methods of operation and conduct of business of the banks *and trust companies* and their systems of

accounting to ascertain whether the methods and systems are in accordance with law and sound banking principles.

(4) ~~It~~ *The department* may examine under oath any of the officers, directors, agents, clerks, customers, or depositors of a bank *or trust company* regarding the affairs and business of the bank *or trust company.*

(5) ~~It~~ *The department* may, in the performance of its official duties, issue subpoenas and administer oaths. In case of a refusal to obey a subpoena issued by ~~it~~ *the department,* the refusal may ~~at once~~ be reported to the district court of the district in which the bank *or trust company* is located.~~, and the~~ *The* court shall enforce obedience to the subpoena in the manner provided by law for enforcing obedience to the process of the court.

(6) In all matters relating to its official duties, the department has the same power possessed by courts of law to issue subpoenas and have them served and enforced.

(7) All officers, directors, agents, and employees of banks *or trust companies* doing business under this chapter and all persons having dealings with or knowledge of the affairs or methods of a bank *or trust company* shall at all times afford reasonable facilities for the examinations and make returns and reports to the department as it may require. They shall also attend hearings and answer under oath the department's inquiries, produce and exhibit any books, accounts, documents, and property ~~it~~ *the department* desires to inspect, and in all things aid ~~it~~ *the department* in the performance of its duty.

(8) There is within the department a division of banking and financial institutions. The head of the division is the commissioner of banking and financial institutions, who shall exercise supervision and control over the activities and employees of the division. The position of commissioner is an exempt position as provided in 2-18-103. The commissioner must be hired by and serve at the pleasure of the director of the department. The director may consult with the board in hiring or terminating the commissioner.

(9) The commissioner may accept as the examination required by this section the findings or results of an examination of a bank or trust company that was made by a regulatory or insuring agency of the United States authorized to make the examination."

Section 7. Section 32-1-201, MCA, is amended to read:

"**32-1-201. State banking board — secretary — meetings — per diem.** (1) The state banking board, created in 2-15-1803, shall elect a secretary from its members to serve at the pleasure of the board.

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold meetings at the office of the department at dates and times set by the department. Special meetings may be called by the ~~chairman~~ *presiding officer* at any time upon 3 days' notice to the members.

(4) A quorum for all meetings ~~shall be~~ *is* a majority of the board members, and a majority of the quorum present at any meeting may take action.

(5) ~~The chairman shall have a voice but no vote in all meetings except to break a tie.~~

~~(6) Any~~ *A* board member ~~except the chairman~~ may be removed by the governor without cause in any case.

~~(7)~~*(6)* The board members shall receive compensation and travel expenses in the same manner and amount as provided for in 37-1-133 for boards allocated to the department of commerce. The costs and expenses of the board ~~shall be~~ *are* legitimate charges of the department."

Section 8. Section 32-1-202, MCA, is amended to read:

"**32-1-202. Powers and duties of board.** The ~~state banking~~ board shall:

(1) make final determinations upon applications for certificates of authorization for new banks, branch banks, mergers, consolidations, and relocations of banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the ~~director of the~~ department ~~of commerce~~ as the duties and powers relate to banking."

Section 9. Section 32-1-218, MCA, is amended to read:

"**32-1-218. Department to make rules.** (1) The department may promulgate reasonable rules and orders concerning bookkeeping and accounting by state banks, including the keeping of reasonable credit information, information in connection with assets, or information in connection with charged-off items.

(2) The department may adopt uniform rules to govern the examination and reports of banks *and trust companies* and prescribe the form in which banks *and trust companies* shall report their assets, liabilities, and reserves.

(3) The department may adopt rules, issue orders and declaratory statements, disseminate information, and exercise its discretion to effectuate the purposes, policies, and provisions of this chapter."

Section 10. **Reliance on order — limit on liability.** A person acting in good faith reliance upon a rule, order, or declaratory statement issued by the division is not subject to any criminal, civil, or administrative liability for the action if a subsequent decision by a court of competent jurisdiction invalidates the rule, order, or declaratory statement. In the case of an order or declaratory statement that is not of general application, only the person to whom the order or declaratory statement was issued is entitled to rely upon it, unless a third person is dealing with material facts or circumstances that are substantially the same as those upon which the order or declaratory statement was based.

Section 11. **Examination of holding companies and affiliated entities.** The division shall request assistance from and cooperate with the federal reserve system in the examination of bank holding companies under the Bank Holding Company Act of 1956 in order to resolve issues relating to the safety and soundness of banks under the jurisdiction of the division.

Section 12. Section 32-1-234, MCA, is amended to read:

"**32-1-234. Confidentiality — penalties.** (1) *(a)* The report and any information contained in the reports and statements provided for, other than those reports which are required to be published, ~~shall~~ *must* be considered secret and for the confidential information of the department only. The information may not be imparted to persons who are not officially associated with the department, and the information contained in ~~them shall~~ *the reports and statements may* be used by the department only in the furtherance of its official duties.

(b) The department may exchange information with federal ~~banking departments~~ *financial institution regulatory agencies* and with *the financial regulatory* departments of other states. ~~and~~ *The department may* furnish information to the legislative auditor ~~or prosecuting officials who request it~~ for use in pursuit of official duties. *A prosecuting official may obtain the information by court order.*

(2) Any knowledge or information gained or discovered by the department in pursuance of its powers or duties is confidential information of the department. The information may not, except as provided in ~~this~~ subsection *(1)(b)*, be imparted to any person not officially associated with the department. The information ~~shall~~ *must* be used by the department only in the furtherance of its official duties~~, except that the department may exchange information with the federal banking department and departments of other states and may furnish information to prosecuting officials who require it for use in pursuit of official duties~~.

(3) An employee or agent of the department who violates this section or willfully makes a false official report as to the condition of a bank ~~shall~~ *must* be removed from office and is also guilty of a felony. Upon conviction, ~~he~~ *the person* shall be fined *an amount* not exceeding $1,000, ~~or~~ imprisoned in ~~the~~ *a* state ~~penitentiary~~ *correctional facility for a term* not exceeding 5 years, or both ~~fined and imprisoned~~."

Section 13. **Applicability of corporation law.** (1) Except as provided in subsection (2), the provisions of Title 35, chapter 1, apply to banks unless a section in this title or a rule or order issued under this chapter is inconsistent with Title 35, chapter 1.

(2) The provisions of 35-1-114, 35-1-115(4) through (10), 35-1-308(1), 35-1-623(2), 35-1-936, 35-1-1106, 35-1-1107, 35-1-1207, and Title 35, chapter 1, part 10, do not apply to banks.

Section 14. Section 32-1-301, MCA, is amended to read:

"**32-1-301. Organization and incorporation — articles of ~~agreement~~ *incorporation*.** (1) ~~Any three or more persons~~ *A person* desiring to ~~associate themselves together for the purpose of becoming~~ *organize* a *banking* corporation ~~to engage in any one or more or all of the businesses mentioned in this chapter~~ shall ~~sign and acknowledge, in the manner provided for the acknowledgment of deeds of real estate, articles of agreement which shall~~ *make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must* set forth:

(a) the ~~corporate name of the proposed corporation, which may not be the name of any other corporation granted and then doing business of a similar character in this state or any imitation of a name, provided that it is lawful to use the name used by any corporation previously incorporated and doing business in the state of Montana but which has been disincorporated, liquidated, dissolved, and is entirely out of business. A banking corporation may not adopt or use the name of any other banking corporation or association, or of any friendly association.~~ *information required by 35-1-216(1);*

(b) the name of the city or town and county in which the principal office of the corporation is to be located;

(c) ~~the amount of the capital stock of the corporation, the number of shares into which it is to be divided, and the par value of shares; the amount of capital stock actually subscribed in good faith at the time of the signing of the articles of agreement; and the amount of the capital stock actually paid up in lawful money of the United States and in the custody of some banking institution designated as the depository of the money until the proposed corporation is fully organized and authorized to engage in business;~~

~~(d)~~ the names and places of residence of the ~~several~~ *initial* shareholders and the number of shares subscribed by each;

~~(e)~~*(d)* the number of the board of directors and the names of those agreed upon for the first year~~. The articles may provide that the number of directors elected at each annual meeting shall constitute the board for the year, all vacancies to be filled by the board taking the action, and also may provide that a majority of the full board of trustees may increase the number of the directors of the bank, not exceeding two, and appoint persons to fill the resulting vacancies between meetings of the stockholders.~~*; and*

~~(f)~~*(e)* the purpose for which the ~~association or company~~ *banking corporation* is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation desires to engage.

(2) In addition to provisions required ~~therein~~ *in subsection (1)*, the articles of incorporation may also contain provisions ~~not inconsistent with law regarding the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:~~

~~(a) for breach of a director's duty of loyalty to a corporation or its shareholders;~~

~~(b) for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law; or~~

~~(c) for a transaction from which a director derives an improper personal benefit~~ *set forth in 35-1-216(2).*

(3) A banking corporation may not adopt or use the name of any other banking corporation or association, and the corporation name must comply with 35-1-308(2) through (4).

(4) A banking corporation may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before [the effective date of this section], articles of agreement are considered articles of incorporation."

Section 15. Section 32-1-302, MCA, is amended to read:

"**32-1-302. Incorporation.** (1) The proposed articles of ~~agreement shall~~ *incorporation must* be presented to the department, together with an application in writing in the form prescribed by the department, for a certificate authorizing the proposed corporation to transact ~~within this state~~ the business specified in the articles of ~~agreement~~ *incorporation within this state.*

(2) Upon the presentation of the proposed articles of ~~agreement~~ *incorporation,* together with the application, the department shall ascertain whether the requisite capital of the bank, as required in 32-1-307, has been subscribed and been paid up in cash. ~~It~~ *The department* shall also determine whether the corporation is being formed for any other purpose than the legitimate business contemplated by this chapter. ~~It~~ *The department* shall determine whether the corporate name assumed by the bank, by reason of the use of any one or more of the words "commercial", "trust", "savings", or "investment" in conjunction with any other word or words, resembles so closely the name of any other bank previously formed under this chapter as to be likely to cause confusion.

(3) The expenses of the department and the board incurred in the examinations and hearings provided for in this chapter for the formation of new banks must be paid by the proposed bank through advance payment of a reasonable nonrefundable application fee which must be determined by the board by rule.

(4) All information gathered by the department under this section ~~shall~~ *must* be transmitted to the board for its use in conducting hearings on applications for certificates of authorization."

Section 16. Section 32-1-307, MCA, is amended to read:

"**32-1-307. Amount of capital.** ~~(1)~~ The *division, in consultation with the board, shall determine the appropriate level* ~~amount of the common and preferred stock of a commercial bank shall not be less than $25,000, and in addition thereto there shall be created a surplus of not less than 10% of the amount of the capital stock of said bank, which said surplus and capital stock shall be paid up in cash and deposited with some bank or banks at the time the application is made to the department for~~ *of capitalization of the proposed corporation prior to the issuance of* the certificate of authorization ~~hereinabove mentioned~~.

~~(2) A commercial bank having its place of business in a city or town of more than 2,000 and less than 4,000 inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than $30,000 and a surplus of 10% of the capital stock as hereinbefore provided. A commercial bank having its place of business in a city or town of more than 4,000 inhabitants, as disclosed by the last authorized census, shall have a capital stock of not less than $50,000 and a surplus of 10% of the capital stock as hereinbefore provided.~~

~~(3) The amount of the capital stock of a savings bank, trust company, or investment company shall be fixed and limited by the articles of agreement and shall be not less than $100,000 or more than $10 million, of which amount at least $100,000 must be subscribed and fully paid up in cash and on deposit with some bank or banks in this state when the application is made to the department for the certificate of authorization hereinabove mentioned. The remainder of the authorized capital stock may be subscribed and paid in at such times and under such regulations as the board of directors of such corporation may determine. The shares of the common capital stock of all banks shall have a par value of $100 or such less amount as may be provided in the articles of incorporation, provided that this chapter shall not require any bank in existence and doing business to increase its capital stock.~~"

Section 17. Section 32-1-308, MCA, is amended to read:

"**32-1-308. Bylaws.** ~~(1) The persons signing the articles of agreement shall at their first meeting adopt bylaws for the government of the corporation, which bylaws may provide for:~~

~~(a) the time, place, and manner of calling and conducting the meetings of the corporation;~~

~~(b) the number of stockholders constituting a quorum;~~

~~(c) the mode of voting by proxy;~~

~~(d) the time of the annual election of directors and the mode and manner of giving notice thereof;~~

~~(e) the duties of officers;~~

~~(f) the manner of election and the tenure of office of all officers other than the directors;~~

~~(g) suitable penalties for violation of bylaws, not exceeding in any case $100 for any one offense.~~

~~(2)~~ The bylaws ~~adopted~~ must be certified by a majority of the directors and the secretary of the corporation and recorded in the book of bylaws~~, which~~. *The* book ~~shall~~ *must* be open to ~~the~~ *public* inspection ~~of the public~~ during ~~the~~ office hours ~~of each day except holidays~~. A copy of the bylaws ~~shall~~ *must* also be transmitted to the department. ~~The bylaws may be repealed or amended or new bylaws be adopted at the annual meetings or at any other meeting of the stockholders called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or the power to repeal and amend the bylaws and adopt new bylaws may, by a similar vote at the first meeting or any annual meeting, be delegated to the board of directors.~~"

Section 18. Section 32-1-322, MCA, is amended to read:

"**32-1-322. Board of directors — qualifications, tenure, and vacancies.** (1) The affairs of the bank ~~shall~~ *must* be managed by a board of directors~~,~~ *consisting of* not less than three ~~in number, of whom at~~ *persons. At* least two-thirds *of the board* must be residents of Montana. Directors need not be shareholders of the corporation unless *required by* the articles of incorporation or bylaws ~~so require~~. A person who has been convicted of a crime against the banking laws of the United States or of any state may not be elected a director.

(2) The directors ~~shall~~ *must* be elected for a term of 1 year at the annual meeting of the stockholders~~, which shall~~. *The annual meeting must* be held ~~on any business day~~ before April 15 of each calendar year. If the election is not held on the day fixed for the annual meeting, the corporation ~~may~~ *is* not ~~thereby be~~ dissolved, but an election may be held at any other time agreeable to the bylaws of the corporation, and the persons ~~so~~ elected shall hold their office until ~~the second Tuesday of the following January or until others~~ *successors* are elected and qualified. Every director shall take and subscribe an oath that ~~he~~ *the director* will diligently and honestly perform ~~his~~ *the director's* duty in the office and that ~~he~~ *the director* will not knowingly violate or permit a violation of any of the provisions of this chapter. The oaths ~~shall~~ *must* be made in duplicate~~,~~; one copy ~~of which shall~~ *must* be transmitted to ~~the department~~ and filed ~~in its office~~ *with the department*, and one copy ~~shall~~ *must* be kept on file in the office of the bank.

~~(3) In case of death or resignation of one or more of the directors, the vacancy shall be filled by the board and the directors so appointed shall hold office until the next annual election.~~"

Section 19. Section 32-1-325, MCA, is amended to read:

"**32-1-325. Selection of officers and employees — minutes of meetings.** (1) The board of directors of a bank must hold a meeting at least quarterly.

(2) The board of directors may elect a president, one or more vice-presidents, a cashier and one or more assistant cashiers, and other officers and employees ~~which~~ *that* they may from time to time consider to be to the best interest of the bank and fix their compensation. The president ~~shall~~ *must* be chosen from the board of directors.

(3) The board of directors ~~shall also elect a secretary, who~~ shall keep a correct report of the meetings of the board and of the stockholders in a book kept for that purpose~~, which~~. *The* minutes ~~shall particularly~~ *must* disclose the dates of the meetings and the names of the directors or stockholders present. This record of the meetings of the board of directors ~~shall~~ *must* be subscribed to by the presiding officer and ~~secretary~~ *the person responsible for preparing the minutes*. The minutes ~~shall~~ *must* be read and approved at the following meeting of the board of directors, and the minutes of the following meeting ~~shall~~ *must* show that fact. The minute book ~~shall~~ *must* be kept in the *main* office of the bank at all times and ~~shall~~ *must* be presented to the department at the time of its examination of the books. The department shall include in its report of examination of the bank a statement of the dates on which the meetings were held since the last examination of the bank ~~by it~~ and the names of the directors

in attendance at each of those meetings. A person who makes a false entry in the book or who changes or alters an entry made in it is guilty of a misdemeanor."

Section 20. Section 32-1-339, MCA, is amended to read:

"**32-1-339. Right of examination by stockholder.** ~~No~~ *A* stockholder of ~~any~~ *a* bank incorporated under the laws of this state who is not a director ~~shall have the right to~~ *may not* inspect the books and records of ~~such~~ *the* bank showing its transactions with ~~any of its customers,~~ *a customer.* ~~but any such~~ *A* stockholder ~~shall have the right to~~ *may* inspect ~~during business hours the general statement book showing the general assets and liabilities~~ *the books and records* of ~~such~~ *the* bank *as provided in Title 35, chapter 1, part 11.*"

Section 21. Section 32-1-340, MCA, is amended to read:

"**32-1-340. Conversion of surplus and undivided profits to capital stock.** (1) A bank having a surplus and undivided profits equal to or in excess of 50% of its capital stock may increase its capital stock by the issuance of new stock for a part of that surplus and undivided profits.

(2) The increase may be made by ~~the~~ *a* vote ~~of two-thirds~~ of the stock ~~in person or by proxy~~, either at a regular annual stockholders' meeting or at a meeting called for that purpose in accordance with the bylaws of the corporation.

(3) All increases of capital stock made under this section must be accomplished in a manner conforming to the requirements of this chapter pertaining to surplus of banks when first incorporated.

(4) ~~New capital stock when issued by a bank against its surplus and undivided profits may be issued without the payment of cash for it, but it shall be charged upon the books of the bank and in the statements of the bank against surplus and undivided profits so that the combined capital, surplus, and undivided profits are not reduced by the issuance of the new stock.~~

~~(5)~~ When a bank has voted to issue any stock as contemplated in this section, it shall certify that action to the department, which shall within 30 days approve or reject the plan. ~~Its~~ *Departmental* action ~~shall be~~ *is* final, and written notice of ~~it shall~~ *the action must* be given to the bank.

~~(6) If the department approves of the issuance of the new stock and so notifies the bank, the bank shall then file a certificate of issuance with the county clerk and recorder of the county in which the bank is located and with the secretary of state. Upon the filing with the secretary of state, the increase becomes effective.~~"

Section 22. Section 32-1-361, MCA, is amended to read:

"**32-1-361. Change from state to national bank.** *(1)* ~~Any~~ *A* bank may become a corporation for the purpose of carrying on the business of banking in this state, under the act of congress "to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof", approved June 3, 1864, and under Title 52 of the Revised Statutes of the United States, when*:*

(a) stockholders owning two-thirds of the stock of the bank ~~have voted~~ *vote* to become ~~such~~ *a national bank* corporation or ~~have executed~~ *execute* a written

consent authorizing its directors to make the certificate required therefor by the laws of the United States*;* or

(b) ~~when~~ a majority of the directors of the bank, ~~having been~~ authorized in their discretion to make the change, ~~shall,~~ by a vote of the majority~~,~~ decide to become ~~such~~ *a national bank* corporation.

(2) The cashier of the bank shall*:*

(a) publish notice ~~thereof for 30 days~~ *of the change once a week for 4 consecutive weeks* in the newspaper ~~which~~ *that* the directors select*;* ~~and~~

(b) send a ~~like~~ printed notice by mail or otherwise to all nonvoting or dissenting stockholders*; and*

(c) notify the department that the bank has decided to become a corporation under the laws of the United States."

Section 23. Section 32-1-374, MCA, is amended to read:

"**32-1-374. Reorganization of national bank as state bank.** *(1)* ~~Any~~ *A* national bank *that is* authorized to dissolve~~,~~ and ~~which shall have~~ *that has* taken the necessary steps to effect dissolution~~,~~ may reorganize as a state bank upon the consent in writing of the owners of two-thirds of the capital stock of ~~such~~ *the* bank and with the approval of the department. The stockholders shall make, execute, and acknowledge articles of incorporation as required by the laws of the state of Montana and shall set forth ~~therein~~ *in the articles of incorporation* the written consent of ~~such~~ *the* stockholders. Upon the filing of ~~said~~ *the* articles as provided by law and upon the approval of the department, ~~such~~ *the* bank ~~shall be deemed to be~~ *is* reorganized under this chapter, and ~~thereupon~~ all assets, real and personal, of ~~such~~ *the* dissolved national bank ~~shall be~~ *are* vested in and become the property of ~~such~~ *the* reorganized state bank, subject to all liabilities of ~~such~~ *the* national bank not liquidated before ~~such~~ *the* reorganization.

(2) The cashier of the bank shall:

(a) publish notice of the change once a week for 4 consecutive weeks in the newspaper that the directors select;

(b) send a printed notice by mail or otherwise to all nonvoting or dissenting stockholders; and

(c) notify the department that the bank has decided to become a corporation under the laws of Montana."

Section 24. Section 32-1-402, MCA, is amended to read:

"**32-1-402. When advertising as bank prohibited — trade names restricted.** (1) ~~A~~ *Except as provided in (4), a* person, firm, company, partnership, or corporation, either domestic or foreign, *that is* not subject to the supervision of the department and not required by the provisions of this chapter to report to it and ~~which~~ *that* has not received a certificate to do a banking business from the department, may not:

(a) advertise that ~~he~~ *the person* or ~~it~~ *entity* is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit ~~therefor~~; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on checks; or

(iii) any other form of banking business is transacted there.

(2) ~~That~~ *The* person, firm, company, partnership, or corporation, domestic or foreign, may not use or circulate letterheads, billheads, blank notes, blank receipts, certificates, ~~or~~ circulars, or any written or printed or partly written and partly printed ~~paper~~ *papers* ~~whatever, having on them~~ *that contain* an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) ~~That~~ *The* person, firm, company, partnership, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner ~~which~~ *that* leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) *(a)* A person, firm, company, partnership, or corporation, domestic or foreign~~,~~ *that is* not subject to the supervision of the department and not required by the provisions of this chapter to report to it and ~~which~~ *that* has not received from the department a certificate to do a banking business~~,~~ may not transact business under a name or title ~~which~~ *that* contains the word "bank", "banker", "banking", "savings bank", "saving", "trust", "trustee", "trust company", or "investment company" *unless the department has granted a waiver.* ~~Nothing contained in this~~ *This* section ~~shall~~ *does not* prohibit *the* use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to Title 12, United States Code, section 1844~~, and such use of the word "bank" is hereby authorized~~.

(b) The department may grant a waiver to allow the use of a restricted word listed in subsection (4)(a) to a nonprofit organization if:

(i) the organization is not acting as a financial institution; and

(ii) the name used is not likely to mislead a reasonable individual into thinking that the organization is acting as a financial institution.

(5) A person, firm, company, partnership, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining ~~that~~ *the* person, firm, company, partnership, or corporation during pendency of the action and permanently from further using those words in violation of the provisions of this section or from further transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust,

or investment company and may enter any other order or decree as equity and justice require."

Section 25. Section 32-1-412, MCA, is amended to read:

"**32-1-412. Borrowing money — limitations.** (1) ~~A~~ *Except as provided in subsection (3), a* bank may not borrow money except to meet its seasonal requirements or unexpected withdrawals. ~~At no time shall the~~ *The* bills payable and rediscounts of a bank *may not* be permitted to exceed in the aggregate an amount equal to the capital and surplus of the bank, except with the written consent of the department. *Security instruments sold under an agreement to repurchase do not apply to the limit on borrowing contained in this section. The division may prohibit excessive amounts of borrowing structured as a security instrument sold under an agreement to repurchase to a single customer or within the bank.* When it appears to the department that a bank is borrowing money in excess of the limitation provided by this section or for the purposes other than as specified in this section, the department may require it to reduce the borrowing within a time to be fixed by the department.

(2) ~~A~~ *Subject to subsections (1) and (3), a* bank may not at any time become indebted either directly or indirectly for borrowed money or rediscounts in an amount in excess of its paid-up capital and surplus, without first obtaining written authority from the department. Debentures or certificates of indebtedness issued by an investment company to run for a period of 3 years or more may not be included in the deposit liabilities of that investment company, as affected by the provisions of this section.

(3) A bank may borrow funds from a federal home loan bank for use in financing home ownership, in financing affordable housing programs, or in interest rate risk management. The division may prevent excessive borrowing by an institution."

Section 26. Section 32-1-422, MCA, is amended to read:

"**32-1-422. Restriction on investment in corporate stock — rulemaking authority.** (1) ~~No~~ *Except as provided in subsections (2) and (3), a* commercial or savings bank ~~shall~~ *may not* purchase or invest its capital or surplus or money of its depositors, or any part of either, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired ~~shall~~ *must* be sold by the bank within 6 months ~~thereafter~~ *after purchase or acquisition*~~,~~ if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after ~~such~~ purchase or acquisition, or if the stock is unmarketable, it ~~shall~~ *must* be charged off as an investment loss, which ~~shall be~~ *is* equivalent to the stock's sale. ~~Every~~ *A* person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of ~~such~~ *the* stock.

(2) ~~Notwithstanding subsection (1), a~~ *A* bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank, without limitation of amount; and

(c) shares of stock in a Montana capital company *or the Montana small business investment capital company* within limits prescribed by the Montana Capital Company Act.

(3) A bank may invest any amount up to ~~5%~~ *the limit established by the department* of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) The department shall adopt rules to implement this section."

Section 27. Section 32-1-423, MCA, is amended to read:

"**32-1-423. Real estate ~~which~~ *that* banks may purchase, hold, or convey.** (1) A bank organized under the provisions of this chapter may purchase, hold, or convey real estate ~~which~~ *that*:

(a) is ~~necessary~~ for *its accommodation in* the ~~proper~~ transaction of its business, but it ~~shall~~ *may* not invest an amount exceeding 50% of its paid-up capital and surplus in the lot and building in which the business of the company is *or is projected to be* carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business, *provided that property held for future use as a bank office site is held pursuant to a business plan adopted by the directors of the bank*;

(b) is mortgaged to it in good faith by way of security for loans previously made or ~~moneys~~ *money* due to the bank;

(c) is conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) it purchases at sales under judgments, decrees, or mortgages held by the bank.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) ~~of this section~~ may not be held longer than 5 years from the date of acquisition, unless special written permission to do so is granted by the department. The real estate ~~shall~~ *must* be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title."

Section 28. Section 32-1-424, MCA, is amended to read:

"**32-1-424. Investments of financial institutions.** ~~(1) Trust and investment companies may lease, purchase, hold, and convey all real or personal~~

~~property necessary to carry on their authorized business, as well as the real or personal property the board of directors considers necessary to acquire in the enforcement or settlement of any claims or demands arising out of business transactions and may execute and issue, in the transaction of their business, all necessary receipts, certificates, and contracts.~~

~~(2) The board of directors of a corporation may invest the capital and assets of the corporation and keep the capital and assets invested in securities to be approved by the board, and the board may make investments of its capital and assets and of the funds accumulated by its business, including money, deposits, or any part thereof, in negotiable or nonnegotiable notes or bonds, mortgages on unencumbered real estate, stocks and bonds of corporations, or bonds and warrants of any county, city, town, or school district of this state or any other state of the United States legally authorized to issue the bonds or warrants, or bonds or obligations of the United States.~~

~~(3)~~*(1)* Notwithstanding other provisions of the law, it is lawful for a bank, trust company, investment company or other financial institution operating under the laws of this state to invest the funds or money in its custody or possession, eligible for investment, in:

(a) debentures issued by the federal housing administrator and in obligations of national mortgage associations; and

(b) United States government obligations, either directly or in the form of securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(i) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(ii) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

~~(4)~~*(2)* ~~An investment in~~ *The department shall publish a list of the permissible type of investments in* United States government obligations as provided in subsection ~~(3)(b) may not be made for a term longer than 5 years~~ *(1).*"

Section 29. Section 32-1-432, MCA, is amended to read:

"**32-1-432. Limitations on loans — *rulemaking.*** (1) (a) The total loans *or extensions of credit* to a person, partnership, or corporation by a bank, including loans to a partnership and to the ~~several~~ members ~~thereof~~ *of the partnership,* ~~shall at no time~~ *may not* exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it~~,~~ and the obligations of the United States, ~~or~~ general obligations of any state or of any political subdivision ~~thereof~~, or ~~obligation~~ *obligations* issued under authority of the Federal Farm Loan Act~~,~~ may not be considered as money borrowed.

(c) The limitations imposed on total loans *and extensions of credit* by this section do not apply to loans and investments secured by obligations of the United States having a *current market* value of 100% of the amount loaned or invested ~~or to loans made on warehouse receipts and bills of lading, when the warehouse receipts and bills of lading cover nonperishable commodities of the marketable value of at least 120% of the amount loaned on them~~.

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the ~~several~~ members of a firm, partnership, or unincorporated association to the loaning bank ~~shall~~ *must* be included in the liabilities of the firm, partnership, or unincorporated association. ~~That~~ *The* portion of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally responsible ~~shall~~ *must* be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans *or extensions of credit* to a limited partner of a limited partnership, ~~those~~ *the* portions of the liabilities of the limited partnership for which the limited partner is free from liability ~~shall~~ *must* be excluded.

(3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the limits and within the time it prescribes.

(4) The limitations of this section do not apply to the extent that the loan *or extension of credit* is secured by pledged deposits in the lending bank.

(5) The limitations of this section do not apply to a loan of funds *or an extension of credit* made by a bank to another bank if the term of the loan *or extension of credit* does not exceed 2 business days.

(6) The limitations of this section do not apply to the extent that a loan is covered by a guaranty or by commitments or agreements to take over or purchase ~~such~~ *the* loan made by an agency or board of the state of Montana authorized by law to provide such guaranties, commitments, or agreements.

(7) The department may adopt rules to carry out the purposes of this section.

(8) For purposes of this section, the terms "loan" and "extension of credit" include all direct or indirect advances of funds to a person on the basis of an obligation of the person to repay the funds. The terms also include a liability of a state chartered bank to advance funds to or on behalf of a person pursuant to a contractual commitment. The department may adopt a rule differentiating between discretionary and nondiscretionary contractual commitments."

Section 30. Section 32-1-446, MCA, is amended to read:

"**32-1-446. Safe deposit department.** ~~Any~~ *A* bank may conduct a safe deposit department ~~but shall not invest more than one-tenth of its capital and surplus in such safe deposit department~~. The liability of any bank for the safekeeping and protection of the contents of safety deposit boxes ~~shall be~~ *is* determined by the contract endorsed on the receipt delivered to the renter of ~~said~~ *a* box at the time of the rental, but in any event the obligation of the bank ~~shall be~~ *is* limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes."

Section 31. Section 32-1-452, MCA, is amended to read:

"**32-1-452. Dividends, surplus, losses, and bad debts.** (1) The directors of ~~any~~ *a* bank may, at certain times and in ~~such~~ *the* manner as its bylaws prescribe, declare and pay dividends to the stockholders of so much of the net undivided profits of the banks as may be appropriated for that purpose, but every bank shall, before declaring any ~~such~~ dividend, carry at least 25% of its net earnings for the period covered by the dividend to its surplus, until ~~such~~ *the* surplus ~~shall amount to~~ *is* 50% of its paid-up capital stock. The whole or any part of ~~such~~ *the* surplus may at any time be converted into paid-in capital, ~~and in such event~~ *but* the surplus ~~shall~~ *must* be restored ~~in the manner above~~ *as* provided *in this subsection* until it amounts to 50% of the aggregate paid-up capital stock. A larger surplus may be created~~, and nothing herein contained shall be construed as prohibitory thereof~~.

(2) ~~No~~ *A* dividend ~~shall~~ *larger than the previous 2 years' net earnings may not* be declared ~~or paid while there shall remain among the ledger assets of the bank any item which shall properly be classified as a bad debt~~ *without giving notice to the division.* ~~Under the terms of this section and before any dividend can be paid, all debts due a bank on which the interest is past due and unpaid for a period of 12 months after maturity, unless the same be well secured or in legal process of collection, and all judgments held by the bank after 2 years from the date of rendition, exclusive of time consumed in appeal, unless payments have been made, shall be considered bad debts. Such bad debts as hereinbefore defined shall be charged off the books of such bank before any dividend is declared.~~

(3) Losses sustained by a bank in excess of its undivided profits may be charged to and paid from the surplus, ~~in which event such~~ *but the* surplus ~~shall~~ *must* be restored in the manner ~~above~~ provided *in subsection (1)* in the amount required by this chapter."

Section 32. Section 32-1-455, MCA, is amended to read:

"**32-1-455. Reserve requirements.** (1) A bank, except a reserve bank, shall maintain at all times a reserve of that percentage of its deposit liabilities as ~~shall be determined by the department as provided in this section, of which reserve a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks~~ *required by the appropriate federal regulator.*

(2) The department may establish~~, raise, or lower reserves which shall be maintained on demand deposits and on time deposits as in its judgment banking~~

~~conditions may justify. The power to establish, raise, or lower reserves is limited to a percentage of deposits not in excess of~~ reserve requirements ~~which may be established for banks that are members of the federal reserve system and not less than 75% of those reserve requirements for members of the federal reserve system~~ *if the federal regulator discontinues reserve requirements.*

(3) A bank approved by the department as a reserve bank ~~must~~ *shall maintain* at all times ~~maintain~~ a reserve ~~of the percentage or percentages~~ as the department ~~shall determine from time to time, which shall not be less than the percentages specified in this section of its deposit liabilities, of which a portion the board of directors may determine may be on deposit in banks approved by the department as reserve banks~~ *requires by rule.*

(4) A solvent bank of good repute having a full paid-up capital and surplus ~~of $300,000,~~ *as the department requires by rule and* doing business in this state or any other state~~,~~ may be designated by the department as a reserve agent for Montana banking institutions. The approval or designation may be withdrawn or withheld at any time by the department for cause.

(5) ~~It shall be the duty of any~~ *A* bank whose reserve ~~shall drop~~ *drops* below the legal requirements ~~to~~ *shall* report the matter to the department immediately and as often ~~thereafter~~ as the department ~~shall ask~~ *asks* for ~~said~~ *a* report.

(6) When the reserve of a bank falls below the ~~amount required by this section~~ *legal requirements,* the bank may not increase its loans or discounts ~~otherwise than~~ *except* by discounting or purchasing bills of exchange payable at sight or on demand, and the department shall notify a bank whose reserve may be below the amount required to make good the reserve.

(7) In arriving at deposit liabilities with regard to bank deposits, the net balance of amounts due to and from other banks ~~shall be taken~~ *must be used* as the basis for ascertaining the deposit liability to banks against which reserves ~~shall be~~ *are* carried.

(8) ~~However, a compliance~~ *Compliance* by member banks with the federal reserve banking laws, rules, and regulations ~~shall be held to be a~~ *is* compliance with the reserve requirements and conditions of this chapter and entitles those federal reserve member banks to the rights and privileges accruing from compliance with this chapter."

Section 33. Section 32-1-465, MCA, is amended to read:

"32-1-465. ~~Overdraft by~~ *Limit on loans to* officer, *director,* or ~~employee — receiving personal profit from loan~~ *principal shareholder.* *(1)* ~~An~~ *Except as provided in subsection (2), a bank may not extend credit to an* officer, director, ~~agent, teller, clerk,~~ or ~~employee~~ *principal shareholder* ~~of a bank is guilty of a misdemeanor if that person:~~

~~(1) knowingly overdraws his account with such bank and thereby obtains the money, notes, or funds of any such bank; or~~

~~(2) asks or receives or consents or agrees to receive any commission, premium on insurance, emolument, gratuity, reward, money, property, or thing of value for his own personal benefit or personal advantage for procuring or endeavoring to procure for any person, firm, or corporation any loan from or the~~

~~purchase or discount of any paper, note, draft, check, or bill of exchange by such bank or for authorizing and permitting any person, firm, or corporation to overdraw any account with such bank~~ *unless the extension of credit is in an amount that, when aggregated with the amount of all outstanding extensions of credit by that bank to all officers, directors, or principal shareholders, does not exceed the bank's unimpaired capital and unimpaired surplus.*

(2) A member bank with deposits of less than $100 million may by resolution of its board of directors increase the general limit in subsection (1) to a limit that does not exceed two times the bank's unimpaired capital and unimpaired surplus if:

(a) the board of directors determines that a higher limit is consistent with prudent, safe, and sound banking practices in light of the bank's experience in lending to officers, directors, and principal shareholders and is necessary to attract or retain directors or to prevent restricting the availability of credit in small communities;

(b) the resolution sets forth the facts and reasoning on which the board of directors bases the finding, including the amount of the bank's lending to officers, directors, and principal shareholders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution;

(c) the bank has submitted the resolution to the department; and

(d) the bank meets or exceeds, on a fully phased-in basis, all applicable capital requirements established by the department."

Section 34. Section 32-1-467, MCA, is amended to read:

"**32-1-467. Loans to managing officer or director.** *(1)* ~~No~~ *A* bank ~~shall~~ *may* ~~make a loan~~ *extend credit* to ~~any~~ *a* managing officer ~~of such bank without taking good collateral or other ample and specific security therefor. When such loan~~ or ~~a loan made to a~~ director of ~~such~~ *the* bank~~, banking institution, or trust company exceeds~~*:*

(a) in any amount to finance the education of the managing officer's or director's children;

(b) in any amount to finance the purchase, construction, maintenance, or improvement of a residence of the managing officer or director if the extension of credit is secured by a first lien on the residence and the residence is:

(i) owned by the managing officer or director; or

(ii) expected to be owned by the managing officer or director after the extension of credit; and

(c) for any other purpose not specified in subsections (1)(a) and (1)(b) if the aggregate ~~in~~ amount *of loans to that individual under this subsection (1) does not exceed at any one time the greater of* ~~10%~~ *2.5%* of ~~its~~ *the bank's* capital ~~stock, it shall not be made until first approved by a majority of the directors of such bank, banking institution, or trust company, which approval shall be entered upon the records of such bank, and the signatures of a majority of the board of directors approving same shall be attached thereto and be and remain a~~

~~permanent record of such bank~~ *and unimpaired surplus or $25,000. However, in no event may the aggregate amount of loans to the individual exceed $100,000.*

(2) The department may adopt rules to address loans made before [the effective date of this section] and to define capital and unimpaired surplus for purposes of 32-1-465 and this section."

Section 35. Section 32-1-484, MCA, is amended to read:

"**32-1-484. ~~Bylaws regarding banking~~ *Banking* hours and business days.** ~~(1) At any regular or special meeting of its board of directors, any~~ *A* bank~~, as herein defined, and any national bank or national banking association and any federal reserve bank~~ may~~, at any time, enact or amend bylaws to~~ provide for its banking hours or business days ~~or to change its banking hours or business days, including remaining closed or closing on any Saturdays.~~

~~(2) Any such bank enacting a bylaw or amending any bylaw with respect to such subject matter shall give~~ *by giving* reasonable notice to the public ~~of the enactment of a new bylaw or amendment of bylaws by:~~

~~(a) posting an announcement in the lobby of the bank, incorporating the text of the bylaw or of the amended bylaw and advising of the date the same becomes effective; or~~

~~(b) mailing~~ *and providing* a copy of ~~such~~ *the* notice to ~~each of the bank's customers as of the date of the adoption of such bylaw or amendment; and~~

~~(c) in addition to posting or mailing, publishing such notice not less than once in each week for 2 weeks in any newspaper of general circulation in the county wherein such bank has its office.~~

~~(3) In any event such notice, whether posted and published or mailed and published, shall be given at least 14 days in advance of the effective date of the bylaw or amended bylaw~~ *the department."*

Section 36. Section 32-1-507, MCA, is amended to read:

"**32-1-507. Power of closed banks to borrow money from governmental agencies.** *(1)* ~~After~~ *Except as provided in subsection (2), after* applying to and obtaining the approval of the department and the district court of the county in which the bank or trust or investment company is located, ~~and notwithstanding any other law,~~ the liquidating agents of closed banks may borrow money from an agency of the federal government on behalf of commercial banks, savings banks, trust companies, and investment companies closed and in liquidation. As security for the loan the liquidating agent may pledge or mortgage ~~the~~ assets and properties ~~thereof~~ for the purpose of paying depositors or creditors in part or in full.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsection (1) do not apply."

Section 37. Section 32-1-513, MCA, is amended to read:

"**32-1-513. Taking possession of bank — notice.** On taking possession of the assets and business of the bank, the department shall, in addition to posting notice on the front door of the bank, also notify ~~at once~~, personally, *by mail* or by wire, all corresponding banks and all persons or corporations known ~~to it~~ to be in possession of any of the estate of the bank."

Section 38. Section 32-1-515, MCA, is amended to read:

"**32-1-515. Powers of department on closing bank — court proceedings.** (1) Upon taking the assets and business of a bank into its possession, the department is authorized to collect all ~~moneys~~ *money* due to ~~that~~ *the* bank and to do ~~those~~ other acts necessary to conserve ~~its~~ *the bank's* assets and business. ~~and the~~ *The* department shall proceed to liquidate the affairs of the bank.

(2) The department may, ~~in its discretion and~~ except as ~~otherwise~~ limited by the terms of this chapter, do any acts necessary or desirable for the protection of the property and assets of the bank, ~~and~~ the speedy and economical liquidation of the assets and affairs of the bank, ~~and~~ the payment of ~~its~~ creditors, or ~~for~~ the reopening and resumption of business ~~where~~ *when* that is practicable or desirable.

(3) ~~It~~ *The department* may institute, in its own name or in the name of the bank, ~~those suits and other~~ legal proceedings ~~as~~ it considers expedient for ~~those~~ *the* purposes *of subsection (1)*.

(4) (a) By applying to the district court of the county in which the bank is located or to the judge of that court ~~in chambers~~, the department may obtain an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell and dispose of any assets~~,~~. ~~which~~ *The* sale may be made to stockholders, officers, directors, or others interested in the bank~~,~~ on consent of the court.

(b) In the court proceedings the bank ~~shall~~ *must* be made a party by notice issued on order of the court or judge, in place of summons, and served upon ~~some~~ *an* officer of the bank~~,~~ if there is ~~any~~ *an officer* in the county. ~~If no officer can be found in the county, then the notice shall be posted in three public places in the county for at least 10 days before the day of hearing.~~

~~(c) The hearing of an application or petition by the department may be had at any time, either in term or vacation in court or in chambers, as the court may order, after the bank has had 5 days' notice of the application or the notice has been posted for at least 10 days.~~

(5) If the federal deposit insurance corporation is appointed as the liquidating agent, subsection (4) does not apply."

Section 39. Section 32-1-518, MCA, is amended to read:

"**32-1-518. Compensation of agents and attorneys.** *(1)* ~~The~~ *Except as provided in subsection (2), after notice to the bank and subject to approval by a district court judge of the county in which the bank is located, the* compensation of the agents, attorneys, expert accountants, and other assistants appointed by the department and all expenses of liquidation and distribution of a bank whose assets and business have been taken possession of by the department ~~shall~~ *must* be fixed by the department~~, but subject to approval by the judge of the district court of the county in which the bank is located, on notice of the bank~~. The department shall, upon written request of the ~~district~~ judge, supply semiannual statements showing the condition of the bank in process of liquidation. Except in cases of emergency, the compensation paid to attorneys and expert accountants ~~shall~~ *must* be fixed and approved before services are rendered. ~~When the compensation has been fixed and approved and the services rendered, the~~ *The* compensation ~~shall~~ *must* be paid out of the funds of the bank in the hands of the department and are a proper charge and lien on the assets of the bank.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsection (1) do not apply."

Section 40. Section 32-1-531, MCA, is amended to read:

"**32-1-531. Notice to creditors of insolvent bank.** *(1)* ~~The~~ *Except as provided in subsection (2), the* department shall give notice by advertisement in a newspaper of general circulation in the town or city in which the bank is situated, if there is one, and, if not, then in some other newspaper published in this state, which the department shall designate, once a week for 2 successive weeks. The notice ~~shall~~ *must* call on all persons who have claims against the bank to present them to the department or its authorized agent at a place ~~to be~~ specified in the notice and to make sworn proof, in *a* form to be fixed by the department, within the time specified in the notice, not less than 90 days from the date of the first publication. A copy of the notice ~~shall~~ *must* be mailed to all persons whose names appear as creditors upon the books of the bank.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsection (1) do not apply and notice to creditors must be given pursuant to federal law."

Section 41. Section 32-1-532, MCA, is amended to read:

"**32-1-532. Claims — allowance and rejection.** (1) ~~The~~ *Except as provided in subsection (6), the* department shall reject or allow all claims in whole or in part and on each claim allowed shall designate the order of its priority.

(2) If a claim is rejected or an order of priority allowed lower than that claimed, notice ~~shall~~ *must* be given the claimant personally or by certified ~~or registered~~ mail and an affidavit of the service of the notice, which ~~shall be~~ *is* prima facie evidence of service, ~~shall~~ *must* be filed in the office of the department.

(3) The action of the department is final unless an action is brought by the claimant against the bank in the district court of the county ~~where~~ *in which* the bank is located within 90 days after ~~the~~ service ~~to fix the amount of the claim and its order of priority or either~~. An appeal from the department's allowance~~, either as to priority or amount,~~ may also be taken ~~to the district court of that county~~ by any party in interest by serving notice on the department, stating the grounds of objection and filing it in that court within 30 days after allowance.

(4) Within 5 days after the notice, the department shall file in the court and serve on the appellant a copy of the claim and its reasons for allowance.

(5) The court shall, after 5 days' notice of time and place of hearing on the issues raised, hear the proof of the parties and enter judgment reversing, affirming, or modifying the department's action.

(6) If the federal deposit insurance corporation is appointed as the liquidating agent, the provisions of subsections (1) through (5) do not apply and notice to creditors must be given pursuant to federal law."

Section 42. Section 32-1-534, MCA, is amended to read:

"**32-1-534. Claims — order of payment — priorities.** (1) Except as otherwise provided by the Uniform Commercial Code, the order of payment of the debts of a bank liquidated by the department ~~shall be~~ *is* as follows:

(a) the expense of liquidation, including compensation of agents, employees, and attorneys;

(b) all funds of any other bank in process of liquidation by the department and placed on deposit by the department;

(c) all funds held by the bank in trust;

(d) debts due depositors~~,~~ *or* holders of cashier's checks, certified checks, ~~contractual liabilities,~~ and drafts on correspondent banks, including protest fees~~,~~ paid by them on valid checks or drafts presented after closing of the bank, pro rata. All deposit balances of other banks or trust companies and all deposits of public funds of every kind (except those actually placed on special deposit under the statutes providing ~~therefor~~ *for deposit*), including those of the United States, the state of Montana, and every county, district, municipality, political subdivision, or public corporation of this state, whether secured or unsecured or whether deposited in violation of law or otherwise, are included within the terms of this subsection (1)(d) and take the same priority as debts due any other depositor. Accrued interest on savings accounts, certificates of deposit, or other interest-bearing contracts, up to the time of the closing of the bank, ~~shall be~~ *is* considered as part of the debt due.

(e) interest on the classes of claims contained in subsections (1)(a) through (1)(d) ~~of this section~~ without regard to the priority computed from the date of closing of the bank at the rate of 7% a year;

(f) unliquidated claims for damages and similar claims, including claims of stockholders for amounts claimed to have been voluntarily advanced to the bank or paid in by way of special or voluntary or other assessments.

(2) The department may, in its discretion, without regard to the priorities fixed in subsections (1)(c) through (1)(f) ~~of this section~~ or in preference to the payment of any claims of creditors within these subsections, pay off and discharge any lien, claim, or charge against the assets or property of the bank in its hands and pay those sums it considers necessary for the preservation, maintenance, conservation, and protection of those assets and property and ~~likewise~~ property on which the bank has liens by mortgage or otherwise. ~~It~~ *The department* may ~~also, in its discretion,~~ create a fund or retain ~~in its hands~~, in preference to the claim of any creditors in subsections (1)(c) through (1)(f), money for those purposes.

(3) Collateral that has been put up or pledged as security for the payment of bills payable by a bank or loans or discounts that have been outstanding as rediscounts of a bank prior to the closing of it is not available to the other creditors of the bank in whole or in part until the bills payable or rediscounts

have been retired, after which offsets as provided in this section ~~shall~~ *must* be allowed.

(4) Deposits of a person, firm, or corporation in a bank ~~which~~ *that* is in the possession of the department may be offset against any indebtedness (subject to the conditions of subsection (3) ~~of this section~~), except assessments on stock, due to the bank from that person, firm, or corporation. All dividends when declared in favor of a creditor of the bank may be applied, in the discretion of the department, in satisfaction of the indebtedness, if any, due the bank from the creditor."

Section 43. Section 32-1-537, MCA, is amended to read:

"**32-1-537. Disposition of unclaimed funds.** (1) The department shall certify to the state treasurer a complete list of funds remaining with it *that are* uncalled for~~,~~ *and that* ~~which~~ have been left with it in its official capacity~~,~~ in trust for depositors in and creditors of a liquidated bank after they have been held by it for 6 months from the date of the final liquidation of the institution. Along with this certificate, ~~it~~ *the department* shall transmit to the state treasurer the funds, with accumulated interest on them, ~~which~~ *that* it has ~~so~~ held in trust for 6 months. A copy of the certificate ~~shall~~ *must* also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund ~~of this state~~.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to ~~his~~ *the person's* credit as ~~thus~~ certified to the state treasurer may apply to the department for the amount due ~~him~~. The depositor or creditor shall make an affidavit and offer proof of ~~his~~ identity and of the amount due ~~him by the liquidated bank~~. When satisfied as to the correctness of the claim and of the identity of the person, the department shall forward it to the auditor who shall audit the claim and, if found correct, ~~so~~ certify *the claim* to the department.~~,~~ ~~which, if it~~ *If the department* approves the claim, *it* shall ~~transmit~~ *pay* the claim to the ~~legislature with a statement of its approval~~ *depositor or creditor. The money deposited in the general fund pursuant to this section is statutorily appropriated, as provided in 17-7-502, to the department for the purpose of paying approved claims.*"

Section 44. Section 32-1-538, MCA, is amended to read:

"**32-1-538. Disposition of assets remaining after payment of claims.** (1) ~~When~~ *Except as provided in subsection (4), when* the department has paid to each depositor and creditor of the bank whose claims have been approved and allowed as provided in this chapter the amount due on them or made satisfactory adjustment of them and has made provisions for unclaimed and unpaid deposits and disputed claims and deposits and has paid all the expenses of liquidation, it shall file a report of its administration of the trust with the clerk of the district court of the county in which the bank is located. If there are remaining assets on hand, the department may apply to the judge of that court ~~in open court or in chambers~~ for an order authorizing it to surrender the remaining assets, together with all the stationery, correspondence, books, and records kept by the bank while it was a going concern, to the directors of the bank in office at the time of closing it, as trustees for stockholders, or to ~~that~~ *some* other person, if any, designated as trustee by a majority of the stockholders. The report and petition ~~shall~~ *must* be set for hearing upon notice ~~which~~ *that* the court may direct. Upon hearing and approval of the report and account and the surrender of the assets as directed, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The court may, if requested, require the trustees to give bond in an amount the court may fix, conditioned for the faithful performance of their duties. The trustee or trustees shall complete the liquidation of any remaining assets and may sell and dispose of real and personal property as rapidly as possible and shall distribute the proceeds among the stockholders as their rights may appear or dispose of the proceeds in some other manner as the stockholders ~~shall~~ by majority action direct. The court may upon request of a majority of the stockholders order the department to close up the trust as provided in subsection (2) ~~of this section~~.

(2) If the assets of the bank are insufficient for making payments in full to the depositors and creditors of the bank, then, when the department has liquidated all available assets and disbursed them as provided by law, the department shall file a final report of its liquidation of the bank with the clerk of court of the county in which the bank is located. Upon notice ~~which~~ *that* the court may order, the report ~~shall~~ *must* be set for hearing before the court and, if found correct and all funds accounted for, the court shall approve it. The department may at the same time and in the report make application to the district court of the county in which the bank is located for an order directing the closing of the trust, and upon entry of the order closing the trust, the department is discharged from all further liability or responsibility in connection with the assets and affairs of the bank. The charter of the bank ~~shall~~ *must* be forfeited and all the stationery, correspondence, books, and records kept by the bank while it was a going concern and considered by the department to be of no value may be destroyed. However, ~~no~~ correspondence or records may *not* be destroyed until 10 years after the date the bank ceased to be a going concern.

(3) On application for orders as provided in this section, the bank ~~shall~~ *must* be made a party by notice issued on order of the court or judge and served in a manner the court directs~~,~~ and applications authorized by this section may be heard at any time ~~in court or in chambers, as the court may order,~~ upon not less than 5 days' posted or served notice of the hearing.

(4) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsections (1) through (3) do not apply."

Section 45. Section 32-1-551, MCA, is amended to read:

"**32-1-551. Liquidating officer's powers and duties.** (1) ~~At any time~~ *Except as provided in subsection (3),* after taking possession of a bank for the purpose of liquidation, the liquidating officer ~~duly qualified under the laws,~~ *may* as soon as ~~he~~ *the officer* ascertains that the assets of ~~such~~ *the* bank will be insufficient to pay its debts and liabilities, ~~may~~ proceed to collect and enforce the stockholders' liability. For that purpose, ~~he~~ *the officer* may institute and maintain in ~~his~~ *the officer's* own name as ~~such~~ liquidating officer appropriate suits or actions in any state or federal court of competent jurisdiction. ~~He~~ *The liquidating officer* may receive and receipt for ~~moneys~~ *money* received on account of stockholders' liability, and any money ~~so~~ paid to the liquidating officer by a stockholder in whole or partial satisfaction of ~~his~~ *the stockholder's* liability ~~shall~~ *is* not ~~be deemed~~ *considered* paid voluntarily but ~~shall give~~ *gives* the stockholder the same protection to the extent of the amount paid as if the payments were made after suit by *a* creditor or *the* liquidating officer. The liquidating officer ~~is authorized~~ *may*, ~~by and~~ with the consent of the court having jurisdiction of ~~such~~ *the* liquidation, ~~to~~ compromise, settle, and compound claims for stockholders' liability, and ~~such~~ *the* settlements and compromises when approved by the court ~~shall be~~ *are* legal and binding upon all parties concerned, including creditors.

(2) *(a)* ~~All~~ *Except as provided in subsection (2)(b), all* sums collected by a liquidating officer on account of stockholders' liability, either received from voluntary payments or collected by suits, settlements, or compromises, ~~shall~~ *must* be distributed to the creditors of the bank according to their several rights in the same proportion as the amount of a given claim of a creditor bears to the amount of the claims of all creditors and without regard to the rank or class or character of claims and without diminution.

(b) ~~, except that the~~ *The* liquidating officer may deduct from amounts collected the court costs or ~~attorney's~~ *attorney* fees (~~such attorney's~~ *the attorney* fees to be allowed for not more than 10% of the amount collected, provided that the 10% allowed for ~~attorney's~~ *attorney* fees ~~shall~~ *may* not apply to collections ~~which~~ *that* are made outside of the state of Montana) and other expenses incurred by ~~him~~ *the officer* in the prosecution of any action for ~~the~~ collection ~~thereof~~.

(3) If the federal deposit insurance corporation is appointed as the liquidating agent, the reporting and district court approval requirements of subsections (1) and (2) do not apply."

Section 46. Section 32-1-552, MCA, is amended to read:

"32-1-552. **Further duties of liquidating officer.** (1) For the purpose of this section the term "liquidating officer" includes every person legally empowered to liquidate the business and affairs of a state bank, whether the liquidation is by the department or its deputies and agents. The term also includes all receivers of state banks qualified to liquidate a state bank under any law of this state.

(2) The liquidating officer of a bank may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements, and liabilities~~,~~ and ~~he~~ may determine the ~~question of the~~ time when and the court where necessary legal proceedings ~~shall be~~ *are* conducted, subject to the general provisions of law governing venue and place of trial.

(3) The provisions of ~~32-1-333 and~~ 32-1-551 through 32-1-553 do not impose ~~any~~ liability on a stockholder of a bank ~~which~~ *that* is a member of the federal deposit insurance corporation."

Section 47. Section 32-1-553, MCA, is amended to read:

"32-1-553. **Department to file inventory — report required — *exception.*** *(1)* ~~The~~ *Except as provided in subsection (2), the* department shall, within 90 days after taking charge of an insolvent bank, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured. ~~It~~ *The department* shall ~~also~~ every 6 months, or more often if required by the court, file with the court a report showing the status of the liquidation of the bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report ~~shall~~ *must* contain other information the court requires, so that the court and the public may be apprised of the condition of the bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the bank and the manner in which claims are being paid. The report and account ~~shall~~ *must* be set for hearing upon the notice the court may require and, if found to be correct, ~~shall~~ be approved by the court.

(2) If the federal deposit insurance corporation is appointed as the liquidating agent, subsection (1) does not apply."

Section 48. Section 32-1-606, MCA, is amended to read:

"**32-1-606. Closed banking institutions empowered to borrow from ~~the~~ corporation.** If a banking institution is closed on account of inability to meet the demands of its depositors, ~~or~~ by action of the department, ~~or~~ by action of its directors, or~~,~~ in the event of its insolvency or suspension, the department or its agent~~, with the permission of the court having jurisdiction,~~ may borrow from the corporation and furnish any of the assets of the institution to the corporation as security for a loan from ~~it~~ *the corporation*. The department ~~upon the order of a district court of competent jurisdiction~~ may sell to the corporation any part or all of the assets of the institution. The provisions of this section do not limit the power of a banking institution or the department to pledge or sell assets in accordance with any existing law."

Section 49. Section 32-1-803, MCA, is amended to read:

"**32-1-803. Organization of subsidiary trust companies.** A subsidiary trust company ~~shall~~ *must* be incorporated under the laws of this state in accordance with and subject to the provisions of 32-1-301 through 32-1-303, ~~32-1-305 through~~ *32-1-307, 32-1-308, 32-1-321,* 32-1-322, *and* 32-1-325~~, and 32-1-351 through 32-1-356~~ or under the laws of the United States. To the extent not inconsistent with the provisions of this part, ~~any~~ *a* subsidiary trust company incorporated under the laws of this state ~~shall be~~ *is* subject to the laws of this state generally applicable to trust companies. A subsidiary trust company formed under the laws of the United States ~~shall be~~ *is* subject, to the extent provided by the laws of the United States, to the laws of this state applicable to subsidiary trust companies incorporated under the laws of this state."

Section 50. **Repealer.** Sections 32-1-217, 32-1-305, 32-1-306, 32-1-323, 32-1-331, 32-1-332, 32-1-333, 32-1-334, 32-1-336, 32-1-337, 32-1-338, 32-1-351, 32-1-352, 32-1-353, 32-1-354, 32-1-355, 32-1-356, and 32-1-431, MCA, are repealed.

Section 51. **Codification instruction.** [Sections 10, 11, and 13] are intended to be codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [sections 10, 11, and 13].

Section 52. **Effective dates.** (1) [Sections 1, 7, 8, and this section] are effective on passage and approval.

(2) [Sections 2 through 6 and 9 through 51] are effective October 1, 1993.

Approved April 19, 1993.

CHAPTER NO. 396

[HB 222]

AN ACT REVISING LICENSURE REQUIREMENTS FOR PERSONS SELLING, INSTALLING, AND SERVICING FIRE PROTECTION EQUIPMENT; AMENDING SECTIONS 50-39-101, 50-39-102, 50-39-103, 50-39-104, AND 50-39-105, MCA; AND PROVIDING AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of justice authority to adopt administrative rules. The rules should provide for the use of current industry testing procedures and ensure that consumers receive safe and effective fire protection equipment.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-39-101, MCA, is amended to read:

"**50-39-101. ~~Certificate of registration, permit, and license~~ *License and endorsements* required.** *(1)* A ~~natural~~ person ~~shall~~ *or entity shall* obtain a ~~certificate of registration~~ *license* from the department of justice ~~prior to~~ *before engaging in the business of* servicing ~~or installing~~ fire extinguishers~~,~~ *or before engaging in the business of selling, servicing, or installing* fire alarm systems, *special agent fire suppression systems,* or fire extinguishing systems. ~~A person or firm shall obtain from the department a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems prior to engaging in the business.~~ *Each individual, except an apprentice, employed by the licensee to perform services under the license must obtain from the department an endorsement to sell, service, or install:*

(a) fire alarm systems;

(b) special agent fire suppression systems; or

(c) fire extinguishing systems.

(2) The license and endorsement or endorsements must be prominently displayed at the business premises, and copies must be carried by the person conducting each installation or servicing and must be shown to anyone requesting to see them.

(3) It is a misdemeanor to knowingly or purposely service a fire extinguisher or sell, service, or install a fire alarm system, special agent fire suppression system, or fire extinguishing system without the required license and endorsement."

Section 2. Section 50-39-102, MCA, is amended to read:

"**50-39-102. Application for ~~certificate, permit, and~~ license *and endorsements*.** (1) ~~Applications~~ *An application* for ~~licenses, permits, or certifi-~~

~~cates~~ *a license and any endorsements* must be made on a form prescribed by the department of justice.

(2) The department shall *annually* issue a license *and endorsement* to an applicant who*:*

(a) submits satisfactory proof that ~~he~~ *the applicant* is properly equipped and staffed to provide the *sales or* services to be licensed *and endorsed* ~~and who pays the required fee.~~*; and*

~~(3)~~*(b)* ~~The department shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the department and who pays the required fee.~~ *submits satisfactory proof that the applicant is insured to engage in the business covered by the license and endorsement or endorsements.*

~~(4) The department shall issue a sales permit to an applicant who submits the information required by the department on the application form, who submits satisfactory proof that he deals only in equipment that meets the standards and regulations of the department, and who pays the required fee.~~

(3) The department shall:

(a) issue an endorsement to an applicant who scores a passing grade on an examination devised or approved by the department; and

(b) annually renew the endorsement upon payment of the endorsement fee and submission of satisfactory proof that the endorsee has completed continuing education, training, or testing required by the department."

Section 3. Section 50-39-103, MCA, is amended to read:

"**50-39-103. Inspections,** ~~**and**~~ **examinations,** ***and hearings*** **authorized.** The department of justice may conduct inspections, examinations, or hearings ~~prior to the issuance of licenses, permits, or certificates~~ *to determine an applicant's qualifications.*"

Section 4. Section 50-39-104, MCA, is amended to read:

"**50-39-104.** ~~**Revocations and suspensions authorized**~~ ***Violations and penalties.*** The department of justice may *deny,* revoke, suspend, or refuse to ~~issue~~ *renew* a license~~, permit, or certificate~~ *or endorsement* for *falsification of an application or for a* violation of ~~the provisions of~~ this part or ~~any rules~~ *a rule* promulgated by the department under ~~applicable law~~ *[section 6].*"

Section 5. Section 50-39-105, MCA, is amended to read:

"**50-39-105. Fees.** (1) ~~The department of justice shall charge a fee for the inspection and issuance of licenses, permits, and certificates. The fee may not exceed $50 for each license, permit, or certificate issued~~ *There is an annual $200 license fee.*

(2) There is an annual fee for each endorsement required by 50-39-101, as follows:

(a) $100 to sell, service, or install fire alarm systems;

(b) $100 to sell, service, or install special agent fire suppression systems; and

(c) $100 to sell, service, or install fire extinguishing systems.

(3) The fees may be prorated. In the year of first application, there is an additional fee equal to the cost of processing the application.

~~(2) All fees collected under this section must be paid into the general fund.~~"

Section 6. **Rulemaking authority.** The department of justice may adopt rules to implement this part.

Section 7. **Deposit of fees.** The fees collected under 50-39-105 must be deposited in an account in the state special revenue fund to the credit of the department of justice and appropriated to the department to administer [this act].

Section 8. **Coordination instruction.** If House Bill No. 207 is passed and approved and if it creates a state special revenue account to fund the fire prevention and investigation activities of the department of justice, then [section 7 of this act] is void and the fees collected under 50-39-105, as amended by [this act], must be deposited in the special revenue account created by House Bill No. 207.

Section 9. **Codification instruction.** [Sections 6 and 7] are intended to be codified as an integral part of Title 50, chapter 39, part 1, and the provisions of Title 50, chapter 39, part 1, apply to [sections 6 and 7].

Section 10. **Applicability.** Licenses issued under 50-39-101 through 50-39-105 before October 1, 1993, expire on December 31, 1993, after which those holding such licenses are subject to the provisions of [this act].

Approved April 19, 1993.

CHAPTER NO. 397

[HB 255]

AN ACT REVISING THE CRITERIA APPLICABLE TO THE CONDITIONAL RELEASE OR DISCHARGE OF A PERSON WHO HAS RELIED UPON THE DEFENSE OF MENTAL DISEASE OR DEFECT; PROVIDING FOR A DIAGNOSIS OF SERIOUSLY DEVELOPMENTALLY DISABLED IN EXAMINATION REPORTS; REVISING THE HEARING PROCEDURE; AMENDING SECTIONS 46-14-206, 46-14-301, 46-14-302, 46-14-303, 46-14-304, AND 46-14-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-14-206, MCA, is amended to read:

"**46-14-206. Report of examination.** (1) A report of the examination ~~may~~ *must* include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant is seriously mentally ill, as defined in 53-21-102, *or is seriously developmentally disabled, as defined in 53-20-102*;

(c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect."

Section 2. Section 46-14-301, MCA, is amended to read:

"**46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge.** (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

~~(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment.~~

(2) The court shall evaluate the nature of the offense with which the defendant was charged. If the offense:

(a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or others, the defendant may be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate mental health facility for custody, care, and treatment. However, if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor shall petition the court in the manner provided in Title 53, chapter 20.

(b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property damage, the court shall release the defendant. The prosecutor may petition the court in the manner provided in Title 53, chapter 20 or 21.

(3) A person committed to the custody of the ~~superintendent~~ *director of the department of corrections and human services* ~~shall~~ *must* have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person ~~may~~ *must* be discharged or released ~~without danger to others~~ *or whether the commitment may be extended because the person continues to suffer from a mental disease or defect that renders the person a danger to the person or others.* The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the ~~third judicial~~ district *court in the district in which the person has been placed.* The court shall cause notice of the hearing to be served upon the person, the person's counsel, ~~and~~ the prosecutor, *and the court that originally ordered the commitment.* The hearing is a civil proceeding, and the burden is upon the ~~defendant~~ *state* to prove by ~~a preponderance of the~~ *clear and convincing* evidence that the ~~defendant~~ *person* may *not* be safely released *because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:*

(a) serious bodily injury or death to the person or others;

(b) an imminent threat of physical injury to the person or others; or

(c) substantial property damage.

(4) According to the determination of the court upon the hearing, the ~~defendant~~ *person* must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the ~~superintendent of the Montana state hospital~~ *director of the department of corrections and human services* to be placed in an appropriate ~~institution~~ *mental health facility* for custody, care, and treatment.

(5) A professional person shall review the status of the person each year. At the time of the annual review, the director of the department of corrections and human services or the person or the representative of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be held pursuant to the provisions of subsection (3)."

Section 3. Section 46-14-302, MCA, is amended to read:

"**46-14-302. Discharge or release upon motion of ~~superintendent~~ *director.*** (1) If the ~~superintendent of the Montana state hospital~~ *director of the department of corrections and human services* believes that a person committed to the ~~superintendent's~~ *director's* custody under 46-14-301 may be discharged or released on condition without danger to the person or others *because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial property damage,* the ~~superintendent~~ *director* shall make application for the discharge or release of the person in a report to the *district* court by which the person was committed *unless that court transfers jurisdiction to the court in the district in which the* *person has been placed* and shall send a copy of the application and report to the prosecutor of the county from which the ~~defendant~~ *person* was committed.

(2) Either the director of the department of corrections and human services or the person may also make application to the court for discharge or release as part of the person's annual treatment review.

~~(2)~~*(3)* The court shall then appoint at least ~~two persons~~ *one person* who ~~are~~ *is* either *a* qualified ~~psychiatrists~~ *psychiatrist* or licensed clinical ~~psychologists~~ *psychologist* to examine the person and to report ~~their opinion~~ as to the person's mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the court may have the person confined in any ~~institution~~ *mental health facility* located near the place where the court sits that may be designated by the ~~superintendent of the Montana state hospital~~ *director of the department of corrections and human services* as suitable for the temporary detention of ~~irresponsible~~ persons *suffering from mental disease or defect.*

(4) The committed person or the person's attorney may secure a professional person of the committed person's choice to examine the committed person and to testify at the hearing. If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons, the court shall appoint an additional professional person to perform the examination. Whenever possible, the court shall allow the committed person or the person's attorney a reasonable choice of an available professional person qualified to perform the requested examination. The professional person must be compensated by the department of corrections and human services.

~~(3)~~*(5)* If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting psychiatrist or licensed clinical psychologist that the committed person may be discharged or released on condition ~~without danger to the person or others~~ *because the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of serious bodily injury or death to the person or others, a substantial risk of an imminent threat of physical injury to the person or others, or a substantial risk of substantial property damage,* the court shall order the person's discharge ~~or release on conditions that the court determines to be necessary~~.

~~(4)~~*(6) (a)* If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released *on the grounds that the person no longer suffers from a mental disease or defect that causes the person to present a substantial risk of:*

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(b) A hearing is considered a civil proceeding, and the burden is upon the ~~committed person~~ *state* to prove by ~~a preponderance of the~~ *clear and convincing* evidence that the person may *not be* safely ~~be~~ discharged or released *because the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:*

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(c) According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody of the ~~superintendent of the Montana state hospital~~ *director of the department of corrections and human services*, subject to discharge or release only in accordance with the procedures provided in this section and 46-14-303."

Section 4. Section 46-14-303, MCA, is amended to read:

"**46-14-303. Application for discharge or release by committed person.** A committed person may make application for discharge or release to the *district* court by which the person was committed~~,~~ *unless that court transfers jurisdiction to the court in the district in which the person has been placed,* and the procedure to be followed upon the application is the same as that prescribed in 46-14-302 in the case of an application by the ~~superintendent of the Montana state hospital~~ *director of the department of corrections and human services.* However, an application by a committed person need not be considered until the person has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person may not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for the person's release or discharge."

Section 5. Section 46-14-304, MCA, is amended to read:

"**46-14-304. ~~Recommitment after~~ *Revocation of* conditional release.** *(1)* ~~If within 5 years after the conditional release of a committed person~~ *The court may order revocation of a person's conditional release if* the court determines after hearing evidence that*:*

(a) the conditions of release have not been fulfilled*;* and

(b) ~~that for the safety of the person or for the safety of others the person's conditional release should be revoked,~~ *based on the violations of the conditions and the person's past mental health history, there is a substantial likelihood that the person continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:*

(i) serious bodily injury or death to the person or others;

(ii) an imminent threat of physical injury to the person or others; or

(iii) substantial property damage.

(2) The court may retain jurisdiction to revoke a conditional release for no longer than 5 years.

(3) If the court finds that the conditional release should be revoked, the court shall immediately order the person to be recommitted to the custody of the ~~superintendent of the Montana state hospital~~ *director of the department of*

corrections and human services, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-14-303."

Section 6. Section 46-14-312, MCA, is amended to read:

"**46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders ~~him~~ *the defendant* unable to appreciate the criminality of ~~his~~ *the defendant's* conduct or to conform ~~his~~ *the defendant's* conduct to the requirements of law; ~~or~~

(c) the defendant suffers from a mental disease or defect but is not a danger to the defendant or others; or

~~(c)~~*(d)* the defendant suffers from a mental disease or defect that makes ~~him~~ *the defendant* a danger to ~~himself~~ *the defendant* or others, but ~~either~~*:*

(i) there is no treatment available for ~~his~~ *the* mental disease or defect*;*

(ii) ~~or he~~ *the defendant* refuses to cooperate with treatment*; or*

(iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved April 19, 1993.

CHAPTER NO. 398

[HB 272]

AN ACT REVISING AND CLARIFYING THE GAMBLING LAWS; DEFINING "GIFT ENTERPRISE"; EXPANDING THE DEFINITION OF "LICENSE"; REVISING THE TRANSFER OF OWNERSHIP NOTIFICATION REQUIREMENT AND REQUIRING DEPARTMENT APPROVAL; REVISING THE THEFT DEDUCTION FROM THE VIDEO GAMBLING MACHINE TAX; CLARIFYING THAT A MANUFACTURER-DISTRIBUTOR MAY NOT SUPPLY UNAPPROVED MACHINES; AND AMENDING SECTIONS 23-5-110, 23-5-111, 23-5-112, 23-5-113, 23-5-115, 23-5-117, 23-5-118, 23-5-123, 23-5-136, 23-5-157, 23-5-161, 23-5-162, 23-5-171, 23-5-172, 23-5-309, 23-5-610, 23-5-631, AND 23-7-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-110, MCA, is amended to read:

"**23-5-110. Public policy of state concerning gambling.** (1) The legislature finds that for the purpose of ensuring the proper gambling environment in this state it is necessary and desirable to adopt a public policy regarding public gambling activities in Montana. The legislature therefore declares it is necessary to:

(a) create and maintain a uniform regulatory climate that assures players, owners, tourists, citizens, and others that the gambling industry in this state is fair and is not influenced by corrupt persons, organizations, or practices;

(b) protect legal public gambling activities from unscrupulous players and vendors and detrimental influences;

(c) protect the public from unscrupulous proprietors and operators of gambling establishments, games, and devices;

(d) protect the state and local governments from those who would conduct illegal gambling activities that deprive those governments of their tax revenues;

(e) protect the health, safety, and welfare of all citizens of this state, including those who do not gamble, by regulating gambling activities; and

(f) promote programs necessary to provide assistance to those who are adversely affected by legalized gambling, including compulsive gamblers and their families.

(2) The legislature adopts the policy that an applicant for a license or permit or other department approval under parts 1 through ~~6~~ *8* of this chapter does not have a right to the issuance of a license or permit or the granting of the approval sought. The issuance of a license or permit issued or other department approval granted pursuant to the provisions of parts 1 through ~~6~~ *8* of this chapter is a privilege revocable only for good cause. A holder does not acquire a vested right in the license or permit issued or other department approval granted. A license or permit issued under parts 1 through ~~6~~ *8* of this chapter may not be sold, assigned, leased, or transferred.

(3) Revenue to fund the expense of administration and control of gambling as regulated by parts 1 through ~~6~~ *8* of this chapter must be derived solely from

fees, taxes, and penalties on gambling activities, except the gambling activities of the Montana state lottery and the parimutuel industry."

Section 2. Section 23-5-111, MCA, is amended to read:

"**23-5-111. Construction and application.** ~~(1)~~ In view of Article III, section 9, of the Montana constitution, ~~Chapter 642, Laws of 1989,~~ *parts 1 through 8 of this chapter* must be strictly construed by the department and the courts to allow only those types of gambling and gambling activity that are specifically and clearly allowed by ~~Chapter 642, Laws of 1989~~ *those parts.*

~~(2) This chapter applies only to public gambling activities within the state of Montana.~~"

Section 3. Section 23-5-112, MCA, is amended to read:

"**23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through ~~6~~ *8* of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through ~~6~~ *8* of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. ~~No more~~ *More* than 75 numbers may *not* be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover a previously designated arrangement of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from another person equipment of any kind for use in gambling activities; and

(b) sells, leases, or otherwise furnishes the equipment to another person for use in public.

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to be awarded by purchasing or agreeing to purchase goods or services. The term does not mean:

(a) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

(b) a promotional game of chance; or

(c) an amusement game regulated under chapter 6 of this title.

~~(14)~~*(15)* "Gross proceeds" means gross revenue received less prizes paid out.

~~(15)~~*(16)* "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under chapter 7 or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

~~(16)~~*(17)* "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, ~~includes~~ *including* craps, hazard, or chuck-a-luck, but ~~does~~ not ~~include an activity in which a participant rolls one or more dice for a chance to obtain a drink or music~~ *including activities authorized by 23-5-160*; and

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter 4 of this title and parts 2, ~~and~~ 5, *and 8* of this chapter.

~~(17)~~*(18)* "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

~~(18)~~*(19)* "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

~~(19)~~*(20)* "License" means ~~an operator's, dealer's,~~ *a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab card manufacturer, manufacturer of electronic live bingo or keno equipment,* or ~~manufacturer-distributor's license~~ *manufacturer-distributor* issued to a person by the department.

~~(20)~~*(21)* "Licensee" means a person who has received a license from the department.

~~(21)~~*(22)* "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

~~(22)~~*(23)* "Lottery" ~~or "gift enterprise"~~ means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. ~~However, "gift enterprise"~~ *The term* does not mean~~:~~

~~(a)~~ lotteries authorized under chapter 7~~; or~~

~~(b) cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos~~ *of this title.*

~~(23)~~*(24)* "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device.

~~(24)~~*(25)* "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

~~(25)~~*(26)* "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through ~~6~~ *8* of this chapter.

~~(26)~~*(27)* "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through ~~6~~ *8* of this chapter.

~~(27)~~*(28)* "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

~~(28)~~*(29)* "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

~~(29)~~*(30)* "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it.

~~(30)~~*(31)* "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

~~(31)~~*(32)* "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

~~(32)~~*(33)* "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of family services.

~~(33)~~*(34)* "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(34)~~*(35)* "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 4. Section 23-5-113, MCA, is amended to read:

"**23-5-113. Department as criminal justice agency — seized property.** (1) The department is a criminal justice agency. Designated agents of the department are granted peace officer status, with the power of search, seizure, and arrest, to investigate gambling activities in this state regulated by parts 1 through ~~6~~ *8* of this chapter and the rules of the department and to report violations to the county attorney of the county in which they occur.

(2) Upon conviction for any violation of parts 1 through ~~6~~ *8* of this chapter, the court may order any property seized by a department or local law enforcement agent during a lawful search to be forfeited to the department, sold, if necessary, and disposed of under 23-5-123."

Section 5. Section 23-5-115, MCA, is amended to read:

"**23-5-115. Powers and duties of department — licensing.** (1) The department shall administer the provisions of parts 1 through ~~6~~ *8* of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through ~~6~~ *8* of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through ~~6~~ *8* of this chapter.

(6) The department may not make public or otherwise disclose information obtained in the application or tax reporting processes, except for general statistical reporting or studies or as provided in 23-5-116.

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through ~~6~~ *8* of this chapter."

Section 6. Section 23-5-117, MCA, is amended to read:

"**23-5-117. Premises approval.** (1) Except as provided in subsection (4), the department may approve a premises for issuance of an operator's license if the premises meets the requirements contained in subsections (2) ~~through (4)~~ *and (3)*.

(2) The premises must:

(a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor to ceiling;

(b) have a unique address assigned by the local government in which the premises is located; and

(c) have a public external entrance, leading to a street or other common area, that is not shared with another premises for which an operator's license has been issued.

(3) If the premises shares a common internal wall with another premises for which an operator's license has been issued, the common wall must be permanently installed, opaque, and extend from floor to ceiling and may not contain an internal entrance through which public access is allowed.

(4) A second operator's license may be issued or renewed until June 30, 1996, for a person operating a gambling activity on a premises that did not meet the requirements of subsections (2) and (3) if:

(a) the second operator's license was issued to the person on or before January 1, 1991; or

(b) (i) the application for the second operator's license was received by the department on or before January 1, 1991;

(ii) a second on-premises alcoholic beverages license was obtained for the premises on or before January 1, 1991; and

(iii) substantial physical modifications to the premises were made on or before January 1, 1991."

Section 7. Section 23-5-118, MCA, is amended to read:

"**23-5-118. Transfer of ownership interest.** ~~A licensed operator~~ *(1) In this section, "licensed gambling operation" means a business for which a license was obtained under parts 1 through 8 of this chapter.*

(2) Except as provided in subsection (3), an owner of an interest in a licensed gambling operation shall notify the department in writing *and receive approval from the department* before transferring any ownership interest in ~~his premises~~ *the operation.*

(3) This section does not apply to the transfer of a security interest in a licensed gambling operation or to the transfer of less than 5% of the interest in a publicly traded corporation."

Section 8. Section 23-5-123, MCA, is amended to read:

"**23-5-123. Disposal of money confiscated by reason of violation of gambling laws.** All fines, penalties, forfeitures, and confiscated money collected by criminal, civil, or administrative process for a violation of a provision of parts 1 through ~~6~~ *8* of this chapter or a rule of the department must be deposited one-half in the state general fund and one-half in the general fund of the county in which the violation occurred."

Section 9. Section 23-5-136, MCA, is amended to read:

"**23-5-136. Injunction and other remedies.** (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through ~~6~~ *8* of this chapter or a rule or order of the department, the department may:

(a) issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days;

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed $10,000 for each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) The department may issue a warrant for distraint against an operator who fails to pay a civil penalty imposed under subsection (1) or a tax imposed under 23-5-409 or 23-5-610. The department may issue the warrant for the amount of the unpaid penalty or for the amount of the unpaid tax, plus penalty and accumulated interest on the tax, and shall follow the procedures provided in 15-1-701 through 15-1-708.

(3) (a) A civil penalty imposed under this section must be collected by the department and distributed as provided in 23-5-123. The local government

portion of the penalty payment is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

(b) If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action."

Section 10. Section 23-5-157, MCA, is amended to read:

"**23-5-157. Gambling on cash basis.** (1) In every gambling activity, except raffles as authorized in 23-5-413, the consideration paid for the chance to play must be *made in* cash. *A check or credit card may be used to obtain cash to participate in a gambling activity.* A participant shall present the ~~money~~ *cash* needed to play the game as the game is being played. A check, credit card, note, ~~I-O-U~~ *IOU*, or other evidence of indebtedness may not be offered or accepted as part of the price of participation in the gambling activity or as payment of a debt incurred in the gambling activity. ~~The use of a check or credit card to pay for other goods or services in the establishment or to obtain cash is not a violation of this section.~~

(2) A person who violates this section is guilty of a misdemeanor and must be punished in accordance with 23-5-161."

Section 11. Section 23-5-161, MCA, is amended to read:

"**23-5-161. Criminal liabilities — misdemeanor.** A person who purposely or knowingly violates a provision of parts 1 through ~~6~~ *8* of this chapter, the punishment of which is for a misdemeanor, ~~must~~ *shall* upon conviction of a first offense be fined not more than $500. Upon a second conviction within 5 years of a first conviction, a person ~~must~~ *shall* be fined not more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. Upon a third conviction within 5 years of a second conviction, a person ~~must~~ *shall* be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both. Upon a fourth conviction within 5 years of a third conviction, a person ~~must~~ *shall* be fined not more than $10,000 or imprisoned in the county jail for not more than 1 year, or both, and the department shall revoke all licenses and permits the person holds under parts 1 through ~~6~~ *8* of this chapter and the person is forever barred from receipt of any license or permit under this chapter. When 5 years have passed following a conviction, the record of that conviction may be made available only to criminal justice agencies or upon court order."

Section 12. Section 23-5-162, MCA, is amended to read:

"**23-5-162. Criminal liabilities — felony.** (1) A person who purposely or knowingly violates a provision of parts 1 through ~~6~~ *8* of this chapter, the punishment for which is a felony, may upon conviction be fined not more than $50,000 or imprisoned for not more than 10 years, or both, for each violation.

(2) In addition to any penalty imposed under subsection (1), the department shall revoke all licenses or permits issued to the person under parts 1 through ~~6~~ *8* of this chapter and may not issue the person another license or permit under parts 1 through ~~6~~ *8* of this chapter."

Section 13. Section 23-5-171, MCA, is amended to read:

"23-5-171. **Authority of local governments to regulate gambling.** (1) A local government may not license or regulate a form of gambling authorized by parts 1 through ~~6~~ *8* of this chapter or assess or charge any fees or taxes unless specifically authorized by statute.

(2) An incorporated city or town may enact an ordinance or resolution zoning certain areas within its incorporated limits in which gambling is prohibited.

(3) A county may enact a resolution zoning certain areas in the county, not within an incorporated city or town, in which gambling is prohibited.

(4) A county or incorporated city or town may not restrict the number of licenses that the department may issue."

Section 14. Section 23-5-172, MCA, is amended to read:

"23-5-172. **Prosecution.** The county attorney of the county in which a violation of a provision of parts 1 through ~~6~~ *8* of this chapter occurs shall prosecute all gambling actions within the jurisdiction of the department. However, if the county attorney declines prosecution or fails to commence an action within a reasonable time, the attorney general may initiate and conduct the prosecution on behalf of the state."

Section 15. Section 23-5-309, MCA, is amended to read:

"23-5-309. **Requirements for conducting card games.** (1) Except as provided in *23-5-310 and* 23-5-317, a live card game must be played on a live card game table for which a permit has been issued and on the premises of a licensed operator.

(2) A live card game of panguingue or poker must be played in the presence and under the control of a licensed dealer."

Section 16. Section 23-5-610, MCA, is amended to read:

"23-5-610. *(Temporary)* **Video gambling machine gross income tax — records — distribution — quarterly statement and payment.** (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts are not repaid by insurance and if a law enforcement agency investigated the theft.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in such form as the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to him, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall forward one-third of the tax collected under subsection (3) and the surtax imposed by 23-5-646 to the general fund.

(b) The department shall forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury.

23-5-610. *(Effective on receipt of taxes for calendar quarter ending June 30, 1993)* **Video gambling machine gross income tax — records — distribution — quarterly statement and payment.** (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts *stolen* are not repaid by insurance *or under a court order* and ~~if~~ a law enforcement agency investigated the theft *and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.*

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in ~~such~~ *a* form as the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to ~~him~~ *the operator*, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall forward one-third of the tax collected under subsection (3) to the general fund.

(b) The department shall forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury."

Section 17. Section 23-5-631, MCA, is amended to read:

"23-5-631. Examination and approval of new video gambling machines and associated equipment — fee. (1) The department shall examine and may approve a new video gambling machine and associated equipment ~~which~~ *that* are manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used.

(2) A video gambling machine or associated equipment may not be examined or approved by the department until the video gambling machine manufacturer-distributor is licensed as required in 23-5-625.

(3) All video gambling machines approved by the department of commerce prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the manufacturer-distributor seeking the examination and approval of a new video gambling machine or associated equipment to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment and to issue refunds for overpayments.

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine prior to its distribution and placement for play by the public. *A manufacturer-distributor may not supply a video gambling machine or associated equipment to another licensed manufacturer-distributor or a licensed operator unless the machine or equipment has been approved by the department. [A manufacturer, distributor, or route operator may not supply a video gambling machine or associated equipment to a manufacturer, distributor, route operator, or operator unless the machine or equipment has been approved by the department.]*"

Section 18. Section 23-7-302, MCA, is amended to read:

"**23-7-302. Sales restrictions.** (1) The price of each lottery game ticket or chance must be clearly stated thereon. The price of a lottery game chance vended by a machine or electronic device must be clearly stated on the machine or device.

(2) Tickets and chances may not be sold to or purchased by persons under 18 years of age.

(3) Tickets and chances may *be purchased only with cash or a check and may* not be purchased on credit.

(4) Tickets and chances may not be sold to or purchased by commissioners, the director, his staff, gaming suppliers doing business with the state lottery, suppliers' officers and employees, employees of any firm auditing or investigating the state lottery, governmental employees auditing or investigating the state lottery, or members of their households.

(5) The names of elected officials may not appear on any ticket or chance."

Section 19. **Coordination instruction.** If House Bill No. 411 is passed and approved, then the unbracketed amendment in [section 17(6) of this act], amending 23-5-631, is void and the bracketed language is effective. If House Bill No. 411 is not passed and approved, then the bracketed language is void.

Approved April 19, 1993.

CHAPTER NO. 399

[HB 294]

AN ACT REVISING THE LAW CONCERNING VEHICLE LOADS; REDUCING THE MAXIMUM ALLOWABLE WEIGHT ON AXLES EQUIPPED WITH SINGLE TIRES; AMENDING SECTION 61-10-107, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-107, MCA, is amended to read:

"**61-10-107. Maximum gross weight — when permit required.** (1) An axle may not carry a load in excess of 20,000 pounds, and no two consecutive axles more than 40 inches or less than 96 inches apart may carry a load in excess of 34,000 pounds. *An axle load is the total load transmitted to the road by all wheels whose centers are included between two parallel transverse vertical planes 40 inches apart, extending across the full width of the vehicle.* For purposes of this section, axles 40 inches or less apart are considered as a single axle. A vehicle or combination may not have more than nine axles. The maximum gross weight allowed on a vehicle, group of axles, or combination of vehicles must be determined by the formula:

$$W = 500((LN/(N - 1)) + 12N + 36)$$

in which W equals gross weight, L equals wheel base in feet, and N equals number of axles, except that two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each if the overall distance between the first and last axles of the consecutive sets of tandem axles is 36 feet or more.

(2) Notwithstanding a vehicle's conformance with the requirements of subsection (1), ~~its maximum load per inch of tire width, excluding the steering axle, may not exceed 600 pounds, based on the table in 61-10-105(3).~~ *its maximum load per inch of tire width, excluding the steering axle, may not exceed 500 pounds, based on the table in 61-10-105(3).*

(3) If the gross weight of a vehicle or combination exceeds 80,000 pounds, the vehicle or combination must have a special permit, which may be issued in the discretion of the department of transportation based on evaluation of safety, highway capacity, and economics of highway maintenance and vehicle operation. The fee is $20 per trip permit or $100 per term permit. A term permit may not be issued for a period of time greater than the period for which the GVW license is valid. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department, purchase permits to expire with their registration. Permits may specify and permits issued under 61-10-124(6) must specify highway routing.

(4) A special permit issued under subsection (3) for the transportation of agricultural products by farm vehicles from a harvesting combine or other

harvesting machinery to the point of first unloading is for the full term of the harvest season of the agricultural product transported.

(5) This section does not apply to highways that are a part of the national system of interstate and defense highways (as referred to in 23 U.S.C. 127) when application of this section would prevent this state from receiving federal funds for highway purposes."

Section 2. Date of compliance. All equipment existing on or after [the date the governor signs this act] must comply with the provisions of 61-10-107(2) by January 1, 1996.

Section 3. Effective date. [This act] is effective January 1, 1995.

Approved April 19, 1993.

CHAPTER NO. 400

[HB 317]

AN ACT ESTABLISHING A FRAMEWORK FOR THE CONDUCT OF NEGOTIATED RULEMAKING; PROVIDING A PROCESS FOR ESTABLISHING A NEGOTIATED RULEMAKING COMMITTEE; PROVIDING DUTIES FOR A NEGOTIATED RULEMAKING COMMITTEE; AUTHORIZING AN AGENCY TO USE THE SERVICES OF A CONVENER AND A FACILITATOR; AND AUTHORIZING AN AGENCY TO ACCEPT GRANTS OR GIFTS TO FUND A NEGOTIATED RULEMAKING PROCESS.

WHEREAS, negotiated rulemaking is a process that reflects an agency's recognition that regulatory objectives, consistent with legislative directives, can be accomplished in more than one way; and

WHEREAS, negotiated rulemaking brings together the regulating agency and regulated and other interested parties during the development of a rule to negotiate and resolve potential problems with the rulemaking in order to develop a rule acceptable to all parties; and

WHEREAS, negotiated rulemaking may improve the substance of a proposed rule, shorten the length of time necessary to implement a final rule, and reduce litigation, thereby effectuating legislative purposes and aiding in the prompt delivery of governmental services; and

WHEREAS, federal agencies and other states have extensive experience with and success at negotiating rulemaking.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 10] may be cited as the "Montana Negotiated Rulemaking Act".

Section 2. **Purpose.** The purpose of [sections 1 through 10] is to establish a framework for the conduct of negotiated rulemaking consistent with the Montana Administrative Procedure Act and the constitutional right of Montanans to participate in the operation of governmental agencies and to encourage agencies to use negotiated rulemaking when it enhances the rulemaking process. As authorized by 2-4-304, it is the intent of the legislature that state agencies, whenever appropriate, use the negotiated rulemaking process to resolve controversial issues prior to the commencement of the formal rulemaking process. However, negotiated rulemaking is not a substitute for the public notification and participation requirements of the Montana Administrative Procedure Act, and a consensus agreement by a negotiated rulemaking committee may be modified by an agency as a result of the subsequent rulemaking process. [Sections 1 through 10] may not be construed as an attempt to limit innovation and experimentation with the negotiated rulemaking process.

Section 3. **Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the executive branch of state government authorized or required by law to make rules.

(2) "Consensus" means unanimous concurrence among the interests represented on a negotiated rulemaking committee established under [section 6], unless the committee agrees upon another specified definition.

(3) "Convener" means a person who impartially assists an agency in determining whether establishment of a negotiated rulemaking committee is feasible and appropriate for a particular rulemaking procedure.

(4) "Facilitator" means a person who impartially aids in the discussions and negotiations among the members of a negotiated rulemaking committee to develop a proposed rule. A facilitator does not have decisionmaking authority.

(5) "Interest" means, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

(6) "Negotiated rulemaking" means rulemaking through the use of a negotiated rulemaking committee.

(7) "Negotiated rulemaking committee" or "committee" means an advisory committee established under [section 6] and authorized under 2-4-304 to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

(8) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public or private organization of any character.

(9) "Rule" means an agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(e) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the Administrative Rules of Montana.

Section 4. **Determination of need for negotiated rulemaking committee.** (1) An agency may establish a negotiated rulemaking committee to negotiate and develop a proposed rule if the agency director determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the agency director shall consider whether:

(a) there is a need for a rule;

(b) there are a limited number of identifiable interests that will be significantly affected by the rule;

(c) there is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

(i) can adequately represent the interests identified under subsection (1)(b); and

(ii) are willing to negotiate in good faith to reach a consensus on the proposed rule;

(d) there is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;

(e) the negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of the final rule;

(f) the agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee; and

(g) the agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee as the basis for the rule proposed by the agency.

(2) An agency may use the services of a convener to assist in making the determination of need pursuant to subsection (1) and to assist the agency in:

(a) identifying persons who will be significantly affected by a proposed rule; and

(b) conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a negotiated rulemaking committee is feasible and appropriate for the particular rulemaking procedure.

(3) The convener shall report findings and make recommendations to the agency. Upon request of the agency, the convener shall ascertain the names of persons who are willing and qualified to represent the interests that will be

significantly affected by the proposed rule. The report and any recommendations of the convener must be made available to the public upon request.

Section 5. **Application for membership on committees — publication of notice.** (1) If an agency decides to establish a negotiated rulemaking committee, the agency shall publish in the Montana Administrative Register and, as appropriate, in newspapers and other publications, a notice that includes:

(a) an announcement that the agency intends to establish a negotiated rulemaking committee to negotiate and develop a proposed rule;

(b) a description of the subject and scope of the rule to be developed and the issues to be considered;

(c) a list of interests likely to be significantly affected by the proposed rule;

(d) a list of the persons proposed to represent the affected interests and the agency;

(e) a proposed schedule for completing the work of the committee; and

(f) an explanation of how a person may apply for or nominate another person for membership on the committee.

(2) An agency may include the notice required in subsection (1) in the notice of intent to promulgate rules made pursuant to 2-4-302.

(3) The agency shall provide a period of at least 30 days for the submission of comments and applications for membership on a negotiated rulemaking committee.

Section 6. **Establishment of committee — determination.** (1) If, after considering comments and applications submitted under [section 5], the agency determines that a negotiated rulemaking committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule and that it is feasible and appropriate in the particular rulemaking, the agency may establish a negotiated rulemaking committee.

(2) If, after considering comments and applications submitted under [section 5], the agency decides not to establish a negotiated rulemaking committee, the agency shall notify the persons who commented on or applied for membership on the negotiated rulemaking committee of the reasons for the decision. The agency shall also publish a notice in the Montana Administrative Register and, as appropriate, in newspapers and other publications.

(3) The agency shall provide appropriate administrative support to the negotiated rulemaking committee, including technical support.

(4) A negotiated rulemaking committee terminates upon adoption of the final rule under consideration, unless the agency, after consulting the committee, or the committee itself specifies an earlier termination date.

Section 7. **Expansion of committee membership.** (1) A negotiated rulemaking committee may by consensus expand its membership, either by contacting and recruiting persons whose participation the committee believes is essential to the success of the negotiated rulemaking process or upon reviewing a petition submitted pursuant to subsection (2).

(2) Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a negotiated rulemaking committee may petition for or nominate another person for membership on the negotiated rulemaking committee. Each petition or nomination must be submitted to the negotiated rulemaking committee and must include:

(a) the name of the petitioner or nominee and a description of the interests the person represents;

(b) evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent;

(c) a written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration; and

(d) an explanation of reasons that the persons already on the negotiated rulemaking committee do not adequately represent the interests of the person submitting the petition or nomination.

(3) Upon receiving a petition pursuant to subsection (2), a negotiated rulemaking committee shall decide by consensus at its next meeting whether or not to expand its membership.

Section 8. **Committee — duties — procedures — report.** (1) A negotiated rulemaking committee shall consider the matter proposed by the agency for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

(2) The person representing the agency on a negotiated rulemaking committee shall participate in the deliberations of the committee with the same rights and responsibilities of other members of the committee and is authorized to fully represent the agency in the discussions and negotiations of the committee.

(3) A negotiated rulemaking committee may adopt procedures or ground rules for the operation of the committee.

(4) If a negotiated rulemaking committee achieves consensus on a proposed rule, at the conclusion of the negotiations, the committee shall transmit to the agency that established the committee a report containing the proposed rule.

(5) If a negotiated rulemaking committee does not reach a consensus on the proposed rule, the committee shall transmit to the agency a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations, or materials.

(6) Title 2, chapter 3, part 2, applies to meetings of a negotiated rulemaking committee.

Section 9. **Facilitator — selection and duties.** (1) An agency may nominate a person to serve as a facilitator for the negotiations of the committee, subject to the approval of the committee by consensus. If the committee does not approve the agency's nomination for facilitator, the agency shall submit a substitute nomination. If a committee does not approve the substitute nomination of the agency for facilitator, the committee shall select by consensus a person to serve as facilitator. A person designated to represent the agency in substantive issues may not serve as facilitator or presiding officer for the committee.

(2) A facilitator approved or selected by a committee shall:

(a) preside at the meetings of the committee in an impartial manner;

(b) impartially assist the members of the committee in conducting discussions and negotiations and achieving consensus; and

(c) manage the keeping of minutes and records.

Section 10. **Expenses — convener — facilitator — committee members.** (1) An agency may employ or enter into a contract for the services of an organization or individual to serve as a convener or facilitator for a negotiated rulemaking committee or may use the services of a government employee to act as a convener or facilitator for a committee.

(2) An agency shall determine whether a person under consideration as a convener or facilitator of a negotiated rulemaking committee has any financial or other interest that would preclude the person from serving in an impartial and independent manner. A person disqualified under this criterion must be dropped from further consideration.

(3) Members of a negotiated rulemaking committee are responsible for their own expenses of participation. However, an agency may pay for a committee member's reasonable travel and per diem expenses, expenses to obtain technical assistance, and a reasonable rate of compensation if:

(a) the committee member certifies a lack of adequate financial resources to participate in the committee; and

(b) the agency determines that the committee member's participation in the committee is necessary to ensure an adequate representation of the interests of the members.

(4) An agency may accept grants or gifts from any source to fund the negotiated rulemaking process, provided that:

(a) information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public;

(b) the grant or gift is given to and accepted by the agency without placing any condition on the membership of a negotiated rulemaking committee or the outcome of the negotiated rulemaking process; and

(c) there is consensus among the members of the negotiated rulemaking committee established pursuant to [section 6] that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

Section 11. **Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 2, and the provisions of Title 2 apply to [sections 1 through 10].

Approved April 19, 1993.

CHAPTER NO. 401

[HB 358]

AN ACT GENERALLY REVISING BANKING LAWS; AUTHORIZING INTERSTATE BANK ACQUISITIONS BY A REGIONAL BANK HOLDING COMPANY; ESTABLISHING CONDITIONS AND LIMITATIONS ON ACQUISITIONS; REVISING LIMITS ON DETACHED TELLER FACILITIES; AND AMENDING SECTION 32-1-372, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** (1) The purpose of [sections 1 through 4] is to authorize interstate banking by the acquisition of existing banks within the framework of the "Douglas amendment" to the Bank Holding Company Act of 1956, as amended, and to provide a variety of banking alternatives in Montana in terms of the numbers and ownership of banks. If federal legislation authorizes unrestricted interstate banking unless state law affirmatively provides otherwise, it is the purpose of [sections 1 through 4] to affirmatively provide that unrestricted interstate banking does not apply in Montana.

(2) [Sections 1 through 4] do not authorize the establishment of a branch bank in Montana by a bank not located in Montana. Sections 32-1-371 and 32-1-375 do not apply to acquisitions or transactions authorized in [sections 1 through 4].

Section 2. **Definitions.** As used in [sections 1 through 4], unless the context requires otherwise, the following definitions apply:

(1) "Acquire" means:

(a) the direct or indirect purchase of stock;

(b) the direct or indirect purchase of assets; or

(c) a merger.

(2) "Bank" means a commercial bank as defined in 32-1-105 or a national banking association as designated by 12 U.S.C. 24.

(3) "Bank holding company" means a bank holding company that is registered under the Bank Holding Company Act of 1956, as amended, regardless of where it is located or has its headquarters.

(4) "Control" means:

(a) ownership of, authority over, or power to vote, directly or indirectly, 25% or more of any class of voting security;

(b) authority in any manner over the election of a majority of directors; or

(c) power to exercise, directly or indirectly, a controlling influence over management and policies.

(5) "Department" means the department of commerce provided for in 2-15-1801.

(6) "Financial institution" means a bank or bank holding company.

(7) "Headquarters" means the state in which the activities of a bank holding company or a company controlling the bank holding company are "principally conducted" within the meaning of the Bank Holding Company Act of 1956, as amended.

(8) "Located in this state" means:

(a) in the case of a bank, that the organizational certificate identifies an address in this state as the principal place of conducting its business; and

(b) in the case of a bank holding company, an entity, partnership, or trust organized under the laws of this state.

(9) "Reciprocating state" means a state that authorizes the acquisition, directly or indirectly, of control of banks in that state by a bank holding company located in this state under terms and conditions substantially similar to the terms and conditions contained in [sections 1 through 4].

(10) "Regional bank holding company" means a bank holding company that does not have its headquarters in Montana and:

(a) that has headquarters in Colorado, Idaho, Minnesota, North Dakota, South Dakota, Wisconsin, or Wyoming; or

(b) that controlled a bank in Montana on January 1, 1993. The authority to acquire control of a bank under [sections 1 through 4] may not be transferred to a bank holding company that does not have its headquarters in a state listed in subsection (10)(a).

Section 3. **Acquisition of financial institution by bank holding company not located in this state — limitations.** (1) A regional bank holding company with headquarters in a reciprocating state may acquire control of a bank located in this state through acquisition of a financial institution if the regional bank holding company complies with [sections 1 through 4]. The bank to be acquired must:

(a) have been conducting business for a continuous period of at least 6 years prior to the acquisition; or

(b) be organized for the purpose of purchasing the assets of a bank that has conducted business for a continuous period of at least 6 years prior to the acquisition.

(2) A bank holding company may acquire control of a bank located in this state by purchase of stock in or by merger with a regional bank holding company.

(3) (a) Subject to the provisions of subsection (3)(b), a bank holding company may not acquire control of a bank located in this state if the bank holding

company would directly or indirectly control more than 18% of all deposits in federally insured banks, savings associations, and credit unions located in this state.

(b) On October 1, 1994, and on October 1 of each year thereafter, the percentage limitation contained in subsection (3)(a) must be increased by 1% until the limit reaches 22%.

(4) A bank holding company that is not located in this state or that does not have headquarters in this state may not acquire control of a bank located in this state if the acquisition of control would result in the aggregate direct or indirect control, by all bank holding companies that do not have headquarters in this state, of more than 49% of all deposits in all federally insured banks and savings associations located in this state.

(5) The determination of the limits contained in subsections (3) and (4) must be based upon public reports filed with the appropriate regulatory agency as of the December 31 preceding the submission to the appropriate federal banking regulatory agency of the application seeking prior approval of the acquisition of control of the bank.

(6) A bank holding company that ceases to be a regional bank holding company shall divest all interest in a bank located in this state unless the bank holding company:

(a) controlled the bank for a period of 36 consecutive months immediately prior to cessation of its status as a regional bank holding company; or

(b) controlled the bank on January 1, 1993.

(7) If a regional bank holding company is being acquired by a bank holding company that does not have its headquarters in this state and that is not a regional bank holding company, then the bank holding company shall divest all interest in a bank located in this state unless the regional bank holding company:

(a) controlled the bank for a period of 36 consecutive months immediately prior to the acquisition of control of the regional bank holding company by the acquiring bank holding company; or

(b) controlled the bank on January 1, 1993.

(8) If this section requires a bank holding company to divest all interest in a bank located in this state, the divestiture must be completed within 24 calendar months of the event requiring the divestiture.

Section 4. **Federal applications — comments.** (1) A bank holding company shall file with the department a copy of applications submitted to a federal banking regulatory agency seeking prior approval of the proposed acquisition of a financial institution located in this state. The bank holding company shall also file a statement verifying that the acquisition will not result in a violation of the limits in [section 3(3) and (4)].

(2) The applications and statement are public records, and the department shall allow public inspection of all nonconfidential portions of the applications and statements. The department shall solicit public comment on the applica-

tions by promptly publishing notice of the applications in a newspaper of general circulation in the county in which the financial institution to be acquired is located. The department shall send the comments to the appropriate federal banking regulatory agency. The department may intervene in or take other action in a federal banking regulatory authority proceeding.

Section 5. Section 32-1-372, MCA, is amended to read:

"**32-1-372. Branch bank — detached facilities.** (1) A bank may establish and maintain a branch bank only as provided in 32-1-371 and this section and, in the case of a bank organized under the laws of this state, with the prior approval of the state banking board, provided that nothing in this section prohibits ordinary clearinghouse transactions between banks.

(2) *(a)* With the prior approval of the department, ~~any~~ *a* bank or branch bank doing business in this state may establish and maintain*:*

(i) ~~not more than~~ one detached drive-in and walk-up facility consisting of one or more teller windows*; or*

(ii) if the bank or branch bank is doing business in a city or consolidated government with a population of more than 20,000 as indicated in the most recent United States census, two drive-in or walk-up facilities consisting of one or more teller windows.

(b) ~~The~~ *A* detached facility must be in the city or within 3,000 feet of the city limits of the city in which the main banking house or branch bank is located. ~~The~~ *A* facility may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances specified in this subsection in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of ~~the~~ *a* facility must be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank or the branch bank, and other transactions that are normally and usually conducted or handled at teller windows in the main banking house or branch bank.

(3) ~~Any~~ *A* bank authorized to do banking business in this state may utilize a satellite terminal as defined in the Montana Electronic Funds Transfer Act and at any location permitted by the Montana Electronic Funds Transfer Act. The use of satellite terminals ~~hereby authorized~~ is not subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.

(4) A bank, other than a bank owned by a holding company not located in Montana, may establish, maintain, and operate a branch bank in a city in which no bank or branch bank is located at the time the branch bank is to be established if that city is in the county or a county adjoining the county in which the main banking house of the branch bank is located.

(5) Common ownership notwithstanding, a bank *located in this state* may acquire by consolidation or merger under 32-1-371 and may maintain and operate as a branch bank any bank in this state if, at the time of acquisition, a receiver has been appointed by an appropriate regulatory agency or other governmental authority. ~~Nothing in this subsection allows a bank owned by a holding company not located in this state to acquire an interest in a bank in contravention of 12 U.S.C. 1842.~~

(6) A branch bank must have a community advisory board."

Section 6. **Severability.** (1) If a part of [this act], other than [section 3(3) or (4)], is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act], other than [section 3(3) or (4)], is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

(2) If [section 3(3) or (4)] is invalid or if the application of [section 3(1)] must be extended to bank holding companies other than regional bank holding companies, then [this act] is void.

Section 7. **Saving clause.** If [this act] is voided, it does not affect an acquisition or rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the date this act is void].

Section 8. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [sections 1 through 4].

Approved April 19, 1993.

CHAPTER NO. 402

[HB 410]

AN ACT PROVIDING THAT AN AMERICAN FLAG BE DISPLAYED IN EACH CLASSROOM; AND AMENDING SECTION 20-3-324, MCA.

WHEREAS, the Board of Public Education, on January 26, 1989, passed and approved a resolution encouraging teachers to begin the school day with the Pledge of Allegiance; and

WHEREAS, the Board of Public Education stated in the resolution that it believes that Montana schools should increase their efforts to educate students in the American values of patriotism and love of country; and

WHEREAS, this Legislature supports the resolution of the Board of Public Education and recognizes that an American flag needs to be displayed in each classroom in order for students to give the Pledge of Allegiance; and

WHEREAS, veteran groups in Montana have demonstrated a willingness to donate flags to any school requesting flags.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-324, MCA, is amended to read:

"**20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, foundation program, permissive, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to ~~his~~ *the* child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather *on school days* at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

~~(23)~~*(24)* adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110; and

~~(24)~~*(25)* perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Approved April 19, 1993.

CHAPTER NO. 403

[HB 443]

AN ACT ALLOWING A SCHOOL DISTRICT TO WITHHOLD THE GRADES, DIPLOMA, OR TRANSCRIPTS OF A PUPIL WHO TRANSFERS TO ANOTHER SCHOOL WITHOUT PAYING FOR THE PURCHASE OF, LOSS OF, OR DAMAGE TO SCHOOL MATERIALS OR PROPERTY; PROVIDING NOTICE TO THE PARENT THAT THE PUPIL'S GRADES, DIPLOMA, OR TRANSCRIPTS WILL BE WITHHELD BY THE SCHOOL DISTRICT TO WHICH THE PUPIL TRANSFERS UNTIL THE OBLIGATION HAS BEEN MET; REQUIRING TRUSTEES TO ADOPT A POLICY REGARDING AN APPEAL PROCESS FOR DECISIONS TO WITHHOLD A PUPIL'S GRADES, DIPLOMA, OR TRANSCRIPTS; AMENDING SECTION 20-5-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-5-201, MCA, is amended to read:

"**20-5-201. Duties and sanctions.** (1) ~~Any~~ *A* pupil shall:

(a) comply with the policies of the trustees and the rules of the school ~~which he~~ *that the pupil* attends;

(b) pursue the required course of instruction;

(c) submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) be subject to the control and authority of the teachers, principal, and district superintendent while ~~he~~ *the pupil* is in school or on school premises, on ~~his~~ *the* way to and from school, or during ~~his~~ intermission or recess.

(2) ~~Any~~ *A* pupil who continually and willfully disobeys the provisions of this section, shows open defiance of the authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, book belonging to the district, or harms or threatens to harm another person or ~~his~~ *the person's* property ~~shall be~~ *is* liable for punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property~~, as defined above, his~~ *the pupil's* parent or guardian ~~shall be~~ *is* liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of ~~such~~ *any* damage.

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in the graduation exercise or exclude a high school pupil from participating in school activities. ~~Such~~ *The trustees may not take* action ~~shall not be taken~~ *under this subsection* until the incident or infraction causing ~~such~~ *the* consideration has been investigated and the trustees have determined that the high school pupil was involved in ~~such~~ *the* incident or infraction.

(4) (a) A school district may withhold the grades, diploma, or transcripts of a pupil who is responsible for the cost of school materials or the loss or damage

of school property until the pupil or the pupil's parent or guardian satisfies the obligation.

(b) A school district that decides to withhold a pupil's grades, diploma, or transcripts from the pupil and the pupil's parent or guardian pursuant to subsection (4)(a) shall:

(i) upon receiving notice that the pupil has transferred to another school district in the state, notify the pupil's parent or guardian in writing that the school district to which the pupil has transferred will be requested to withhold the pupil's grades, diploma, or transcripts until any obligation has been satisfied;

(ii) forward appropriate grades or transcripts to the school to which the pupil has transferred;

(iii) at the same time, notify the school district of any financial obligation of the pupil and request the withholding of the pupil's grades, diploma, or transcripts until any obligations are met;

(iv) when the pupil or the pupil's parent or guardian satisfies the obligation, inform the school district to which the pupil has transferred; and

(v) adopt a policy regarding a process for a pupil or the pupil's parent or guardian to appeal the school district's decision to request that another school district withhold a pupil's grades, diploma, or transcripts.

(c) Upon receiving notice that a school district has requested the withholding of the grades, diploma, or transcripts of a pupil under this subsection (4), a school district to which the pupil has transferred shall withhold the grades, diploma, or transcripts of the pupil until it receives notice, from the district that initiated the decision, that the decision has been rescinded under the terms of subsection (4)(a)."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 19, 1993.

CHAPTER NO. 404

[HB 445]

AN ACT PROVIDING THAT AN INDIVIDUAL ATTENDING AN ADULT BASIC EDUCATION CLASS 20 HOURS A WEEK OR LESS WHILE LAID OFF FROM A JOB IS NOT DISQUALIFIED FROM RECEIVING UNEMPLOYMENT INSURANCE BENEFITS; AMENDING SECTIONS 39-51-2104 AND 39-51-2307, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2104, MCA, is amended to read:

"**39-51-2104. General benefit eligibility conditions.** An unemployed individual is eligible to receive benefits for any week of total unemployment within ~~his~~ *the individual's* benefit year only if the department finds that *the individual*:

(1) ~~he~~ has filed a claim at and ~~thereafter~~ has continued to report at an employment office in accordance with ~~such regulation~~ *rules* as the department may prescribe, except that the department may~~,~~ by ~~regulation~~ *rule*~~,~~ prescribe that in cases in which it finds ~~such~~ *the* requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies;

(2) ~~he~~ is able to work, ~~and~~ is available for work, and is seeking work~~;~~. ~~provided, however, that no~~ *A* claimant is *not* considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if ~~such~~ *the* failure is due to*:*

(a) an illness or disability ~~which~~ *that* occurs after ~~he~~ *the claimant* has registered for work and ~~no~~ suitable work has *not* been offered to ~~such~~ *the* claimant after the beginning of ~~such~~ *the* illness or disability; *or*

(b) enrollment as a student as provided in 39-51-2307.

(3) prior to the first week for which ~~he~~ *the individual* is paid benefits, ~~he~~ has been totally unemployed for a waiting period of 1 week. ~~No~~ *A* week is *not* counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid ~~with respect thereto~~ *for that week*;

(b) unless the individual was eligible for benefits ~~with respect thereto~~ *during the week*;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter."

Section 2. Section 39-51-2307, MCA, is amended to read:

"**39-51-2307. Disqualification because of student status.** (1) ~~Effective April 1, 1977,~~ *Except as provided in subsection (2) or (3),* an individual ~~shall be~~ *is* disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within ~~such~~ *the* school year or during any prescribed school term if ~~claimant~~ *the individual* is a student regularly attending an established educational institution.

(2) An individual attending an adult basic education class 20 hours a week or less while laid off from a job is not disqualified from receiving benefits if the individual is willing to return to work when notified.

~~(2)~~*(3)* ~~Notwithstanding any other provisions in this section, no~~ *An* otherwise eligible individual ~~shall~~ *may not* be denied benefits for any week because ~~he~~ *the individual* is in training approved by the department, nor ~~shall such~~ *may the* individual be denied benefits with respect to any week in which ~~he~~ *the individual* is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(2)."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 19, 1993.

CHAPTER NO. 405

[HB 472]

AN ACT EXCLUDING CERTAIN RETAIL ESTABLISHMENT EMPLOYEES FROM COVERAGE UNDER THE STATE OVERTIME COMPENSATION LAWS IF THE EMPLOYEE'S REGULAR RATE OF PAY EXCEEDS 1 ½ TIMES THE MINIMUM HOURLY RATE APPLICABLE UNDER THE FAIR LABOR STANDARDS ACT OF 1938 AND IF MORE THAN HALF OF THE EMPLOYEE'S COMPENSATION FOR A PERIOD OF NOT LESS THAN 1 MONTH IS DERIVED FROM COMMISSIONS ON GOODS AND SERVICES; AND AMENDING SECTION 39-3-406, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"**39-3-406. Exclusions.** (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees ~~thereof~~ who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work ~~which~~ *that* is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that ~~such~~ *the* exclusion ~~shall~~ *may* not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid ~~such~~ *the* learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside ~~salesman~~ *salesperson* paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a ~~salesman~~ *salesperson,* ~~partsman~~ *parts person,* or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if ~~he~~ *the salesperson, parts person, or mechanic* is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(f) a ~~salesman~~ *salesperson* primarily engaged in selling trailers, boats, or aircraft if ~~he~~ *the salesperson* is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside ~~salesman~~ *salesperson* paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a ~~salesman~~ *salesperson* paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for ~~such~~ *the* employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that ~~such~~ *the* plan has the general purpose and effect of reducing hours worked by ~~such~~ *the* employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee ~~with respect to his employment~~ *employed* in agriculture by a farmer, notwithstanding other employment of ~~such~~ *the* employee in connection with livestock auction operations in which ~~such~~ *the* farmer is engaged as an adjunct to the raising of livestock, either on ~~his~~ *the farmer's* own account or in conjunction with other farmers, if ~~such~~ *the* employee is:

(i) primarily employed during ~~his~~ *the* workweek in agriculture by ~~such~~ *the* farmer; and

(ii) paid for ~~his~~ employment in connection with ~~such~~ livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment ~~which~~ *that* sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with ~~his~~ *the employee's* spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in ~~such~~ *the* institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as ~~such~~ *the* employee and ~~his~~ *the employee's* spouse reside in ~~such~~ *the* facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by ~~his~~ *the* employer in ~~such~~ *the* forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee ~~where no~~ *when a* bargaining unit is *not* recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee ~~where no~~ *when a* bargaining unit is *not* recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115~~.~~*;*

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 ½ times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services."

Approved April 19, 1993.

CHAPTER NO. 406

[HB 478]

AN ACT REVISING THE DISABILITY PARKING LAW; INCREASING THE PENALTY FOR A VIOLATION; REQUIRING THAT A SIGN DESIGNATING A DISABILITY PARKING SPACE STATE THE PENALTY FOR A VIOLATION; EXEMPTING "NOTICE OF VIOLATION" CARDS FROM LITTERING ORDINANCES; LIMITING NEW PERMITS TO 4 YEARS; AND AMENDING SECTIONS 7-5-2109, 7-5-4104, 49-4-302, 49-4-305, AND 49-4-307, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2109, MCA, is amended to read:

"**7-5-2109. County control of litter.** (1) (a) The governing body of a county may regulate, control, and prohibit littering on any county road and on land within the county by the adoption of an ordinance that substantially complies with the provisions of 7-5-103 through 7-5-107. The ordinance may apply to portions of the county and may apply to persons other than the owners of the property on which littering occurs.

(b) The ordinance ~~may~~ *does* not apply to lead, copper, or brass deposits directly resulting from shooting activities at a shooting range.

(c) The ordinance does not apply to a "notice of violation" card placed on a motor vehicle illegally parked in a disability parking space.

(2) The governing body of a county may establish a fine not to exceed $200 as a penalty for violation of the ordinance referred to in subsection (1). A violation of the ordinance may not be punishable by imprisonment."

Section 2. Section 7-5-4104, MCA, is amended to read:

"**7-5-4104. Control of nuisances** — ***exception.*** *(1)* The city or town council has power to:

~~(1)~~*(a)* define and abate nuisances and impose fines upon persons guilty of creating, continuing, or suffering a nuisance to exist on the premises which they occupy or control;

~~(2)~~*(b)* regulate and prohibit the wearing of hats or bonnets at theaters or public places of amusement.

(2) The city or town council may not prohibit the placing of a "notice of violation" card on a motor vehicle illegally parked in a disability parking space."

Section 3. Section 49-4-302, MCA, is amended to read:

"**49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces.** (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or on private property available for public use.

(2) ~~No~~ *A* vehicle other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing handicapped person's license plate or placard issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a handicapped person or one displaying a specially inscribed license plate issued under 61-3-332(10)(c) and conveying a 100% disabled veteran may *not* be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c) and parked in public places along public streets from any time limitation imposed upon parking in ~~such~~ *the* area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for handicapped persons or permitholders on ways of this state open to the public as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for handicapped persons must be at least 13 feet wide.

(d) A parking space reserved for handicapped persons must be designated by a sign showing the international symbol of accessibility, ~~and~~ indicating that a permit is required, *and stating the penalty for a violation. In order to meet the penalty statement requirement, signs existing on October 1, 1993, must have attached a decal stating the penalty for a violation.* The sign must be attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space."

Section 4. Section 49-4-305, MCA, is amended to read:

"**49-4-305. Expiration of permit.** ~~A~~ *(1) Except as provided in subsection (2), a* permit expires ~~on:~~ *on the occurrence of either of the following:* -

~~(1) the death of the permittee; or~~

~~(2) certification by a physician~~

(a) 4 years from the date of issuance. A permittee may renew a permit if a physician certifies that the permittee's ~~physical handicap~~ *disability* impairing ~~his~~ mobility ~~no longer~~ *still* exists.

(b) certification by a physician that the permittee's disability impairing mobility no longer exists.

(2) A permit issued before October 1, 1993, expires on:

(a) the death of the permittee; or

(b) certification by a physician that the permittee's disability impairing mobility no longer exists."

Section 5. Section 49-4-307, MCA, is amended to read:

"**49-4-307. Penalty.** A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of ~~$50~~ *$100*. However, ~~no~~ *a* person charged with violating 49-4-302(2) may *not* be convicted if within 24 hours ~~he~~ *the person* produces in court or the office of the arresting officer a special parking permit *that was* previously issued to ~~him~~ *the person* and *that is* valid at the time of ~~his~~ arrest."

Section 6. **Coordination instruction.** If House Bill No. 496 is not passed and approved, then references in amended language in [this act] to "disability" are void and the code commissioner is instructed to change references to "disability" in amended language in [this act] to "handicap" or "physical handicap", as appropriate.

Approved April 19, 1993.

CHAPTER NO. 407

[HB 496]

AN ACT REVISING THE MONTANA HUMAN RIGHTS LAWS; REPLACING THE TERMS "HANDICAP" AND "HANDICAPPED PERSON" WITH THE TERMS "DISABILITY" AND "PERSON WITH A DISABILITY"; PROVIDING OTHER CHANGES IN TERMINOLOGY; AND AMENDING SECTIONS

49-1-102, 49-2-101, 49-2-303, 49-2-304, 49-2-305, 49-2-306, 49-2-307, 49-2-308, 49-2-403, 49-2-602, 49-3-101, 49-3-103, 49-3-201, 49-3-202, 49-3-203, 49-3-204, 49-3-205, 49-3-206, 49-3-207, 49-4-101, 49-4-202, 49-4-211, 49-4-212, 49-4-301, 49-4-302, 49-4-304, AND 49-4-305, MCA.

WHEREAS, many individuals with disabilities and many organizations representing individuals with disabilities object to the use of the terms "handicap" and "handicapped person"; and

WHEREAS, as with racial and ethnic terms, the choice of words used to describe a person with a disability is overlaid with stereotypes and emotional connotations; and

WHEREAS, it is important to use terminology most in line with the sensibilities of most persons with disabilities; and

WHEREAS, the current accepted terminology is "disability" rather than "handicap" and "person with a disability" rather than "handicapped person"; and

WHEREAS, the federal Americans with Disabilities Act of 1990 uses the terms "disability" and "individual with a disability" rather than the terms "handicap" or "handicapped person"; and

WHEREAS, making the state human rights laws consistent with the Americans with Disabilities Act will eliminate some confusion between state and federal laws.

THEREFORE, it is appropriate for the Legislature to revise the state human rights laws to replace the terms "handicap" and "handicapped person" with the terms "disability" and "person with a disability".

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-1-102, MCA, is amended to read:

"**49-1-102. Freedom from discrimination.** (1) The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental ~~handicap~~ *disability*, age, or national origin is recognized as and declared to be a civil right. This right must include but not be limited to:

(a) the right to obtain and hold employment without discrimination; and

(b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section."

Section 2. Section 49-2-101, MCA, is amended to read:

"**49-2-101. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment ~~therefor~~. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of ~~his~~ *the person's* business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means ~~any~~ *an* individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(13) "National origin" means ancestry.

(14) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(15) (a) "Physical or mental ~~handicap~~ *disability*" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental ~~handicap~~ *disability* includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental ~~handicap~~ *disability*. ~~Any~~ *An* accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(16) (a) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons ~~alike~~. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection (16), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

(17) "Staff" or "commission staff" means the staff of the commission for human rights."

Section 3. Section 49-2-303, MCA, is amended to read:

"**49-2-303. Discrimination in employment.** (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar ~~him~~ *a person* from employment, or to discriminate against ~~him~~ *a person* in compensation or in a term, condition, or privilege of employment because of ~~his~~ race, creed, religion, color, or national origin or because of ~~his~~ age, physical or mental ~~handicap~~ *disability*, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental ~~handicap~~ *disability*, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of ~~his~~ age, physical or mental ~~handicap~~ *disability*, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental ~~handicap~~ *disability*, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental ~~handicap~~ *disability*, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental ~~handicap~~ *disability*, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications ~~shall~~ *must* be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be construed to be a violation of this section."

Section 4. Section 49-2-304, MCA, is amended to read:

"**49-2-304. Discrimination in public accommodations.** (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, marital status, race, age, physical or mental ~~handicap~~ *disability*, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, age, physical or mental ~~handicap~~ *disability*, color, or national origin.

(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color, religion, creed, sex, marital status, age, physical or mental ~~handicap~~ *disability*, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age."

Section 5. Section 49-2-305, MCA, is amended to read:

"**49-2-305. Discrimination in housing — exemptions.** (1) It is an unlawful discriminatory practice for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental ~~handicap~~ *disability*, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental ~~handicap~~ *disability*, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental ~~handicap~~ *disability*, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, *marital status*, race, creed, religion, age, familial status, physical or mental ~~handicap~~ *disability*, color, or national origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental ~~handicap~~ *disability*, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental ~~handicap~~ *disability*, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental ~~handicap~~ *disability*, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have ~~such~~ a *prohibited* preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental ~~handicap~~ *disability* of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental ~~handicap~~ *disability* includes:

(a) refusal to permit, at the expense of the ~~handicapped~~ person *with a disability*, reasonable modifications of existing premises occupied or to be occupied by the ~~handicapped~~ person *with a disability* if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by ~~handicapped persons~~ *a person with a disability*;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by ~~handicapped persons~~ *a person with a disability* ~~in~~ *who uses* ~~wheelchairs~~ *a wheelchair*; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual ~~in~~ *who uses* a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, *marital status,* race, creed, religion, age, familial status, physical or mental ~~handicap~~ *disability,* color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, *marital status,* race, creed, religion, age, familial status, physical or mental ~~handicap~~ *disability,* color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of ~~his~~ *the person* having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (3) and 24 C.F.R. 100.304, as those sections read on October 1, 1989.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as ~~his~~ *the owner's* residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person."

Section 6. Section 49-2-306, MCA, is amended to read:

"**49-2-306. Discrimination in financing and credit transactions.** (1) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of ~~his~~ *that person's* duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental ~~handicap~~ *disability,* color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical ~~handicap~~ *disability,* sex, or marital status against any person in any credit transaction ~~which~~ *that* is subject to the jurisdiction of any state or federal court of record."

Section 7. Section 49-2-307, MCA, is amended to read:

"**49-2-307. Discrimination in education.** It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical ~~handicap~~ *disability,* or national origin or because of mental ~~handicap~~ *disability,* unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental ~~handicap~~ *disability,* or national origin of an applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental ~~handicap~~

disability, sex, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental ~~handicap~~ *disability*, or national origin."

Section 8. Section 49-2-308, MCA, is amended to read:

"**49-2-308. Discrimination by the state.** (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental ~~handicap~~ *disability*, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental ~~handicap~~ *disability*, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental ~~handicap~~ *disability* is unwelcome or not desired or solicited, unless based on reasonable grounds;

(c) to refuse employment to a person, to bar ~~him~~ *a person* from employment, or to discriminate against ~~him~~ *a person* in compensation or in a term, condition, or privilege of employment because of ~~his~~ *that person's* political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1)."

Section 9. Section 49-2-403, MCA, is amended to read:

"**49-2-403. Specific limits on justification.** (1) Except as permitted in 49-2-303(3) and (4) and 49-3-201(5), sex, marital status, age, physical or mental ~~handicap~~ *disability*, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental ~~handicap~~ *disability* may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations."

Section 10. Section 49-2-602, MCA, is amended to read:

"**49-2-602. Intimidation or interference in right to be free from housing discrimination — penalties.** (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental ~~handicap~~ *disability*, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because ~~he~~ *that person* is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental ~~handicap~~ *disability*, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because ~~he~~ *the citizen* is or has been, or in order to discourage ~~him~~ *that citizen* or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because ~~he~~ *the citizen* is or has been lawfully participating in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life."

Section 11. Section 49-3-101, MCA, is amended to read:

"**49-3-101. Definitions.** As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) (a) "Physical or mental ~~handicap~~ *disability*" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental ~~handicap~~ *disability* includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental ~~handicap~~ *disability.* Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(4) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

(5) "Qualifications" means ~~such~~ qualifications ~~as~~ *that* are genuinely related to competent performance of the particular occupational task."

Section 12. Section 49-3-103, MCA, is amended to read:

"**49-3-103. Permitted distinctions.** (1) Nothing in this chapter prohibits any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental ~~handicap~~ *disability* when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39, chapter 29 or 30, by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter."

Section 13. Section 49-3-201, MCA, is amended to read:

"**49-3-201. Employment of state and local government personnel.** (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental ~~handicap~~ *disability*, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall ~~insure~~ *ensure* that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to ~~insure~~ *ensure* utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section."

Section 14. Section 49-3-202, MCA, is amended to read:

"**49-3-202. Employment referrals and placement services.** (1) All state and local governmental agencies, including educational institutions, ~~which~~ *that* provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental ~~handicap~~ *disability*, or national origin ~~shall~~ *must* be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing ~~such~~ *the* programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities."

Section 15. Section 49-3-203, MCA, is amended to read:

"**49-3-203. Educational, counseling, and training programs.** All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental ~~handicap~~ *disability*, or national origin. ~~Such~~ *The* programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of *persons who are* culturally deprived~~,~~ *or who are* educationally ~~handicapped,~~ or economically disadvantaged ~~persons~~. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest."

Section 16. Section 49-3-204, MCA, is amended to read:

"**49-3-204. Licensing.** (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental ~~handicap~~ *disability*, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of family services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental ~~handicap~~ *disability*, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization."

Section 17. Section 49-3-205, MCA, is amended to read:

"**49-3-205. Governmental services.** (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental ~~handicap~~ *disability*, or national origin.

(2) ~~No~~ *A* state or local facility may *not* be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan ~~which~~ *that* has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

(4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section."

Section 18. Section 49-3-206, MCA, is amended to read:

"**49-3-206. Distribution of governmental funds.** Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental ~~handicap~~ *disability*, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices."

Section 19. Section 49-3-207, MCA, is amended to read:

"**49-3-207. Nondiscrimination provision in all public contracts.** Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services ~~shall~~ *must* contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may *not* be ~~no~~ discrimination on the basis of race. color, religion, creed, political ideas, sex, age, marital status, physical or mental ~~handicap~~ *disability*, or national origin by the persons performing the contract."

Section 20. Section 49-4-101, MCA, is amended to read:

"**49-4-101. Discrimination prohibited.** It is unlawful to discriminate, in hiring or employment, against a person because of the *person's* physical ~~handicap~~ *disability* ~~of such person~~. There is no discrimination ~~where~~ *when* the nature or extent of the ~~handicap~~ *disability* reasonably precludes the performance of the particular employment or ~~where~~ *when* the particular employment may subject the ~~handicapped or his~~ *person with a disability or that person's* fellow employees to physical harm."

Section 21. Section 49-4-202, MCA, is amended to read:

"**49-4-202. Policy of the state.** It is the policy of the state to encourage and enable the blind, the visually ~~handicapped~~ *impaired*, the deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually ~~handicapped~~ *impaired*, the deaf, and the otherwise physically disabled ~~shall~~ *must* be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved."

Section 22. Section 49-4-211, MCA, is amended to read:

"**49-4-211. Right to use public places and accommodations.** (1) The blind, the visually ~~handicapped~~ *impaired*, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually ~~handicapped~~ *impaired*, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons."

Section 23. Section 49-4-212, MCA, is amended to read:

"**49-4-212. Access to housing accommodations.** Blind, visually ~~handicapped~~ *impaired*, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state."

Section 24. Section 49-4-301, MCA, is amended to read:

"**49-4-301. Who eligible for special parking permit.** (1) The department of justice shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical ~~handicap~~ *disability* that impairs ~~his~~ mobility when not in a motor vehicle;

(b) regardless of whether ~~he~~ *the person* holds a driver's license or owns a motor vehicle, has a permanent physical ~~handicap~~ *disability* that impairs ~~his~~ driving ability and impairs ~~his~~ mobility when not in a motor vehicle to such an extent that ~~he~~ *the person* needs to be driven by another person to a destination; or

(c) has a temporary physical ~~handicap~~ *disability* that impairs ~~his~~ driving ability or ~~his~~ mobility when not in a motor vehicle to such an extent that ~~he~~ *the person* needs to be driven by another person to a destination.

(2) ~~No one~~ *An* applicant may *not* receive more than one permit."

Section 25. Section 49-4-302, MCA, is amended to read:

"**49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces.** (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in *a* special parking ~~spaces~~ *space* reserved for ~~handicapped persons~~ *a person with a disability,* whether on public property or on private property available for public use.

(2) ~~No~~ *A* vehicle other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing ~~handicapped person's~~ license plate or placard *for a person with a disability that was* issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a ~~handicapped~~ person *with a disability* or one displaying a specially inscribed license plate issued under 61-3-332(10)(c) and conveying a 100% disabled veteran may *not* be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by ~~handicapped persons~~ *a person with a disability.*

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c) and parked in public places along public streets from any time limitation imposed upon parking ~~in such area~~ except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed

after September 30, 1985, and reserved for ~~handicapped persons~~ *a person with a disability* or ~~permitholders~~ *a permitholder* on ways of this state open to the public as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for ~~handicapped persons~~ *a person with a disability* must be at least 13 feet wide.

(d) A parking space reserved for ~~handicapped persons~~ *a person with a disability* must be designated by a sign showing the international symbol of accessibility and indicating that a permit is required. The sign must be attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space."

Section 26. Section 49-4-304, MCA, is amended to read:

"**49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle.** (1) The department of justice shall provide a special license plate under 61-3-332(10)(f) or a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the ~~handicapped~~ person *with a disability* in a vehicle other than the one to which ~~his~~ *a* special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide ~~to him~~ additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-303, a ~~handicapped~~ person *with a disability* who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the ~~handicapped~~ person *with a disability* is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a ~~handicapped~~ person *with a disability*."

Section 27. Section 49-4-305, MCA, is amended to read:

"**49-4-305. Expiration of permit.** A permit expires on:

(1) the death of the permittee; or

(2) certification by a physician that the permittee's physical ~~handicap~~ *disability* impairing ~~his~~ mobility no longer exists."

Approved April 19, 1993.

CHAPTER NO. 408

[HB 507]

AN ACT CREATING THE CRIMINAL OFFENSE OF ASSAULT UPON A SPORTS OFFICIAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Assault upon sports official.** (1) A person commits the offense of assault upon a sports official if, while a sports official is acting as an official at an athletic contest in any sport at any level of amateur or professional competition, the person:

(a) purposely or knowingly causes bodily injury to the sports official;

(b) negligently causes bodily injury to the sports official with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with the sports official; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in the sports official.

(2) A person convicted of assault upon a sports official shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45 apply to [section 1].

Approved April 19, 1993.

CHAPTER NO. 409

[HB 510]

AN ACT ALLOWING CITIES TO ELIMINATE THE REQUIREMENT THAT A MAYOR OR CITY MANAGER SERVE ON THE PARK BOARD; ALLOWING CITIES TO ELECT TO HAVE PARK BOARD PERSONNEL DECISIONS MADE BY THE MAYOR OR CITY MANAGER, PARK BOARD CLAIMS DECISIONS MADE BY THE CITY GOVERNING BODY, AND PARK BOARD WARRANTS COUNTERSIGNED BY THE MAYOR OR CITY MANAGER; AND AMENDING SECTIONS 7-16-4202, 7-16-4209, 7-16-4224, 7-16-4227, AND 7-16-4228, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-4202, MCA, is amended to read:

"**7-16-4202. Composition of park board.** *(1)* ~~The~~ *Except as provided in subsection (2), the* board of park commissioners ~~shall~~ *must* be composed of the mayor or city manager of the city and six other persons to be appointed by the mayor or city manager of the city with the approval of the city council.

(2) A city authorized by 7-16-4201 to create a board of park commissioners may elect to have its board of park commissioners consist of seven members appointed by the mayor or the city manager and may elect not to require its mayor or city manager to serve as a member of the board."

Section 2. Section 7-16-4224, MCA, is amended to read:

"**7-16-4224. Power of park board to employ persons and to make contracts.** (1) ~~The~~ *Except as provided in subsection (4), the* board of park commissioners ~~shall have~~ *has* the following powers and ~~be charged with the following~~ duties:

(a) to employ and discharge ~~workmen~~ *workers*, laborers, engineers, foresters, and others and to fix their compensation, which ~~shall~~ *may* not be less than the union scale of wages in force in each individual city of the first class; and

(b) to make all contracts necessary or convenient for carrying out any and all of the powers conferred and duties enjoined upon ~~said~~ *the* board by this part.

(2) All contracts made by ~~said~~ *the* board ~~shall~~ *must* be in the name of the city and ~~shall~~ *must* be signed by the city clerk and by the president or, in ~~his~~ *the president's* absence, by the vice-president of ~~said~~ *the* board.

(3) ~~No~~ *An* order or resolution authorizing the making of any contract ~~shall~~ *may not* be passed or adopted except by a yea and nay vote, which ~~vote shall~~ *must* be recorded in full in the minutes by the clerk.

(4) A city may elect to have all personnel decisions made by the mayor or city manager pursuant to the policies and regulations governing other city personnel decisions."

Section 3. Section 7-16-4209, MCA, is amended to read:

"**7-16-4209. Duties of board officers.** (1) ~~The~~ *Except as provided in 7-16-4228(2), the* president and, in ~~his~~ *the president's* absence, the vice-president shall preside at all meetings of the board and shall countersign all warrants issued by the board and perform ~~such~~ other duties as ~~shall be~~ *are* required and directed by the board.

(2) The city clerk, or ~~his~~ *the clerk's* designee, as ex officio clerk of the board of park commissioners, shall attend all meetings of ~~said~~ *the* board and keep correct minutes of all proceedings of ~~said~~ *the* board in a book to be provided for that purpose ~~by it~~, to be called the record of the board of park commissioners of the city of .... It ~~shall be~~ *is* the duty of the city clerk as ~~such~~ *the* clerk of the board of park commissioners to keep an accurate account of all transactions of ~~said~~ *the* board separate from other city accounts and to make and submit in writing to ~~said~~ *the* board at the first meeting in January in each year a report under oath showing in detail all the receipts and disbursements made by the board during the year. The report ~~shall~~ *must* be in duplicate, and after being

approved by ~~said~~ *the* board, one of ~~said~~ *the* duplicates ~~shall~~ *must* be filed in the office of the city clerk and one in the office of the city treasurer. The city clerk shall perform ~~such~~ other services as the board shall require. In the absence of the clerk, or ~~his~~ *the clerk's* designee, at any meeting held by the board, it shall designate one of its number as clerk pro tem to keep the minutes of ~~said~~ *the* meeting, which minutes ~~shall~~ *must* be delivered to the clerk to be transcribed into the record book of ~~said~~ *the* board."

Section 4. Section 7-16-4227, MCA, is amended to read:

"**7-16-4227. Allowance of claims.** (1) Subject to the provisions of subsection (2) *and except as provided in subsection (4)*, ~~said~~ *the* board of park commissioners shall, at its first regular meeting in each month, audit and allow all just claims against the city, liability for which ~~shall~~ *must* have been incurred by ~~said~~ *the* board.

(2) ~~No~~ *A* claim ~~shall~~ *may not* be audited or paid until an itemized account of ~~such~~ *the* claim, in writing and verified by the oath of the claimant or ~~his or its~~ *the claimant's* authorized agent, ~~shall have~~ *has* been filed in the office of the clerk of ~~said~~ *the* board.

(3) ~~No~~ *An* order or resolution providing for the payment or expenditure of money or creating an obligation in excess of the sum of $25 ~~shall~~ *may not* be passed or adopted except by a yea and nay vote, which ~~vote shall~~ *must* be recorded in full in the minutes by the clerk.

(4) A city may elect to have all claims allowed or disallowed by the governing body of the city."

Section 5. Section 7-16-4228, MCA, is amended to read:

"**7-16-4228. Disbursement of money.** ~~All~~ *(1) Except as provided in subsection (2), all* money paid out by the park commissioners under the provisions of this part ~~shall~~ *must* be by warrant drawn upon the city treasury, which ~~shall~~ *must* be signed by the city clerk and countersigned by the president or, in ~~his~~ *the president's* absence, by the vice-president of the board of park commissioners.

(2) A city may elect to have all warrants signed by the city clerk and countersigned by the mayor or city manager."

Approved April 19, 1993.

CHAPTER NO. 410

[HB 526]

AN ACT REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES AND THE DEPARTMENT OF REVENUE TO PROVIDE CERTAIN INFORMATION TO THE DEPARTMENT OF LABOR AND INDUSTRY FOR THE PURPOSE OF PREVENTING FRAUD AND ABUSE IN THE UNEMPLOYMENT COMPENSATION AND WORKERS' COMPENSATION PROGRAMS; AUTHORIZING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO REQUEST INFORMATION FROM THE DEPARTMENT OF LABOR AND INDUSTRY; AUTHORIZING THE

DEPARTMENT OF LABOR AND INDUSTRY TO REQUEST CERTAIN TAX INFORMATION FROM THE DEPARTMENT OF REVENUE; AND AMENDING SECTIONS 15-30-303, 53-2-105, AND 53-3-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Department to share eligibility data.** (1) The department shall make available to the unemployment compensation program of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for medicaid, aid to families with dependent children, and food stamps. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation program of the state and for no other purpose.

(2) The department shall make available to the unemployment compensation and the workers' compensation programs of the department of labor and industry all information contained in its files and records pertaining to eligibility of persons for low-income energy assistance, weatherization, and general relief. The information made available must include information on the amount and source of an applicant's income. The information received from the department must be used by the department of labor and industry for the purpose of determining fraud, abuse, or eligibility for benefits under the unemployment compensation and workers' compensation programs of the state.

(3) (a) Subject to federal restrictions, the department may request information from the department of labor and industry pertaining to unemployment, workers' compensation, and occupational disease benefits. If the department of labor and industry discovers evidence relating to fraud or abuse for unemployment, workers' compensation, or occupational benefits, the department of labor and industry may request information from the department of revenue pertaining to income as provided in 15-30-303(7)(c).

(b) The information must be used by the department for the purpose of determining fraud, abuse, or eligibility for benefits.

Section 2. Section 53-2-105, MCA, is amended to read:

"**53-2-105. Misuse of public assistance information unlawful.** ~~It shall be~~ *Except as provided in [section 1], it is* unlawful for any person, body, association, firm, corporation, or other agency to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of any lists or names for commercial or political purposes of any nature or for any purpose not directly connected with the administration of public assistance."

Section 3. Section 53-3-111, MCA, is amended to read:

"**53-3-111. Confidentiality.** (1) ~~Any~~ *Except as provided in [section 1],* personal information provided to or obtained by the county welfare department or the department for the purposes of this chapter is confidential.

(2) ~~Disclosure~~ *Except as provided in [section 1], disclosure* of confidential information concerning applicants for general relief is restricted to purposes

directly connected with the administration of programs administered by the department except as otherwise provided in this section.

(3) Confidential information may be released upon written consent of the applicant.

(4) Confidential information concerning an applicant may be released without prior consent if an emergency situation necessitates the release. The applicant must be informed of ~~such~~ *the* release as soon as practicable.

(5) Confidential information may be released without notice or consent for the purpose of fraud investigation, collection of child support, *the purposes of [section 1]*, and third-party medical recovery.

(6) Confidential information may be released if ~~so~~ directed by a court order."

Section 4. Section 15-30-303, MCA, is amended to read:

"**15-30-303. Confidentiality of tax records.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter or any other information secured in the administration of this chapter. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) The officers charged with the custody of ~~such~~ *the* reports and returns ~~shall~~ *may* not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding to which the department is a party under the provisions of this chapter or any other taxing act or on behalf of any party to any action or proceedings under the provisions of this chapter or ~~such~~ *the* other act when the reports or facts shown ~~thereby~~ *by the reports* are directly involved in ~~such~~ *the* action or proceedings, in either of which events the court may require the production of and may admit in evidence so much of ~~said~~ *the* reports or of the facts shown ~~thereby~~ *by the reports* as are pertinent to the action or proceedings and no more.

(3) ~~Nothing herein shall~~ *This section may not* be construed to prohibit:

(a) the delivery to a taxpayer or ~~his duly~~ *the taxpayer's* authorized representative of a certified copy of any return or report filed in connection with ~~his~~ *the taxpayer's* tax;

(b) the publication of statistics ~~so~~ classified ~~as~~ to prevent the identification of particular reports or returns and the items ~~thereof~~ *of particular reports or returns*; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based ~~thereon~~ *on the report or return* or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 and 15-30-322.

(4) Reports and returns ~~shall~~ *must* be preserved for 3 years and ~~thereafter~~ until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) ~~of this section~~ shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year, or both, at the discretion of the court, and if the offender ~~be~~ *is* an officer or employee of the state, ~~he~~ *the offender* shall be dismissed from office and ~~be~~ *is* incapable of holding any public office in this state for a period of 1 year ~~thereafter~~.

(6) This section may not be construed to prohibit the department from providing information from employers' payroll withholding reports to:

(a) the department of labor and industry to prevent and detect fraud and abuse under the unemployment compensation program; or

(b) the state fund to prevent and detect fraud and abuse under the workers' compensation program.

~~(6)~~*(7)* Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either ~~such~~ officer to inspect the return of income of any individual or may furnish to ~~such~~ *the* officer or ~~his~~ *the officer's* authorized representative an abstract of the return of income of any individual or supply ~~him~~ *the officer* with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any individual, but ~~such~~ *the* permission ~~shall~~ *must* be granted or ~~such~~ *the* information furnished to ~~such~~ *the* officer or ~~his~~ *the officer's* representative only if the statutes of the United States or of ~~such~~ *the* other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

~~(7)~~*(8)* Further, notwithstanding any of the provisions of this section, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

~~(c)~~*(d)* to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses; and

~~(d)~~*(e)* to the board of regents information required under 20-26-1111."

Section 5. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 53, chapter 2, part 2, and the provisions of Title 53, chapter 2, part 2, apply to [section 1].

Approved April 19, 1993.

CHAPTER NO. 411

[HB 549]

AN ACT CLARIFYING THE USE OF CERTAIN FEES BY THE SECRETARY OF STATE; REVISING THE DEPOSIT OF THE FEES; CLARIFYING THAT FEES ARE NOT REFUNDABLE; AMENDING SECTIONS 2-4-313, 2-6-103, AND 30-9-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-313, MCA, is amended to read:

"**2-4-313.** *(Temporary)* **Distribution, costs, and maintenance.** (1) The secretary of state shall distribute copies of ARM and supplements or revisions thereto to the following:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana, one copy;

(i) legislative council, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of ARM, including supplements or revisions thereto.

Such persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall also maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions thereto and the register available to any person at prices fixed in accordance with subsection (4).

(4) The secretary of state, in consultation with the administrative code committee, shall determine the cost of supplying copies of ARM and supplements or revisions thereto and the register to persons not listed in subsection (1). The cost shall be the approximate cost of publication of such copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register.

(5) The secretary of state shall deposit fees he collects in the amount of $20,000 for fiscal year 1993 in the general fund on or before June 30, 1993, and shall deposit all other fees in an account within the state special revenue fund created for paying the expenses of publication of ARM and the register.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. He shall fix, in consultation with the administrative code committee, the fee to cover the costs of supplying copies of ARM and supplements or revisions thereto and the register to the persons listed in subsection (1). The cost shall be the approximate cost of publication of such copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register. *(Terminates July 1, 1993—sec. 3, Ch. 6, Sp. L. January 1992.)*

2-4-313. *(Effective July 1, 1993)* **Distribution, costs, and maintenance.** (1) The secretary of state shall distribute copies of ARM and supplements or revisions ~~thereto~~ *to ARM* to the following:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana, one copy;

(i) legislative council, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of ARM, including supplements or revisions ~~thereto~~ *to ARM*. ~~Such~~ *The designated* persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall ~~also~~ maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions ~~thereto~~ *to ARM* and the register available to any person at prices fixed in accordance with subsection (4).

(4) The secretary of state, in consultation with the administrative code committee, shall determine the cost of supplying copies of ARM and supplements or revisions ~~thereto~~ *to ARM* and the register to persons not listed in subsection (1). The cost ~~shall~~ *must* be the approximate cost of publication of ~~such~~ *the* copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions ~~thereto~~ *to ARM* and the register. *Fees are not refundable.*

(5) The secretary of state shall deposit all fees ~~he collects~~ in ~~an account within the state~~ *a* ~~special revenue~~ *proprietary* fund ~~created for paying the expenses of publication of ARM and the register~~.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. ~~He~~ *The secretary of state* shall fix, in consultation with the administrative code committee, the fee to cover the costs of supplying copies of ARM and supplements or revisions ~~thereto~~ *to ARM* and the register to the persons listed in subsection (1). The cost ~~shall~~ *must* be the approximate cost of publication of ~~such~~ *the* copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions ~~thereto~~ *to ARM* and the register."

Section 2. Section 2-6-103, MCA, is amended to read:

"**2-6-103. Filing and copying fees.** (1) The secretary of state, for services performed in ~~his~~ *the* office, shall charge and collect the following fees:

(a) for each copy of any law, resolution, record, or other document or paper on file in his office, except corporate papers, 40 cents per folio or, if the copy is made by any process of reproduction by photographic, photostatic, or similar process, the fee shall be 50 cents per page or fraction ~~thereof~~ *of a page*;

(b) for affixing certificate and seal, $2;

(c) for receiving and recording each official bond, $10;

(d) for each commission or other document signed by the governor and attested by the secretary of state (pardon, military commissions, and extraditions excepted), $5;

(e) for issuing each certificate of record, $5;

(f) for filing and recording miscellaneous papers, records, or other documents, $5;

(g) for filing and recording any other paper not otherwise ~~herein~~ provided for, $5;

(h) for filing and recording any paper, record, or other document or other than a standard form when recommended by the secretary of state, $5;

(i) when a copy of any law, resolution, record, or other document or paper on file in the office of the secretary of state is presented for comparison and certification, 10 cents per folio must be charged and collected for proofreading the same.

(2) ~~No~~ *A* member of the legislature or state or county officer may *not* be charged for any search relative to matters appertaining to the duties of ~~his~~ *the member's* office or for a certified copy of any law or resolution passed by the legislature relative to ~~his~~ *the member's* official duties.

(3) The secretary of state may not charge a fee, other than the fees authorized in 2-6-110, for providing electronic information.

(4) Fees ~~shall~~ *must* be collected in advance and when collected by the secretary of state *are not refundable and* ~~shall~~ *must* be deposited pursuant to 17-6-105.

(5) Within 120 days following the end of each fiscal year, the secretary of state shall deposit into the general fund from the proprietary fund any revenue collected in the proprietary fund during the prior fiscal year that is in excess of the amount appropriated from the proprietary fund for the current year."

Section 3. Section 30-9-403, MCA, is amended to read:

"**30-9-403. What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system.** (1) (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of 30-9-402 and subsection (1)(a), provided that ~~he receives~~ the original document *is received* within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (1)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (1)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1)(b), the filing of the facsimile copy is void.

(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(2) Except as provided in ~~subsections~~ *subsection* (6) ~~and (11)~~, a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until 60 days after termination of the insolvency proceedings or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, ~~whereupon~~ *after which* it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to ~~such~~ *the* lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if ~~he~~ *the filing officer* has retained a microfilm or other photographic record or a record produced according to rules adopted by the secretary of state, or in other cases after 1 year after the lapse. The filing officer shall so arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if ~~he~~ *the filing officer* physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing. The filing officer shall hold the statement or a microfilm or other photographic copy or a copy produced according to rules adopted by the secretary of state for public

inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing shall be set pursuant to subsection ~~(13)~~*(12)*.

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if ~~he~~ *the secured party* were the mortgagee ~~thereunder~~ *under the financing statement*~~;~~ or, if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9).

(9) Within 1 working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that ~~he~~ *the secretary of state* shall establish. The computer system must allow access to financing statement information by any type of communications which conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document

which does not specifically indicate the county of the principal debtor's residence on its face.

(11) ~~When a financing or continuation statement covers property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents.~~

~~(12)~~ Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

~~(13)~~*(12)* The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit in ~~the general~~ *an enterprise* fund in the state treasury all fees ~~he collects~~ *collected.* The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved April 19, 1993.

CHAPTER NO. 412

[HB 565]

AN ACT ESTABLISHING THE CHARLES M. RUSSELL TRAIL.

WHEREAS, Charles M. Russell, preeminent western artist, is celebrated for his historic portrayals of the West and had strong ties to the Judith Basin country of central Montana; and

WHEREAS, the Judith Basin, the heartland of Montana, is the setting for many of Russell's paintings from the artist's early days with Jake Hoover, when Russell joined in the Judith Basin roundups and colorfully captured the western epic with paintings of buffalo, Native Americans, trappers, cattle roundups and depicted the high times in Stanford and the quiet days in Utica; and

WHEREAS, there is a growing national and international interest and fascination with western history, and U.S. Highway 87, State Highway 200, crosses the heart of the Judith Basin between the majestic Highwood Mountains and the historic Little Belt Mountains, connecting the C.M. Russell Museum in Great Falls with historic Lewistown and providing outstanding opportunities to experience the West as it is and as it was; and

WHEREAS, there is significant local interest in preserving and interpreting the rich history of this area that once served as the common hunting ground for Montana tribes and in developing responsible tourism in order to help diversify local economies and provide satisfying experiences for visitors; and

WHEREAS, there are numerous attractions of interest to local residents and visitors, including museums in Lewistown, Utica, Stanford (where Snowdrift, the famed white wolf is featured), Belt, and Great Falls, and expansive vistas of the country Russell loved, preserved, and portrayed so beautifully, including Square Butte, the Hoover cabin, Russell Point, and Yogo, home of the world's most striking sapphires.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Charles M. Russell trail.** The portion of U.S. highway 87, state highway 200, between Great Falls and Lewistown and continuing to Jordan and the portion of state secondary road 543, connecting U.S. highway 87, state highway 200, to the Charles M. Russell National Wildlife Refuge, are established as the Charles M. Russell trail.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 60, chapter 1, part 2, and the provisions of Title 60, chapter 1, part 2, apply to [section 1].

Approved April 19, 1993.

CHAPTER NO. 413

[HB 606]

AN ACT REVISING THE WIDTH RESTRICTIONS APPLICABLE TO COMMERCIAL HAY GRINDERS; AND AMENDING SECTION 61-10-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-102, MCA, is amended to read:

"**61-10-102. Width.** (1) Except as provided in subsection (2), ~~no~~ *a* vehicle, including a bus, unloaded or with load, may *not* have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay, moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than 12 feet wide, it must be preceded by ~~flagman~~ *flag vehicle* escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations. Lights which meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by ~~flagman~~ *flag vehicle* escorts.

(b) A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

(c) Subsection (1) does not apply to a commercial hay grinder moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to operations of the commercial hay grinder. A commercial hay grinder exceeding 102 inches in width must have a permit issued under 61-10-124. If the commercial hay grinder is more than 12 feet wide, it must be preceded by flag vehicle escorts to warn other highway users. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the commercial hay grinder. Movement of a commercial hay grinder that does not exceed 138 inches in width may occur on any day of the week, including holidays, and is restricted to movement during daylight hours. Movement of a commercial hay grinder may not exceed the posted speed limit, including the speed limit on an interstate highway.

(3) A safety device that the department determines by rule adopted pursuant to 61-9-504 to be necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1)."

Approved April 19, 1993.

CHAPTER NO. 414

[HB 609]

AN ACT TRANSFERRING THE INVESTIGATIVE FUNCTIONS RELATING TO ALCOHOLIC BEVERAGE LICENSING AND ENFORCEMENT, TOBACCO, AND PUBLIC ASSISTANCE FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF JUSTICE; GENERALLY REVISING THE LAWS TO CONFORM TO THE TRANSFER OF FUNCTIONS TO THE DEPARTMENT OF JUSTICE; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 16-1-106, 16-1-302, 16-1-303, 16-1-304, 16-4-207, 16-4-402, 16-4-403, 16-4-404, 16-4-406, 16-6-101, 16-6-102, 16-6-103, 16-6-106, 16-6-107, 16-6-108, 16-6-109, 16-11-103, 16-11-118, 16-11-124, 16-11-141, 16-11-142, 16-11-147, AND 16-11-149, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 3 and 28] authorize the department of justice to adopt rules to carry out the investigative functions transferred to the department of justice from the department of revenue under the provisions of this bill. The investigative functions that rulemaking may address are limited to the factfinding responsibilities of investigators and the search and seizure functions associated with illegally stored or transported alcoholic beverages or tobacco products. It is the intent of the legislature to consolidate investigative functions under the supervision of the state attorney general.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1-106, MCA, is amended to read:

"**16-1-106. Definitions.** As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Beer importer" means a person other than a brewer who imports malt beverages.

(6) "Brewer" means a person who produces malt beverages.

(7) "Department" means the department of revenue, *unless otherwise specified.*

(8) "Immediate family" means a spouse, dependent children, or dependent parents.

(9) "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(10) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(11) "Liquor" means an alcoholic beverage except beer and table wine.

(12) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared therefrom and with or without other wholesome products suitable for human food consumption.

(13) "Package" means a container or receptacle used for holding an alcoholic beverage.

(14) "Posted price" means the retail price of liquor and table wine as fixed and determined by the department and in addition ~~thereto~~ an excise and license tax as provided in this code.

(15) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50% of alcohol by volume.

(16) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(17) "Rules" means rules ~~published~~ *adopted* by the department *or the department of justice* pursuant to this code.

(18) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(19) "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling liquor and table wine.

(20) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

(21) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler or table wine distributor, located at a site in Montana other than the site of ~~such~~ *the* beer wholesaler's or table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(22) "Table wine" means wine as defined below which contains not more than 16% alcohol by volume.

(23) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(24) "Warehouse" means a building or structure located in Montana owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(25) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

Section 2. Section 16-1-302, MCA, is amended to read:

"**16-1-302. Functions, powers, and duties of department.** The department has the following functions, duties, and powers:

(1) to buy, import, have in its possession for sale, and sell liquors and table wine ~~in the manner set forth in this code~~;

(2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;

(3) to determine the municipalities where state liquor stores are to be established throughout the state and the situation of the stores within these municipalities;

(4) to lease, furnish, and equip any building or land required ~~for the operation of~~ *to administer its duties under* this code;

(5) to buy or lease ~~all~~ plants and equipment ~~it may consider~~ necessary ~~and useful in carrying into effect the objects and purposes of~~ *to administer its duties under* this code;

(6) to employ store managers and ~~also every officer, investigator, clerk, or~~ other ~~employee~~ *employees* required ~~for the operation or carrying out of~~ *to administer* this code and to dismiss them, ~~fix their salaries or remuneration,~~ assign them their title, *and* define their respective duties and powers~~;~~ and to ~~engage~~ *contract with the department of justice for investigative services or to contract for* the ~~service~~ *services* of experts and persons engaged in the practice of a profession, if ~~considered~~ appropriate;

(7) to determine the nature, form, and capacity of all packages to be used for containing liquor kept or sold under this code;

(8) to grant and issue licenses under ~~and in pursuance to~~ this code;

(9) to place special restrictions on the use of a particular license, which must be endorsed upon the face of the license, if the special restrictions are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions are agreed to by the licensee;

(10) without limiting or being limited by the foregoing, to do all things ~~considered~~ necessary ~~or advisable by the department for the purpose of carrying into effect the provisions of~~ *to administer* this code or ~~the~~ rules ~~made under the provisions of this code~~."

Section 3. Section 16-1-303, MCA, is amended to read:

"**16-1-303. Department rules.** (1) The department *and the department of justice* may make ~~such~~ rules not inconsistent with this code ~~as to the department seem~~ necessary ~~for carrying out the provisions of~~ *to efficiently administer* this code ~~and for the efficient administration thereof~~.

(2) ~~Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared that the power of~~ *Rules made by* the department ~~to make rules in the manner set out in that subsection shall extend to and~~ *may* include *but are not limited to* the following:

(a) regulating the equipment and management of state stores and warehouses in which liquor or table wine is kept or sold and prescribing the books and records to be kept ~~therein~~;

(b) prescribing the duties of ~~the~~ *department* employees ~~of the liquor division~~ and regulating their conduct while in the discharge of their duties;

(c) governing the purchase of liquor and table wine and the furnishing of liquor and table wine to state stores ~~established under this code~~;

(d) determining the classes, varieties, and brands of liquor and table wine to be kept for sale at any state store;

(e) prescribing~~, subject to this code,~~ the hours during which state liquor stores ~~shall~~ *must* be ~~kept~~ open for the sale of alcoholic beverages;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety, or brand of liquor and table wine kept for sale ~~under this code~~;

(g) prescribing forms to be used for the purpose of this code or ~~of~~ the rules ~~made thereunder~~ and the terms and conditions ~~in~~ *for* permits and licenses issued and granted under this code;

(h) prescribing the form of records of purchase of liquor and table wine and the reports to be made ~~thereon~~ to the ~~division~~ *department* and providing for inspection of the records ~~so kept~~;

(i) prescribing the manner of giving and serving notices required by this code or the rules ~~thereunder~~;

(j) prescribing the fees payable ~~in respect of~~ *for* permits and licenses issued under this code for which no fees are prescribed in this code and prescribing the fees for anything done or permitted to be done under the rules ~~made thereunder~~;

(k) prescribing, subject to the provisions of this code, the conditions and qualifications necessary for the obtaining of alcoholic beverage licenses and the books and records to be kept and the returns to be made by the licensees ~~and providing for the inspection of such licensed premises~~;

(l) specifying and describing the place and the manner in which alcoholic beverages may be lawfully kept or stored;

(m) specifying and regulating the time ~~and periods~~ when and the manner~~, methods, and means~~ by which vendors and brewers ~~shall~~ *may* deliver alcoholic beverages under this code and the time ~~and periods~~ when and the manner~~, methods, and means~~ by which alcoholic beverages, under this code, may be lawfully conveyed or carried;

(n) governing the conduct, management, and equipment of any premises licensed to sell alcoholic beverages under this code;

(o) providing for the imposition and collection of taxes and making rules respecting returns, accounting, and payment of the taxes to the department.

(3) *The department of justice may adopt rules to administer and implement its responsibilities under this title, including but not limited to rules providing for the inspection of licensed premises or premises where the sale of liquor has been proposed.*

(4) Whenever ~~it is provided in~~ this code *provides* that ~~any~~ *an* act~~, matter, or thing~~ may be done if ~~permitted or~~ authorized by ~~the~~ rules ~~or may be done in accordance with the rules or as provided by the rules~~, the department, subject to the restrictions ~~set out~~ in subsection (1) ~~hereof~~, ~~shall have the power to~~ *may* make rules respecting ~~such~~ *the* act~~, matter, or thing~~."

Section 4. Section 16-1-304, MCA, is amended to read:

"**16-1-304. Prohibited acts ~~within division~~.** (1) ~~No officer or~~ *An* employee of the ~~liquor division, including those engaged in the sale of liquor at the various~~ *department involved in the operation of the state warehouse or* state liquor ~~or table wine~~ stores, *the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the department of justice directly involved with the investigation of matters concerning the manufacture, sale, and distribution of alcoholic beverages* may *not* be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor or table wine, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee ~~and whether~~ for ~~his~~ *the employee's* own benefit or in a fiduciary capacity for some other person.

(2) ~~No member or employee of the division or any~~ *An* employee of the state may *not* solicit or receive directly or indirectly any commission, remuneration, or gift ~~whatsoever~~ from any person or corporation ~~having sold,~~ selling~~,~~ or offering liquor or table wine for sale to the state ~~or division~~ pursuant to this code.

(3) ~~No~~ *A* person selling or offering for sale to or purchasing liquor or table wine from the state ~~liquor division~~ may ~~either~~ *not* directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the ~~division, to any employee of the~~ state~~,~~ or to anyone on behalf of ~~such~~ *the* member or employee.

(4) The prohibition contained in subsection (3) ~~of this section~~ does not prohibit the ~~division~~ *state* from receiving samples of liquor or table wine for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any liquor or table wine to the *state of* Montana ~~liquor division~~ shall submit, without cost to the ~~division~~ *state* prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of ~~such~~ *the* merchandise to the ~~division~~ *state.*

(b) When a brand of liquor or table wine has been accepted for testing by the ~~division~~ *state*, the ~~division~~ *state* shall forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The ~~division~~ *state* shall maintain written records of all samples received. The records ~~shall~~ *must* show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the ~~division's~~ *state's* action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) ~~No liquor~~ *Liquor,* wine, or other alcoholic beverage may *not* be withdrawn from the regular warehouse inventory or from the state liquor stores ~~of the Montana liquor division~~ for any purpose other than sale at the prevailing state retail prices or for destroying damaged or defective merchandise. The ~~division~~ *state* shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse or state store merchandise.

(6) The ~~division~~ *state* may not require a company that manufactured, distilled, rectified, bottled, or processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to maintain minimum amounts of liquor or wine in the state warehouse while the distiller or winery retains ownership of the product.

(7) The ~~division~~ *state* may not require a company that bottled and sold less than 100,000 wine gallons of table wine nationwide in the previous calendar year to maintain minimum amounts of table wine in the state warehouse while the company retains ownership of the product."

Section 5. Section 16-4-207, MCA, is amended to read:

"16-4-207. Notice of application — investigation — publication — protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer a retail license, the department shall *review the application for completeness and to determine whether the applicant or the premises to be licensed meets criteria provided by law. The department shall request that the department of justice* investigate the application as provided in 16-4-402. If after the investigation the department does not discover a basis to deny the application, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail license and that protests against the issuance of a license to the applicant by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is given that on the .... day of ...., 19......, one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of .... counties may protest against the issuance of the license. Protests may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., 19.........

Dated .... Signed ....

ADMINISTRATOR

(2) Each applicant shall, at the time of filing ~~his~~ *an* application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) If the administrator receives no written protests, the department may issue or transfer the license without holding a public hearing. If written protests by a person who has extended credit to the transferor or residents of the county from which the application comes or adjoining Montana counties against the

issuance or transfer of the license are received, the department shall hold a public hearing."

Section 6. Section 16-4-402, MCA, is amended to read:

"**16-4-402. Application — investigation.** (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department. The application must be verified by the affidavit of the person making it before a person authorized to administer oaths.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall ~~within 30 days~~ *request that the department of justice* make a thorough investigation of all matters relating to the application. ~~The~~ *Based on the results of the investigation, the* department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) ~~his~~ *the applicant's* premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-204(2) or a special permit provided in 16-4-301.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) If, within 30 days of receiving the completed application, the department finds no basis for denying the application, the department shall proceed to publish the notice of the application as required by 16-4-207."

Section 7. Section 16-4-403, MCA, is amended to read:

"**16-4-403. Fingerprints required of licensees and mortgagees.** All applicants for a Montana retail all-beverages or beer license, including corporate officers and managers, may be required by the department ~~when applying for said license~~ *or the department of justice* to have their fingerprints taken for use in determining the eligibility of the applicant for ~~such~~ *the* license. This provision ~~shall also apply~~ *applies* to all who file a security interest against ~~such~~ *the* license except ~~as to~~ banks, savings and loan institutions, and licensed lending agencies."

Section 8. Section 16-4-404, MCA, is amended to read:

"**16-4-404. Protest period — contents of license — posting — privilege — transfer.** (1) ~~No~~ *A* license may *not* be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code ~~shall~~ *must* state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited upon request to any authorized representative of the department *or the department of justice* or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of a deceased licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) (a) A licensee may apply to the department for a transfer of the license to different premises if:

(i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

(ii) the lease of the licensed premises has expired;

(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord; or

(iv) the licensee has proposed removal of the license to premises that are as substantially suited for the retail alcoholic beverages business as the premises proposed to be vacated.

(b) The department may, after notice and opportunity for protest, permit a transfer in the cases specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the licensee applying for the transfer and is justified by public convenience and necessity. The department may not allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to be made.

(6) Upon a bona fide sale of the business operated under a license, the license may be transferred to a qualified purchaser. ~~No~~ *A* transfer of a license to a person or location is *not* effective unless approved by the department. A licensee or transferee or proposed transferee who operates or attempts to operate under a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the license in writing, is considered to be operating without a license and the license affected may be revoked or suspended by the department. The department may, within its discretion, permit a qualified purchaser to operate the business to be transferred pending

final approval if there has not been a change in location and the application for transfer has been filed with the department.

(7) Except as provided in subsections (2) through (6) and 16-4-204, ~~no~~ *a* license may *not* be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the department, must be endorsed on the license."

Section 9. Section 16-4-406, MCA, is amended to read:

"**16-4-406. Renewal — suspension or revocation — penalty.** (1) The department may upon its own motion and shall upon a written, verified complaint of a person *request that the department of justice* investigate the action and operation of a brewer, wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after *receiving the results of the department of justice's* investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee;

(b) proceed to revoke the license of the licensee;

(c) suspend the license for a period of not more than 3 months;

(d) refuse to grant a renewal of the license after its expiration; or

(e) impose a civil penalty not to exceed $1,500.

(3) If the department, after *receiving the results of the department of justice's* investigation, has reasonable cause to believe that a licensee does not meet the eligibility criteria established by this code or rules of the department or that the premises are not suitable pursuant to the provisions of this code or rules of the department, it may, in its discretion, proceed to revoke the license of the licensee or it may refuse to grant renewal of the license subject to the opportunity of the licensee to contest the action at a hearing under the Montana Administrative Procedure Act."

Section 10. Section 16-6-101, MCA, is amended to read:

"**16-6-101. Employment of investigators and prosecuting officers.** *(1)* The department *of justice* may appoint one or more investigators or prosecuting officers who, under its direction, shall perform ~~such~~ *the* duties ~~as~~ it may require ~~and who shall be paid such salaries, fees, and expenses as the department may fix~~.

(2) When requested by the department, the department of justice shall:

(a) investigate the character of an applicant applying for the issuance or transfer of a liquor license and, if applicable, the suitability of a premises or proposed premises to be used in connection with a liquor license;

(b) investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of alcoholic beverages; and

(c) serve as a liaison to local law enforcement authorities in matters relating to alcoholic beverage law enforcement."

Section 11. Section 16-6-102, MCA, is amended to read:

"**16-6-102. Search warrants.** Upon information on oath by ~~any~~ *a department of justice* investigator appointed under this code or by ~~any~~ *a* peace officer showing reasonable cause to believe that alcoholic beverages are unlawfully kept, ~~or had~~ or kept ~~or had~~ for unlawful purposes, in any ~~building or~~ premises, ~~it shall be lawful for any~~ *a* court ~~by~~ *may issue a* warrant to authorize ~~and empower~~ the investigator or peace officer or any other person named ~~therein~~ *in the warrant* to enter and search the ~~building or~~ *entire* premises ~~and every part thereof and for that purpose~~, *including* to break open any door, lock, ~~or~~ fastening ~~of the building or premises or any part thereof or any~~, closet, cupboard, box, or other receptacle ~~therein which~~ *on the premises that* might contain alcoholic beverages."

Section 12. Section 16-6-103, MCA, is amended to read:

"**16-6-103. Examination of retailer's premises and carriers' cars and aircraft.** The department *of justice* or ~~any duly authorized~~ *its* representative ~~thereof~~ or ~~the sheriff of any county shall have the right~~ *a peace officer may* at any time ~~to make an examination of~~ *examine* the premises of a retail licensee ~~as~~ to *determine* whether the law of Montana and the rules of the department *or the department of justice* are being complied with and ~~shall also have a right to~~ *also may* inspect cars or aircraft of any common carrier system licensed under this code."

Section 13. Section 16-6-106, MCA, is amended to read:

"**16-6-106. When force may be used in seizure of alcoholic beverages — forfeiture — hearing.** (1) ~~Where~~ *If an* alcoholic beverage is found by ~~any~~ *a department of justice* investigator or *a* peace officer ~~on any premises or~~ in any place in ~~such~~ quantities ~~as to~~ *that* satisfy the investigator or peace officer that ~~such~~ *the* alcoholic beverage is being ~~had or~~ kept contrary to ~~any of the provisions of~~ this code, ~~it shall be lawful for~~ the investigator or peace officer ~~to forthwith~~ *may* seize and remove, by force if necessary, any alcoholic beverage found and the packages in which the alcoholic beverage was ~~had or~~ kept and immediately turn the alcoholic beverage over to the department.

(2) The department shall determine if the seized alcoholic beverage is suitable for resale *in a state liquor store.* ~~When~~ *If* the department has determined that the seized alcoholic beverage is suitable for resale, the department shall commence an administrative action against the owner of the alcoholic beverage. All seized alcoholic beverages found to be unsuitable for sale *in a state liquor store* must be destroyed by the department.

(3) A notice and opportunity for hearing must be given in accordance with the Montana Administrative Procedure Act, except that the notice must be published in the county where the alcoholic beverage was seized if a newspaper is published in the county.

(4) The notice must show the date and place of seizure, the name of the person or persons actually or apparently in possession or control of the alcoholic beverage if ~~such~~ *the* person was present at the time of the seizure, and the reasons the department claims the right to the possession of the alcoholic beverage. The notice must also demand that all persons who claim any right to the possession of the alcoholic beverage show the nature of their claim or claims, that the hearing examiner declare the alcoholic beverage contraband, and that the hearing examiner order the alcoholic beverage be forfeited to the state ~~of Montana~~."

Section 14. Section 16-6-107, MCA, is amended to read:

"**16-6-107. Disposal of forfeited alcoholic beverages — report.** (1) ~~In every case in which~~ *If* a court or hearing examiner ~~makes any order for~~ *orders* the forfeiture of alcoholic beverages under ~~any of the provisions of~~ this code ~~and in every case in which any~~ *or if a* claimant to an alcoholic beverage under ~~the provisions of~~ 16-6-105 or 16-6-106 fails to establish ~~his claim and~~ *the claimant's* right ~~thereto~~ *to the alcoholic beverage,* the alcoholic beverage in question and the packages in which the alcoholic beverage is kept ~~shall~~ *must* be delivered to the department. The department shall determine the market value of each forfeited alcoholic beverage ~~which is~~ found to be suitable for sale in the state liquor stores and shall pay the amount ~~so~~ determined to the state treasurer after deducting ~~therefrom the~~ *any* expenses ~~necessarily~~ incurred by the department for transporting the forfeited alcoholic beverage to the state liquor ~~warehouses~~ *warehouse.* The alcoholic beverage suitable for sale ~~shall~~ *in a state liquor store must* be taken into stock by the department and sold under the provisions of this code. All alcoholic beverages found to be unsuitable for sale in state liquor stores ~~shall~~ *must* be destroyed by the department.

(2) ~~In every case in which~~ *If* an alcoholic beverage is seized by a peace officer, ~~it~~ *the officer* shall ~~be his duty to make or cause to be made~~ *report* to the department ~~a report~~ in writing ~~of~~ the particulars of ~~such~~ *the* seizure."

Section 15. Section 16-6-108, MCA, is amended to read:

"**16-6-108. Inspection of carriers' records.** For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this code, the department *or the department of justice* or any person appointed by ~~it~~ *either department* in writing for the purpose may inspect the freight and express books and records and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state."

Section 16. Section 16-6-109, MCA, is amended to read:

"**16-6-109. Unlawful for carrier to refuse inspection of records.** Every railway company, express company, or common carrier and every officer or employee of ~~any such~~ *a* company or common carrier who neglects or refuses to produce and submit for inspection any book, record, or document referred to in 16-6-108 when requested to do so by the department *or the department of justice* or by a person ~~so~~ appointed by ~~it shall be~~ *either department is* guilty of an offense against this code."

Section 17. Section 16-11-103, MCA, is amended to read:

"**16-11-103. Powers of department.** (1) The department shall have the power and authority to prescribe all rules not inconsistent with the provisions of this part for the detailed and efficient administration ~~thereof~~ *of this part*. All ~~such~~ rules and orders promulgated ~~shall~~ *must* be published promptly and a copy distributed to each wholesale licensee. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by part 2 of this chapter.

(2) The department and its duly authorized agents are empowered to conduct ~~investigations,~~ inquiries~~,~~ and hearings ~~hereunder~~, and any member ~~thereof~~ *of the department* or any agent is authorized to administer oaths and take testimony under oath relative to the matter of inquiry ~~or investigation~~. The director or ~~his~~ *an* authorized agent may subpoena witnesses and require the production of books, papers, and documents pertinent to ~~such~~ *the* inquiry. The director or ~~his~~ *the director's* agent, after the hearing, shall make findings and an order in writing, which findings and order ~~shall~~ *must* be filed in the office of the department and open for public inspection.

(3) The department is ~~hereby~~ authorized to *contract with the department of justice for the investigations required under this part. The department may* appoint ~~such~~ additional assistants and ~~to~~ establish an additional division of cigarette enforcement as ~~may be~~ required to carry out the provisions of this part.

(4) The department ~~is hereby~~ *and the department of justice are* authorized to employ ~~such~~ clerical and field assistants ~~as may be~~ necessary to properly administer the provisions of this part."

Section 18. Section 16-11-118, MCA, is amended to read:

"**16-11-118. Records of tax meter users and stampers.** All tax meter users and stampers shall keep for 5 years all invoices of cigarettes purchased and imported by them, all receipts issued by them and insignia purchased, and an accurate record of all sales of cigarettes by the tax meter users or stampers, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and destination. The tax meter users or stampers shall permit the department *and the department of justice* and ~~its~~ *their* assistants, authorized agents, or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine whether the tax meter machine or tax stamp-applying machine has been used as required or the insignia required by this part had been purchased and used or to determine the amount of ~~such~~ *the* tax as may be due or unpaid."

Section 19. Section 16-11-124, MCA, is amended to read:

"**16-11-124. Disposition of license fees.** (1) All license fees collected under the provisions of this part ~~shall~~ *must* be deposited with the state treasurer in the general fund.

(2) Each biennium, there ~~shall~~ *must* be appropriated to the department *and the department of justice* an amount justified and reasonable to operate the ~~department's~~ cigarette enforcement ~~division~~ *responsibilities of each department.*

(3) All expenses charged against the appropriation ~~shall~~ *must* be justified by itemized claims coupled with standard accounting reports."

Section 20. Section 16-11-141, MCA, is amended to read:

"**16-11-141. Powers of arrest — search and seizure.** The department *of justice is a criminal justice agency.* ~~shall administer and enforce this part, and the director and his~~ *Designated* agents *of the department of justice* have ~~the powers of~~ peace ~~officers~~ *officer status* and may arrest any person violating any provision of this part, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence any unlawful or unlawfully possessed license, stamp, or insignia found in the possession of any person or in any place."

Section 21. Section 16-11-142, MCA, is amended to read:

"**16-11-142. Duties of county attorneys and peace officers.** In the enforcement of this part, the department *of justice* may call to its assistance, and it ~~shall be~~ *is* the duty of any county attorney or any peace officer in this state to assist the department *of justice* in the enforcement of this part."

Section 22. Section 16-11-147, MCA, is amended to read:

"**16-11-147. Seizure and forfeiture of unlawful cigarettes.** (1) Any motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department *of justice*, its ~~duly~~ authorized agent, any sheriff or deputy, or *any* other peace officer and is subject to forfeiture ~~in the manner~~ *as* provided in subsection (2).

(2) Upon the seizure of any cigarettes and within 2 days ~~thereafter~~ *after seizure*, the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, if known, and file a copy of the inventory with the department. The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in 46-5-305, 46-5-311, and 46-5-312."

Section 23. Section 16-11-149, MCA, is amended to read:

"**16-11-149. Hearings before state tax appeal board.** Any person aggrieved by any action of the department or its ~~duly~~ authorized agents under the provisions of this part may apply to the state tax appeal board, in writing, for a hearing or rehearing ~~thereon~~ within 30 days after ~~such~~ *the* action of the department or its authorized agents. The board shall promptly consider ~~such~~ *the* application, set ~~same~~ *the application* for hearing, and notify the applicant of the time and place fixed for ~~such~~ *the* hearing or rehearing, which may be at its office or in the county of the applicant. After ~~such~~ *the* hearing or rehearing, the board may make any further or other order in the premises as it may ~~deem~~ *consider* proper and lawful and shall furnish a copy ~~thereof~~ to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated."

Section 24. **Functions transferred — name change.** (1) The functions of the department of revenue contained in Title 53, chapter 2, part 5, that relate to investigations involving public assistance are transferred to the department of justice.

(2) In the provisions of the Montana Code Annotated referred to in subsection (1), the term "department of revenue" or "department", meaning the department of revenue, is changed to "department of justice" or "department", meaning the department of justice. The code commissioner shall conform internal references, grammar, and legislation enacted by the 53rd legislature to these changes.

Section 25. **Reorganization protections.** The provisions of 2-15-131 through 2-15-137 govern the transfer of functions contained in [this act].

Section 26. **Implementation.** The governor shall by executive order implement the provisions of [this act].

Section 27. **Appropriation — transfer of employee positions.** (1) There is appropriated from the liquor enterprise fund referred to in 16-2-108 to the department of justice for the biennium ending June 30, 1995, $215,000 to be used to implement the transfer of investigative functions under [this act].

(2) There is transferred from the department of revenue to the department of justice a total of 12 full-time equivalent positions to implement the transfer of investigative functions under [this act].

Section 28. **Rulemaking authority.** The department of justice may adopt rules to implement [sections 17 through 24].

Section 29. **Effective dates.** (1) [Sections 25, 26, 28, and this section] are effective on passage and approval.

(2) [Sections 1 through 24 and 27] are effective July 1, 1993.

Approved April 19, 1993.

CHAPTER NO. 415

[HB 610]

AN ACT PROVIDING FOR THE ENFORCEMENT AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES REGARDING HEALTH CARE FACILITIES; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO IMPOSE AND COLLECT CIVIL PENALTIES FOR STATUTORY AND REGULATORY VIOLATIONS; GRANTING THE DEPARTMENT ADMINISTRATIVE ORDER AUTHORITY; PROVIDING FOR RECEIVERSHIP; CLARIFYING CRIMINAL PENALTY PROVISIONS; CREATING A PATIENT PROTECTION ACCOUNT; PROVIDING FOR A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502, 50-5-103, 50-5-108, 50-5-201, AND 50-5-207, MCA; AND REPEALING SECTIONS 50-5-109, 50-5-221, 50-5-229, 50-5-230, AND 50-5-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Prohibited activities.** It is unlawful to:

(1) operate a facility without a license;

(2) prevent, interfere with, or impede department investigation, department enforcement, department examination of relevant books and records, or activities of the department concerning the preservation of evidence; or

(3) violate any provision of part 1 or 2 of this chapter or violate a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

Section 2. **Civil penalties.** (1) A person who commits an act prohibited by [section 1] is subject to a civil penalty not to exceed $1,000 for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2. The department or, upon request of the department, the county attorney of the county in which the health care facility in question is located may petition the court to impose the civil penalty. Venue for an action to collect a civil penalty pursuant to this section is in the county in which the facility is located or in the first judicial district.

(2) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient; the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;

(b) other matters as justice may require.

(3) A penalty collected under this section must be deposited in the patient protection account provided for in [section 7].

(4) In addition to or exclusive of the remedy provided in subsection (1), the department may pursue remedies available for a violation as provided for in 50-5-108 or any other remedies available to it.

Section 3. **Criminal penalties.** (1) A person is guilty of a criminal offense under this section if the person knowingly conceals material information about the operation of the facility or does any of the following and by doing so threatens the health or safety of one or more individuals entrusted to the care of the person:

(a) commits an act prohibited by [section 1];

(b) omits material information or makes a false statement or representation in an application, record, report, or other document filed, maintained, or used for compliance with the provisions of part 1 or 2 of this chapter or with rules, license provisions, or orders adopted or issued pursuant to part 1 or 2; or

(c) destroys, alters, conceals, or fails to file or maintain any record, information, or application required to be maintained or filed in compliance with a provision of part 1 or 2 of this chapter or in compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) A person convicted under subsection (1) is subject to a fine of not more than $1,000 for the first offense and not more than $2,000 for each subsequent offense for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(3) In determining the amount of penalty to be assessed for an alleged violation under this section, the court shall consider:

(a) the gravity of the violation in terms of the degree of physical or mental harm to a resident or patient; the degree of harm to the health, safety, rights, security, or welfare of a resident or patient; and the degree of deviation committed by the facility from a requirement imposed by part 1 or 2 of this chapter or by a rule, license provision, or order adopted or issued pursuant to part 1 or 2;

(b) other matters as justice may require.

(4) Prosecution under this section does not bar enforcement under any other section of this chapter or pursuit of any other appropriate remedy by the department.

(5) Venue for prosecution pursuant to this section is in the county in which the facility is located or in the first judicial district.

(6) A penalty collected under this section must be deposited in the patient protection account provided for in [section 7].

Section 4. **Administrative enforcement — notice — order for corrective action.** (1) If the department believes that a violation of a provision of part 1 or 2 of this chapter or of a rule adopted or a condition or limitation imposed by a license issued pursuant to part 1 or 2 has occurred, it may serve written notice on the alleged violator or the violator's agent personally or by certified mail. The notice must specify the provision of part 1 or 2 of this chapter or the rule or license condition or limitation alleged to have been violated and the facts alleged to constitute the violation. The notice must inform the alleged violator of the right to a hearing and that the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing. The notice may include an order to take necessary corrective action, including ceasing new admissions, relocating residents, or ceasing the violation within a reasonable period of time stated in the order. The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Until issuance of a contrary decision by the board, a department order concerning corrective action remains effective and enforceable.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall issue an appropriate order for the prevention, abatement, or control of the violation involved or the taking of other corrective action. As appropriate, an order issued as part of a notice or after a hearing may prescribe the date by which the violation must cease and the time limits for particular action in preventing, abating, or controlling the violation. If, after a

hearing on an order contained in a notice, the board finds that a violation has not occurred or is not occurring, it shall declare the department order void.

(3) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted pursuant to this section.

(4) Instead of or in addition to issuing the order provided for in subsection (1), the department may:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges; or

(b) initiate action under any other applicable provisions of part 1 or 2 of this chapter.

(5) Before acting under this section, the department shall attempt to obtain voluntary compliance through a warning, conference, or any other appropriate means.

(6) In connection with a hearing held pursuant to this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of any party.

Section 5. **Receiverships.** (1) If receivership has not already been instituted under medicaid or medicare, upon notice to the facility, the department may file a complaint in district court for receivership under any of the following conditions in addition to applicable conditions listed in 27-20-102:

(a) a facility is operating without a license and residents are in danger of serious physical or mental harm;

(b) a facility intending to close has not made arrangements within 30 days before closure for the orderly transfer of residents;

(c) a facility is abandoned by an owner; or

(d) a life threatening situation exists for the residents of the facility.

(2) If the department believes there is an emergency that presents or might present an immediate and serious threat to the health or safety of patients or residents of a facility, a receiver may be appointed by the court upon an ex parte application by the department. If a receiver is appointed upon an ex parte application, notice must be given by the department to the facility within 24 hours of issuance of the receivership order and a hearing must be offered the facility by the court within 10 days of issuance of the order to determine whether the order will be continued.

(3) The department shall maintain a list of persons qualified to act as receivers.

(4) The selection, appointment, and removal of receivers must be consistent with Title 27, chapter 20, parts 2 and 3.

(5) Whenever possible, receivers must be paid from the income of the facility; however, receivers may be paid from the patient protection account

provided for in [section 7]. The court shall direct the amount of payments to be made to the receiver, the payments to be made by the receiver, and the order of payments made to the receiver or to other entities. Payments owed to a facility that are made to the receiver must be used to discharge any obligation of the entity making the payments owed to the facility.

(6) The powers and duties of the receiver include:

(a) the duty to protect the health, welfare, and safety of the residents;

(b) the power to hire, discipline, and fire staff;

(c) the power to collect debts due to the facility;

(d) the power to settle labor disputes;

(e) the power to petition the court to set aside unreasonable contracts or leases entered into by the facility management;

(f) the power to make capital investments in the facility with court approval; and

(g) all other powers granted receivers by 27-20-302.

Section 6. **Facility inspections.** (1) In addition to its annual licensure inspections, as provided by 50-5-204, the department may inspect any facility for compliance with part 1 or 2 of this chapter or for compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.

(2) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary. The authorized representative must be given access to all records and an opportunity to copy the records.

Section 7. **Patient protection account.** (1) There is a patient protection account in the state special revenue fund. The money in the account is statutorily appropriated to the department as provided in 17-7-502.

(2) There is deposited in the patient protection account:

(a) penalties collected pursuant to part 1 or 2 of this chapter;

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source that are intended to be used for the purposes of the account; and

(c) interest earned on money in the account.

(3) The funds deposited in the patient protection account may be used only:

(a) to pay for the costs of a receivership; and

(b) to pay for the cost of department-initiated relocation of residents.

Section 8. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; *[section 7];* 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 9. Section 50-5-103, MCA, is amended to read:

"**50-5-103. Rules and standards — accreditation by joint commission.** (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 ~~through 4~~ *and 2.*

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 ~~through 4 after~~ *and 2 upon* adoption.

(4) Any hospital that furnishes written evidence, including the recommendation for future compliance statements to the department of its accreditation granted by the joint commission on accreditation of ~~hospitals~~ *health care*

organizations, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department~~, except that the~~ *for purposes of the licensing process. The* department may, *in addition to its inspection authority in [section 6],* inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when ~~such~~ *the* complaints pertain to licensing requirements. Inspection by the department upon ~~such~~ *a specific* complaint *made in writing pertaining to licensing requirements* ~~shall be~~ *is* limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of health care organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards."

Section 10. Section 50-5-108, MCA, is amended to read:

"**50-5-108. Injunction.** The department~~, on advice of the attorney general,~~ may bring an action for injunction or other process against any person to ~~restrain or prevent the establishment, conduct, management, or operation of a facility which is in violation of any provision of parts 1 or 4 of this chapter.~~*:*

(1) restrain a facility from engaging in a prohibited activity that is endangering the health, safety, or welfare of any individual under the care of the facility;

(2) enjoin a violation of part 1 or 2 of this chapter, or a violation of a rule, license provision, or order adopted or issued pursuant to part 1 or 2; or

(3) require compliance with part 1 or 2 of this chapter or compliance with a rule, license provision, or order adopted or issued pursuant to part 1 or 2."

Section 11. Section 50-5-201, MCA, is amended to read:

"**50-5-201. License requirements.** (1) A *facility or* licensee ~~who contemplates~~ *considering* construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) ~~No~~ *A* person may *not* operate a health care facility unless the facility is licensed by the department. Licenses may be issued for a period of 1 to 3 years in duration. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses ~~shall~~ *must* be displayed in a conspicuous place near the admitting office of the facility."

Section 12. Section 50-5-207, MCA, is amended to read:

"**50-5-207. Denial, suspension, or revocation of health care facility license — provisional license.** (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without ~~his~~ *the patient's or resident's* consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined ~~minimum standards are not being met~~ *that the facility has failed to comply with a provision of part 1 or 2 of this chapter or has failed to comply with a rule, license provision, or order adopted or issued pursuant to part 1 or 2.*

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

(4) The department may provide in its revocation order that the revocation will be in effect for up to 2 years. If this provision is appealed, it must be affirmed or reversed by the board or court."

Section 13. **Repealer.** Sections 50-5-109, 50-5-221, 50-5-229, 50-5-230, and 50-5-231, MCA, are repealed.

Section 14. **Codification instruction.** (1) [Sections 1 through 6] are intended to be codified as an integral part of Title 50, chapter 5, part 1, and the provisions of Title 50, chapter 5, part 1, apply to [sections 1 through 6].

(2) [Section 7] is intended to be codified as an integral part of Title 50, chapter 5, part 2, and the provisions of Title 50, chapter 5, part 2, apply to [section 7].

Approved April 19, 1993.

CHAPTER NO. 416

[HB 637]

AN ACT ESTABLISHING MINIMUM POLICY LANGUAGE STANDARDS FOR PROPERTY AND CASUALTY POLICIES DELIVERED IN THE STATE OF MONTANA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 8] may be cited as the "Property and Casualty Insurance Policy Language Simplification Act".

Section 2. **Purpose.** (1) The purpose of [sections 1 through 8] is to establish minimum language and format standards to make property and casualty policies easier to read.

(2) [Sections 1 through 8] are not intended to increase the risk assumed under policies subject to [sections 1 through 8]. [Sections 1 through 8] are not intended to impede flexibility and innovation in the development of policy forms or content. [Sections 1 through 8] do not grant authority to the commissioner to mandate the standardization of policy forms or content.

Section 3. **Definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) "Casualty insurance" does not include accident and health or disability insurance.

(2) "Policy" or "policy form" means any written contract of property or casualty insurance delivered or issued for delivery in this state by or on behalf of any insurer licensed in this state.

Section 4. **Applicability.** (1) Other statutes of this state setting simplification standards for language or format do not apply to property and casualty policies.

(2) [Sections 1 through 8] do not apply to policies in manuscript form or to the following kinds of insurance:

(a) ocean marine;

(b) surety and financial institution bonds;

(c) reinsurance; or

(d) commercial aviation.

(3) A non-English policy is considered in compliance with [section 5] if it was translated from an English policy that complies with [section 5].

Section 5. **Minimum policy simplification standards.** (1) All property and casualty policies subject to [sections 1 through 8] must take into consideration the following factors:

(a) use of simple sentence structure, short sentences, and personal style;

(b) use of commonly understood words and everyday conversational language consistent with the policy's standing as a contract;

(c) avoidance of use of technical and legal terms and words with special meanings whenever possible;

(d) minimal reference to other sections or provisions of the policy;

(e) logical organization of text; and

(f) legibility.

(2) The policy must include a table of contents and notice section of important provisions.

(3) Each section must be self-contained and independent. However, general provisions applicable to more than one section may be included in a common section.

(4) The policy, except for declarations pages, schedules, and tables, must be printed in not less than 10-point type, 1-point leaded.

(5) The policy must be printed in a legible type style, with adequate contrast between ink and paper. Captions, headings, and spacings must be used to increase overall legibility.

(6) Policy exclusions may use technical terms, terms with special meanings, and court-interpreted terms to ensure policy clarity.

(7) Technical terms and words with special meanings must be avoided whenever possible.

(8) The policy text must achieve a minimum score of 40 on the Flesch reading ease test, an equivalent score on a comparable test, or a lower score on either if the commissioner finds the policy reasonably easy to read. For purposes of this section, a Flesch reading ease test must be scored by the following method:

(a) For a policy containing 10,000 words or less, the entire policy must be analyzed. For a policy containing more than 10,000 words, the readability of two 100-word samples per page may be analyzed instead. The samples must be separated by at least 20 printed lines.

(b) The total number of words in the text or sample must be divided by the total number of sentences. The figure obtained must be multiplied by 1.015.

(c) The total number of syllables in the text or sample must be divided by the total number of words. The figure obtained must be multiplied by 84.6.

(d) The sum of the figures computed under subsections (8)(b) and (8)(c) subtracted from 206.835 equals the Flesch reading ease test score.

(9) (a) For purposes of subsection (8), the following procedures must be used:

(i) A contraction, hyphenated word, number, and letter, when separated by spaces, are counted as one word.

(ii) A unit of text ending with a period, semicolon, or colon is counted as a sentence.

(iii) A syllable means a unit of spoken language consisting of one or more letters of a word as divided by an accepted dictionary. When the dictionary shows two or more equally acceptable pronunciations of a word, the pronunciation containing fewer syllables may be used.

(iv) At the option of the insurer, a form made a part of the policy may be scored separately or as part of the policy.

(b) The term "text", as used in this section, includes all printed matter except:

(i) the name and address of the insurer;

(ii) the name, number, or title of the policy or form;

(iii) the table of contents or index;

(iv) headings and captions; and

(v) declarations pages, schedules, or tables.

Section 6. **Powers of commissioner.** (1) At the commissioner's discretion, the commissioner may extend any dates under [sections 1 through 8].

(2) The commissioner has sole authority to enforce the provisions of [sections 1 through 8] or to seek remedies for its violation.

(3) The commissioner may authorize a lower score than the Flesch reading ease score required in [section 5] when, in the commissioner's discretion, a lower score:

(a) will provide a more accurate reflection of the readability of a policy;

(b) is warranted by the nature of a particular policy or type or class of policy; or

(c) is caused by certain policy language that is drafted to conform to the requirements of any state law, regulation, or agency interpretation.

Section 7. **Compliance with other statutorily required language.** The requirements of any other laws that specify the language or content of a policy may be met by a policy complying with the provisions of [section 5]. However, the policy must provide protection that, considered as a whole, is not less favorable to the insured than is required by the other laws.

Section 8. **Liability and coverage not imputed.** The existence or nonexistence of coverage or liability under a policy may not be construed from policy approval by the commissioner.

Section 9. **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 33, chapter 15, and the provisions of Title 33, chapter 15, apply to [sections 1 through 8].

Section 10. **Applicability.** [Sections 1 through 8] apply to all policies issued or renewed on or after April 1, 1996.

Approved April 19, 1993.

CHAPTER NO. 417

[HB 648]

AN ACT REVISING THE LIVESTOCK LAWS; INCLUDING ALPACAS IN THE LAWS RELATING TO THE CONTAINMENT OF LIVESTOCK AND THE UNAUTHORIZED MOVEMENT OR TRANSPORTATION OF LIVESTOCK; PROVIDING FOR THE TAXATION OF ALPACAS; EXEMPTING LLAMAS FROM BRAND REQUIREMENTS; AND AMENDING SECTIONS 15-1-101, 15-24-921, 81-2-702, 81-3-201, 81-4-201, 81-4-214, 81-4-215, 81-4-306, 81-4-401, 81-4-402, 81-4-601, 81-5-101, AND 81-5-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-101, MCA, is amended to read:

"**15-1-101.** *(Temporary)* **Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and, beginning January 1, 1994, forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, ~~and~~ asses, *llamas, alpacas, bison, and domestic ungulates.*

(j) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(o) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(p) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(q) The term "weighted mean assessment ratio" means the total of the assessed values divided by the total of the selling prices of all area sales in the stratum.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board.

15-1-101. *(Effective July 1, 1993)* **Definitions.** (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and profit margin shown in national appraisal guides and manuals or the valuation schedules of the department of revenue.

(d) (i) The term "commercial", when used to describe property, means any property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except that property described in subsection (ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and, beginning January 1, 1994, forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes used exclusively as a residence except when held by a distributor or dealer of trailers or mobile homes as his stock in trade;

(E) all property described in 15-6-135; and

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that has similar use, function, and utility; that is influenced by the same set of economic trends and physical, governmental, and social factors; and that has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department of revenue or its agent determines that the permanency of location of a mobile home or housetrailer has been established, the mobile home or housetrailer is presumed to be an improvement to real property. A mobile home or housetrailer may be determined to be permanently located only when it is attached to a foundation which cannot feasibly be relocated and only when the wheels are removed.

(h) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on such leasehold improvements are a lien only on such leasehold improvements.

(i) The term "livestock" means cattle, sheep, swine, goats, horses, mules, ~~and~~ asses, *llamas, alpacas, bison, and domestic ungulates.*

(j) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any "trailer", "housetrailer", or "trailer coach" up to 8 feet in width or 45 feet in length used as a principal residence.

(k) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(l) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(m) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by the stocks is within the state and has been taxed.

(n) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all rights and privileges appertaining thereto.

(o) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(p) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification shall mean the state tax appeal board."

Section 2. Section 15-24-921, MCA, is amended to read:

"**15-24-921. Per capita tax levy to pay expenses of enforcing livestock laws.** (1) In addition to appropriations made for such purposes, a per capita tax is ~~hereby~~ authorized and directed to be levied by the county assessor on all poultry and bees, all swine 3 months of age or older, and all other livestock 9 months of age or older in each county of this state for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the livestock laws of the state and for the payment of bounties on wild animals as hereinafter specified.

(2) As used in this section, "livestock" means cattle, sheep, swine, poultry, bees, goats, horses, mules, asses, llamas, *alpacas,* domestic bison, and domestic ungulates."

Section 3. Section 81-2-702, MCA, is amended to read:

"**81-2-702. Definitions.** As used in this part, the following definitions apply:

(1) "Animals" means livestock, dogs, cats, rabbits, rodents, game animals, game farm animals, fur-bearing and wild animals, and poultry and other birds.

(2) "Biologics" means medicinal preparations made from living organisms and their products. It includes but is not limited to serums, vaccines, antigens, and antitoxins.

(3) "Department" means the department of livestock.

(4) "Health certificate" means a legible record written on an official health certificate form of the state of origin or on an equivalent form of the U.S. department of agriculture attesting that the animals, animal semen, or animal biologics described ~~thereon~~ *on the certificate* have been visually inspected by a federally accredited veterinarian and found to meet the entry requirements of the state of Montana.

(5) "Livestock" means cattle, horses, mules, asses, sheep, llamas, *alpacas,* bison, swine, and goats.

(6) "Permit" means an official document issued by the department after proper application that allows the movement of animals, animal semen, or animal biologics into Montana.

(7) "Poultry" means domesticated birds, including but not limited to chickens, turkeys, ducks, geese, guinea fowl, pigeons, and pheasants."

Section 4. Section 81-3-201, MCA, is amended to read:

"**81-3-201. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector who does not receive a salary or compensation from the department.

(2) "Feedlot" means a confined livestock feeding operation where the owner or operator of the feedlot feeds livestock belonging to others for a fee.

(3) "Livestock" means any bovine animal, horse, mule, or ass, regardless of its age or sex, and includes ~~llama,~~ bison, sheep, and elk.

(4) "Person" means an individual, partnership, corporation, association, firm, or any entity not enumerated capable of owning or controlling livestock.

(5) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector."

Section 5. Section 81-4-201, MCA, is amended to read:

"**81-4-201. Swine, sheep, llamas, *alpacas,* bison, and goats running at large.** It is unlawful for any owner or person in control of swine, sheep, llamas, *alpacas,* bison, or goats to willfully permit the ~~same~~ *animals* to run at large."

Section 6. Section 81-4-214, MCA, is amended to read:

"**81-4-214. Branding animals running at large — running irons prohibited.** Every person except an owner, and ~~he~~ *the owner* only when branding on ~~his~~ *the owner's* own premises and in the presence of two responsible citizens, who marks or brands any calf or cattle that are running at large between December 1 and May 10 of the next ensuing year and every person who shall at any time brand or cause to be branded or marked any horse, mule, cattle or head of cattle, sheep, llama, *alpaca,* bison, swine, or other animal, 1 year old or older, with any piece of metal or implement, other than a branding iron, which branding iron ~~shall~~ *must* be of the same design as the brand or mark owned by the party using it, or who ~~shall so mark~~ *marks* or ~~brand~~ *brands* or ~~cause~~ *causes* to be marked or branded any of the animals ~~aforesaid~~ *listed in this section* with any piece or pieces of iron called "running irons", such as bars, rings, half or quarter circles, is punishable by imprisonment in the county jail for not exceeding 6 months or by a fine of not less than $25 or more than $500, or both."

Section 7. Section 81-4-215, MCA, is amended to read:

"81-4-215. **Liability of owners of stock for trespass.** If any cattle, horses, mules, asses, hogs, sheep, llamas, *alpacas,* bison, or other domestic animals break into any enclosure~~,~~ *and* the fence ~~being~~ *of the enclosure is* legal, as provided in 81-4-101, the owner of ~~such~~ *the* animals is liable for all damages to the owner or occupant of the enclosure ~~which may be sustained thereby~~. This section ~~must~~ *may* not be construed ~~so as~~ to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law."

Section 8. Section 81-4-306, MCA, is amended to read:

"81-4-306. **Penalty for permitting animals to run at large in herd districts.** (1) Any person who is the owner or entitled to the possession of any horses, mules, cattle, sheep, llamas, *alpacas,* bison, asses, hogs, or goats, who willfully permits ~~such~~ *the* animals to run at large within any herd district, is guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that each five head or less of ~~such~~ horses, mules, cattle, sheep, llamas, *alpacas,* bison, asses, hogs, or goats are willfully permitted to run at large constitutes a separate offense.

(2) Any person who is the owner or entitled to the possession of any bull, stallion, or jackass over 1 year of age who willfully permits ~~such~~ *the* animal to run at large within any herd district is guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine of not less than $50 or more than $250 for each offense. Each day that a bull is permitted to run at large constitutes a separate offense."

Section 9. Section 81-4-401, MCA, is amended to read:

"81-4-401. **Certain livestock not to run at large in municipalities.** ~~No horses~~ *Horses,* cattle, mules, sheep, llamas, *alpacas,* bison, goats, or swine may *not* be allowed to run at large in any incorporated city or town."

Section 10. Section 81-4-402, MCA, is amended to read:

"81-4-402. **Punishment for permitting trespass of livestock.** Any person owning livestock or having in charge any horses, mules, cattle, sheep, llamas, *alpacas,* bison, goats, or swine who willfully and unlawfully permits ~~such~~ *the* livestock to trespass in violation of any of the provisions of 81-4-401 is guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished as provided by law."

Section 11. Section 81-4-601, MCA, is amended to read:

"**81-4-601. Estray defined.** In this part, "estray" means a horse, mule, mare, gelding, colt, llama, *alpaca*, bison, cow, ox, bull, stag, steer, heifer, calf, sheep, or lamb:

(1) not bearing a brand and the ownership of which cannot be determined by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders;

(2) bearing a recorded brand, the owner of which brand cannot be located at or through the post office designated on the records of the department or which owner cannot be located by the stock inspector of the district where the estray is found by inquiry among reputable resident stock owners or freeholders; or

(3) which bears an unrecorded brand, the owner of which unrecorded brand cannot be ascertained by the stock inspector of the district in which the animal is found by inquiry among reputable resident stock owners or freeholders."

Section 12. Section 81-5-101, MCA, is amended to read:

"**81-5-101. Moving livestock from customary range forbidden.** Every person who willfully moves or causes to be moved any cattle, horses, mules, swine, llamas, *alpacas*, bison, or sheep from their customary range without the permission of the owner ~~thereof~~ is punishable by imprisonment in the county jail not exceeding 90 days or by fine not exceeding $100, or both."

Section 13. Section 81-5-104, MCA, is amended to read:

"**81-5-104. Stolen livestock — seizure and forfeiture of vehicle used to transport.** (1) The use of any vehicle for the transportation of any stolen mule, horse, mare, colt, foal, filly, sheep, lamb, cow, calf, heifer, steer, bull, llama, *alpaca*, bison, hogs, poultry, or the products of any ~~thereof~~ *listed animals* is unlawful, and ~~such~~ *the* vehicle ~~shall~~ *must* be forfeited to the state. Any vehicle found in ~~such~~ use or upon probable cause believed to be devoted wholly or in part to ~~such~~ *the* use ~~shall~~ *must* be seized and held.

(2) Within 45 days after the seizure, any peace officer or officer of the agency that seizes any property shall file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall cause the ~~same~~ *summons* to be served upon all owners or claimants of the property by one of the following methods:

(a) upon an owner or claimant whose address is known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(b) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no ~~such~~ newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing a copy of the petition and summons to the most recent address of ~~such~~ *the* owner or claimant, if any, shown in the records of the division of motor vehicles.

(3) A vehicle is not subject to forfeiture under this section if:

(a) it is a stolen vehicle at the time it is used for ~~such~~ *the* unlawful transportation; or

(b) the owner ~~thereof~~ is not in collusion with the party or parties guilty of the theft."

Approved April 19, 1993.

CHAPTER NO. 418

[HB 84]

AN ACT REVISING THE DAM SAFETY ACT; REVISING THE AUTHORITY OF THE DISTRICT COURT AND COUNTY COMMISSIONERS TO CONSIDER DAM SAFETY COMPLAINTS; AMENDING SECTIONS 85-15-106, 85-15-107, 85-15-209, 85-15-211, 85-15-212, 85-15-213, AND 85-15-216, MCA; AND REPEALING SECTIONS 85-15-306, 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311, 85-15-402, 85-15-403, 85-15-404, AND 85-15-501, MCA.

STATEMENT OF INTENT

A statement of intent is required to provide guidance to the department of natural resources and conservation in adopting rules to implement this bill. It is the intent of the legislature to provide a uniform process for complaints regarding unsafe dams and to reduce the potential for nuisance actions against dam owners. It is further the intent of the legislature to authorize the department to investigate all complaints regarding unsafe dams.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-15-106, MCA, is amended to read:

"**85-15-106. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Alterations" or "repairs" means alterations or repairs that may directly affect the safety of a dam or reservoir.

(2) "Appurtenant works" means all works incident or attached to a dam or reservoir, including but not limited to:

(a) a spillway, either in the dam or separate from it;

(b) the reservoir and its rim;

(c) a low-level outlet; and

(d) a water conduit such as a tunnel, pipeline, or penstock, either through the dam or its abutments.

(3) "Construction" or "construct" includes construction, alteration, repair, enlargement, or removal of a dam or reservoir.

(4) "Dam" means ~~any~~ *an* artificial barrier, including appurtenant works, used to impound or divert water ~~with an impounding capacity of 50 acre-feet or greater measured at maximum normal operating pool~~.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Emergency" means ~~any~~ *a* threat to life caused by the condition of a dam or reservoir or by present or imminent floods that threaten the structural integrity of any dam or reservoir.

(7) "Engineer" means a registered professional engineer licensed to practice in the state of Montana under Title 37, chapter 67, part 3.

(8) "Enlargement" means ~~any~~ *a* change in or addition to an existing dam or reservoir that raises or may raise the water storage elevation or increases the impoundment capacity of the reservoir.

(9) "High-hazard dam" means ~~any~~ *a* dam or reservoir *with an impounding capacity of 50 acre-feet or more at the maximum normal operating pool,* the failure of which would be likely to cause loss of life.

(10) "Inspection" means a visual or mechanical check, a measurement, a boring, or any other method necessary for determination of the adequacy of construction techniques, conformity of work with approved plans and specifications, or the safety and operating performance of a dam or reservoir.

(11) "Owner" means ~~any~~ *a* person who owns, controls, operates, maintains, manages, or proposes to construct a dam or reservoir.

(12) "Person" means an individual, association, partnership, corporation, business trust, state agency, political subdivision, utility, municipal or quasi-municipal corporation, or ~~any~~ other entity or ~~any~~ authorized agent, lessee, or trustee of any of the foregoing.

(13) "Removal" means removing, taking down, or changing the location of ~~any~~ *a* dam or reservoir.

(14) "Reservoir" means ~~any~~ *a* valley, basin, coulee, ravine, or other land area that contains ~~50 acre-feet or more of~~ impounded water ~~measured at maximum normal operating pool~~."

Section 2. Section 85-15-107, MCA, is amended to read:

"**85-15-107. Exemptions.** *(1)* The provisions of ~~85-15-105, 85-15-106,~~ 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, ~~85-15-501, and~~ 85-15-502, *and [section 8]* do not apply to*:*

(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit~~.~~*;*

(b) ~~The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to~~ federal dams and reservoirs~~, to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency, or to~~*;*

(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission~~. The provisions of 85-15-105, 85-15-106,~~

~~85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to~~*; or*

(d) dams that are required to obtain a certificate of environmental compatibility and public need pursuant to 75-20-201 for the period during which the dam is subject to the certificate. ~~In addition, the provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply until July 1, 1990, to high-hazard dams that have been inspected by the U.S. army corps of engineers pursuant to P.L. 92-367 and for which resultant dam safety reports have been submitted to the owner.~~

(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and [section 8] do not apply to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency."

Section 3. Section 85-15-209, MCA, is amended to read:

"**85-15-209. High-hazard dam — determination.** ~~Any~~ *A* person proposing to construct ~~any~~ *a* dam or reservoir *with an impounding capacity of 50 acre-feet or more measured at the maximum normal operating pool* shall make application to the department for a determination of whether the dam or reservoir is a high-hazard dam. The application must include the information required by the department. The department shall make the determination required by this section within 60 calendar days after a complete application is received by the department."

Section 4. Section 85-15-211, MCA, is amended to read:

"**85-15-211. Inspection and reports during construction.** (1) An engineer must be in charge of and responsible for inspections during construction of any high-hazard dam.

(2) Inspections during construction must be performed at intervals necessary to ensure conformity with the permit. The engineer in charge or a qualified designee shall perform the inspections.

(3) The department shall set procedures and requirements for reporting information obtained from, during, or as the result of an inspection. The engineer in charge shall certify all reports to the department.

(4) The department may also inspect the *high-hazard* dam during construction to ensure conformity with the construction permit.

(5) If the department finds that construction of the high-hazard dam does not conform with the construction permit, it may order that construction be stopped until changes are made in conformity with the permit."

Section 5. Section 85-15-212, MCA, is amended to read:

"**85-15-212. Operating permit.** (1) An operation plan must be prepared by the owner and approved by the department prior to operation of the high-hazard dam or reservoir. The operation plan must set forth at a minimum:

(a) a reservoir operation procedure;

(b) a maintenance procedure for the *high-hazard* dam and appurtenant works; and

(c) emergency procedures and warning plans.

(2) When construction is complete and if the *high-hazard* dam or reservoir conforms to the construction permit and when an operation plan has been approved, the department shall issue a permit to operate the high-hazard dam or reservoir, containing ~~such~~ conditions on the safe operation of the *high-hazard* dam as it considers necessary."

Section 6. Section 85-15-213, MCA, is amended to read:

"**85-15-213. Periodic inspections after construction.** (1) *(a)* ~~Any~~ *A* high-hazard dam, whether or not previously permitted by the department, must be inspected as often as considered necessary by the department, but at least once every 5 years, in order to ensure the continued safe operation of the *high-hazard* dam.

(b) The department determination that an inspection is necessary more often than once every 5 years, as provided in subsection (1)(a), must be based on substantive evidence, and the reasons for that determination must be stated in writing.

(2) Periodic inspections required by this section must be performed by a qualified engineer, who shall make a report of the inspection to the department. If the department finds that the *high-hazard* dam conforms to current safety standards, it shall issue or reissue, as the case may be, a permit to continue operation of the *high-hazard* dam, containing ~~such~~ conditions on the safe operation of the *high-hazard* dam as it considers necessary.

(3) The owner is responsible for inspections required under this section."

Section 7. Section 85-15-216, MCA, is amended to read:

"**85-15-216. *High-hazard dam* ~~Permit~~ *permit* cancellation.** Failure to comply with the provisions of 85-15-209 through 85-15-212 or 85-15-214 subjects the permit to cancellation at any time during the progress of construction or the operation of the *high-hazard* dam. The department is authorized to cancel any permit if the provisions of 85-15-209 through 85-15-212 or 85-15-214 have not been or are not being complied with, and the cancellation operates as a forfeiture of all rights acquired under and by virtue of any permit approved by the department."

Section 8. **Civil penalty.** The owner of a dam with an impounding capacity of greater than 50 acre-feet or more measured at the maximum normal operating pool who fails to comply with a provision of this chapter or a rule or order of the department adopted pursuant to this chapter is subject to a civil penalty not to exceed $1,000. Each day of violation is a separate offense.

Section 9. **Repealer.** Sections 85-15-306, 85-15-307, 85-15-308, 85-15-309, 85-15-310, 85-15-311, 85-15-402, 85-15-403, 85-15-404, and 85-15-501, MCA, are repealed.

Section 10. **Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 85, chapter 15, part 5, and the provisions of Title 85, chapter 15, part 5, apply to [section 8].

Section 11. **Coordination instruction.** If House Bill No. 121 is passed and approved and if it includes a section amending 85-15-107 and instituting a civil penalty for a violation of the dam safety act, then [sections 2 and 8 of this act] are void.

Approved April 19, 1993.

CHAPTER NO. 419

[SB 89]

AN ACT GENERALLY REVISING THE LAWS ADMINISTERING THE MONTANA STATE BOARD OF MEDICAL EXAMINERS; ADDING A LICENSED PHYSICIAN ASSISTANT-CERTIFIED MEMBER TO THE BOARD; ALLOWING THE IMPAIRED PROFESSIONALS PROGRAM TO ADDRESS THE NEEDS OF PHYSICIANS DERIVING FROM MENTAL OR CHRONIC PHYSICAL ILLNESS; MAKING THE REQUIREMENT FOR PERSONAL APPEARANCE BY A PHYSICIAN APPLICANT FOR LICENSURE DISCRETIONARY; AMENDING THE DEFINITION OF "UNPROFESSIONAL CONDUCT"; AMENDING THE OBLIGATION TO REPORT INCOMPETENCE OR UNPROFESSIONAL CONDUCT; REVOKING THE LIABILITY INSURANCE REQUIREMENT FOR PHYSICIAN ASSISTANTS-CERTIFIED WHO WORK IN HOSPITALS; AMENDING PHYSICIAN ASSISTANTS-CERTIFIED PRACTICE STATUTES TO IMPROVE CLARITY AND ORGANIZATION; PROHIBITING PRACTICE AS A PHYSICIAN ASSISTANT-CERTIFIED PRIOR TO LICENSURE; REPLACING THE TERM "CERTIFICATE" WITH "LICENSE" WITH RESPECT TO PHYSICIAN ASSISTANTS-CERTIFIED; ALLOWING THE BOARD TO ISSUE CERTAIN FORMS OF LICENSURE TO PHYSICIAN ASSISTANTS-CERTIFIED; REVOKING THE REQUIREMENT THAT DRUGS DISPENSED BY A PHYSICIAN ASSISTANT-CERTIFIED BE PREPACKAGED BY A LICENSED PHARMACIST; ALLOWING CERTAIN PERSONS AND ENTITIES TO BILL FOR PHYSICIAN ASSISTANT-CERTIFIED SERVICES; AMENDING SECTIONS 2-15-1841, 37-3-203, 37-3-305, 37-3-322, 37-3-323, 37-3-401, 37-20-104, 37-20-202, 37-20-301, 37-20-302, 37-20-402, 37-20-404, AND 37-20-405, MCA; REPEALING SECTION 37-20-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1841, MCA, is amended to read:

"**2-15-1841. Board of medical examiners.** (1) There is a Montana state board of medical examiners.

(2) The board consists of ~~10~~ *11* members appointed by the governor with the consent of the senate. Appointments made when the legislature is not in session may be confirmed at the next session.

(3) The members are:

(a) five members having the degree of doctor of medicine;

(b) one member having the degree of doctor of osteopathy;

(c) one member who is a licensed podiatrist;

(d) one member who is a licensed nutritionist; ~~and~~

(e) one member who is a licensed physician assistant-certified; and

~~(e)~~*(f)* two members of the general public who are not medical practitioners.

(4) The members having the degree of doctor of medicine may not be from the same county. Each member ~~shall~~ *must* be a citizen of the United States. Each member, except for public members, ~~shall~~ *must* have been licensed and ~~shall~~ *must* have practiced medicine or dietetics-nutrition in this state for at least 5 years and ~~shall~~ *must* have been a resident of this state for at least 5 years~~, except that for 5 years after October 1, 1987, the number of years of licensure required for the nutritionist member is no greater than the number of years this act has been in effect~~.

(5) The member who is a licensed nutritionist may vote only on issues that affect the licensure and regulation of nutritionists.

(6) The member who is a licensed physician assistant-certified may vote only on issues that affect the licensure and regulation of physician assistants-certified.

~~(6)~~*(7)* Members shall serve staggered 4-year terms. A term commences on September 1 of each year of appointment. A member may, upon notice and hearing, be removed by the governor for neglect of duty, incompetence, or unprofessional or dishonorable conduct.

~~(7)~~*(8)* The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Section 37-3-203, MCA, is amended to read:

"**37-3-203. Powers and duties.** The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules ~~shall~~ *must* be fair, impartial, and nondiscriminatory;

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensed physicians who are found to be physically or mentally impaired by habitual intemperance or the excessive use of ~~narcotic~~ *addictive* drugs, alcohol, or any other drug or substance *or by mental or chronic physical illness*;

(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs; and

(6) fund additional staff, hired by the department, to administer the provisions of this chapter, by increasing license fees as necessary."

Section 3. Section 37-3-305, MCA, is amended to read:

"**37-3-305. Qualifications for licensure.** (1) ~~No~~ *A* person may *not* be granted a physician's ~~certificate~~ *license* to practice medicine in this state unless ~~he~~ *the person*:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training ~~which~~ *that* is at least the equivalent of 1 year internship;

(d) has *had a completed application file reviewed by a board member and, in the discretion of the board member, has* made a personal appearance before the board ~~unless such appearance has been specifically waived by the board~~; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) ~~No~~ *A* person may *not* be granted a temporary license to practice medicine in this state unless ~~he~~ *the person*:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training ~~which~~ *that* is at least the equivalent of 1 year internship;

(d) has made a personal appearance before at least one member of the board; and

(e) is able, in the opinion of the board, to communicate in the English language."

Section 4. Section 37-3-322, MCA, is amended to read:

"**37-3-322. Unprofessional conduct.** As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) employing abusive billing practices;

(5) directly or indirectly giving or receiving a fee, commission, rebate, or other compensation for professional services not actually rendered. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.

(6) willful disobedience of:

(a) the rules *adopted by the board; or*

(b) an order of the board *regarding evaluation or enforcement of discipline of a licensee*;

(7) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(9) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(10) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(11) habitual intemperance or excessive use of ~~narcotic~~ *addictive* drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(12) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public as defined by rule of the board;

(13) conduct likely to deceive, defraud, or harm the public;

(14) making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(15) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(16) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;

(17) practicing medicine under a false or assumed name;

(18) testifying in court on a contingency basis;

(19) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(20) aiding or abetting in the practice of medicine by a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(21) allowing another person or organization to use the licensee's license to practice medicine;

(22) malpractice or negligent practice;

(23) except as provided in this subsection, practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4;

(b) a single consultation with or a single treatment by a person ~~or persons~~ licensed to practice medicine and surgery in another state or territory of the United States or foreign country; or

(c) practicing medicine as the partner, agent, or employee of or in joint venture with a hospital, medical assistance facility, or other licensed health care provider. However:

(i) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine;

(ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(iii) the physician may not be required to refer any patient to a particular provider or supplier or take any other action the physician determines not to be in the patient's best interest.

(24) willfully or negligently violating the confidentiality between physician and patient, except as required by law;

(25) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim related to acts or conduct similar

to acts or conduct that would constitute grounds for action as defined in this section;

(26) failing to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by the patient's legally designated representative;

(27) failing to furnish to the board or its investigators or representatives information legally requested by the board;

(28) failing to cooperate with a lawful investigation conducted by the board;

(29) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them;

(30) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct.

(31) any other act, whether specifically enumerated or not, ~~which~~ *that,* in fact, constitutes unprofessional conduct."

Section 5. Section 37-3-323, MCA, is amended to read:

"**37-3-323. Revocation or suspension of license — probation — fine — disposition of fine.** (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured ~~his~~ *a* license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition ~~which~~ *that* impairs ~~his~~ *the person's* intellect or judgment to the extent that it incapacitates ~~him~~ *the person* for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine ~~while his license was~~ *with a* suspended or revoked *license;*

(d) has had ~~his~~ *a* license *to practice medicine* suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation ~~shall~~ *must* be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation

be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies ~~of these shall~~ *must* be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the ~~person~~ *person's* ~~at his~~ last address of record with the department a specification of the charges ~~against him~~, together with a written notice of the time and place of the hearing on ~~such~~ *the* charges, advising ~~him~~ that ~~he~~ *the person* may be present ~~in person~~ and *may be represented* by counsel if ~~he so desires~~ *the person wants* to offer evidence and be heard in ~~his~~ *the person's own* defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a written complaint with the department against a person having a license to practice medicine in this state charging ~~him~~ *that person* with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section~~, which complaint shall~~. *The complaint must* set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at ~~his~~ *the person's* last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing, the board shall adopt a resolution finding ~~him~~ *the accused* guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if ~~he~~ *the person* is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke ~~his~~ *the person's* license;

(b) suspend ~~his~~ *the person's* right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place ~~him~~ *the person* on probation;

(e) impose a fine, not to exceed $500 an incident; or

(f) take any other action in relation to disciplining ~~him~~ *the person* as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee ~~shall~~ *must* be reinstated by the board if ~~he~~ *the suspended person* furnishes the board with evidence that ~~he~~ *the person* is then of good moral character and conduct, ~~and~~ *is* restored to good health, and ~~that he~~ has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows ~~he~~ *the person* has practiced

medicine in this state during the term of suspension, the board shall revoke the license, *using the* ~~at a hearing with~~ notice and ~~the~~ *hearing* procedure provided in subsection ~~(1)~~ *(2)* ~~of this section~~. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of ~~narcotics~~ *addictive substances*, ~~his~~ *the person's* license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until ~~he~~ *the person* is discharged as restored to reason or cured and ~~his~~ *the person's* professional competence has been proven to the satisfaction of the board.

(8) A fine imposed under this section must be deposited in the general fund.

(9) The remedies and method of enforcement of this part, as provided for in this section, are concurrent and in addition to the other remedies provided in this part."

Section 6. Section 37-3-401, MCA, is amended to read:

"**37-3-401. Report of incompetence or unprofessional conduct.** (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society ~~thereof~~ *of the association* shall and any other person may report to the ~~state~~ board ~~of medical examiners~~ any information ~~such~~ *that the* physician, organization, association, society, or person has ~~which~~ *that* appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) (a) Information that relates to possible physical or mental impairment connected to habitual intemperance or excessive use of addictive drugs, alcohol, or any other drug or substance by a licensee or to other mental or chronic physical illness of a licensee may be reported to the appropriate personnel of the program established by the board under 37-3-203(4), in lieu of reporting directly to the board.

(b) The program personnel referred to in subsection (2)(a) shall report to the board the identity of a licensee and all facts and documentation in their possession if:

(i) the licensee fails or refuses to comply with a reasonable request that the licensee undergo a mental, physical, or chemical dependency evaluation or a combination of evaluations;

(ii) the licensee fails or refuses to undergo a reasonable course of treatment that they recommend, including reasonable aftercare;

(iii) the licensee fails or refuses to satisfactorily complete a reasonable evaluation, a course of treatment, or aftercare;

(iv) the licensee's condition creates a risk of harm to the licensee, a patient, or others; or

(v) they are in possession of information that appears to show that the licensee has or is otherwise engaged in unprofessional conduct.

~~(2)~~*(3)* This section applies to professional standards review organizations only to the extent that ~~such~~ *the* organizations are not prohibited from disclosing ~~such~~ information under federal law."

Section 7. Section 37-20-104, MCA, is amended to read:

"**37-20-104.** ~~**Penalty — enforcement**~~ ***Title and practice.*** (1) ~~Any~~ *A* person who employs a physician assistant-certified or holds ~~himself~~ out to ~~be~~ *the public that the person is* a physician assistant-certified without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) ~~In addition to seeking any criminal penalty available under this section, the board may, in the manner set out in subsection (3) and after notice and opportunity for hearing, discipline any supervising physician or physician assistant-certified who:~~

~~(a) acts in violation of this section;~~

~~(b) obtained the approval of the board by fraud;~~

~~(c) acts in a manner contrary to the terms of the utilization plan; or~~

~~(d) violates any of the applicable provisions of this chapter or rules of the board adopted thereunder.~~ *Prior to being issued a license and receiving approval of a utilization plan, a physician assistant-certified may not engage in the practice of medicine in this state, even under the supervision of a licensed physician.*

~~(3) If the board finds that the supervising physician or the physician assistant-certified has violated any provision of subsection (2), the board may:~~

~~(a) revoke his license or approval, as applicable;~~

~~(b) suspend his right to practice for a period not to exceed 1 year;~~

~~(c) suspend its judgment of revocation on terms and conditions determined by the board;~~

~~(d) place him on probation;~~

~~(e) impose a fine, not to exceed $500 for each violation; or~~

~~(f) take other action it considers proper.~~

~~(4)~~*(3)* The board may enforce the provisions of this section by the remedy of injunction."

Section 8. **Disciplinary action.** (1) The Montana state board of medical examiners may, after notice and opportunity for hearing, discipline a supervising physician or physician assistant-certified who:

(a) acts in violation of this section;

(b) obtains approval of the board by fraud;

(c) acts in a manner contrary to the terms of a utilization plan; or

(d) violates any of the applicable provisions of this chapter or rules of the board adopted under this chapter.

(2) If the board finds that the supervising physician or the physician assistant-certified has violated any provision specified in subsection (1), the board may:

(a) revoke the person's license or approval;

(b) suspend the person's right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the person on probation;

(e) impose a fine, not to exceed $500 for each violation; or

(f) take other action it considers proper.

Section 9. Section 37-20-202, MCA, is amended to read:

"**37-20-202. Adoption of rules.** The board of medical examiners shall adopt administrative rules to implement the provisions of this chapter that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician assistant-certified unless ~~he can~~ *the physician is able to* demonstrate to the board the ability to supervise more than one assistant adequately;

(4) address other considerations pertinent to the approval of physician assistant-certified utilization plans and locum tenens utilization plans, and the health care needs of the public;

(5) address physician assistant training in Montana*; and*

(6) set forth grounds for disciplinary action."

Section 10. **Licensing of physician assistants-certified.** The Montana state board of medical examiners may issue the following two forms of physician assistants-certified licenses under its seal:

(1) a permanent license, signed by the president and subject to annual renewal; and

(2) a temporary license, signed by any member of the board and subject to specifications and limitations imposed by the board.

Section 11. Section 37-20-301, MCA, is amended to read:

"**37-20-301. Utilization plan required — contents — approval.** (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified in the practice of medicine, as defined in 37-3-102, and a physician assistant-certified may not be employed or practice as a physician assistant-certified unless the physician assistant-certified:

(a) is supervised by a licensed physician;

(b) ~~has been approved~~ *is licensed* by the Montana state board of medical examiners; and

(c) has received board approval of a physician assistant-certified utilization plan.

(2) A physician assistant-certified utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and ~~approval~~ *license* number of the physician assistant-certified;

(b) the nature and location of the physician's medical practice;

(c) the ~~duties to be delegated to~~ *scope of practice of* the physician assistant-certified and the ~~location in which those duties are to be performed~~ *locations where the physician assistant-certified will practice*;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to ~~serve in the place of the~~ *act as an alternate* supervising physician in the ~~event that the supervising physician is unable to supervise the physician assistant-certified temporarily~~ *absence of the primary supervising physician*;

(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and

(f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the ~~duties to be delegated to~~ *practice of* the physician assistant-certified ~~are~~ *is*:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, ~~as~~ *so* long as the information

requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice. A locum tenens utilization plan may be approved by a single board member."

Section 12. Section 37-20-302, MCA, is amended to read:

"**37-20-302. Utilization plan approval fee — renewal of ~~approval~~ *license* — renewal fee.** (1) ~~Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified shall pay to the board a~~ *A* utilization plan approval fee *must be paid* in an amount set by the board. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) ~~Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified on a locum tenens basis shall pay to the board a locum tenens utilization plan fee in an amount set by the board~~ *A locum tenens utilization plan approval fee must be paid in an amount set by the board.*

(3) A ~~certificate~~ *license* issued under this part must be renewed annually, on a date set by the board.

(4) A ~~certificate~~ *license* renewal fee set by the board must be paid at the time the ~~certificate~~ *license* is renewed.

(5) The department shall mail a renewal notice no later than 60 days prior to the renewal date set by the board under subsection (3). A certified letter addressed to the delinquent ~~certificate holder's~~ *licensee's* last-known address as it appears on the records of the department constitutes notice of intent to revoke the ~~certificate~~ *license.*

(6) If the annual renewal fee is not paid on or before the renewal date set by the board under subsection (3), the board may revoke the ~~certificate~~ *license* after giving 30 days' notice to the ~~certificate holder~~ *licensee.* A ~~certificate~~ *license* may not be revoked for nonpayment of a renewal fee if the ~~certificate holder~~ *licensee* pays the annual renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(7) Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6)."

Section 13. Section 37-20-402, MCA, is amended to read:

"**37-20-402. Criteria for ~~approval of~~ *licensing a* physician assistant-certified.** A person may not be ~~approved~~ *licensed* as a physician assistant-certified in this state unless ~~he~~ *the person*:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program approved by the American medical association's committee on allied health education and accreditation;

(3) has taken and successfully passed an examination recognized by the national commission on the certification of physician assistants;

(4) holds a current certificate from the national commission on the certification of physician assistants; and

(5) has submitted to the board detailed information on ~~his~~ *the person's* history, education, and experience."

Section 14. Section 37-20-404, MCA, is amended to read:

"**37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority.** (1) A physician assistant-certified may prescribe, dispense, and administer drugs to the extent authorized by the board by rule, by the utilization plan, or both. The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician ~~in his discretion~~ may impose additional limitations on the prescribing and dispensing authority granted by the board.

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician assistant-certified may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232, is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed ~~48~~ *72* hours.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant-certified shall maintain registration with the federal drug enforcement administration.

~~(e) Drugs dispensed by a physician assistant-certified must be prepackaged by a licensed pharmacist, except that samples provided by a pharmaceutical company representative may be dispensed.~~

~~(f)~~*(e)* Prescriptions written by physician assistants-certified must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

~~(g)~~*(f)* The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified."

Section 15. Section 37-20-405, MCA, is amended to read:

"37-20-405. Billing. A supervising physician, *office, firm,* ~~or an~~ institution, ~~where services were delivered~~ *or other entity* may bill for physician assistant-certified services."

Section 16. **Repealer.** Section 37-20-102, MCA, is repealed.

Section 17. **Codification instruction.** [Sections 8 and 10] are intended to be codified as an integral part of Title 37, chapter 20, and the provisions of Title 37, chapter 20, apply to [sections 8 and 10].

Section 18. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1993.

CHAPTER NO. 420

[SB 288]

AN ACT REGULATING THE DISPOSITION OF LOCAL GOVERNMENT RECORDS; ESTABLISHING A LOCAL GOVERNMENT RECORDS COMMITTEE AND A LOCAL GOVERNMENT RECORDS DESTRUCTION SUBCOMMITTEE; GRANTING THE SECRETARY OF STATE RULEMAKING AUTHORITY; AMENDING SECTIONS 2-6-201, 2-6-302, 7-4-2221, 7-4-2222, 7-4-2223, 7-4-2612, 7-4-2613, 7-5-2131, 7-5-2132, 7-5-4124, 20-1-212, 22-3-201, 22-3-202, 22-3-203, 30-9-403, 30-9-407, 71-3-206, 71-3-705, AND 71-3-810, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, proper maintenance and disposition of local government records are an essential function of government; and

WHEREAS, certain local government records are of substantial historical value to the state and should be retained and preserved, rather than destroyed; and

WHEREAS, coordination of local government recordkeeping policies and procedures will increase their effectiveness and efficiency; and

WHEREAS, it is the view of the Legislature that these goals pertaining to local government records can be best accomplished through the creation of a state-level body; and

WHEREAS, the Legislature of the State of Montana finds it desirable and appropriate to create a local government records committee.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] grants rulemaking authority to the secretary of state.

It is the intent of the legislature that the secretary of state have authority to adopt rules to implement and enforce [section 3], including specific authority to adopt rules regarding procedures and criteria:

(1) for determining which local government records must be preserved because they presently or may at some point in the future have significant historical value;

(2) for determining which local government records must be approved for destruction; and

(3) for evaluating proposed schedules for retention and disposition of local government records.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of [sections 1 through 4], the following definitions apply:

(1) "Local government" means:

(a) any city, town, county, consolidated city-county, or school district; and

(b) any subdivision of an entity named in subsection (1)(a).

(2) "Public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies of the record, regardless of physical form or characteristics, that has been made or received by any local government, in connection with the transaction of official business, and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any local government in the state of Montana.

(3) "Records custodian" means any individual responsible for the proper filing, storage, or safekeeping of any public records.

Section 2. **Local government records committee — creation.** (1) There is a local government records committee.

(2) The committee consists of the following seven members:

(a) the state archivist;

(b) the state records manager;

(c) the bureau chief of the local government services bureau of the department of commerce;

(d) two local records custodians, appointed by the director of the Montana historical society; and

(e) two additional local records custodians, appointed by the secretary of state.

(3) Committee members subject to appointment shall hold office for a period of 2 years beginning on January 1 of the year following their appointment.

(4) Any vacancies must be filled in the same manner they were filled originally.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet twice a year upon the call of the secretary of state or the presiding officer.

(7) Members of the committee not serving as part of their compensated government employment must be compensated in accordance with 2-18-501 through 2-18-503 for each day in committee attendance. Members who serve as part of their compensated government employment may not receive additional compensation, but the employing governmental entity shall furnish, in accordance with the prevailing per diem rates, a reasonable allowance for travel and other expenses incurred in attending committee meetings.

Section 3. **Duties and responsibilities.** (1) The local government records committee shall approve, modify, or disapprove proposals for local government records retention and disposition schedules.

(2) The committee shall appoint a subcommittee, known as the local government records destruction subcommittee, to handle requests for disposal of records. The subcommittee consists of the state archivist and the bureau chief of the local government services bureau of the department of commerce. Unless specifically authorized by statute, a local government public record may not be destroyed or otherwise disposed of without the unanimous approval of the subcommittee. When approval is required, a request for the disposal or destruction of any local government records must be submitted to the subcommittee by the entity concerned.

(3) The local government records committee may by unanimous approval establish categories of records for which a disposal request is not required, providing that those records are retained for the designated retention period.

(4) The committee shall respond to requests for technical advice on matters relating to local government records.

(5) The committee shall provide leadership and coordination in matters affecting the records of multiple local governments.

Section 4. **Rulemaking authority.** The secretary of state shall adopt rules to implement [sections 2 and 3].

Section 5. Section 2-6-201, MCA, is amended to read:

"**2-6-201. Purpose.** The purpose of this part is to create an effective records management program for executive branch agencies of the state of Montana *and political subdivisions* by establishing guidelines and procedures for the efficient and economical control of the creation, utilization, maintenance, and preservation of state *and local* records."

Section 6. Section 2-6-302, MCA, is amended to read:

"**2-6-302. Official records management — powers and duties.** In order to insure the proper management and safeguarding of official records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing and servicing official records transferred to the custody of the state archives;

(2) in cooperation with the secretary of state, *the local government records committee provided for in [section 2],* and the state records committee provided for in 2-15-1013, establish guidelines for the inventorying, cataloging, retention, and transfer of all official records;

(3) maintain and enforce restrictions on access to official records in the custody of the state archives in accordance with the provisions of this part;

(4) provide adequate housing and care of official records in the custody of the state archives to insure their proper preservation and use by the public;

(5) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate official records and official records of insignificant historical value from the records deposited in the state archives."

Section 7. Section 7-4-2221, MCA, is amended to read:

"**7-4-2221. Manner of keeping records and storing documents.** ~~(1)~~ Whenever any officer of any county is required or authorized by law to record, copy, file, recopy, or replace any document, plat, paper, written instrument, or book on file or of record in ~~his~~ *the officer's* office, ~~he~~ *the officer* may do so by ~~photostatic, microphotographic, microfilm~~ *photographic, micrographic, electronic,* or other mechanical process ~~which~~ *that* produces a clear, accurate, and permanent copy or reproduction of the original document, plat, paper, written instrument, or record in accordance with standards not less than those now approved for permanent records by ~~the~~ national ~~bureau of~~ standards.

~~(2) Nothing in 7-4-2613 shall be construed as preventing the recording or photographing or copying of such instruments separately upon a single or loose page or pages of a book if such page or pages shall immediately become a part of such book or volume which, when completed, shall be firmly bound and the pages thereof securely locked or sealed into the volume.~~"

Section 8. Section 7-4-2222, MCA, is amended to read:

"**7-4-2222. Substitution of reproduction for original document.** (1) Any ~~such~~ document, plat, paper, written instrument, or book reproduced as provided in 7-4-2221~~(1), the original of which is not less than 10 years old,~~ can be disposed of or destroyed only upon order of the district or probate court having jurisdiction, and the reproductions may be substituted ~~therefor~~ as public records.

(2) The ~~photostatic, microphotographic, or microfilmed~~ copy of any ~~such~~ record destroyed or disposed of as ~~herein~~ authorized *in this section* or a certified copy thereof ~~shall be~~ *is* admissible as evidence in any court or proceeding and ~~shall have~~ *has* the same force and effect as though the original record had been produced and proved.

(3) It ~~shall be~~ *is* the duty of the custodian of ~~such~~ *the* records to prepare enlarged typed or photographic copies of the records whenever their production is required by law."

Section 9. Section 7-4-2223, MCA, is amended to read:

"**7-4-2223. Duplicate records — safe storage of one copy.** (1) Whenever any record or document is copied or reproduced ~~by microphotographic,~~

~~microfilm, or other mechanical process~~ as provided in 7-4-2221, it ~~shall~~ *must* be made in duplicate.

(2) The custodian ~~thereof~~ *of the record or document* shall place ~~one~~ *the master* copy, the contents ~~thereof~~ *of the copy* being first ~~duly~~ identified and indexed, in a fireproof vault or fireproof storage place. ~~He~~ *The custodian* shall retain the other copy in ~~his~~ *the* office with suitable equipment for ~~displaying such record by projection to not less than its original size or for preparing copies of the record~~ *reproducing the record or document* for persons entitled ~~thereto~~ *to the record or document.*"

Section 10. Section 7-4-2612, MCA, is amended to read:

"**7-4-2612. Books for recording documents.** The county clerk, as ex officio recorder, ~~must~~ *shall* procure ~~such~~ books *or other recording materials* for records ~~as~~ *that* the business of ~~his~~ *the* office requires, but orders for the ~~same~~ *books or materials* must first be obtained from the board of county commissioners."

Section 11. Section 7-4-2613, MCA, is amended to read:

"**7-4-2613. Documents subject to recording.** The county clerk ~~must~~ *shall*, upon payment of ~~his~~ *the appropriate* fees ~~for the same~~, record~~, photograph, or correctly copy, separately, in large and well-bound or to be bound separate books, either in a fair hand or~~ by printing, typewriting, or photographic, *micrographic, or electronic* process or by the use of prepared blank forms:

(1) deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages, powers of attorney to convey real estate, leases which have been acknowledged or proved, and abstracts of ~~such~~ *the* instruments ~~which~~ *that* have been acknowledged or proved;

(2) notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest; however, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

(3) a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is deceased and that ~~his~~ *the deceased's* interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest not requiring probate. The document may be on the form used by the department of revenue for responding to the application for determination of inheritance or estate tax. It ~~shall~~ *must* contain:

(a) a statement that the holder of the nonprobate interest has died and that ~~his~~ *the deceased's* interest in the property is terminated;

(b) a certification by the county treasurer that the inheritance or estate tax, if any tax was due, has been paid or that no inheritance or estate tax was due;

(c) a description of the property;

(4) certificates of births and deaths;

(5) wills devising real estate admitted to probate;

(6) official bonds;

(7) transcripts of judgments ~~which~~ *that* by law are made liens upon real estate;

(8) instruments describing or relating to the individual property of married persons;

(9) all orders and decrees made by the district court in probate matters affecting real estate and ~~which~~ *that* are required to be recorded;

(10) notice of preemption claims;

(11) notice and declaration of water rights;

(12) assignments for the benefit of creditors;

(13) affidavits of annual work done on mining claims;

(14) notices of mining locations and declaratory statements;

(15) estrays and lost property;

(16) a book containing appraisement of state lands; *and*

(17) ~~such~~ other writings ~~as~~ *that* are required or permitted by law to be recorded."

Section 12. Section 7-5-2131, MCA, is amended to read:

"**7-5-2131. Records to be available to public.** The books, records, and accounts must be kept at the office of the clerk~~,~~ *and must be* open ~~at all times~~ for public inspection free of charge."

Section 13. Section 7-5-2132, MCA, is amended to read:

"**7-5-2132. Destruction of ~~old~~ county records.** ~~(1)~~ Upon the order of the board of county commissioners and with the *written* approval of the ~~department of commerce,~~ *local government records destruction subcommittee provided for in [section 3],* a county officer may destroy ~~old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent~~ records *that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.*

~~(2) (a) The board of county commissioners may, with the approval of the department of commerce, adopt retention schedules for claims, warrants, vouchers, bonds, treasurer's general receipts, and similar records created or kept by the county. The destruction of such records must be done in accordance with the provisions of such schedules.~~

~~(b) If a schedule has not been adopted and approved under the provisions of subsection (2)(a), such records may be destroyed by any county officer after a period of 25 years.~~"

Section 14. Section 7-5-4124, MCA, is amended to read:

"**7-5-4124. Destruction of ~~old~~ municipal records.** ~~(1) Except as provided in subsection (2), upon~~ *Upon* the order of the city or town council or commission and with the *written* approval of the ~~department of commerce,~~ *local government records destruction subcommittee provided for in [section 3],* a city or town officer may destroy ~~old worthless reports, papers, or records in his office that have served their purpose and that are substantiated by permanent~~ records *that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.*

~~(2) Records relating to the operation of any public utility by a city or town may be destroyed without the approval of the department of commerce after the expiration of the period during which they must be kept by said city or town as specified in the appropriate regulations of the public service commission of Montana.~~

~~(3) (a) The city or town council or commission may, with the approval of the department of commerce, adopt retention schedules for claims, warrants, vouchers, bonds, treasurer's general receipts, and similar records created or kept by the city or town. The destruction of such records must be done in accordance with the provisions of such schedules.~~

~~(b) If a schedule has not been adopted and approved under the provisions of subsection (3)(a), such records may be destroyed by any city or town officer after a period of 5 years.~~"

Section 15. Section 20-1-212, MCA, is amended to read:

"**20-1-212. Destruction of ~~old~~ records by *school* officer.** (1) ~~Unless destruction may be otherwise required by federal law, a school officer may destroy old worthless reports, papers, or records in his office:~~

~~(a) that have served their purpose and that are substantiated by permanent records, upon~~ *Upon* the order of the board of trustees and with the *written* approval of the ~~department of commerce~~ *local government records destruction subcommittee provided for in [section 3]*~~; and~~

~~(b) after a retention period of 5 years,~~ *a school officer may destroy records that have met the retention period, as contained in the local government records retention and disposition schedules, and that are no longer needed by the office.*

(2) ~~For the purposes of subsection (1), old worthless reports, papers, or records do not include student records and records of employment. Such records or copies of such~~ *Student* records must be permanently kept, *and employment records must be kept for 10 years after termination.*"

Section 16. Section 22-3-201, MCA, is amended to read:

"**22-3-201. Public policy.** The legislature declares that it is the public policy of the state of Montana that noncurrent records of permanent value to the state *and to local governments* should be preserved and protected; that the operations of state government should be made more efficient, more effective, and more economical through current records management; and that to the end that the people may receive maximum benefit from a knowledge of state *and local government* affairs, the state *and local governments* should preserve ~~its~~ noncurrent records of permanent value for study and research."

Section 17. Section 22-3-202, MCA, is amended to read:

"**22-3-202. Archives created — appointment, duties, and compensation of archivist.** There is a state archives in the Montana historical society for the preservation of noncurrent records of permanent value to the state *and local governments* and for records management. The director of the Montana historical society shall appoint a state archivist, who serves at the pleasure of the director, define ~~his~~ *the archivist's* duties, and fix ~~his~~ *the archivist's* compensation with the approval of the board of trustees of the Montana historical society."

Section 18. Section 22-3-203, MCA, is amended to read:

"**22-3-203. Preservation of noncurrent records of permanent value.** The state archivist shall preserve noncurrent records of permanent value *to the state and is responsible for the ultimate preservation of local government records of permanent value.* Upon request, ~~he~~ *the archivist* shall assist and advise in the establishment of records management programs in the executive, legislative, and judicial branches of state government *and in local governments,* with due regard to the functions of the officers and agencies involved."

Section 19. Section 30-9-403, MCA, is amended to read:

"**30-9-403. What constitutes filing — duration of filing — fees — effect of lapsed filing — duties of filing officer — computerized farm statement system.** (1) (a) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of 30-9-402 and subsection (1)(a), provided that ~~he~~ *the secretary of state* receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (1)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (1)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1)(b), the filing of the facsimile copy is void.

(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(2) Except as provided in ~~subsections~~ *subsection* (6) ~~and (11)~~, a filed financing statement is effective for a period of 5 years from the date of filing. The effectiveness of a filed financing statement lapses on the expiration of the 5-year period unless a continuation statement is filed prior to the lapse. If a security interest perfected by filing exists at the time insolvency proceedings are commenced by or against the debtor, the security interest remains perfected until 60 days after termination of the insolvency proceedings or until expiration of the 5-year period, whichever occurs later. Upon lapse the security interest becomes unperfected unless it is perfected without filing. If the security interest becomes unperfected upon lapse, it is considered to have been unperfected as against a person who became a purchaser or lien creditor before lapse.

(3) A continuation statement may be filed by the secured party within 6 months prior to the expiration of the 5-year period specified in subsection (2). Any continuation statement must be signed by the secured party, identify the original statement by file number, and state that the original statement is still effective. A continuation statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with 30-9-405(2), including payment of the required fee. Upon timely filing of the continuation statement, the effectiveness of the original statement is continued for 5 years after the last date to which the filing was effective, whereupon it lapses in the same manner as provided in subsection (2) unless another continuation statement is filed prior to ~~such~~ *the* lapse. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the original statement. Unless a statute on disposition of public records provides otherwise, the filing officer may remove a lapsed statement from the files and destroy it immediately if ~~he~~ *the filing officer* has retained a microfilm or other photographic record or a record produced according to rules adopted by the secretary of state, or in other cases after 1 year after the lapse, *upon approval by the local government records destruction subcommittee provided for in [section 3]*. The filing officer shall ~~so~~ arrange matters by physical annexation of financing statements to continuation statements or other related filings, or by other means, that if ~~he~~ *the filing officer* physically destroys the financing statements of a period more than 5 years past, those which have been continued by a continuation statement or which are still effective under subsection (6) shall be retained.

(4) Except as provided in subsection (7), a filing officer shall mark each statement with a file number and with the date and hour of filing. The filing officer shall hold the statement or a microfilm or other photographic copy or a copy produced according to rules adopted by the secretary of state for public inspection. In addition, the filing officer shall index the statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the statement.

(5) The uniform fees for filing, indexing, and stamping a copy furnished by the filing party to show the date and place of filing ~~shall~~ *must* be set pursuant to subsection ~~(13)~~ *(12)*.

(6) If the debtor is a transmitting utility and a filed financing statement so states, it is effective until a termination statement is filed. A real estate mortgage that is effective as a fixture filing under 30-9-402(6) remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real estate.

(7) When a financing statement covers timber to be cut or covers minerals or the like (including oil and gas) or accounts subject to 30-9-103(5) or is filed as a fixture filing, the filing officer shall index it under the names of the debtor and any owner of record shown on the financing statement in the same fashion as if they were the mortgagors in a mortgage of the real estate described and, to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if ~~he~~ *the secured party* were the mortgagee ~~thereunder~~, or if indexing is by description, in the same fashion as if the financing statement were a mortgage of the real estate described.

(8) When a financing or continuation statement filed by a financial institution covers farm products or accounts, livestock, general intangibles arising from or relating to the sale of farm products by a farmer, crops growing or to be grown, or equipment used in farming operations, the fee for filing must be established by the secretary of state in an amount commensurate with the costs of establishing and operating the computerized access system described in subsection (9).

(9) Within 1 working day of receipt of a financing or continuation statement, the secretary of state shall record the information contained in the statement on a centralized computer system that ~~he~~ *the secretary of state* shall establish. The computer system must allow access to financing statement information by any type of communications which conform to standards used by the state central computer. The system must have safeguards to allow only access to UCC data and to prevent alteration, addition, or deletion of the UCC data. The computer must be accessible whenever the state computer system is available. A perfected security interest is not created until the financing statement information is recorded on the system. A printout of information from the system is prima facie evidence of the existence or nonexistence of the filing of a financing statement. The secretary of state shall maintain adequate errors and omissions liability coverage to protect against input errors causing loss to a secured party.

(10) The secretary of state shall, upon request of a clerk and recorder, mail a certified copy of a financing statement, continuation statement, assignment, amendment, or termination covering collateral described in subsection (8) to the clerk and recorder in the county of the principal debtor's residence. The secretary of state shall mail the requested copies at least once each week. This subsection does not require the secretary of state to mail a copy of any document which does not specifically indicate the county of the principal debtor's residence on its face.

(11) ~~When a financing or continuation statement covers property described in subsection (8), its effectiveness lapses on July 1, 1986, unless prior to that~~

~~date there is filed in the office of the secretary of state a certified copy of the statement on file with the county clerk and all related documents.~~

~~(12)~~ Financing statement information in the computer system constitutes public writings within the meaning of 2-6-101, but the information may not be used to compile mailing lists.

~~(13)~~*(12)* The secretary of state, with advice from the county clerk and recorders, shall by administrative rule establish fees as required by this part. The fees must be commensurate with the costs of processing the documents. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this subsection. The secretary of state shall deposit *all fees* in the general fund in the state treasury ~~all fees~~ ~~he collects~~. The secretary of state shall disseminate the uniform fee schedule to the county clerk and recorders for their use."

Section 20. Section 30-9-407, MCA, is amended to read:

"**30-9-407. Information from filing officer.** (1) If the person filing any financing statement, termination statement, statement of assignment, or statement of release furnishes the filing officer a copy ~~thereof~~ *of the statement,* the filing officer shall upon request note upon the copy the file number and date and hour of the filing of the original and deliver or send the copy to ~~such~~ *the* person.

(2) Upon request of any person, the filing officer shall issue ~~his~~ *a* certificate showing whether there is on file on the date and hour stated ~~therein~~ *in the certificate,* any presently effective financing statement naming a particular debtor and any statement of assignment ~~thereof~~ and, if there is, giving the date and hour of filing of each ~~such~~ statement and the name and address of each secured party ~~therein~~ *in the statement.* For financing statements recorded on the system described in 30-9-403(9), the filing officer shall, upon request of any person, also furnish written information concerning the collateral described for any presently effective financing statement covering collateral described in 30-9-403(8). However, ~~such~~ *the* information is not a part of the filing officer's certificate and may not constitute a complete description of the collateral covered by the financing statement. The uniform fee for ~~such~~ a certificate and description of collateral ~~shall~~ *must* be set pursuant to 30-9-403. Upon request the filing officer shall furnish a copy of any filed financing statement or statement of assignment for a uniform fee of 50 cents per page.

(3) A computer printout from the system described in 30-9-403(9) constitutes the certificate of the secretary of state as to whether there is on file, on the date and hour stated ~~thereon~~ *on the printout,* ~~such~~ a financing statement covering the collateral described in 30-9-403(8). The fee for requesting a printout from the secretary of state must cover the cost of the printout. If a certificate is made on a requestor's own computer using telephone dial-up access, a fee commensurate with costs must be charged.

(4) ~~Within 30 days after July 1, 1987, the secretary of state shall provide a listing of all financing statements recorded on the system described in 30-9-403(9) covering collateral described in 30-9-403(8) to each county clerk and recorder. The secretary of state shall compile the listing alphabetically by debtor's name and may distribute the listing on microfilm or microfiche. The secretary of state shall provide the listing without charge to the county.~~

~~(5)~~ The secretary of state shall ensure that the system described in 30-9-403(9) complies with the requirements for a central filing system as defined by 7 U.S.C. 1631 as that statute read on January 1, 1987. The secretary of state shall distribute portions of the master list to registered buyers at least once each month. ~~He~~ *The secretary of state* may distribute portions of the master list more frequently if ~~he determines~~ it is *determined* necessary to improve the flow of agricultural credit."

Section 21. Section 71-3-206, MCA, is amended to read:

"**71-3-206. Fees.** (1) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien must be established and deposited in accordance with the provisions of 30-9-403~~(13)~~.

(2) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them."

Section 22. Section 71-3-705, MCA, is amended to read:

"**71-3-705. Destruction of records — when allowed.** (1) All seed liens ~~which have heretofore or shall hereafter be~~ filed for record in the office of any county clerk and recorder ~~of the several counties in the state shall~~ *must* be retained by ~~such~~ *the* county clerk in a file kept ~~by him~~ for ~~such purposes~~ *that purpose* for a period of 8 years from the time when ~~said~~ *the* seed lien has ceased to be a lien on the property described ~~therein~~ *in the lien.*

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all seed liens ~~which~~ *that* have been preserved for the period of time specified in this section, *upon approval by the local government records destruction subcommittee provided for in [section 3].*"

Section 23. Section 71-3-810, MCA, is amended to read:

"**71-3-810. Destruction of records — when allowed.** (1) All threshers' liens ~~which have heretofore or shall hereafter be~~ filed for record in the office of any county clerk and recorder ~~of the several counties in the state shall~~ *must* be retained by ~~such~~ *the* county clerk in a file kept ~~by him~~ for ~~such purposes~~ *that purpose* for a period of 8 years from the time when ~~said~~ *the* threshers' lien has ceased to be a lien on the property described ~~therein~~ *in the lien.*

(2) Upon the expiration of the period of time specified in subsection (1), the county clerk and recorder may destroy all threshers' liens which have been preserved for the period of time specified in this section, *upon approval by the local government records destruction subcommittee provided for in [section 3].*"

Section 24. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 2, chapter 6, and the provisions of Title 2, chapter 6, apply to [sections 1 through 4].

Section 25. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1993.

CHAPTER NO. 421

[SB 313]

AN ACT CONCERNING DISABLED ADULTS; AUTHORIZING THE DEPARTMENT OF FAMILY SERVICES TO LICENSE IN CERTAIN CIRCUMSTANCES ADULT FOSTER FAMILY CARE HOMES FOR MORE THAN LIGHT PERSONAL CARE OR CUSTODIAL CARE; SPECIFYING WHO MAY SERVE ON PROTECTIVE SERVICE TEAMS; SPECIFYING PERSONS REQUIRED TO REPORT SUSPECTED CASES OF ABUSE, NEGLECT, OR EXPLOITATION; DESIGNATING PERSONS WHO MAY ACCESS CERTAIN GOVERNMENT RECORDS OF ABUSED, NEGLECTED, OR EXPLOITED PERSONS; AND AMENDING SECTIONS 52-3-305, 52-3-805, 52-3-811, AND 52-3-813, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-3-305, MCA, is amended to read:

"**52-3-305. Limitation on care offered.** ~~The~~ *(1) Except as provided in this section, the* type of care offered by adult foster family care homes for the purposes of this part is light personal care or custodial care and does not include skilled nursing care.

(2) An adult foster family care home may be licensed to provide care for a disabled adult who resided in the home for at least 1 year before reaching 18 years of age, even though the adult is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

(3) A home applying for a license under subsection (2) must have a signed statement from a physician agreeing that the care needed by the adult may be provided in the home.

(4) A resident of an adult foster family care home licensed under subsection (2) must have a signed statement, renewed on an annual basis, from a physician assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the home and who:

(a) actually visited the home within the year covered by the statement;

(b) has certified that the particular needs of the resident can be adequately met in the home; and

(c) has certified that there has been no significant change in health care status that would require another level of care."

Section 2. Section 52-3-805, MCA, is amended to read:

"**52-3-805. Adult protective service teams.** The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons *and developmentally disabled persons* who are victims of abuse, neglect, or exploitation. The supervisor of adult protective services of the department of family services or ~~his~~ *a* designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or ~~his~~ *a* designee, who is an attorney. *Members may include other appropriate persons designated by the county attorney or the department.*"

Section 3. Section 52-3-811, MCA, is amended to read:

"**52-3-811. Reports.** (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a developmentally disabled person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless ~~he~~ *the attorney* acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies; ~~and~~

(g) a peace officer or other law enforcement official*; and*

(h) a person providing services to an older person or a developmentally disabled person pursuant to a contract with a state or federal agency.

(4) Any other person may submit a report as provided in subsection (1)."

Section 4. Section 52-3-813, MCA, is amended to read:

"**52-3-813. Confidentiality.** (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 ~~shall~~ *must* be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who has in ~~his~~ *the physician's* care an older person or a developmentally disabled person who ~~he~~ *the physician* reasonably believes was abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, exploitation, or neglect is later convicted of an offense constituting abuse, exploitation, or neglect and if the identity of the older person or the developmentally disabled person who is the subject of the report is not disclosed to the researcher; ~~and~~

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person, if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case; or

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person;

(g) an employee of the department or the department of social and rehabilitation services if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person; and

(h) an authorized representative of a guardianship program approved by the department if the department determines that disclosure to the program or to a person designated by the program is necessary for the proper provision of guardianship services to a person alleged to be an abused, neglected, or exploited older person or developmentally disabled person.

(3) The records and reports required to be kept confidential by subsection (1) ~~shall~~ *must* be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, neglected, or exploited an older person or a developmentally disabled person is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Approved April 20, 1993.

CHAPTER NO. 422

[SB 370]

AN ACT PROVIDING FOR LOCAL GOVERNMENT DISCRETION TO SUSPEND OR CANCEL DELINQUENT PROPERTY TAXES ON COMMERCIAL, AGRICULTURAL, OR RESIDENTIAL PROPERTY SUBJECT TO A STATE OR FEDERAL STATUTORY DUTY IN ORDER TO FACILITATE THE PURCHASE OR CONTINUED USE OF THE PROPERTY; AMENDING SECTION 15-24-1702, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Suspension and cancellation of collection of property taxes on commercial, agricultural, or residential property when statutory duty imposed.** (1) The governing body of a county or consolidated local government unit may suspend the collection of all or a part of the delinquent property taxes on commercial, agricultural, or residential property to facilitate the fulfillment of a statutory duty imposed with respect to the property to promote the viability of the property in commerce.

(2) The governing body may determine that:

(a) federal or state law imposed a duty, other than taxes or assessments, upon the property of the owner or a purchaser after the occurrence of the event;

(b) a material tax delinquency exists relative to the value of the property;

(c) the normal and reasonable cost of fulfilling the statutory duty when added to the delinquent taxes exceeds the fair market value of the property;

(d) the ownership history of the property demonstrates that there is no intent to restructure ownership for the purpose of escaping the payment of delinquent property taxes;

(e) the owner or purchaser has committed to fulfilling the statutory duty within a reasonable period of time;

(f) the cancellation of the delinquent taxes together with other financial facts concerning the property provide the owner or purchaser with a reasonable profit potential.

(3) If an owner or purchaser fulfills the statutory duty within a reasonable period of time, the governing body may cancel the collection of the delinquent property taxes. The governing body may not cancel the delinquent property taxes if the owner or purchaser is delinquent on taxes for any other property within the governing body's taxing jurisdiction.

Section 2. Section 15-24-1702, MCA, is amended to read:

"**15-24-1702. Resolution to suspend or cancel delinquent taxes.** (1) In order for the governing body to grant a suspension or cancellation of delinquent property taxes pursuant to this section, it shall adopt a resolution after:

(a) providing notice, as set forth in 7-1-2121;

(b) holding a public hearing; and

(c) notifying the governor's office of budget and program planning and the department of revenue about a proposed action to suspend or cancel delinquent property taxes. The governor's office of budget and program planning and the department of revenue shall consult with the governing body regarding the impact on programs that would result from the proposed granting of the suspension or cancellation of the delinquent property taxes, and the governing body shall consider the information before reaching a final decision.

(2) The resolution must state that the suspension or cancellation is in the best interest of the people of the county or consolidated local government, based

on full disclosure of all pertinent financial information by the new owner *under 15-24-1701 or by the owner or purchaser under [section 1]* as required by the local government."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 24, part 17, and the provisions of Title 15, chapter 24, part 17, apply to [section 1].

Section 4. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively to tax years beginning after December 31, 1987.

Section 5. **Termination.** [This act] terminates July 1, 1995.

Approved April 20, 1993.

CHAPTER NO. 423

[SB 395]

AN ACT LIMITING THE ALLOWABLE LENGTH FOR A VEHICLE COMBINATION HAULING LOGS; ESTABLISHING LIMITATIONS ON THE MAXIMUM OVERHANG LENGTH OF LOGS; AND AMENDING SECTION 61-10-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-104, MCA, is amended to read:

"**61-10-104. Length — definitions.** (1) A single truck, bus, or any self-propelled vehicle, unladen or with load, may not have an overall length, inclusive of front and rear bumpers, in excess of 45 feet.

(2) (a) When used in a truck tractor-semitrailer combination, the semitrailer may not exceed 53 feet in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. When used in a truck tractor-semitrailer-trailer or a truck tractor-semitrailer-semitrailer combination, the semitrailer and trailer or the two semitrailers may not exceed 28 ½ feet each in length, excluding those portions not designed to carry a load, except as provided by 61-10-124. Truck tractor-semitrailer, truck tractor-semitrailer-trailer, and truck tractor-semitrailer-semitrailer combinations are not subject to a combination length limit.

(b) A stinger-steered automobile or boat transporter may not exceed 75 feet in length plus a maximum 3 feet of front overhang and 4 feet of rear overhang, except as provided by 61-10-124. "Stinger-steered automobile or boat transporter" means a truck tractor-semitrailer combination that has a fifth wheel on a drop frame located behind and below the rear axle of the truck tractor and that is designed and used for the transportation of vehicles or assembled boats or boat hulls.

(c) All other combinations of vehicles may not have a combination length in excess of 75 feet, except as provided by 61-10-124. If the combination consists of more than two units, the rear units of the combination must be equipped with breakaway brakes.

(3) A motor vehicle may not tow more than one motor vehicle, and a motor vehicle may not draw more than three motor vehicles attached to it by the triple saddle-mount method (that is, by mounting the front wheels of one vehicle on the bed of another, leaving only the rear wheels of the vehicle in contact with the roadway), nor may this combination have a combination length in excess of 75 feet.

(4) A passenger vehicle or truck of less than 2,000 pounds "manufacturers' rated capacity" may not tow more than one trailer or semitrailer, nor may this combination have a length in excess of 65 feet.

(5) (a) The length of a vehicle combination consisting of a truck or truck-tractor and one trailer, pole trailer, or semitrailer hauling raw logs may not exceed 75 feet in overall length. As used in this subsection (a), the term "length" means the total length of the vehicle combination beginning at the front of the front bumper of the truck or truck-tractor and extending to the most distant end of the logs being hauled. A term permit for an overlength vehicle combination, as provided in 61-10-124(3), does not apply to the vehicle combination described in this subsection (a). A vehicle combination exceeding 75 feet must have a trip permit.

(b) The maximum overhang of any log may not exceed 15 feet, except by special, single-trip permit. Overhang is measured from the center of the rear-most axle to the most distant end of the logs being hauled.

(c) The provisions in subsections (5)(a) and (5)(b) do not apply to a vehicle combination hauling utility poles.

~~(5)~~*(6)* As used in this chapter, the following definitions apply:

(a) "Combination length" means the total length of a combination of vehicles, such as a truck tractor-semitrailer-trailer combination, measured from the front bumper of the motor vehicle to the back bumper or rear extremity of the last trailer, including the connection tongues.

(b) "Combined trailer length" means the total length of a combination of trailers measured from the front of the first trailer to the back of the last trailer, including the connection tongues and loads.

(c) "Length", *except as provided in subsection (5)(a),* means the total longitudinal dimension of a single vehicle, a trailer, or a semitrailer. The length of a trailer or semitrailer is measured from the front of the cargo-carrying unit to its rear, exclusive of safety or energy efficiency devices, air-conditioning units, air compressors, flexible fender extensions, splash and spray suppressant devices, bolsters, mechanical fastening devices, and hydraulic lift gates.

(d) "Rocky Mountain double" means a combination of vehicles that includes a truck tractor pulling a long semitrailer and a shorter trailer."

Approved April 20, 1993.

CHAPTER NO. 424

[SB 396]

AN ACT ALLOWING A TAXING UNIT THAT EXPERIENCED A 5 PERCENT OR MORE DECREASE IN TAXABLE VALUATION FROM THE 1986 TAX YEAR TO CONTINUE TO LEVY ADDITIONAL MILLS WHEN THE TAXING UNIT'S TAXABLE VALUATION IS GREATER THAN 95 PERCENT BUT LESS THAN 100 PERCENT OF THE TAXING UNIT'S TAXABLE VALUATION IN TAX YEAR 1986; AMENDING SECTION 15-10-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that ~~no~~ *a* further increase may *not* be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not mean that ~~no~~ *a* further increase may *not* be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in classes four and eleven is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four or class eleven property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) *except as provided in subsection (8)(a),* the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) (a) Except as provided in subsection (8)(b), if a taxing unit has levied additional mills under subsection (7)(a) to compensate for a decrease in taxable valuation, it may continue to levy additional mills to equal the revenue from property taxes for the 1986 tax year when the taxing unit's taxable valuation is greater than 95% but less than 100% of the taxing unit's taxable valuation in tax year 1986.

(b) When the taxable valuation of a taxing unit that levied additional mills under subsection (7)(a) or (8)(a) is equal to or greater than the taxing unit's taxable valuation in tax year 1986, it may not levy additional mills to compensate for a subsequent decrease in taxable valuation unless the conditions of subsection (7)(a) are satisfied.

~~(8)~~*(9)* The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection ~~(8)~~*(9)*;

(i) levies for economic development authorized pursuant to 90-5-112(4);

(j) levies authorized under 7-6-502 for juvenile detention programs; and

(k) elementary and high school districts.

~~(9)~~*(10)* The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

~~(10)~~*(11)* (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2).

~~(11)~~*(12)* The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

~~(12)~~*(13)* The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

Approved April 20, 1993.

CHAPTER NO. 425

[SB 406]

AN ACT EXPANDING THE TEMPORARY RESTRAINING ORDER LAWS AND THE CRIMINAL LAWS THAT PROTECT PERSONS AGAINST DOMESTIC ABUSE; DEFINING "FAMILY MEMBER" FOR PURPOSES OF BOTH

AREAS OF LAW; APPLYING BOTH AREAS OF LAW TO PARTNERS; DEFINING THE TERM "PARTNERS"; APPLYING THE PROTECTIONS IN THE TEMPORARY RESTRAINING ORDER LAWS TO ALL FAMILY MEMBERS; AND AMENDING SECTIONS 40-4-121, 45-5-206, 46-6-311, 46-6-602, AND 46-9-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-121, MCA, is amended to read:

"**40-4-121. Temporary order or temporary injunction.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion ~~shall~~ *must* be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring ~~him~~ *the person* to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any ~~child~~ *family member*;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; ~~and~~

(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment; and

~~(e)~~*(f)* providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) ~~of this section~~ without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) alleging physical abuse, harm, or bodily injury against the petitioner by a family ~~or household~~ member *or partner* or the threat of physical abuse, harm, or bodily injury against the petitioner by a family ~~or household~~ member *or partner* that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; and

(b) requesting relief under Title 27, chapter 19, part 3. Any ~~preliminary~~ *temporary* injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, *as appropriate*. Persons who may request relief under this subsection include ~~spouses, former spouses, and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition~~ *family members or partners.*

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) At the time of the hearing, the court shall determine whether good cause exists for the injunction to continue for 1 year.

(7) If the court determines, on the basis of a party's history of violence and the testimony presented at the hearing or on the basis of credible evidence that a party has violated [section 1 of Senate Bill No. 37], that the other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may order that the injunction be effective permanently.

(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to a dissolution proceeding upon presentation of evidence of a party's history of violence showing that the other party may suffer permanent injury or harm if a permanent injunction is not issued. A permanent injunction may also be issued enjoining a party from stalking upon presentation of credible evidence that the party has violated [section 1 of Senate Bill No. 37] if the court determines that the stalked party needs permanent protection.

(9) Except when the alleged conduct to be restrained is a violation of [section 1 of Senate Bill No. 37], restraining orders issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in addition to the respondent, has engaged in abusive or assaultive behavior as described by subsection (3)(a).

~~(6)~~*(10)* On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

~~(7)~~*(11)* A temporary order or ~~temporary~~ injunction *or permanent injunction*:

(a) ~~does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;~~

~~(b)~~ may be revoked or modified ~~before final decree~~ on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208 *or order under Title 27, chapter 19, part 3, as appropriate*;

~~(c)~~*(b)* terminates upon order of the court or ~~when a final decree is entered or~~ when ~~a~~ *the* petition ~~for dissolution or legal separation~~ is voluntarily dismissed; and

~~(d)~~*(c)* when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626."

~~(8)~~*(12)* When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown.

(13) As used in this section, the following definitions apply:

(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex."

Section 2. Section 45-5-206, MCA, is amended to read:

"**45-5-206. Domestic abuse.** (1) A person commits the offense of domestic abuse if ~~he~~ *the person*:

(a) purposely or knowingly causes bodily injury to a family member or ~~household member~~ *partner*; ~~or~~

(b) negligently causes bodily injury to a family member or partner with a weapon during or in connection with a quarrel, fight, or abusive behavior; or

~~(b)~~*(c)* purposely or knowingly causes reasonable apprehension of bodily injury in a family member or ~~household member~~ *partner*. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused must be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or ~~household member~~ *partner*, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of 46-6-311 and this section, ~~"family member or household member" means a spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.~~ *the following definitions apply:*

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) A person convicted of domestic abuse for the first or second time shall be fined not to exceed ~~$500~~ *$1,000* or be imprisoned in the county jail not to exceed ~~6 months~~ *1 year*, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not ~~to exceed~~ *less than $500 and not*

more than $50,000 ~~or~~ *and* be imprisoned *in the county jail or* in the state prison for a term not ~~to exceed~~ *less than 10 days and not more than* 5 years, or both.

(4) (a) A person convicted of domestic abuse ~~for the first or second time~~ shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours:

(i) with a person licensed under Title 37, chapter 3, 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the convicted person. Subsection (4)(a) does not prohibit the placement of the convicted person in other appropriate treatment if the court determines there is no available treatment program directed to the violent conduct of the convicted person.

(c) Upon completion of the minimum counseling requirements, the counselor shall notify the court that the defendant has completed the minimum counseling requirements and shall provide the court with a recommendation as to whether or not the defendant requires additional counseling. Upon recommendation of the counselor and direction of the court, the defendant may be required to pay for and complete additional counseling or treatment, such as chemical dependency treatment, or both.

(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court."

Section 3. Section 46-6-311, MCA, is amended to read:

"**46-6-311. Basis for arrest without warrant.** (1) A peace officer may arrest a person when ~~no~~ *a* warrant has *not* been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a family member or ~~household member~~ *partner* constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim."

Section 4. Section 46-6-602, MCA, is amended to read:

"**46-6-602. Notice of rights to victim upon arrest in domestic violence situation.** Whenever a peace officer arrests a person for domestic abuse, as defined in 45-5-206, if the victim is present, the officer shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county attorney's office can file criminal charges against your abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:

(1) an order restraining your abuser from abusing you;

(2) an order directing your abuser to leave your household;

(3) an order preventing your abuser from transferring any property except in the usual course of business;

(4) an order awarding you or the other parent custody of or visitation with a minor child or children;

(5) an order restraining your abuser from molesting or interfering with minor children in your custody *or a family member or partner, as defined in 45-5-206*; or

(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so"."

Section 5. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule — acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse or any assault against a family member or a ~~household member~~ *partner, as defined in 45-5-206.*

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

Approved April 20, 1993.

CHAPTER NO. 426

[SB 408]

AN ACT AMENDING THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT; CLARIFYING THE DEFINITION OF NEGLECT; PROVIDING FOR THE MEMBERSHIP AND DUTIES OF ADULT PROTECTIVE SERVICE TEAMS; AND AMENDING SECTIONS 52-3-803 AND 52-3-805, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-3-803, MCA, is amended to read:

"**52-3-803. Definitions.** As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a developmentally disabled person without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102.

(3) "Exploitation" means the unreasonable use of an older person or a developmentally disabled person, ~~his~~ *the person's* money, or ~~his~~ *the person's* property to the advantage of another by means of duress, menace, fraud, or undue influence.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any ~~other~~ person legally responsible in a residential setting for an older person's or a developmentally disabled person's welfare to provide, *to the extent of legal responsibility,* food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the developmentally disabled person.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to protect ~~himself~~ *the person* from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function."

Section 2. Section 52-3-805, MCA, is amended to read:

"**52-3-805. Adult protective service teams.** *(1)* The county attorney or the department of family services ~~may~~ *shall* convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams ~~may~~ *shall* assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons who are victims of abuse, neglect, or exploitation. The supervisor of adult protective services of the department of family services or ~~his~~ *a* designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or ~~his~~ *a* designee, who is an attorney.

(2) When the team considers a matter involving a developmentally disabled adult in the care of a person providing developmental disabilities services, the team must also include a provider of developmental disability services other than the provider involved in the matter under review and a representative of the developmental disabilities division of the department of social and rehabilitation

services. The team shall make a report to the county attorney that contains a recommendation concerning any criminal prosecution to be brought pursuant to this part."

Approved April 20, 1993.

CHAPTER NO. 427

[SB 412]

AN ACT CLARIFYING THAT THE BENEFICIAL USE OF PROPERTY HELD BY A PORT AUTHORITY IS EXEMPT FROM PROPERTY TAXATION; AMENDING SECTION 15-24-1203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-1203, MCA, is amended to read:

"**15-24-1203. Privilege tax on gainful use of tax-exempt property — exceptions.** After March 17, 1969, there is imposed and ~~shall~~ *must* be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. ~~No~~ *A* tax may *not* be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on ~~such~~ airport property are subject to tax. ~~No~~ *A* tax ~~shall~~ *may not* be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates. The tax ~~shall be~~ *is* imposed upon the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts ~~shall~~ *may* not be subject to the tax. The tax may not be imposed upon the possession or other beneficial use of railroad right-of-way or track owned by the United States or acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state or the United States retains ownership and the right-of-way or track is used exclusively for rail transportation. *The tax may not be imposed on the beneficial use by a person of property held by a port authority, created under Title 7, chapter 14, part 11, or by a port authority owned by the United States or an agency of the United States, unless the port authority provides for the exclusive use of the property by the person.*"

Section 2. **Coordination instruction.** If House Bill No. 312, Senate Bill No. 325, and [this act] are passed and approved, then 15-24-1204 is amended to read:

"**15-24-1204. Rate of privilege — tax credit for federal payments in lieu of taxes.** The tax imposed upon ~~such~~ *the* possession or other beneficial use of tax-exempt property *for industrial, trade, or other business purposes* ~~shall be in the same amount and to the same extent as the ad valorem property tax would be if the possessor or user were the owner thereof, provided that there shall be~~ *is on the separate private interest in the tax-exempt property. The amount of payments that are made in lieu of taxes must be* credited against the *amount* *of* tax ~~so~~ *that is* imposed upon the beneficial use of property owned by the federal government ~~the amount of payments which are made in lieu of taxes~~."

Section 3. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991.

Approved April 20, 1993.

CHAPTER NO. 428

[SB 417]

AN ACT REVISING THE BAD DEBT CREDIT ALLOWANCE ON GASOLINE AND SPECIAL FUEL TAXES PAYABLE TO THE DEPARTMENT OF TRANSPORTATION; AUTHORIZING THE DEPARTMENT TO WRITE OFF THE COLLECTION OF A TAX, PENALTY, OR INTEREST DUE WHENEVER THE DEPARTMENT DETERMINES THAT IT IS NOT COST-EFFECTIVE TO ATTEMPT TO COLLECT THE TAX, PENALTY, OR INTEREST; AMENDING SECTIONS 15-70-221 AND 15-70-328, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] grants the department of transportation authority to adopt rules for establishing procedures to determine whether it is cost-effective to collect any tax, penalty, or interest from a delinquent taxpayer. The legislature intends that the rules adopted by the department address the circumstances under which it is no longer cost-effective to pursue the collection of a tax, penalty, or interest. These circumstances include but are not limited to the difficulty of finding the delinquent taxpayer, the difficulty of locating the assets of the taxpayer, or the financial condition of the taxpayer. In addition, the rules adopted by the department may include procedures to remove, for accounting purposes, a delinquency from the department's accounts receivable.

The legislature also intends that rules provide that if a tax delinquency is written off, it is not forgiven, but the department will incur no further expense in collecting the tax.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-221, MCA, is amended to read:

"**15-70-221. Refund or credit authorized.** (1) ~~Any~~ *A* person who ~~shall purchase~~ *purchases* and ~~use~~ *uses* any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, ~~or~~ *used in* operating or propelling stationary gasoline engines~~,~~ *or* tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon ~~any of~~ the public highways or streets of this state ~~shall be~~ *is* allowed a refund of the amount of tax paid directly or indirectly on the gasoline ~~so used~~. ~~Such~~ *The* refund ~~or drawback should in no instance~~ *may not* exceed the tax paid or to be paid to the state, and ~~no~~ *a* refund ~~shall be~~ *is not* allowed ~~of~~ *for* that portion of the tax per gallon ~~upon~~ *on* aviation gasoline allocated to the department of transportation by 67-1-301.

(2) ~~Any~~ *A* distributor ~~paying~~ *who pays* the gasoline license tax to this state erroneously ~~shall be~~ *is* allowed a credit or refund of the amount of tax ~~so~~ paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline *with a tax liability of $200 or greater* for which the distributor has *not* received ~~no~~ consideration from or on behalf of the purchaser *and for which the distributor has not forgiven any liability.* The distributor ~~shall~~ *may not* have declared the accounts of the purchaser worthless *more than once during a 3-year period,* and *the dealer must have* claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts ~~that were~~ declared worthless must be reported to the department and the tax due *must be prorated* on the collected amount *and* must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) ~~Any~~ *A* person who purchases and exports for sale, use, or consumption outside Montana ~~any~~ gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax ~~so~~ paid upon completion of the information reports required under 15-70-209 and presentation to the department of ~~such other~~ proof of delivery outside Montana as it may by rule require."

Section 2. Section 15-70-328, MCA, is amended to read:

"**15-70-328. Credits.** (1) *(a)* ~~Any~~ *A* licensed special fuel user or licensed special fuel dealer who has paid a special fuel tax either directly or to the vendor from whom it was purchased ~~shall~~ *must* receive credit in the amount of ~~any~~*:*

(i) the tax paid on special fuel exported for use outside of this state or for ~~any~~ use off the public roads and highways of this state*; or*

(ii) ~~for any~~ overpayment of special fuel taxes not due to the state.

(b) Special fuel carried from this state in the fuel tank of a motor vehicle is ~~deemed~~ *considered* to be exported from this state.

(2) ~~Any~~ *A* licensed special fuel user who purchases a temporary special fuel permit and ~~thereafter~~ applies for a special fuel vehicle permit for the same vehicle in less than 11 days after the temporary permit is issued ~~shall~~ *must* receive credit in the amount of the temporary permit fee.

(3) (a) A special fuel dealer who has paid a special fuel tax is entitled to a credit of the tax paid to the department on those sales of special fuels *with a tax liability of $200 or greater* for which the dealer has *not* received ~~no~~ consideration from or on behalf of the purchaser *and for which the special fuel dealer has not forgiven any liability.* The dealer ~~shall~~ *may not* have declared the accounts of the purchaser worthless *more than once during a 3-year period,* and *the dealer must have* claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due *must be prorated* on the collected amount *and* must be paid to the department.

(c) The department may require a dealer to submit periodic reports listing accounts that are delinquent for 90 days or more."

Section 3. **Writeoff of collection of tax, penalty, or interest — rules.** (1) (a) The department of transportation may write off the collection of any tax, penalty, or interest due to the state under this chapter whenever the department determines that it is not cost-effective for the department to attempt to collect the tax, penalty, or interest.

(b) The department shall establish procedures to determine the cost-effectiveness of collecting the tax, penalty, or interest.

(c) If the department writes off the collection of any tax, penalty, or interest, the department shall place in the taxpayer's file a written justification for the writeoff that includes a determination that attempted collection is not cost-effective.

(2) The department shall adopt rules to establish the procedures to carry out the purposes of this section.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 15, chapters 70 and 71, and the provisions of Title 15, chapters 70 and 71, apply to [section 3].

Section 5. **Applicability.** [This act] applies to sales of gasoline and special fuels on or after [the effective date of this act] and to taxes due on those sales.

Section 6. **Effective date.** [This act] is effective July 1, 1993.

Approved April 20, 1993.

CHAPTER NO. 429

[SB 392]

AN ACT INCREASING THE STATE'S ABILITY TO ENFORCE SUPPORT OBLIGATIONS; PROVIDING FOR A LIEN ON LOTTERY WINNINGS WHEN THE WINNER OWES A DEBT TO OR COLLECTED BY A IV-D AGENCY; REVISING THE CRIME OF NONSUPPORT; AND AMENDING SECTIONS 17-4-105 AND 45-5-621, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Lien on lottery winnings for debt collected by IV-D agency — notice to agency — payment to agency — procedure.** (1) For purposes of this section, "IV-D agency" means the state child support enforcement agency created pursuant to Title IV-D of the Social Security Act and providing services under Title 40, chapter 5.

(2) The IV-D agency shall periodically certify to the state lottery the names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(3) Prior to the payment of lottery winnings in excess of $600, the state lottery shall check the name of the winner against the list of names and social security numbers of persons owing a debt to or collected by the IV-D agency.

(4) (a) If the winner is on the list of persons owing a debt to or collected by the IV-D agency, the state lottery shall make a good faith attempt to notify the IV-D agency and the agency then has a lien against the winnings in the amount of the debt owed to or collected by the IV-D agency. The state lottery has no liability to the IV-D agency or the individual on whose behalf the IV-D agency is collecting the debt if the state lottery fails to match a winner's name to a name on the list or is unable to notify the IV-D agency of a match. The IV-D agency shall provide the state lottery with written notice of a support lien promptly upon the state lottery's notification of a match.

(b) If the lottery winnings are to be paid through the state auditor, the lottery winner is entitled to notice and opportunity for hearing under Title 17, chapter 4, part 1, prior to any offset of the debt against the winnings.

(c) If the lottery winnings are to be paid directly by the state lottery, the amount of the debt owed to or collected by the IV-D agency must be held by the lottery for a period of 30 days from the lottery's confirmation of the amount of the debt to allow the IV-D agency to institute any necessary garnishment or withholding proceedings. If a garnishment or withholding proceeding is not initiated within the 30-day period, the lottery shall release the payment to the winner.

(d) The IV-D agency, in its discretion, may release or partially release the support lien upon written notice to the state lottery.

(e) A support lien under this section is in addition to any other lien created by law.

Section 2. Section 17-4-105, MCA, is amended to read:

"**17-4-105. Authority to collect debt — offsets.** (1) Once a debt of a state agency has been transferred to the state auditor, ~~he~~ *the state auditor* ~~shall have~~ *has* the authority to collect it. The state auditor may contract with commercial collection agencies for recovery of debts owed the state.

(2) The state auditor shall offset any amount due a state agency from a person or entity against any amount, including refunds or taxes, owing the person or entity by any state agency, provided the state auditor may not exercise this right of offset until the debtor has first been notified by the state auditor and been given an opportunity for a hearing. ~~No~~ *An* offset may *not* be made against any amount paid out as child support collected by the department of social and rehabilitation services. The state auditor shall deduct from the claim and draw ~~his~~ warrants for the amounts offset in favor of the respective state agencies to which due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due state agencies, the amount available ~~shall~~ *must* be applied first to debts owed by reason of the nonpayment of child support and then in ~~such~~ *the* manner as the state auditor, in ~~his~~ *the state auditor's* discretion, ~~shall determine~~ *determines*.

(3) (a) The department retains the power to offset tax refunds due individuals against taxes owed the state, provided the department may not

exercise this right of offset until the taxpayer has been notified by the department and been given the opportunity to request a review.

(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.

(c) Appeal from the decision of the department after the review conference may be taken to the state tax appeal board.

(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and any decision made as a result of that proceeding has become final.

(4) (a) A debt ~~resulting from or relating to a child support obligation~~ owed to the department of social and rehabilitation services or being collected by the department of social and rehabilitation services on behalf of any person or agency may be offset by the state auditor if~~:~~

~~(i)~~ the debt is being enforced or collected by the department of social and rehabilitation services under Title IV-D of the Social Security Act~~;~~.

~~(ii) the debt is for repayment of child support payments retained contrary to the assignment at 53-2-613; or~~

~~(iii) the debt is for costs of fees under any contract, judgment, or administrative order entered in the course of child support enforcement by the department of social and rehabilitation services.~~

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the state auditor for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. *The person owing a debt is not entitled to a hearing if the amount of the debt has been the subject matter of any proceeding conducted for the purpose of determining the validity of the debt and any decision made as a result of that proceeding has become final.* The hearing must be conducted by teleconferencing methods and is subject to the provisions of the Montana Administrative Procedure Act. The department of social and rehabilitation services shall adopt rules necessary to determine the hearing procedures.

(5) If, in the discretion of the state auditor, the person or entity refuses or neglects to file ~~his~~ *a* claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of ~~such~~ *the* person or entity; if approved by the department of administration, it shall have the same force and effect as though filed by ~~such~~ *the* person or entity. The amount due any person or entity from the state or any agency ~~thereof~~ *of the state* is the net amount otherwise owing ~~such~~ *the* person or entity after any offset as *provided* in this section ~~provided~~."

Section 3. Section 45-5-621, MCA, is amended to read:

"**45-5-621. Nonsupport.** (1) A person commits the offense of nonsupport if ~~he~~ *the person* fails to provide support ~~which he~~ *that the person* can provide and ~~which he~~ *that the person* knows ~~he~~ *the person* is legally obliged to provide to a spouse, child, or other dependent.

(2) *(a)* A person commits the offense of aggravated nonsupport if:

~~(a)~~*(i)* the offender has left the state ~~to avoid the duty of support~~ *without making reasonable provisions for the support of a spouse, child, or other dependent*; or

~~(b)~~*(ii)* the offender has been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

~~(3)~~*(7) (a)* ~~A~~ *Except as provided in subsection (7)(b) or (7)(c), a* person convicted of nonsupport shall be fined not to exceed $500 or be imprisoned in the county jail for ~~any~~ *a* term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed $50,000 or be imprisoned in the state prison for ~~any~~ *a* term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security.

This security must be for a period of 2 years or, in the case of aggravated nonsupport, for a period of 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under 40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) must be forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the defendant to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

~~(4)~~*(11)* The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support. *A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the defendant.*

(12) When any payment of public assistance money has been made for the benefit of a child by the department of social and rehabilitation services under the provisions of Title 53, a representative of the department may sign a criminal complaint against the person obligated by law to support the child who received the public assistance.

(13) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 23, chapter 7, and the provisions of Title 23, chapter 7, apply to [section 1].

Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 20, 1993.

CHAPTER NO. 430

[SB 429]

AN ACT REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO GIVE PRIORITY, UNDER CERTAIN CONDITIONS, TO RECLAMATION AND DEVELOPMENT GRANT REQUESTS FROM THE BOARD OF OIL AND GAS CONSERVATION; AMENDING SECTION 90-2-1113, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-2-1113, MCA, is amended to read:

"**90-2-1113. Evaluation criteria** — ***priority.*** *(1)* ~~The~~ *Except as provided in subsection (2), the* department shall consider the following criteria in evaluating eligible applications and in selecting projects to be recommended to the governor for funding:

~~(1)~~*(a)* the degree to which the project will provide benefits in its eligibility category or categories;

~~(2)~~*(b)* the degree to which the project will provide public benefits;

~~(3)~~*(c)* the degree to which the project will promote, enhance, or advance the policies and purposes of the reclamation and development grants program;

~~(4)~~*(d)* the degree to which the project will provide for the conservation of natural resources;

~~(5)~~*(e)* the degree of need and urgency for the project;

~~(6)~~*(f)* the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;

~~(7)~~*(g)* the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and

~~(8)~~*(h)* any other criteria the department considers necessary to carry out the policies and purposes of the reclamation and development grants program.

(2) (a) Subject to the conditions of this part, the department shall give priority to grant requests, not to exceed $600,000 in total for the biennium, from the board of oil and gas conservation. The board of oil and gas conservation shall use a grant that received priority under this subsection (a) only for oil and gas reclamation projects. A grant may not be used for personnel costs or general operating expenses of the board of oil and gas conservation.

(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the $600,000 limitation for the next biennium.

(c) The priority given to the board of oil and gas conservation under subsection (2)(a) does not preclude the board of oil and gas conservation from submitting additional grant requests. The department shall evaluate additional grant requests from the board of oil and gas conservation in accordance with the provisions of subsection (1)."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved April 20, 1993.

CHAPTER NO. 431

[HB 151]

AN ACT DEFINING THE TERM "CRIMINAL JUSTICE AGENCY" FOR PURPOSES OF THE MONTANA CRIMINAL JUSTICE INFORMATION ACT TO INCLUDE AGENCIES OF FOREIGN NATIONS THAT ADMINISTER CRIMINAL JUSTICE; AMENDING SECTION 44-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-5-103, MCA, is amended to read:

"**44-5-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless ~~such~~ *the* information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; ~~or~~

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order; *or*

(d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer to perform as its principal function the administration of criminal justice and that has been approved for the receipt of criminal justice information by the Montana attorney general, who may consult with the United States department of justice.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by *foreign,* federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings

have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached ~~thereto~~ *to the sentence* by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains ~~such~~ *the* information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 20, 1993.

CHAPTER NO. 432

[SB 316]

AN ACT AMENDING THE TREASURE STATE ENDOWMENT PROGRAM TO ALLOW COUNTY WATER, SEWER, AND SOLID WASTE DISTRICTS TO APPLY FOR ASSISTANCE; ALLOWING THE TREASURE STATE ENDOWMENT PROGRAM TO BORROW FROM THE BOARD OF INVESTMENTS; PERMITTING INTEREST RATE SUBSIDIES TO BE PAID OVER THE LIFE OF LOANS OR BONDS; AMENDING THE ORDER OF PRIORITY FOR INFRASTRUCTURE PROJECTS; AND AMENDING SECTIONS 90-6-701, 90-6-703, AND 90-6-710, MCA.

STATEMENT OF INTENT

This bill requires a statement of intent because it grants the department of natural resources and conservation and the department of commerce additional rulemaking authority. It allows the departments to adopt rules allowing interest rate subsidies for local infrastructure projects to be paid over the life of the loan or bonding period. The rules adopted by the departments must be consistent with the priorities for projects contained in 90-6-710. The bill also allows the departments to make loans for preliminary engineering study costs. These loans must be repaid at the time overall construction financing is arranged.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-701, MCA, is amended to read:

"**90-6-701. Treasure state endowment program created — definitions.** (1) *(a)* There is a treasure state endowment program that consists of:

~~(a)~~*(i)* the treasure state endowment fund established in 17-5-703; ~~and~~

~~(b)~~*(ii)* the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).

(b) The treasure state endowment program may borrow from the board of investments to provide additional financial assistance for local government infrastructure projects under this part, Provided that no part of the loan may be made from retirement funds.

(2) Interest from the treasure state endowment fund and from proceeds of the sale of bonds under 17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under this part *and to repay loans from the board of investments.*

(3) As used in this part, the following definitions apply:

(a) "Infrastructure projects" means:

(i) drinking water systems;

(ii) wastewater treatment;

(iii) sanitary sewer or storm sewer systems;

(iv) solid waste disposal and separation systems, including site acquisition, preparation, or monitoring; or

(v) bridges.

(b) "Local government" means an incorporated city or town, a county, ~~or~~ a consolidated local government, *or a county or multicounty water, sewer, or solid waste district.*

(c) "Treasure state endowment fund" means the coal severance tax infrastructure endowment fund established in 17-5-703(1)(b).

(d) "Treasure state endowment program" means the local government infrastructure investment program established in subsection (1)."

Section 2. Section 90-6-703, MCA, is amended to read:

"**90-6-703. Types of financial assistance available.** *(1)* The legislature shall provide for and make available to local governments the following types of financial assistance under this part:

~~(1)~~*(a)* matching grants for local infrastructure projects;

~~(2)~~*(b)* annual debt service subsidies on local infrastructure projects; and

~~(3)~~*(c)* loans from the proceeds of coal severance tax bonds at a subsidized interest rate.

(2) The department of natural resources and conservation and the department of commerce:

(a) may adopt rules to commit to interest rate subsidies for local infrastructure projects and may allow the subsidies to be paid over the life of the loan or bonding period; and

(b) may make deferred loans to local governments for preliminary engineering study costs. The applicant shall repay the loans whether or not the applicant succeeds in obtaining financing for the full project. Repayment may be postponed until the overall construction financing is arranged."

Section 3. Section 90-6-710, MCA, is amended to read:

"**90-6-710. Priorities for projects — procedure — rulemaking.** (1) The department of commerce must receive proposals for projects from local governments as defined in 90-6-701(3)(b). The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. The department shall prepare and submit a list containing the recommended projects and the recommended form of financial assistance for each project to the governor, prioritized pursuant to subsection (2). The governor shall review the projects recommended by the department ~~of natural resources and conservation under Title 85, chapter 1, part 6,~~ and shall submit a list of recommended projects and the recommended financial assistance to the legislature.

(2) In preparing recommendations under subsection (1), preference must be given to projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems;

(b) projects that enable local governments to meet state or federal health or safety standards;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that result in a benefit to the public commensurate with the amount of financial assistance. However, the benefit to the public may not be measured by population alone.

(e) projects that reflect greater need for financial assistance than other projects;

~~(c)~~*(f)* projects that enable local governments to obtain funds from sources other than the funds provided under this part;

~~(d)~~*(g)* projects that provide long-term, full-time job opportunities for Montanans;

~~(e)~~*(h)* projects that provide public facilities necessary for the expansion of a business that has a high potential for financial success;

~~(f) projects that result in a benefit to the public commensurate with the amount of financial assistance;~~

~~(g) projects that reflect greater need for financial assistance than other projects;~~

~~(h)~~*(i)* projects that maintain the tax base or that do not discourage expansion of the tax base; and

~~(i)~~*(j)* projects that are high local priorities and have strong community support.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department ~~of natural resources and conservation shall adopt rules to implement the prioritization and recommendation of projects to be financed pursuant to 17-5-701.~~

~~(5) Except as provided in subsection (4), the department of commerce~~ shall adopt rules necessary to implement the treasure state endowment program."

Approved April 20, 1993.

CHAPTER NO. 433

[HB 23]

AN ACT GENERALLY REVISING THE LAW CONCERNING BUDGET AMENDMENTS; ESTABLISHING CRITERIA FOR THE ACCEPTANCE AND EXPENDITURE BY STATE AGENCIES OF CERTAIN MONEY FROM PRIVATE SOURCES; EXEMPTING CERTAIN FUNDS AND FUND TRANSFERS FROM THE BUDGET AMENDMENT PROCESS; PROVIDING FOR TRANSFER OF FUNDS BETWEEN AGENCIES; ELIMINATING THE EVALUATION CRITERIA REQUIREMENT FOR BUDGET AMENDMENTS; AMENDING SECTIONS 17-2-102, 17-7-402, 17-7-403, AND 17-8-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Criteria for acceptance and expenditure of certain nonstate and nonfederal money.** (1) Before an agency may expend money from a nonstate or nonfederal source that would be deposited in the state special revenue fund that is restricted by law or by the terms of a contract, a trust agreement, or a donation of $5,000 or more that is accompanied by a written agreement, the approving authority for the agency shall submit to the legislative finance committee a copy of the agreement and a certification containing:

(a) the specific service that will be provided;

(b) the proposed duration of the agreement; and

(c) a statement concerning the degree to which the agreement may result in an ascertainable present or future commitment for general fund support.

(2) The legislative fiscal analyst shall review the agreement and certification to ensure that:

(a) the proposed use of the money has not been specifically disapproved by the legislature;

(b) the terms of the agreement are not contrary to state law; and

(c) the agreement will not result in an ascertainable present or future commitment for general fund support.

(3) The legislative fiscal analyst shall present a written report of each review that is conducted to the legislative finance committee. Within 10 days after the meeting of the legislative finance committee that considered the proposed agreement and certification, the legislative fiscal analyst shall submit the committee's written report to the approving authority.

(4) Upon receipt of the legislative finance committee's report, the approving authority may approve or deny the proposed agreement, taking into consideration the legislative finance committee's report.

(5) If an emergency occurs that poses a serious threat to the life, health, or safety of the public or if the legislative fiscal analyst determines that a review is not necessary, the legislative fiscal analyst may waive the written review and the legislative finance committee's written report provided for by this section. Upon receipt of the waiver, the approving authority may approve or deny the proposed agreement upon completion of the certification. The waiver, however, affects only the legislative fiscal analyst's written review and the legislative finance committee's written report. All other requirements and standards remain in effect. After the waiver, the legislative fiscal analyst may complete the written review.

(6) Nothing in this section confers any authority on the legislative finance committee to approve or deny the proposed agreement.

Section 2. Section 17-2-102, MCA, is amended to read:

"**17-2-102. Fund structure.** (1) There are in the state treasury only the following fund categories and types:

(a) *the* governmental fund category, which includes:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type ~~shall be~~ *are* subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state and other nonfederal sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government *and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation*. ~~Other nonstate and nonfederal revenue deposited in the state special revenue account is not subject to the emergency budget amendment provisions of 17-7-403.~~

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(iii) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) *the* proprietary fund category, which includes:

(i) the enterprise fund type, which accounts for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

(i) expendable trust fund type;

(ii) nonexpendable trust fund type;

(iii) pension trust fund type; and

(iv) agency fund type.

(d) the higher education funds, which include:

(i) the current fund, which accounts for ~~moneys~~ *money* deposited in the state treasury ~~which are~~ *that is* used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system and vocational-technical centers. The financial activities of the current fund ~~shall be~~ *are* subdivided, for ~~operation~~ *operational* purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(D) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the student loan fund, which accounts for ~~moneys~~ *money* deposited in the state treasury ~~which~~ *that* may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system and vocational-technical centers;

(iii) the endowment fund, which accounts for ~~moneys~~ *money* deposited in the state treasury by the Montana university system and vocational-technical centers wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the annuity and life income fund, which accounts for ~~moneys~~ *money* deposited in the state treasury by the Montana university system and vocational-technical centers under an agreement whereby the ~~moneys are~~ *money is* made available on condition that the receiving unit of the Montana university system or vocational-technical center binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system and vocational-technical centers for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the agency fund, which accounts for ~~moneys~~ *money* deposited in the state treasury wherein the Montana university system or a vocational-technical center acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1) ~~of this section~~, there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) ~~of this section~~; and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v) ~~of this section~~."

Section 3. Section 17-7-402, MCA, is amended to read:

"**17-7-402. Budget amendment requirements.** (1) ~~No~~ *Except as provided in subsection (6), a* budget amendment may *not* be approved:

(a) by the approving authority, except a budget amendment to spend ~~funds~~ *additional federal revenue, additional tuition collected by the Montana university system, additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies, Montana historical society enterprise revenue resulting from sales to the public, additional revenue deposited in funds, other than the general fund, from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91, or a new source of revenue* ~~which were~~ *that was* not available for legislative consideration *during the most recent legislative session open to that matter*;

(b) by the approving authority, which contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority, for the expenditure of money in the state special revenue fund unless an emergency justifies ~~such~~ *the* expenditure;

(d) by the approving authority, unless it will provide additional services;

(e) by the approving authority, for any matter of which the requesting agency had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) All budget amendments ~~shall~~ *must* itemize planned expenditures by fiscal year.

(3) Each budget amendment must be submitted by the approving authority to the budget director and the office of the legislative fiscal analyst.

(4) Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is subject to the review process provided in [section 1] and is exempt from the requirements of this part.

(5) An appropriation that would usually be the subject of a budget amendment that is submitted to the legislature for approval during a legislative session

may not include authority to spend money beyond the first fiscal year of the next biennium.

(6) A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

Section 4. Section 17-7-403, MCA, is amended to read:

"**17-7-403. Budget amendment certification.** In approving a budget amendment, the approving authority shall make the following certifications and in addition shall provide all other information required below as an integral part of the certification:

(1) The approving authority shall certify that:

(a) specific additional services will be provided as a result of the expenditures to be permitted under this budget amendment and shall also list each specific service to be so provided;

(b) the specific services to be provided under this budget amendment are necessary;

(c) the agency requesting this budget amendment has no other reasonable alternative available to provide the additional services. ~~Such~~ *The* certification ~~shall~~ *must* specifically include determinations by the approving authority that the agency cannot provide all or specific parts or amounts of the additional services with existing ~~personnel because of the present required workload of existing personnel~~ *appropriations* or that the agency is unable within its existing ~~funding~~ *appropriations* to fund all or part of ~~such~~ *the* additional services from any source lawfully available to it.

(d) the budget amendment makes no ascertainable present or future significant commitment for increased general fund support.

(2) ~~The approving authority shall include in its certification the specific criteria by which the effectiveness of the additional services will be evaluated and shall state a specific followup date on which the written evaluation of such services, using the listed criteria, will be presented to the legislative fiscal analyst. The written evaluation must be presented to the legislative fiscal analyst on or before that date.~~

~~(3)~~ For budget amendments to spend money in the state special revenue fund, *except money from nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation,* the approving authority shall certify that an emergency justifies the expenditure and shall state the specific nature of the emergency, the date on which the requesting agency became aware of the emergency, and the manner in which the requesting agency became aware of the emergency."

Section 5. Section 17-8-101, MCA, is amended to read:

"**17-8-101. Appropriation and disbursement of ~~moneys~~ *money* from ~~the~~ treasury.** (1) ~~Moneys~~ *Money* deposited in the general fund, the special revenue fund type *(except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a* *contract, trust agreement, or donation),* the enterprise fund type, the internal service fund type, and the capital projects fund type, with the exception of refunds authorized in subsection (3), ~~shall~~ *must* be paid out of the treasury only on appropriation made by law.

(2) ~~Moneys~~ *Money* deposited in the debt service fund type, expendable trust fund type, nonexpendable trust fund type, pension trust fund type, *the state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation,* and agency fund type may be paid out of the treasury under general laws, or contracts entered into in pursuance of law, permitting ~~such~~ *the* disbursement.

(3) Money paid into the state treasury through error or under circumstances, such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law, may be refunded upon the submission of a verified claim approved by the department of administration.

(4) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section."

Section 6. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 17, chapter 7, and the provisions of Title 17, chapter 7, apply to [section 1].

Section 7. **Effective date.** [This act] is effective July 1, 1993.

Approved April 21, 1993.

CHAPTER NO. 434

[HB 67]

AN ACT PROHIBITING THE APPOINTMENT OF CERTAIN PUBLIC EMPLOYEES TO REPRESENT CHILDREN IN CERTAIN JUDICIAL PROCEEDINGS; PROHIBITING A COURT FROM ORDERING THE DEPARTMENT OF FAMILY SERVICES TO CONDUCT A CHILD CUSTODY INVESTIGATION EXCEPT IN CERTAIN CASES; AMENDING SECTIONS 40-4-205, 40-4-215, 40-6-110, AND 41-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-205, MCA, is amended to read:

"**40-4-205. Representation of child.** The court may appoint an attorney to represent the interests of a minor dependent child with respect to ~~his~~ *the child's* support, custody, and visitation. The county attorney, ~~and the~~ *a* deputy county ~~attorneys~~ *attorney*, if any, *or the department of family services or any of its staff* may not be appointed for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order ~~shall~~ *must* be made against either or both parents, except that if the responsible party is indigent, the costs ~~shall~~ *must* be waived."

Section 2. Section 40-4-215, MCA, is amended to read:

"**40-4-215. Investigations and reports.** (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian ~~so~~ requests, the court may order an investigation and report concerning custodial arrangements for the child. ~~If the court orders the department of family services to conduct the investigation, the department may charge a reasonable fee. The department shall waive the fee for conducting the investigation if the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits.~~ *The department of family services may not be ordered to conduct the investigation or draft a report unless the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children, food stamps, or general relief benefits and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests.* The cost of the investigation and report ~~shall~~ *must* be paid according to the final order.

(2) In preparing ~~his~~ *a* report concerning a child, the investigator may consult any person who may have information about the child and ~~his~~ *the child's* potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if ~~he~~ *the child* has reached the age of 16 unless the court finds that ~~he~~ *the child* lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person ~~whom he~~ *the investigator* has consulted for cross-examination. A party may not waive ~~his~~ *the* right of cross-examination prior to the hearing."

Section 3. Section 40-6-110, MCA, is amended to read:

"**40-6-110. Parties.** The child ~~shall~~ *must* be made a party to the action. ~~If he is a~~ *A* minor~~, he shall~~ *must* be represented by ~~his~~ *the minor's* general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may *not* appoint the department of family services *or any of its staff* as guardian ad litem for the child. The natural mother, each man presumed to be the father under 40-6-105, and each man alleged to be the natural father ~~shall~~ *must* be made parties or, if not subject to the jurisdiction of the court, ~~shall~~ *must* be given notice of the action in a manner prescribed by the court and *must be given* an opportunity to be heard. The court may align the parties."

Section 4. Section 41-3-303, MCA, is amended to read:

"**41-3-303. Guardian ad litem.** (1) In every judicial proceeding, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. *The department or any of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title.* When necessary the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of the child's interests. The guardian ad litem has the following general duties:

(a) to conduct ~~such investigation as he~~ *investigations that the guardian ad litem* considers necessary to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child~~, his~~ *and the child's* siblings~~,~~ and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; and

(f) to perform ~~such~~ other duties as directed by the court."

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 435

[HB 124]

AN ACT REQUIRING AN ADULT CHILD TO PAY BURIAL, ENTOMBMENT, OR CREMATION COSTS FOR AN INDIGENT PARENT; ALLOWING A COUNTY OR THE STATE TO SEEK REIMBURSEMENT OF COSTS FOR BURIAL, ENTOMBMENT, OR CREMATION OF INDIGENTS; PROHIBITING OFFSETS AGAINST CONTRACT CHARGES FOR INDIGENT BURIALS; REQUIRING REIMBURSEMENT FOR RECOVERY AFTER PAYMENT OF A CONTRACT CHARGE; AND AMENDING SECTIONS 40-6-301, 53-3-110, AND 53-3-114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-6-301, MCA, is amended to read:

"**40-6-301. Duty of child to support indigent parents.** *(1)* It is ~~hereby declared and made~~ the duty of every adult child, having the *financial* ability ~~so to do~~, to furnish and provide necessary food, clothing, shelter, ~~and~~ medical attendance, *and burial, entombment, or cremation costs* for ~~his~~ *an* indigent parent ~~or parents~~, unless, in the judgment of the court or jury, ~~he~~ *the child* is excused ~~therefrom~~ by reason of intemperance, indolence, immorality, or profligacy of ~~such~~ *the* parent.

(2) If a county or the department of social and rehabilitation services pays for burial, entombment, or cremation costs under 53-3-110, the county or the department may seek reimbursement under this part, if applicable."

Section 2. Section 53-3-110, MCA, is amended to read:

"**53-3-110. Burial, *entombment, or cremation* of deceased indigent *— reimbursement.*** (1) In a county without state-assumed welfare services, the county welfare board shall provide for the burial of a deceased indigent.

(2) In a county with state-assumed welfare services, the department shall provide for the burial, *entombment, or cremation* of a deceased indigent. *A person is indigent for purposes of this subsection if the value of all income and resources available to pay that person's burial, entombment, or cremation at the time of death is less than the negotiated amount due the funeral home or mortician for an indigent burial. Available income and resources include:*

(a) any income as defined in 53-3-109 that was received by the deceased person and not spent prior to that person's death; and

(b) any resources as defined in 53-3-109 that are not excluded under 53-3-205.

(3) A county or the department may seek reimbursement under 40-6-303, if applicable, for costs paid under this section.

(4) A county or the department may not deduct amounts that may be recovered from an adult child of a deceased indigent or recovered from resources of a deceased indigent from a contract amount due a funeral home or mortician for burial services provided under 7-4-2915 or this section. A funeral home or a mortician that recovers an amount in excess of a contract amount paid under this subsection shall reimburse the county or the department for the amount recovered up to the amount of the contract."

Section 3. Section 53-3-114, MCA, is amended to read:

"**53-3-114. Department to adopt rules.** The department shall adopt ~~such~~ rules as are necessary to implement this chapter. Rules adopted may include those necessary for application, eligibility, residency, fraud, recovery of overpayments; the form, amount, scope, and duration of relief; confidentiality; burial, *entombment, or cremation* of deceased indigents; and definition of terms. The department may not adopt rules to govern the amounts of relief to be provided in counties where the department has not assumed responsibility for the direct administration of welfare services."

Approved April 21, 1993.

CHAPTER NO. 436

[HB 128]

AN ACT PROVIDING FOR NOTICE AND PUBLIC MEETINGS AS PART OF THE DEVELOPMENT OF A COUNTY DRINKING AND DRIVING PREVENTION PROGRAM; AND AMENDING SECTION 61-2-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-106, MCA, is amended to read:

"**61-2-106. County drinking and driving prevention program.** (1) The governing body of a county may appoint a task force to study the problem of alcohol-related traffic accidents and recommend a program designed to:

(a) prevent driving while under the influence of alcohol;

(b) reduce alcohol-related traffic accidents; and

(c) educate the public on the dangers of driving after consuming alcoholic beverages or other chemical substances that impair judgment or motor functions.

(2) A task force appointed under subsection (1) shall conduct its study and submit its recommendations within 6 months from the date it was appointed. *Task force meetings are open to the public. The task force shall give notice by publication in the community meeting announcement section of a newspaper of general circulation in the county.*

(3) The county governing body may by resolution adopt the recommendations of the task force appointed under subsection (1). The proposed program must be approved by the governor as provided in 61-2-105.

(4) The chairman of the task force shall submit to the county governing body:

(a) a budget and a financial report for each fiscal year; and

(b) an annual report containing but not limited to:

(i) an evaluation of the effectiveness of the program;

(ii) the number of arrests and convictions in the county for driving under the influence of alcohol and the sentences imposed for these convictions;

(iii) the number of alcohol-related traffic accidents in the county; and

(iv) any other information requested by the county governing body or considered appropriate by the task force.

(5) A copy of the annual report may be submitted to the department."

Approved April 21, 1993.

CHAPTER NO. 437

[HB 134]

AN ACT ALLOWING THE BOARD OF CRIME CONTROL TO SUSPEND OR REVOKE THE CERTIFICATION OF PEACE OFFICERS, PUBLIC SAFETY COMMUNICATIONS OFFICERS, DETENTION OFFICERS, AND DETENTION CENTER ADMINISTRATORS; PROVIDING PENALTIES FOR VIOLATIONS OF SUSPENSION OR REVOCATION; AND AMENDING SECTIONS 7-31-203, 7-32-303, AND 44-4-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-31-203, MCA, is amended to read:

"**7-31-203. Certification of public safety communications officers —** ***suspension or revocation — penalty*** **— notification requirements.** (1) A local government may require that a person appointed to receive requests for emergency services, as defined in 10-4-101, and to dispatch the appropriate emergency service units be certified by the board as a public safety communications officer.

(2) The board shall determine the certification standards for public safety communications officers as provided in 7-31-202.

(3) A public safety communications officer who has successfully met the certification standards set by the board and the qualification requirements in 7-31-202 and who has completed a 6-month probationary term of employment must, upon application to the board, be issued a basic public safety communications officer certificate.

(4) It is unlawful for a person whose certification as a public safety communications officer has been suspended or revoked by the board to act as a public safety communications officer. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed $500, or both.

~~(4)~~*(5)* Within 10 days of the appointment, termination, resignation, or death of any public safety communications officer, written notice must be given to the board by the employing authority."

Section 2. Section 7-32-303, MCA, is amended to read:

"**7-32-303. Peace officer employment, education, and certification standards —** ***suspension or revocation — penalty.*** (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, or airport police officer.

(2) No sheriff of a county, mayor of a city, board, commission, or other person authorized by law to appoint peace officers in this state shall appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the board of crime control:

(a) be a citizen of the United States;

(b) be at least 18 years of age;

(c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;

(d) not have been convicted of a crime for which ~~he~~ *the person* could have been imprisoned in a federal or state penitentiary;

(e) be of good moral character, as determined by a thorough background investigation;

(f) be a high school graduate or have passed the general education development test and have been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the employing authority to determine if the applicant is free from any mental or physical condition that might adversely affect performance by the applicant of the duties of a peace officer;

(h) successfully complete an oral examination conducted by the appointing authority or its designated representative to demonstrate the possession of communication skills, temperament, motivation, and other characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

(i) possess or be eligible for a valid Montana driver's license.

(3) At the time of appointment a peace officer ~~must~~ *shall* take a formal oath of office.

(4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written notice thereof must be given to the board of crime control by the employing authority.

(5) (a) Except as provided in subsections *(5)*(b) and *(5)*(c) ~~of this subsection~~, it is the duty of an appointing authority to cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the initial appointment, an appropriate peace officer basic course certified by the board of crime control. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this subsection *(a)* forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(b) A peace officer who has been issued a basic certificate by the board of crime control and whose last date of employment as a peace officer was less than 36 months prior to the date of ~~his~~ *the person's* present appointment as a peace officer is not required to fulfill the basic educational requirements of subsection (5)(a). If ~~such~~ *the* peace officer's last date of employment as a peace officer was 36 or more but less than 60 months prior to the date of ~~his~~ present employment as a peace officer, ~~he~~ *the peace officer* may satisfy ~~his~~ *the* basic educational requirements as set forth in subsection (5)(c).

(c) A peace officer under the provisions of subsection (5)(b) or a peace officer who has completed a basic peace officer's course in another state and whose last date of employment as a peace officer was less than 60 months prior to the date of ~~his~~ present appointment as a peace officer may, within 1 year of ~~his~~ *the peace officer's* present employment or initial appointment as a peace officer within this state, satisfy ~~his~~ *the* basic educational requirements by successfully passing a basic equivalency test administered by the Montana law enforcement academy and successfully completing a legal training course conducted by the academy. If the peace officer fails the basic equivalency test, ~~he must~~ *the peace officer shall* complete the basic course within 120 days of the date of the test.

(6) The board of crime control may extend the 1-year time requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing authority of the officer. The application must explain the circumstances ~~which~~ *that* make the extension necessary. Factors ~~which~~ *that* the board may consider in granting or denying the extension include but are not limited to illness of the peace officer or a member of ~~his~~ *the peace officer's* immediate family, absence of reasonable access to the basic course or the legal training course, and an unreasonable shortage of personnel within the department. The board may not grant an extension to exceed 180 days.

(7) A peace officer who has successfully met the employment standards and qualifications and the educational requirements of this section and who has completed a 1-year probationary term of employment ~~shall~~ *must*, upon application to the board of crime control, be issued a basic certificate by the board, certifying that the peace officer has met all the basic qualifying peace officer standards of this state.

(8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center administrator has been revoked or suspended by the board of crime control to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed $500, or both."

Section 3. Section 44-4-301, MCA, is amended to read:

"**44-4-301. Functions.** (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board shall have the authority to*:*

(a) establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center administrators, and public safety communications officers*; and*

(b) develop procedures for revoking or suspending the certification of peace officers, as defined in 7-32-303, detention officers, detention center administrators, and public safety communications officers.

(3) The board shall have the authority to require basic training for officers, establish minimum standards for equipment and procedures and for advanced inservice training for officers, establish minimum standards for the certification of public safety communications officers, and establish minimum standards for law enforcement and detention officer training schools administered by the state or any of its political subdivisions or agencies, to ~~insure~~ *ensure* the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003."

Approved April 21, 1993.

CHAPTER NO. 438

[HB 149]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES RELATING TO THE TAXATION OF CERTAIN FUELS AND LIMITING THE POWERS THAT THE DEPARTMENT MAY DELEGATE IN THE AGREEMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Agreements with other governmental entities relating to collection of certain fuel taxes.** (1) The department of transportation may enter into agreements relating to the administration and taxation of gasoline, special fuels, and liquefied petroleum gas with state agencies of this state and other states, agencies of the federal government, and agencies of foreign governments and provinces.

(2) The agreements may cover audits, exchange of information, licensure of sellers and users, distribution, and other matters that the department considers necessary for the administration of the taxation of gasoline, special fuels, and liquefied petroleum gas. In an agreement, the department may not delegate powers to another governmental entity that involve levying fines, forfeitures, or penalties or that allow the other governmental entity to revoke or otherwise impair a license or permit issued by the department.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 439

[HB 168]

AN ACT REVISING THE DEFINITION OF "ADEQUATE HEALTH CARE" AND OTHER TERMS USED UNDER MONTANA'S CHILD ABUSE AND NEGLECT LAWS IN ORDER TO CONFORM WITH FEDERAL REQUIREMENTS; AND AMENDING SECTIONS 40-8-111, 41-3-102, AND 41-3-609, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-102, MCA, is amended to read:

"**41-3-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; a staff person providing care in a day-care facility;

an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(2) "Abused or neglected" ~~child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare~~ *means the state or condition of a child who has suffered child abuse or neglect.*

(3) *(a)* "Adequate health care" means any medical ~~or nonmedical remedial health~~ care, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) Nothing in this chapter may be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent, due to religious beliefs, does not provide medical care for a child. However, nothing in this chapter may be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent or substantial risk of harm to the child.

(4) "Child" or "youth" means any person under 18 years of age.

(5) (a) "Child abuse or neglect" means:

(i) harm to a child's health or welfare, as defined in subsection (8); or

(ii) threatened harm to a child's health or welfare, as defined in subsection (15).

(b) The term includes harm or threatened harm to a child's health or welfare by the acts or omissions of a person responsible for the child's welfare.

~~(5)~~*(6)* "Department" means the department of family services provided for in 2-15-2401.

~~(6)~~*(7)* "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for ~~his~~ necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody ~~of the child~~ and whose legal custody has been transferred to a licensed agency.

~~(7)~~*(8)* "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or *adequate* health care, though financially able to do so or offered financial or other reasonable means to do so;

(d) abandons the child by leaving ~~him~~ *the child* under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

~~(8)~~*(9)* "Limited emancipation" means a status conferred on a dependent youth by a court after a dispositional hearing in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

~~(9)~~*(10)* "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

~~(10)~~*(11)* "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function and includes death, permanent or temporary disfigurement, and impairment of a bodily organ or function sustained as a result of excessive corporal punishment.

~~(11)~~*(12)* "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5.

~~(12)~~*(13)* "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(13)~~*(14)* "Social worker" means an employee of the department ~~of family services~~ whose duties generally involve the provision of either child or adult protective services, or both.

~~(14)~~*(15)* "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.

~~(15)~~*(16)* "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment (including appropriate nutrition, hydration, and medication) that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting ~~all such~~ *the* conditions. However, the term does not include the failure to provide treatment (other than appropriate nutrition, hydration, or medication) to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(a) the infant is chronically and irreversibly comatose;

(b) the provision of ~~such~~ treatment would:

(i) merely prolong dying;

(ii) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(iii) otherwise be futile in terms of the survival of the infant; or

(c) the provision of ~~such~~ treatment would be virtually futile in terms of the survival of the infant and the treatment itself under ~~such~~ *the* circumstances would be inhumane. For purposes of this subsection, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children over 1 year of age.

~~(16)~~*(17)* "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section."

Section 2. Section 40-8-111, MCA, is amended to read:

"**40-8-111. Consent required for adoption.** (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102~~(7)(d)~~*(8)(d)*;

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of family services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of family services or of an agency or witnessed by a representative of the court."

Section 3. Section 41-3-609, MCA, is amended to read:

"**41-3-609. Criteria for termination.** (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 40-6-135;

(b) the child has been abandoned by his parents as set forth in 41-3-102~~(7)(d)~~*(8)(d)*;

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(d) the parent has failed to successfully complete a treatment plan approved by the court within the time periods allowed for the child to be in foster care under 41-3-410 unless it orders other permanent legal custody under 41-3-410.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors submit testimony that the parent is so severely mentally ill that such person cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and such treatment plan is not practical considering the incarceration; or

(c) the death of a sibling caused by abuse or neglect by the parent has occurred."

Approved April 21, 1993.

CHAPTER NO. 440

[HB 221]

AN ACT ALLOWING COUNTIES TO ESTABLISH GRANT PROGRAMS FOR PRIVATE, NONPROFIT MUSEUMS AND PRIVATE, NONPROFIT FACILITIES FOR THE ARTS AND THE HUMANITIES, TO BE FUNDED BY A MILL LEVY NOT EXCEEDING 2 MILLS; AND AMENDING SECTIONS 7-16-2202 AND 7-16-2205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2202, MCA, is amended to read:

"7-16-2202. Establishment and acquisition of museums and facilities for the arts *and the humanities — grant programs for private, nonprofit museums and private, nonprofit facilities for the arts and the humanities.* The board of county commissioners of each county of the state, in addition to all other powers conferred upon them, have the authority to:

(1) establish or acquire museums, collections of exhibits, and articles, matters, and things to be included in or added to ~~such~~ *the* museums and collections;

(2) contribute to publicly owned museums not owned by the county; ~~and~~

(3) provide facilities for the presentation of visual and performing arts and similar cultural activities~~.~~*; and*

(4) establish a program to provide grants to private, nonprofit museums and private, nonprofit facilities for the arts and the humanities."

Section 2. Section 7-16-2205, MCA, is amended to read:

"**7-16-2205. Authorization for mill levy.** (1) The board of county commissioners of any county owning, acquiring, ~~or~~ contributing, *or making a grant* to any museum, facility for the arts *and the humanities*, or collection of exhibits as set forth in 7-16-2202:

(a) *(i)* may make an appropriation in its annual budget for the upkeep, care, maintenance, operation, and support of the museum, facility, or collection; ~~and~~

(ii) may make an appropriation in its annual budget for a grant program for private, nonprofit museums and private, nonprofit facilities for the arts and the humanities; and

(b) *in order* to meet and take care of the appropriation *or grant program*, may annually levy a tax not to exceed 2 mills on each dollar of the taxable valuation of the property subject to taxation in the county.

(2) The levy ~~shall~~ *must* be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of the levy ~~shall~~ *must* be kept in a special fund by the county treasurer and used, at the discretion of the board of county commissioners, solely for the purpose for which the levy was made."

Approved April 21, 1993.

CHAPTER NO. 441

[HB 235]

AN ACT ADOPTING THE UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT; PROVIDING FOR THE ENFORCEMENT IN MONTANA OF FOREIGN MONEY-JUDGMENTS; PROVIDING FOR NONRECOGNITION OF CERTAIN JUDGMENTS; AND PROVIDING GUIDELINES FOR THE EXERCISE OF PERSONAL JURISDICTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 9] may be cited as the "Uniform Foreign Money-Judgments Recognition Act".

Section 2. **Definitions.** As used in [sections 1 through 9], the following definitions apply:

(1) "Foreign judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters.

(2) "Foreign state" means any governmental unit other than the United States or any state, district, commonwealth, territory, or insular possession thereof or the Panama Canal Zone, the Trust Territory of the Pacific Islands, or the Ryukyu Islands.

Section 3. **Applicability.** [Sections 1 through 9] apply to any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is subject to appeal.

Section 4. **Recognition and enforcement.** Except as provided in [section 5], a foreign judgment meeting the requirements of [section 3] is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign judgment is enforceable in the same manner as the judgment of a sister state that is entitled to full faith and credit.

Section 5. **Grounds for nonrecognition.** (1) A foreign judgment is not conclusive if:

(a) the judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(b) the foreign court did not have personal jurisdiction over the defendant; or

(c) the foreign court did not have jurisdiction over the subject matter.

(2) A foreign judgment need not be recognized if:

(a) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to defend;

(b) the judgment was obtained by fraud;

(c) the cause of action or claim for relief on which the judgment is based is repugnant to the public policy of this state;

(d) the judgment conflicts with another final and conclusive judgment;

(e) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(f) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

Section 6. **Personal jurisdiction.** (1) Except as provided in [section 5], the foreign judgment may not be refused recognition for lack of personal jurisdiction if:

(a) the defendant was served personally in the foreign state;

(b) the defendant voluntarily appeared in the proceedings other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant;

(c) the defendant, prior to the commencement of the proceedings, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(d) the defendant was domiciled in the foreign state when the proceedings were instituted or, being a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status in the foreign state;

(e) the defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action or claim for relief arising out of business done by the defendant through that office in the foreign state; or

(f) the defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action or claim for relief arising out of the operation.

(2) The courts of this state may recognize other bases of jurisdiction.

Section 7. **Stay in case of appeal.** If the defendant satisfies the court either that an appeal is pending or that the defendant is entitled and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal.

Section 8. **Saving clause.** [Sections 1 through 9] do not prevent the recognition of a foreign judgment in situations not covered by [sections 1 through 9].

Section 9. **Uniformity of interpretation.** [Sections 1 through 9] must be construed to effectuate the general purpose to make uniform the law of those states that enact it.

Approved April 21, 1993.

CHAPTER NO. 442

[HB 258]

AN ACT EXCLUDING FROM THE INTERIM EARNINGS DEDUCTION IN A SUCCESSFUL WRONGFUL DISCHARGE SUIT AN AMOUNT EQUAL TO THE REASONABLE COSTS OF OBTAINING OR RELOCATING TO NEW EMPLOYMENT; CLARIFYING THE ORIGINAL LEGISLATIVE INTENT OF THE WRONGFUL DISCHARGE FROM EMPLOYMENT ACT WITH RESPECT TO ARBITRATION; AND AMENDING SECTIONS 39-2-905 AND 39-2-914, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-2-905, MCA, is amended to read:

"**39-2-905. Remedies.** (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages. *Before interim earnings are deducted from lost wages, there must be deducted from the interim earnings any reasonable amounts expended by the employee in searching for, obtaining, or relocating to new employment.*

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-2-904(1).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2)."

Section 2. Section 39-2-914, MCA, is amended to read:

"**39-2-914. Arbitration.** (1) ~~Under~~ *A party may make* a written ~~agreement of the parties,~~ *offer to arbitrate* a dispute that otherwise could be adjudicated under this part ~~may be resolved by final and binding arbitration as provided in this section~~.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

~~(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.~~

~~(5)~~*(4)* A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

~~(6)~~*(5)* If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act."

Section 3. **Effect of rejection of offer to arbitrate.** A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 39, chapter 2, part 9, and the provisions of Title 39, chapter 2, part 9, apply to [section 3].

Approved April 21, 1993.

CHAPTER NO. 443

[HB 299]

AN ACT RECOGNIZING THE LOCAL GOVERNMENT CENTER AT MONTANA STATE UNIVERSITY AND THE BUREAU OF GOVERNMENT RESEARCH AT THE UNIVERSITY OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Local government center — purpose — funding.** (1) There is a local government center at Montana state university. The purpose of the center is to strengthen the capacities of Montana's local governmental units to deliver essential services efficiently and to provide training, technical assistance, and research to local officials.

(2) The local government center may:

(a) receive and administer gifts, donations, and bequests;

(b) contract with individuals, organizations, and governmental agencies for cooperative endeavors; and

(c) apply for and receive grants from public and private agencies.

Section 2. **Bureau of government research — purpose — funding.** (1) There is a bureau of government research at the university of Montana. The purpose of the bureau is to facilitate research and publication in the area of state and local government and to maintain a liaison between political scientists and government officials through the exchange of information.

(2) The bureau of government research may:

(a) receive and administer gifts, donations, and bequests;

(b) contract with individuals, organizations, and governmental agencies for cooperative endeavors; and

(c) apply for and receive grants from public and private agencies.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 25, part 2, and the provisions of Title 20, chapter 25, part 2, apply to [sections 1 and 2].

Approved April 21, 1993.

CHAPTER NO. 444

[HB 339]

AN ACT EXEMPTING PETROLEUM REFINERIES FROM THE PROVISIONS OF THE STATE BUILDING CODE; EXEMPTING PETROLEUM REFINERIES FROM THE PROVISIONS OF THE STATE BUILDING CONSTRUCTION STANDARDS PERTAINING TO ELECTRICAL INSTALLATIONS; AMENDING SECTIONS 50-60-102 AND 50-60-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-102, MCA, is amended to read:

"**50-60-102. Applicability.** (1) The state building codes do not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures; ~~or~~

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act~~.~~*; or*

(c) petroleum refineries, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code.

(2) The state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state building codes applicable to the aforementioned buildings may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable."

Section 2. Section 50-60-602, MCA, is amended to read:

"**50-60-602. Exceptions.** (1) ~~Nothing in this~~ *This* part ~~shall be deemed to~~ *does not* apply to:

(a) the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city*; or*

(b) electrical installations on the premises of petroleum refineries, except a structure classified under chapter 7, section 701, group B, division 2, and chapter 9, section 901, group H, outside of process units, of the 1991 edition of the Uniform Building Code.

(2) The inspection provisions of this part do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or onsite installations, modifications, additions, or repairs.

(3) Any person who plugs in an electrical appliance where *an* approved electrical outlet is already installed ~~shall~~ *may* not be considered as an installer.

(4) ~~No provisions of this~~ *This* part ~~shall~~ *does not* in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 445

[HB 365]

AN ACT CLOSING THE TETON RIVER BASIN TO FURTHER CONSUMPTIVE APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER, CERTAIN STORAGE PROJECTS, AND DOMESTIC, MUNICIPAL, AND STOCK USES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** Unless the context requires otherwise, in [sections 1 and 2], the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(4) "Teton River basin" means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers.

Section 2. **Basin closure — exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2), the department or the board may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) emergency temporary appropriations as provided for in 85-2-113(3).

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections 1 and 2].

Section 4. **Applicability.** [This act] applies to all applications received by the department of natural resources and conservation after [the effective date of this act].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 446

[HB 393]

AN ACT COMBINING CERTAIN TIMBER HARVESTING FEES INTO ONE FOREST IMPROVEMENT FEE; GENERALLY CLARIFYING STATUTORY LANGUAGE REGARDING TIMBER SALES AND HARVESTING ON STATE LANDS; AMENDING SECTION 77-5-204, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-5-204, MCA, is amended to read:

"**77-5-204. Sale of timber — ~~fees~~ *fee* for ~~brush-disposal and timber stand~~ *forest* improvement.** (1) The board may sell timber on state lands, at ~~such~~ *a* price per 1,000 feet ~~as~~ *that,* in ~~its~~ *the board's* judgment, is in the best interest of the state, ~~but not otherwise; but no such sale of~~ *provided that* live timber ~~shall be~~ *is not sold for* less than*:*

(a) $3 per 1,000 feet for white pine, yellow pine, and spruce*; or*

(b) ~~less than~~ $1.50 per 1,000 feet for all other timber species.

(2) ~~All timber~~ *Timber* sold or cut from state lands ~~shall~~ *must* be cut and removed under ~~such~~ rules *that may be prescribed by the board* for ~~the preservation of~~ standing timber *preservation* and ~~the~~ *fire* prevention ~~of fires as the board prescribes~~. In all cases, the board ~~must~~ *shall* require the person cutting the timber to pile and burn or otherwise dispose of the brush and ~~slashings~~ *slash* in ~~such~~ *the* manner ~~as may be required~~ *that may be prescribed by the board.*

(3) Before ~~any~~ *the* sale *of timber* is granted, the *value of the* timber ~~shall~~ *must* be ~~estimated and~~ appraised under the direction of the department, upon the request and subject to the approval of the board. ~~These estimates and appraisals shall~~ *An appraisal must* show as nearly as possible*:*

(a) the ~~amount and values~~ *value* per 1,000 feet of all merchantable timber~~,~~*;*

(b) ~~together with a statement of the situation~~ *the condition* of the timber relative to risk from fires or *other* damage ~~of any kind,~~*;*

(c) ~~its~~ *the timber's* distance from the nearest lake, stream, or railroad~~,~~*;* and

(d) ~~its~~ *the timber's* value ~~and position~~ as a protection to a watershed.

(4) ~~The~~ *In addition to the price of the timber established under subsection (1), the* board may ~~set fees for brush disposal on state lands. The board may also establish a fee for timber stand improvement on timber cut on state lands. Such fees shall~~ *require a timber purchaser to pay a fee for forest improvement. Revenue from the fee must* be deposited in the state special revenue fund to the credit of the department *and, as appropriated by the legislature, may be used only for:*

(a) disposing of logging slash;

(b) acquiring access and maintaining roads necessary for timber harvesting on state lands;

(c) reforesting, thinning, and otherwise improving the condition and income potential of forested state lands; and

(d) complying with legal requirements for timber harvesting."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved April 21, 1993.

CHAPTER NO. 447

[HB 409]

AN ACT REQUIRING THAT POOR PERSONS PROVIDE A FINANCIAL STATEMENT AND THAT A COURT OR ADMINISTRATIVE TRIBUNAL ORDER OF APPROVAL BE ISSUED BEFORE FILING FEES ARE WAIVED; PROVIDING AN EXCEPTION TO THE FINANCIAL STATEMENT REQUIREMENT; ALLOWING FILING OF A PLEADING SUBJECT TO SUBSEQUENT APPROVAL OF INDIGENCE STATUS; AUTHORIZING THE DEPARTMENT OF JUSTICE TO ADOPT AN AFFIDAVIT FORM BY RULE; AND AMENDING SECTION 25-10-404, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because 25-10-404 authorizes the department of justice to adopt a form for a financial statement by rule. It is the intent of the legislature that the form require sufficient information regarding income and assets to allow a reasonable determination of indigence. The department may, in developing the rules, use the affidavit form currently used by Lewis and Clark County as a model.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-10-404, MCA, is amended to read:

"**25-10-404. Poor persons not required to prepay fees.** ~~Any~~ *(1) Except as provided in subsection (3), a* person~~; who will file~~ *may request a waiver of fees by filing* an affidavit, *supported by a financial statement,* stating that ~~he~~ *the person* has a good cause of action or defense and ~~that he~~ is unable to pay the costs or procure security to secure the ~~same,~~ *cause of action or defense. Except as provided in subsection (2), upon issuance of an order of the court or administrative tribunal approving a request for waiver of fees, the person* may commence and prosecute or defend an action in any of the courts and administrative tribunals of this state~~; then it is hereby made the duty of~~ *and* the officers of the courts and administrative tribunals ~~to~~ *shall* issue *and serve* all writs ~~and serve the same~~ and perform all services in the action without demanding or receiving their fees in advance.

(2) If a judge or presiding officer of an administrative tribunal is not available to approve a request for a waiver of fees prior to filing a pleading, the pleading must be filed subject to subsequent approval. If the request is subsequently denied, the fees must be paid before the case may proceed further.

(3) A person represented by an entity that provides free legal services to indigent persons is not required to file the financial statement required by subsection (1).

(4) The department of justice shall, by rule, prescribe the form of the financial statement required by subsection (1) for use in determining indigence. The form may require the disclosure of income and assets, including but not limited to the ownership of real and personal property, cash, and savings."

Approved April 21, 1993.

CHAPTER NO. 448

[HB 429]

AN ACT CREATING THE OFFENSE OF CRIMINAL PRODUCTION OR MANUFACTURE OF DANGEROUS DRUGS; SEPARATING THE OFFENSE FROM THE OFFENSE OF CRIMINAL SALE OF DANGEROUS DRUGS; PROVIDING PENALTIES FOR THE PRODUCTION OR MANUFACTURE OF VARIOUS TYPES OF DANGEROUS DRUGS; ELIMINATING THE REQUIREMENT THAT THE FIRST 2 YEARS OF A PRISON SENTENCE MAY NOT BE DEFERRED OR SUSPENDED; AND AMENDING SECTIONS 41-5-206 AND 45-9-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Criminal production or manufacture of dangerous drugs.** (1) A person commits the offense of criminal production or manufacture of dangerous drugs if the person knowingly or purposely produces, manufactures, prepares, cultivates, compounds, or processes a dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal production or manufacture of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal production or manufacture of a dangerous drug included in Schedule I of 50-32-222 or Schedule II of 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction that has become final for criminal production or manufacture of a Schedule I or Schedule II drug, the person shall be imprisoned in the state prison for a term of not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal production or manufacture of marijuana, tetrahydrocannabinol, or a dangerous drug not referred to in subsections (2) and (3) shall be imprisoned in the state prison for a term not to exceed 10 years and may be fined not more than $50,000, except that if the dangerous drug is marijuana and the total weight is more than a pound or the number of plants is more than 30, the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000. "Weight" means the weight of the dry plant and includes the leaves and stem structure but does not include the root structure. A person convicted under this subsection who has a prior conviction that has become final for criminal production or manufacture of a drug under this subsection shall be imprisoned in the state prison for a term not to exceed twice that authorized for a first offense under this subsection and may be fined not more than $100,000.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined in 50-32-101, are exempt from this section.

Section 2. Section 41-5-206, MCA, is amended to read:

"**41-5-206. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as ~~included~~ *defined* in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in [section 1];

~~(I)~~*(J)* attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through ~~(1)(a)(ii)(H)~~ *(1)(a)(ii)(I)*;

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of ~~his~~ *the youth's* home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, ~~his~~ *the* commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of age may be confined in the state prison.

(9) A youth whose case is transferred to district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of his case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

Section 3. Section 45-9-101, MCA, is amended to read:

"**45-9-101. Criminal sale of dangerous drugs.** (1) A person commits the offense of criminal sale of dangerous drugs if ~~he~~ *the person* sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away ~~or manufactures, prepares, cultivates, compounds, or processes~~ any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned

in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or ~~tetrahydrocannabinols~~ *tetrahydrocannabinol*, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, ~~he~~ *the person* shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) A person who was an adult at the time of sale and who is convicted of criminal sale of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a sale, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such sales, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(6) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 45, chapter 9, part 1, and the provisions of Title 45 apply to [section 1].

Approved April 21, 1993.

CHAPTER NO. 449

[HB 433]

AN ACT PROVIDING THAT A BAR MAY CONDUCT A RACE BETWEEN PIGS, GERBILS, OR HAMSTERS AND CONDUCT ONE OR MORE SPORTS POOLS ON THE RACE; AMENDING SECTIONS 23-4-301 AND 23-5-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4-301, MCA, is amended to read:

"**23-4-301. Parimutuel betting — other betting illegal.** (1) It is unlawful to make, report, record, or register a bet or wager on the result of a contest of speed, skill, or endurance of an animal, whether the contest is held within or outside of this state, except under *23-5-502 or* this chapter.

(2) A licensee conducting a race meet under this chapter may provide a place in the race meet grounds or enclosure where the licensee may conduct or supervise the use of the parimutuel system by patrons on the result of the races conducted under this chapter and the rules of the board.

(3) A person licensed under this chapter to hold a race meet may simulcast live races at a place in the race meet grounds or simulcast facility where the licensee may conduct or supervise the use of the parimutuel system by patrons on the results of simulcast races approved by the board.

(4) It is unlawful to conduct pool selling or bookmaking or to circulate handbooks or to bet or wager on a race of a licensed race meet, other than by the parimutuel system and in the race meet grounds or enclosure where the race is held, or to permit a minor to use the parimutuel system.

(5) Each licensee conducting a parimutuel system for an intrastate simulcast race meet shall combine the parimutuel pools at a simulcast facility with those at the actual racing facility for the purpose of determining the odds and computing payoffs. The amount of the handle at the simulcast race meet must be combined with the amount of parimutuel handle at the live racing facility for the purposes of distribution of money derived from parimutuel betting under 23-4-302 and 23-4-304.

(6) Negotiated purse money from intrastate and interstate simulcast parimutuel handles at racing associations that do not conduct live racing will be pooled and distributed to all tracks conducting live racing, all moneys to be distributed on a percent, based on each track's percent, of total annual on-track parimutuel handle."

Section 2. Section 23-5-502, MCA, is amended to read:

"**23-5-502. Sports pools and sports tab games authorized — tax.** (1) Conducting or participating in sports pools and sports tab games as defined and governed in this part is lawful, except that*:*

(a) sports tab games may only be conducted on premises licensed to sell alcoholic beverages for consumption on the premises*; and*

(b) only a licensee of premises that are located in an incorporated city or town with a population of less than 100 or located outside the boundaries of an incorporated city or town and that are licensed to sell alcoholic beverages for consumption on the premises may conduct a race between animals and conduct one or more sports pools on the race. The race may be conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of interior areas of the establishment where food and beverages are usually stored, prepared, or served.

(2) A manufacturer licensed under 23-5-115 who sells sports tabs to a licensed operator for use in a sports tab game shall collect from the operator, at the time of sale, a tax of $1 for each 100 sports tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms required by the department and the proceeds of the collected tax. The manufacturer shall keep a record of taxes collected as required by department rule. The records must be made available for inspection by the department upon request of the department. The department shall retain the proceeds of the tax to administer this part."

Section 3. **Coordination instruction.** If House Bill No. 411 is passed and approved and if it includes a section amending the definition of "sports pool" in 23-5-501 to delete the words "or animals" at the end of the definition, then the portion of that section of House Bill No. 411 that deletes the words "or animals" is void.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 450

[HB 485]

AN ACT PROVIDING AD HOC AND AUTOMATIC POSTRETIREMENT COST-OF-LIVING ADJUSTMENTS FOR CERTAIN BENEFIT RECIPIENTS UNDER THE GAME WARDENS' RETIREMENT SYSTEM; INCREASING THE STATE'S CONTRIBUTION FROM CERTAIN FINES AND FORFEITURES TO PAY FOR THE NORMAL COST OF GAME WARDENS' RETIREMENT BENEFITS; REQUIRING THE DEVELOPMENT OF LEGISLATIVE PROPOSALS FOR EQUITABLE POSTRETIREMENT ADJUSTMENTS FOR PUBLIC RETIREMENT SYSTEMS; AMENDING SECTIONS 17-7-502 AND 19-8-504, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 2] gives the public employees' retirement board authority to adopt administrative rules to implement the cost-of-living adjustment provided in the bill.

It is the intent of the legislature to provide a one-time ad hoc cost-of-living adjustment to each member of the game wardens' retirement system who has been retired for 5 years or more, to the member's beneficiary, or to the member's contingent annuitant. The cost of the adjustment will be paid by increasing the amortization period of the system's unfunded liabilities.

It is further the intent of the legislature that the proposed statutory retirement committee established in House Bill No. 65 be assigned by the legislative council to develop legislation providing an equitable guaranteed annual benefit adjustment for each of Montana's statewide public retirement systems and that the legislation be presented to the 54th legislature for consideration. It is further the intent of the legislature that the cost of holding hearings and developing the legislation be paid by retirement systems and donations from public employee and retiree associations.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Ad hoc cost-of-living increase.** (1) The recipient of a monthly service, disability, or survivorship benefit is eligible for a one-time cost-of-living increase on July 1, 1993, if the benefit was initiated before July 1, 1988. A person who received a lump-sum payment or is receiving an annuitized payment is not an eligible recipient under this section.

(2) The amount of the increase for each eligible benefit recipient under subsection (1) must be calculated by:

(a) dividing 5% of the total monthly benefits paid to all eligible benefit recipients as of June 30, 1993, by the total years of service of all eligible benefit recipients as of June 30, 1993;

(b) multiplying the quotient by the individual eligible benefit recipient's years of service, except as provided in subsection (3); and

(c) multiplying the product by the appropriate optional factor for option 2, 3, or 4 benefits described in 19-7-701.

(3) For the purposes of this section, the increase for a recipient of a disability or survivorship benefit must be calculated as if the recipient had 25 years of service.

Section 2. **Rulemaking authority.** The public employees' retirement board may adopt rules to implement [section 1].

Section 3. Section 19-8-504, MCA, is amended to read:

"**19-8-504. State's contribution.** ~~Each~~ *(1) To fund the employer's portion of the normal cost of benefits under this chapter, each* month the state treasurer shall pay to the ~~account~~ *pension trust fund*~~,~~*:*

(a) out of the department of fish, wildlife, and parks ~~moneys~~ *funds*, a sum equal to 7.15% of ~~the total of~~ all members' salaries~~,~~*;* and

(b) out of the ~~moneys~~ *funds* collected as fines and forfeited bonds under the provisions of 87-1-601(1) through (5) or ~~moneys~~ *funds* distributed under 3-10-601(4), ~~all such collections are statutorily appropriated to the account~~ *an amount equal to 1% of all members' salaries.*

(2) In addition to the contributions provided in subsection (1), the state treasurer shall pay to the pension trust fund the balance of the funds distributed to the fish and game account pursuant to 3-10-601 until the unfunded liability

in the account is ~~solvent~~ *fully paid* and a verification statement to that effect is given to the state treasurer by the board."

Section 4. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; ~~19-8-504;~~ 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 5. **Study for equitable postretirement adjustments for all public retirement systems.** The legislative council shall assign the permanent committee on retirement a study to develop recommendations and legislation that will enact equitable, reasonable, and soundly funded guaranteed annual postretirement benefit adjustments for members of the statewide public employee retirement systems. The committee's recommendations and legislative proposals must be presented to the 54th legislature for consideration.

Section 6. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 8, part 8, and the provisions of Title 19, chapter 8, part 8, apply to [section 1].

Section 7. **Coordination instruction.** If Senate Bill No. 203 is not passed and approved, then [this act] is void.

Section 8. **Coordination instruction.** If House Bill No. 65 is not passed and approved, then [section 5 of this act] is void.

Section 9. **Effective date.** [This act] is effective July 1, 1993.

Approved April 21, 1993.

CHAPTER NO. 451

[HB 545]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE REGULATION OF INSURERS AND MOTOR CLUB SERVICE COMPANIES; REVISING THE EFFECTIVE DATE PROVISION FOR HAIL INSURANCE; AMENDING SECTIONS 15-16-601, 33-1-316, 33-1-501, 33-2-302, 33-2-305, 33-2-307, 33-2-312, 33-2-313, 33-2-705, 33-2-708, 33-2-1113, 33-3-305, 33-4-101, 33-4-203, 33-11-104, 33-11-108, 33-14-201, 33-14-305, 33-15-303, 33-16-106, 33-17-231, 33-17-237, 33-20-101, 33-20-121, 33-20-127, 33-20-603, 33-22-101, 33-22-130, 33-22-131, 33-22-132, 33-22-201, 33-22-202, 33-22-1703, AND 80-2-203, MCA; REPEALING SECTIONS 15-1-505, 33-17-206, AND 33-22-216, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-316, MCA, is amended to read:

"**33-1-316. Testimony compelled — immunity from prosecution.** A person may not be excused from attending and testifying or producing any evidence upon any examination, investigation, or hearing conducted by or under authority of the commissioner on the ground that ~~his~~ *the person's* testimony or the evidence required ~~of him~~ may tend to incriminate ~~him~~ or subject ~~him~~ *the person* to a penalty or forfeiture. However, ~~compelled~~ testimony or evidence *compelled following a claim of privilege against self-incrimination* or any information directly or indirectly derived from compelled testimony or evidence may not be used against the person in a criminal prosecution. The commissioner may grant immunity from prosecution for or on account of any act, occurrence, transaction, matter, or other thing concerning which a person ~~is compelled to testify~~ *testifies* if the commissioner determines that the ends of justice would be served by granting the additional immunity. Immunity does not extend to prosecution or punishment for false statements by the person that are contained in ~~the compelled~~ testimony or evidence *given under this part.*"

Section 2. Section 33-1-501, MCA, is amended to read:

"**33-1-501. Filing and approval of forms.** (1) ~~No~~ *An* insurance policy or annuity contract form, *certificate, enrollment form,* application form, printed rider or endorsement form, or form of renewal certificate may *not* be delivered or issued for delivery in Montana unless the form has been filed with and approved by the commissioner and the regulatory official of the state of domicile of the insurer, if required. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject or that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. ~~As to forms~~ *Forms* for use in property, marine (other than ocean marine and foreign trade coverages), casualty, and surety insurance coverages~~, the filing required by this subsection~~ may be ~~made~~ *filed* by a rating organization on behalf of its members and subscribers~~, but this provision does not prohibit~~ *or by* a member or subscriber ~~from filing a form~~ on its own behalf.

(2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than an additional 60 days the period within which ~~he~~ *the commissioner* may approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day period. The commissioner may at any time, after notice and for cause shown, withdraw any approval.

(3) An order of the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer.

(4) The commissioner may ~~by order~~ exempt from the requirements of this section, for so long as ~~he~~ *the commissioner* considers proper, an insurance document, form, or type of document or form specified ~~in the order~~ to which, in ~~his~~ *the commissioner's* opinion, this section may not practicably be applied or the filing and approval of which are, in ~~his~~ *the commissioner's* opinion, not desirable or necessary for the protection of the public.

(5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to ~~him~~ *the commissioner* for the purpose. The same standards apply to these forms as apply to forms for domestic use.

(6) This section and 33-1-502 do not apply to:

(a) reinsurance;

(b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided in subsection (5);

(c) ocean marine and foreign trade insurances.

(7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident in Montana must be filed with the commissioner upon ~~his~~ request."

Section 3. Section 33-2-302, MCA, is amended to read:

"**33-2-302. Conditions precedent to sale of surplus lines insurance.** Insurance may be procured through a licensed surplus lines insurance producer from an unauthorized insurer if:

(1) the insurer is an eligible surplus lines insurer;

(2) ~~the full amount or kind of insurance cannot be obtained from authorized insurers. The full amount or kind of insurance may be procured from an eligible surplus lines insurer if the insurance producer makes a diligent search among the insurers who are authorized to transact and are actually transacting the particular kind and class of insurance in this state and cannot obtain the full amount or kind of insurance from an authorized insurer.~~ *the line of insurance or the full amount of the line of insurance cannot be obtained from authorized insurers;*

(3) the producing insurance producer makes a diligent effort to place the business with a minimum of three insurers authorized and actually transacting that line of business in this state. If fewer than three insurers are authorized and actually transacting the line of business in this state, diligent effort must be met by searching this lesser market.

~~(3)~~*(4)* the insurance is not ~~so~~ procured for the purpose of securing ~~advantages either as to~~:

(a) a lower premium rate than would be accepted by an authorized insurer; or

(b) *an advantage in* terms of the insurance contract; and

~~(4)~~*(5)* all other requirements of this part are met."

Section 4. Section 33-2-305, MCA, is amended to read:

"**33-2-305. Licensing of surplus lines insurance producer — fee and bond.** (1) A person may not procure a contract of surplus lines insurance with an unauthorized insurer unless ~~he~~ *the person* is licensed as a property~~,~~ *and* casualty~~, and surety~~ insurance producer and possesses a current surplus lines insurance license issued by the commissioner.

(2) The commissioner shall issue a surplus lines insurance license to any qualified holder of a current property~~,~~ *and* casualty~~, and surety~~ insurance producer license only if the insurance producer has:

(a) remitted to the commissioner the annual fee prescribed by 33-2-708;

(b) submitted to the commissioner a completed license application on a form supplied by the commissioner;

(c) been licensed as a property~~,~~ *and* casualty~~, and surety~~ insurance producer continuously for 5 years or more; and

(d) filed with the commissioner and ~~thereafter~~ for as long as the license remains in effect kept in force a bond in favor of the state of Montana in the amount of $10,000, with authorized corporate sureties approved by the commissioner. The bond must be conditioned that the insurance producer will conduct business under the license in accordance with the provisions of The Surplus

Lines Insurance Law and that ~~he~~ *the insurance producer* will promptly remit the taxes provided in 33-2-311. The bond may not be terminated unless the surety gives the surplus lines insurance producer, the producing insurance producer, and the commissioner at least 30 days' prior written notice ~~thereof~~ *of termination.*

(3) The license expires on April 1 after its date of issue. A surplus lines insurance producer shall renew the license on or before March 1 of each year upon payment of the annual renewal fee prescribed in 33-2-708. A surplus lines insurance producer who fails to apply for a renewal of the license on or before March 1 shall pay a fine of $100 before the commissioner renews the license.

(4) A corporation is eligible to be licensed as a surplus lines insurance producer if:

(a) the corporate license lists the individuals within the corporation who have satisfied the requirements of this part to become surplus lines insurance producers; and

(b) only those individuals listed on the corporate license transact surplus lines insurance."

Section 5. Section 33-2-307, MCA, is amended to read:

"**33-2-307. Requirements for eligible surplus lines insurers.** (1) A surplus lines insurance producer may not place insurance with an unauthorized insurer unless, at the time of placement, the unauthorized insurer:

(a) has established satisfactory evidence of good reputation and financial integrity; and

(b) is qualified under one of the following subsections:

(i) the insurer maintains capital and surplus or its equivalent under the laws of its state of domicile, which equals the greater of:

(A) the minimum capital and surplus requirements of 33-2-109 and 33-2-110; or

(B) ~~$2.5 million on April 17, 1988, and $3.5 million on April 17, 1990. After April 17, 1990, an~~ *$3 million. An* insurer possessing less than $4 million ~~subcapital~~ *capital* and surplus may satisfy the requirements of this subsection upon an affirmative finding of acceptability by the commissioner. The commissioner's finding must be based upon such factors as quality of management, capital, and surplus of a parent company; company underwriting profit and investment income trends; and company record and reputation within the industry. The commissioner may not make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than $3 million.

(ii) in the case of Lloyd's or another similar unincorporated group of alien individual insurers, the insurer maintains a trust fund of not less than $50 million as security to the full amount ~~thereof~~ *of capital and surplus* for all policyholders and creditors in the United States of each member of the group. The trust must comply with the terms and conditions established in subsection (1)(b)(iv) for alien insurers.

(iii) in the case of an insurance exchange created by the laws of individual states, the insurer maintains capital and surplus, or their substantial equivalent, of not less than $15 million in the aggregate. For an insurance exchange that maintains funds for the protection of each insurance exchange policyholder, each individual syndicate shall maintain minimum capital and surplus, or their substantial equivalent, of not less than $1.5 million. If the insurance exchange does not maintain funds for the protection of each insurance exchange policyholder, each individual syndicate shall meet the minimum capital and surplus requirements of subsection (1)(b)(i).

(iv) in the case of an alien insurer, the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system, in an amount not less than $1.5 million, for the protection of all its policyholders in the United States and ~~such~~ *the* trust fund consists of cash, securities, or letters of credit or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of insurers authorized to write like kinds of insurance in this state. ~~Such~~ *The* trust fund, which must be included in any calculation of capital and surplus or its equivalent, must have an expiration date ~~which at no time~~ *that* may *not at any time* be less than 5 years. In addition, the alien insurer must appear on the national association of insurance commissioners' Non-Admitted Insurers Quarterly Listing.

(c) has provided the commissioner a copy of its current annual statement, certified by the insurer no more than 6 months after the close of the period reported upon (or quarterly if considered necessary by the commissioner), and which is either:

(i) filed with and approved by the regulatory authority in the state of domicile of the unauthorized insurer; or

(ii) certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's state of domicile.

(2) In the case of an insurance exchange, the statement required by subsection (1)(c) may be an aggregate combined statement of all underwriting syndicates operating during the period reported.

(3) In addition to meeting the requirements in subsection (1), an insurer is an eligible surplus lines insurer only if it appears on the most recent list of eligible surplus lines insurers published at least semiannually by the commissioner. This subsection does not require the commissioner to place or maintain the name of any unauthorized insurer on the list of eligible surplus lines insurers. ~~No~~ *An* action may *not* lie against the commissioner or an employee of the commissioner for anything said in issuing the list of eligible surplus lines insurers referred to in this subsection.

(4) (a) The commissioner may declare an eligible surplus lines insurer ineligible if at any time the commissioner has reason to believe that it:

(i) is in unsound financial condition;

(ii) is no longer eligible under subsections (1) through (3);

(iii) has willfully violated the laws of this state; or

(iv) does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(b) The commissioner shall promptly mail notice of all ~~such~~ declarations to each surplus lines insurance producer.

(5) As used in this section, the following definitions apply:

(a) "Capital", as used in the financial requirements of this section, means funds invested in for stocks or other evidences of ownership.

(b) "Surplus", as used in the financial requirements of this section, means funds over and above liabilities and capital of the insurer for the protection of policyholders."

Section 6. Section 33-2-312, MCA, is amended to read:

"**33-2-312. Penalty for failure to file statement, pay tax, or pay stamping fee.** (1) A surplus lines insurance producer who fails to make and file the annual statement as required under 33-2-310 or to pay the taxes as required under 33-2-311 is liable to a penalty of $25 for each day of delinquency, commencing with April 1. The tax and penalty may be recovered in an action instituted by the commissioner in the name of the state in any court of competent jurisdiction, the attorney general representing ~~him~~ *the commissioner.* The penalty when collected, unless collected by a justice's court, ~~shall~~ *must* be paid to the state treasurer and placed to the credit of the general fund. The surplus lines insurance producer license is also subject to revocation as provided in 33-2-313.

(2) If a surplus lines insurance producer does not pay the stamping fee provided for in 33-2-321 ~~before it is due~~, the commissioner or the surplus lines advisory organization formed pursuant to 33-2-321 may impose a penalty of 25% of the stamping fee due plus 1.5% a month from the time of delinquency until the stamping fee is paid."

Section 7. Section 33-2-313, MCA, is amended to read:

"**33-2-313. Revocation or suspension of producer license.** (1) The commissioner shall revoke or suspend any surplus lines insurance producer license, together with ~~his~~ *any* license as an insurance producer:

(a) if the insurance producer fails to file ~~his~~ *an* annual statement or to remit the tax as required by law;

(b) if the insurance producer fails to keep the records or to allow the commissioner to examine ~~his~~ *the* records, as required by law;

(c) if the insurance producer falsifies the affidavit required by 33-2-310(3);

~~(d) if the insurance producer removes the resident surplus lines insurance producer office from this state;~~

~~(e) if the insurance producer removes the resident surplus lines insurance producer office accounts and records from this state during the period during which the accounts and records are required to be maintained under 33-2-310(1);~~

~~(f)~~*(d)* if the insurance producer closes the ~~resident~~ surplus lines insurance producer office for a period of more than 30 business days, unless the commissioner grants permission otherwise;

~~(g)~~*(e)* if the insurance producer violates any provision of this part; or

~~(h)~~*(f)* for any of the causes for which an insurance producer's license may be revoked.

(2) The procedures provided by 33-17-1001 for the suspension or revocation of insurance producer licenses apply to suspension or revocation of a surplus lines insurance producer license.

(3) An insurance producer whose license has been ~~so~~ revoked or suspended may not again be ~~so~~ licensed within 1 year ~~thereafter~~ *after revocation or suspension* or until ~~he~~ *the insurance producer* pays all penalties and delinquent taxes that ~~he owes~~ *are owed.*"

Section 8. Section 33-2-705, MCA, is amended to read:

"**33-2-705. Report on premiums and other consideration — tax.** (1) Each authorized insurer and each formerly authorized insurer with respect to premiums ~~so~~ received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in *a* form ~~as~~ prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to ~~such~~ property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from ~~such~~ *the* total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to ~~such~~ *the* policies. As to title insurance, "premium" includes the total charge for ~~such~~ *the* insurance. ~~No~~ *A* deduction ~~shall~~ *may not* be made of the cash surrender values of policies. Considerations received on annuity contracts ~~shall~~ *may* not be included in total direct premium income and ~~shall~~ *are* not ~~be~~ subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) ~~above~~, each ~~such~~ insurer shall pay to the commissioner a tax upon ~~such~~ *the* net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid ~~hereunder~~ *under this section* by an insurer on account of premiums received for fire insurance ~~shall~~ *must* be separately specified in the report as required by the commissioner, for apportionment as

provided by law. ~~Where~~ *When* insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make ~~such~~ *a* reasonable allocation from ~~such~~ *the* entire premium to the fire portion of the coverage as ~~shall~~ *must* be stated in ~~such~~ *the* report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section ~~shall~~ *must* be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 ~~a day for each day the tax remains unpaid past the due date or 1% of the amount owed in tax, whichever is greater~~ *plus interest on the delinquent amount at the interest rate established in 31-1-107.*

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which ~~such~~ tax liability is accrued."

Section 9. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers	$ 600.00
(B) foreign insurers	600.00
(ii) annual continuation of certificate of authority	600.00
(iii) reinstatement of certificate of authority	25.00
(iv) amendment of certificate of authority	50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state. . 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation	25.00
(c) filing bylaws or amendment to bylaws where required	10.00
(d) filing annual statement of insurer, other than as part of application for original certificate of authority	25.00
(e) insurance producer's license:	
(i) application for original license, including issuance of license, if issued	15.00
(ii) appointment of insurance producer, each insurer	10.00
(iii) temporary license	15.00
(iv) amendment of license (excluding additions to license) or reissuance of master license	15.00
(f) nonresident insurance producer's license:	
(i) application for original license, including issuance of license, if issued	100.00
(ii) appointment of insurance producer, each insurer	10.00
(iii) annual renewal of license	10.00
(iv) amendment of license (excluding additions to license) or reissuance of master license	15.00
(g) examination, if administered by the commissioner, for license as insurance producer, each examination	15.00
(h) surplus lines insurance producer license:	
(i) application for original license and for issuance of license, if issued	50.00
(ii) annual renewal of license	50.00
(i) adjuster's license:	
(i) application for original license and for issuance of license, if issued	15.00
(ii) annual renewal of license	15.00
(j) insurance vending machine license, each machine, each year	10.00
(k) commissioner's certificate under seal (except when on certificates of authority or licenses)	10.00
(l) copies of documents on file in the commissioner's office, per page	.50
(m) policy forms:	

(i) filing each policy form 25.00

(ii) filing each application, *certificate, enrollment form,* rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks 10.00

(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days 100.00

(n) applications for approval of prelicensing education courses:

(i) reviewing initial application 150.00

(ii) periodic review 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected ~~by him~~ pursuant to Title 33 and the rules adopted under Title 33.

(3) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 10. Section 33-2-1113, MCA, is amended to read:

"**33-2-1113. Transactions with affiliates — standards.** (1) Material transactions by registered insurers with their affiliates are subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payments received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts, and records of each party must ~~be so maintained as to~~ clearly and accurately disclose the precise nature and details of the transactions, including ~~such~~ *any* accounting information ~~as is~~ necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) (a) The following transactions involving a domestic insurer and a person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into a transaction and the commissioner has not disapproved it within at least 30 days prior to the transaction, or a shorter period as the commissioner may permit:

(i) sales, purchases, exchanges, loans or extensions of credit, guaranties, or investments if, as of the prior December 31, the transactions are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders; and

(B) with respect to life insurers, 3% of the insurer's admitted assets;

(ii) loans or extensions of credit to a person who is not an affiliate if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in an affiliate of the insurer making the loans or extensions of credit if ~~such~~ *the* transactions, as of the prior December 31, are equal to or exceed:

(A) with respect to insurers other than life insurers, the lesser of 3% of the insurer's admitted assets or 25% of its surplus as regards policyholders;

(B) with respect to life insurers, 3% of the insurer's admitted assets;

~~(C)~~*(iii)* reinsurance agreements or modifications to reinsurance agreements in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds 5% of the insurer's surplus as regards policyholders, as of the prior December 31, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;

~~(D)~~*(iv)* all management agreements, service contracts, and cost-sharing arrangements; and

~~(E)~~*(v)* any material transactions, specified by rule, that the commissioner determines may adversely affect the interests of the insurer's policyholders.

(b) Nothing in this subsection (2) is considered to authorize or permit a transaction that, in the case of an insurer that is not a member of the same holding company system, would otherwise be contrary to law.

(3) A domestic insurer may not enter into a transaction that is part of a plan or series of like transactions with a person within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount review. If the commissioner determines that the separate transactions were entered into over a 12-month period for the purpose of evading review, ~~he~~ *the commissioner* may exercise ~~his~~ authority under 33-2-1120.

(4) The commissioner, in reviewing a transaction pursuant to subsection (2), shall consider whether the transaction complies with the standards set forth in subsection (1) and whether it may adversely affect the interests of a policyholder.

(5) The commissioner must be notified within 30 days of an investment by a domestic insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds 10% of the corporation's voting securities.

(6) For purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's

outstanding liabilities and adequate to its financial needs, the following factors, among others, must be considered:

(a) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) the extent to which the insurer's business is diversified among the several lines of insurance;

(c) the number and size of risks insured in each line of business;

(d) the extent of the geographical dispersion of the insurer's insured risks;

(e) the nature and extent of the insurer's reinsurance program;

(f) the quality, diversification, and liquidity of the insurer's investment portfolio;

(g) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) the surplus as regards policyholders maintained by other comparable insurers;

(i) the adequacy of the insurer's reserves;

(j) the quality and liquidity of investments in subsidiaries made pursuant to 33-2-1104 through 33-2-1106. The commissioner may treat any ~~such~~ investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in ~~his~~ *the commissioner's* judgment the investment so warrants."

Section 11. Section 33-3-305, MCA, is amended to read:

"**33-3-305. Directors — number and election.** (1) The affairs of every domestic insurer ~~shall~~ *must* be managed by the number of directors fixed in the insurer's bylaws, which ~~shall~~ *may* not be less than 5 or more than 21 directors.

(2) Directors must be elected ~~from and~~ by the members or stockholders of a domestic insurer, except as provided in 33-3-306, at ~~such~~ *the* time and place and for ~~such~~ *the* terms, not exceeding 3 years, as may be provided in the insurer's bylaws. *A majority of directors must be elected from the members or stockholders of the domestic insurer.*

(3) The term of a director shall extend until ~~his~~ *a* successor has been elected and has qualified."

Section 12. Section 33-4-101, MCA, is amended to read:

"**33-4-101. Scope of chapter — provisions applicable.** (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings ~~heretofore~~ formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517~~, and all amendments thereto,~~ of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers ~~heretofore~~ formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625~~, and all amendments thereto,~~ of the Revised Codes of Montana, 1947;

(c) all insurers ~~hereafter~~ formed under this chapter.

(2) All ~~such~~ insurers *qualifying under subsection (1)* may be referred to as "farm mutual insurers".

(3) ~~Nothing in the~~ *The* insurance laws of this state ~~shall be deemed to~~ *do not* apply to or govern, either directly or indirectly, domestic farm mutual insurers except as contained or referred to in this chapter.

(4) The following chapters and sections of this title ~~also shall~~ apply to farm mutual insurers to the extent ~~so~~ applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of ~~such~~ *the* express provisions: parts 1, 2, 3, 4, and 7 of chapter 1; *33-2-112;* 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; chapter 2, part 13; 33-2-1212; 33-3-218; 33-3-308; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18."

Section 13. Section 33-4-203, MCA, is amended to read:

"**33-4-203. Approval of articles — commencement of corporate existence.** (1) Upon receipt ~~thereof~~ *of proposed articles of incorporation,* the commissioner shall forward the proposed articles of incorporation to the attorney general for examination. If the attorney general finds the articles to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States of America or of this state, ~~he~~ *the attorney general* shall make a certificate of the facts and return it with the proposed articles to the commissioner.

(2) If the commissioner ~~deems~~ *considers* the name of the proposed corporation to be so similar to one already appropriated by another company or corporation as to be likely to mislead the public, ~~he~~ *the commissioner* shall reject the name applied for and shall notify the incorporators ~~thereof~~ *of the rejection.*

(3) When the proposed articles of incorporation have been approved by the attorney general, the commissioner shall likewise endorse ~~his~~ *the commissioner's* approval upon each set of the articles~~, file one set in his office,~~ and forward ~~the other three~~ *four* sets of articles to the incorporators. The incorporators shall file one of ~~such~~ *the* sets of articles with the secretary of state, one set with the commissioner bearing the certification of the secretary of state, and one set with the county clerk of the county ~~wherein is located~~ *in which* the principal place of business of the corporation *is located* and shall pay to the secretary of state and the county clerk the customary filing fees. The remaining set of articles ~~shall~~ *must* be made a part of the corporation's records.

(4) The corporation ~~shall have~~ *has* legal existence ~~as such~~ upon the approval of the articles by the attorney general and the commissioner and completion of the filings referred to in subsection (3) ~~above~~, but it ~~shall~~ *may* not transact business as an insurer until it has fulfilled the requirements for and has obtained a certificate of authority as provided in 33-4-505."

Section 14. Section 33-11-104, MCA, is amended to read:

"33-11-104. **Risk retention groups not chartered in this state.** A risk retention group chartered in a state other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) a statement identifying the state or states where the risk retention group is chartered and authorized as a casualty insurer, date of chartering, its principal place of business, and ~~such~~ other information, including information on its membership, as the commissioner requires to verify that the risk retention group is qualified under 33-11-102(7);

(b) a copy of its plan of operation or a feasibility study and revisions of ~~such~~ *the* plan or study submitted to its state of domicile. However, this provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance that was defined in the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986, and that was offered before that date by a risk retention group that had been chartered and operated for not less than 3 years before that date; and

(c) a statement of registration that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or by a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) a copy of each examination of the risk retention group as certified by the insurance regulatory official of the state in which the examination was conducted or public official conducting the examination;

(c) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) ~~such~~ *any* information as may be required to verify the group's continuing qualification as a risk retention group under 33-11-102(7).

(3) (a) All premiums paid for coverage within this state to risk retention groups are subject to taxation at the same rate and to the same interest, fines, and penalties for nonpayment that apply to foreign admitted insurers.

(b) To the extent that an insurance producer is used, ~~he~~ *the insurance producer* shall report and pay the taxes for the premiums for risks that ~~he has~~ *are* placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that an insurance producer is not used or fails to pay the tax, each risk retention group shall pay the tax for risks insured within the state.

Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

(4) Each risk retention group, its insurance producers, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding ~~such~~ *the* conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner. The examination must be coordinated to avoid unjustified repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state ~~must~~ *shall* comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under subsection (6).

(12) Upon completion of registration requirements, the commissioner shall issue to the risk retention group a proper certificate of registration."

Section 15. Section 33-11-108, MCA, is amended to read:

"**33-11-108. Notice and registration requirements of purchasing groups.** (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

(a) identifies the state where the group is domiciled;

(b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) identifies the insurer from which the purchasing group intends to purchase its insurance and the domicile of the insurer;

(d) identifies the Montana-licensed insurance producer or Montana-licensed surplus ~~insurance~~ lines *insurance* producer through which the purchasing group intends to place its business;

(e) identifies the principal place of business of the purchasing group; and

(f) provides information required by the commissioner to verify that the purchasing group is qualified under 33-11-102(6).

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process. However, ~~such~~ *the* requirements do not apply in the case of a purchasing group:

(a) (i) that was domiciled before April 2, 1986, in any state of the United States; and

(ii) that was domiciled on and after October 27, 1986, in any state of the United States;

(b) (i) that, before October 27, 1986, purchased insurance from an insurer licensed in any state; and

(ii) that, since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) that was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986; and

(d) that does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986.

(3) Upon completion of registration requirements, the commissioner shall issue a proper certificate of registration to the purchasing group."

Section 16. Section 33-14-201, MCA, is amended to read:

"**33-14-201. License required — fee — renewal of license.** (1) Except as provided in subsection (4), ~~no~~ *a* person may *not* engage in the business of financing insurance premiums without first having obtained a license as a premium finance company from the commissioner. Any person who engages in the business of financing insurance premiums in the state without obtaining a license as provided under this chapter is, upon conviction, guilty of a misdemeanor.

(2) The annual license fee is $100. A license may be renewed as of January 1 each year, upon payment of the fee of $100. The license fee ~~shall~~ *must* be paid to the commissioner.

(3) The person to whom the license or the renewal ~~thereof~~ *of the license* is issued shall file sworn answers, subject to the penalties of perjury, to ~~such~~ *any* interrogatories as the commissioner may require. The commissioner may, at any time, require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees, and ~~he~~ *the commissioner* may, in ~~his~~ *the commissioner's* discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if ~~he is~~ not satisfied that any officer, employee, stockholder, or partner ~~thereof~~ who may materially influence the applicant's conduct meets the standards of this chapter.

(4) ~~No person other than a savings and loan association, bank, trust company, or licensed finance company, credit union, or resident insurance producer who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement to a licensee or to any of the organizations exempt under this subsection may engage in the business of entering into, acquiring, or holding insurance premium finance agreements unless licensed to do so by the commissioner.~~ *This section does not apply to and a license is not required of:*

(a) savings and loan associations, banks, trust companies, licensed finance companies, credit unions, and resident insurance producers; or

(b) a person who, within 15 days after entering into an insurance premium finance agreement, transfers the agreement to a licensee or to any of the organizations exempt under this subsection (4)."

Section 17. Section 33-14-305, MCA, is amended to read:

"**33-14-305. Return of unearned premiums.** (1) Whenever a financed insurance contract is canceled *by a person other than the insured*, the insurer shall process cancellation of the financed insurance policy on a pro rata basis. The insurer shall return whatever gross unearned premiums are due under the insurance contract to the premium finance company for the account of the insured or insureds.

(2) If the crediting of the return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured, except that ~~no~~ *a* refund is *not* required if ~~such~~ *the* excess amounts to less than $1."

Section 18. Section 33-15-303, MCA, is amended to read:

"**33-15-303. Contents of policies in general — identification.** (1) Every policy shall specify:

(a) the names of the parties to the contract;

(b) the subject of the insurance;

(c) the risks insured against;

(d) the time when the insurance ~~thereunder~~ *under the policy* takes effect and the period during which the insurance is to continue;

(e) the premium;

(f) the conditions pertaining to the insurance.

(2) If under the policy the exact amount of premium is determinable only at stated intervals or termination of the contract, a statement of the basis and rates upon which the premium is to be determined and paid ~~shall~~ *must* be included.

(3) ~~Subsections (1) and (2) of this section shall not apply as to surety contracts or to group insurance policies.~~

~~(4)~~ All policies and annuity contracts issued by insurers and the forms ~~thereof~~ *of policies and annuity contracts* filed with the commissioner ~~shall~~ *must* have printed ~~thereon~~ *on the policy or annuity contract* an appropriate designating letter or figure, ~~or~~ combination of letters or figures, or terms identifying the respective forms of policies or contracts, together with the year of adoption of ~~such~~ *the* form. Whenever any change is made in any ~~such~~ form, the designating letters, figures, or terms and year of adoption ~~thereon shall~~ *on the form must* be correspondingly changed."

Section 19. Section 33-16-106, MCA, is amended to read:

"**33-16-106. Examination by commissioner of rating organizations, admitted insurers, officers, managers, insurance producers, and employees — expense.** (1) (a) The commissioner ~~shall, at least once every 5 years, and~~ may, as often as may be reasonable and necessary, make or cause to be made an examination of each licensed rating organization. ~~He~~ *The commissioner* may, as often as may be reasonable and necessary, make or cause to be made an examination of any advisory organization or group, association, or other organization of insurers ~~which~~ *that* engages in joint underwriting or joint reinsurance.

(b) In lieu of ~~any such~~ *an* examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state *or by the national association of insurance commissioners.*

(c) In examining any organization, group, or association pursuant to this section, the commissioner shall ascertain whether ~~such~~ *an* organization, group, or association and, in the case of a rating organization, any rate or rating system made or used by it, complies with the requirements and standards of this chapter applicable to it.

(2) The commissioner may, at any reasonable time, make or cause to be made an examination of every admitted insurer transacting any class of insurance to which the provisions of this chapter are applicable to ascertain whether ~~such~~ *the* insurer and every rate and rating system used by it for every class of insurance complies with the requirements and standards of this chapter applicable ~~thereto~~ *to it*. ~~Such~~ *The* examination ~~shall~~ *may* not be a part of a periodic general examination participated in by representatives of more than one state.

(3) The officers, managers, insurance producers, and employees of any ~~such~~ organization, group, association, or insurer may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation, together with all data, statistics, and information of every kind and character collected or considered by ~~such~~ *an* organization, group, association, or insurer in the conduct of the operations to which ~~such~~ *the* examination relates.

(4) The reasonable cost of any examination authorized by this article ~~shall~~ *must* be paid by the organization, group, association, or insurer to be examined."

Section 20. Section 33-17-231, MCA, is amended to read:

"**33-17-231. Appointment of insurance producers — continuation and termination.** (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer, and pay the fee ~~therefor~~ as stated in 33-2-708. ~~The term of the appointment is for 1 year and runs from June 1 of each year through May 31 of the succeeding year.~~

(2) ~~Subject to annual renewal by the insurer, each such~~ *Each* appointment ~~shall remain~~ *remains* in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer *or the insurance producer. Termination of the insurer's authority in Montana also terminates the appointment.*

(3) ~~Annually, prior to May 1, each insurer shall file with the commissioner an alphabetical list in duplicate of the names and addresses of all its insurance producers whose appointments in this state are to remain in effect, accompanied by payment of the annual renewal fee as provided in 33-2-708. At the same time the insurer shall also file with the commissioner a termination report of all insurance producers whose appointments in this state are not to remain in effect.~~

~~(4)~~ Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of ~~such~~ *the* termination to the commissioner and to the insurance producer. The commissioner may require ~~of the insurer~~ reasonable proof that the insurer has given ~~such~~ notice to the insurance producer.

~~(5)~~*(4)* As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause ~~thereof~~ *of termination.* Any information or statement contained in the notice of termination ~~shall~~ *is* not ~~be~~ admissible as evidence in any action or proceeding against the insurer or any representative ~~thereof~~ *of the insurer* by or ~~in~~ *on* behalf of any person affected by ~~such~~ *the* termination."

Section 21. Section 33-17-237, MCA, is amended to read:

"**33-17-237. Notification of *violation or* appointment termination.** (1) Upon the termination of an appointed insurance producer by an insurer, the insurer shall notify the insurance department within 30 days in the manner prescribed by the insurance department. ~~If the reason of the termination is for~~

~~any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall notify the insurance department of the reason and the insurer shall, upon request of the insurance department, provide information, documents, records, or other data pertaining to the termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 1, part 7.~~

(2) If the reason for the termination is any of the causes listed in 33-17-1001 or 33-25-301, the insurer shall immediately notify the insurance department of the reason.

(3) Whenever an insurance company or an employee or representative of the company has reasonable cause to believe that a person has violated 33-17-1001 or 33-25-301, it is the duty of that entity, upon acquiring the knowledge, to notify the insurance department and provide the insurance department with a complete statement of all relevant facts and circumstances.

(4) The insurer, employee, or representative shall, upon request of the insurance department, provide information, documents and records, or other data pertaining to the alleged violation or termination that may be used by the insurance department in any action taken pursuant to Title 33, chapter 17, part 10.

~~(2)~~*(5)* Any information, documents, records, or other data provided pursuant to this section is privileged and there is no liability on the part of nor may a cause of action of any nature arise against the insurance department, the insurance company, or an authorized representative of either so long as the privileged information is furnished in good faith."

Section 22. Section 33-20-101, MCA, is amended to read:

"**33-20-101. Scope.** (1) Except as provided in subsection (2), parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

(2) ~~Section~~ *Sections 33-20-114 and* 33-20-131 ~~applies~~ *apply* to group life insurance and group annuities."

Section 23. Section 33-20-121, MCA, is amended to read:

"**33-20-121. Prohibited provisions — limitations on liability.** (1) A policy of life insurance may not be delivered or issued for delivery in this state if it contains a provision:

(a) for a period shorter than that provided by statute within which an action at law or in equity may be commenced on the policy; or

(b) that excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified in the policy in the event of death:

(i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of any act or hazard of war or action or of service in the military, naval, or air forces or in civilian forces auxiliary thereto or from any cause while a member of military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in military action;

(ii) as a result of aviation or any air travel or flight;

(iii) as a result of a specified hazardous occupation or occupations;

(iv) while the insured is a resident outside the continental United States and Canada; or

(v) within 2 years from the date of issue of the policy as a result of suicide, while seriously mentally ill or otherwise. If a life insurance policy contains a dependent rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

(2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide that in the event of death under the circumstances to which the exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method on the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy ~~provides~~ *does not provide* for ~~no such~~ *nonforfeiture* benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy)~~,~~ ~~with~~ *or by any other method more favorable to the policyholder, with* adjustment for indebtedness or dividend credit.

(3) This section does not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) This section does not prohibit a provision that in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section."

Section 24. Section 33-20-127, MCA, is amended to read:

"**33-20-127. Life insurance policy with long-term care provision** ***or accelerated benefits provision*** **— ~~policy~~ summary required.** At the time of policy delivery, a ~~policy~~ summary must be delivered to the insured for an individual life insurance policy that provides long-term care benefits *or accelerated benefits* within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the ~~policy~~ summary upon the applicant's request but no later than the time of policy delivery. In addition to complying with all applicable requirements, the summary must also include:

(1) an explanation of how the long-term care benefits *or accelerated benefits* interact with other components of the policy, including deductions from death benefits;

(2) an illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits, if any, for each covered person;

(3) any exclusions, reductions, and limitations ~~on benefits~~ of long-term care *benefits and accelerated benefits*; and

(4) if applicable to the policy type:

(a) a disclosure of the effects of exercising other rights under the policy;

(b) a disclosure of guaranties related to long-term care costs of insurance charges; and

(c) current and projected maximum lifetime benefits."

Section 25. Section 33-20-603, MCA, is amended to read:

"**33-20-603. Separate accounts for life insurance or annuities.** (1) Subject to the provisions of subsection (2), a ~~domestic~~ life insurer may establish one or more separate accounts and may allocate to ~~such~~ *those* accounts the amounts necessary to provide for life insurance or annuities and benefits incidental ~~thereto~~ *to the life insurance or annuities*, payable in fixed or variable amounts, or both. The amounts allocated to ~~such~~ *the* accounts may include without limitation proceeds applied under optional modes of settlement or under dividend options.

(2) Separate accounts for life insurance or annuities established under the provisions of subsection (1) are subject to the following:

(a) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account must be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(b) Except as provided for reserves for guaranteed benefits and funds in subsection (c):

(i) amounts allocated to a separate account and accumulations ~~thereon~~ *on the separate account* may be invested and reinvested in any class of investment authorized under Title 33, chapter 2, part 8, if limitations under 33-2-806 on investments in stocks are not applicable;

(ii) the investments in the separate account or accounts may not be considered in applying the investment limitations otherwise applicable to the investments of the insurer.

(c) Except with the approval of the commissioner and under conditions relating to investments and other *prescribed* matters ~~as he prescribes~~ that recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to amount and duration and for funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.

(d) Unless otherwise approved by the commissioner, assets allocated to a separate account must be valued at their market value on the date of valuation or, if there is no readily available market, as provided under the terms of the contract or the rules or other written agreement applicable to that separate account; however, unless otherwise approved by the commissioner, the portion, if any, of the assets of that separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (c) must be valued in accordance with the laws and rules otherwise applicable to the insurer's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this part must be owned by the insurer, and the insurer may not be or hold itself out to be a trustee with respect to those amounts. If and to the extent provided under applicable contracts, that portion of the assets of a separate account equal to the reserves and other contract liabilities with respect to the account are not chargeable with liabilities arising out of any other business the insurer may conduct.

(f) (i) ~~No~~ *A* sale, exchange, or other transfer of assets may *not* be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(A) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; or

(B) the transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value and the transfer of securities is approved by the commissioner.

(ii) The commissioner may approve other transfers among these accounts if, in ~~his~~ *the commissioner's* opinion, transfers would not be inequitable.

(g) To the extent an insurer considers it necessary to comply with any applicable federal or state laws, the insurer, with respect to any separate account, including without limitation any separate account that is a management investment company or a unit investment trust account, may provide, for persons having an interest ~~therein~~ *in the account*, appropriate voting and other rights and special procedures for the conduct of the business of that account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business of that account."

Section 26. Section 33-22-101, MCA, is amended to read:

"**33-22-101. Exceptions to scope.** ~~Nothing in parts~~ *Parts* 1 through 4 of this chapter, except *33-22-107,* 33-22-111, *33-22-114, 33-22-125, 33-22-130, 33-22-131, 33-22-132, [section 34],* and 33-22-304, ~~shall~~ *do not* apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage ~~therein~~;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or ~~contracts~~ supplemental *contracts that* ~~thereto which~~ contain only ~~such~~ *those* provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard ~~such~~ contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

Section 27. Section 33-22-130, MCA, is amended to read:

"**33-22-130. Coverage for adopted children from time of placement — preexisting conditions.** (1) Each group and individual disability policy, certificate of insurance, or membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state ~~and that provides coverage for a family member of the insured or subscriber~~ must provide coverage for an adopted child of the insured or subscriber to the same extent as for natural children of the insured or subscriber.

(2) The coverage required by this section must be effective from the date of placement for the purpose of adoption and must continue unless the placement is disrupted prior to legal adoption and the child is removed from placement. Coverage at the time of placement must include the necessary care and treatment of medical conditions existing prior to the date of placement.

(3) As used in this section, "placement" means placement for adoption as defined in 40-8-103."

Section 28. Section 33-22-131, MCA, is amended to read:

"**33-22-131. Coverage for phenylketonuria treatment.** (1) Each group or individual disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state ~~and that provides coverage for a family member of the insured or subscriber~~ must provide coverage for the treatment of phenylketonuria.

(2) For ~~the purpose~~ *purposes* of this section, "treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status.

(3) These services are subject to the terms of the applicable group or individual disability policy, certificate, or membership contract that establishes durational limits, dollar limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally."

Section 29. Section 33-22-132, MCA, is amended to read:

"**33-22-132. Coverage for mammography examinations.** (1) Each group or individual disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state ~~and that provides coverage for a family member of the insured or subscriber~~ must provide minimum mammography examination coverage.

(2) For the purpose of this section, "minimum mammography examination" means:

(a) one baseline mammogram for a woman who is 35 years of age or older and under 40 years of age;

(b) a mammogram every 2 years for any woman who is 40 years of age or older and under 50 years of age or more frequently if recommended by the woman's physician; and

(c) a mammogram each year for a woman who is 50 years of age or older.

(3) ~~These services are subject to~~ *A minimum $70 payment or the actual charge if the charge is less than $70 must be made for each mammography examination performed before the application of* the terms of the applicable group or individual disability policy, certificate of insurance, or membership contract that establish durational limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally. ~~A minimum $70 payment must be made for each mammography examination performed.~~"

Section 30. Section 33-22-201, MCA, is amended to read:

"**33-22-201. Format and content.** ~~No~~ *A* policy of disability insurance ~~shall~~ *may not* be delivered or issued for delivery to any person in this state unless it otherwise complies with this code and complies with the following:

(1) The entire money and other considerations ~~therefor~~ *for the policy* ~~shall~~ *must* be expressed ~~therein~~ *in the policy.*

(2) The time when the insurance takes effect and terminates ~~shall~~ *must* be expressed ~~therein~~ *in the policy.*

(3) ~~It shall purport to~~ *The policy may* insure only one person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who ~~shall be deemed~~ *is* the policyholder, any two or more eligible members of that family, including husband, wife, dependent children or any children under a specified age ~~which shall~~ *that may* not exceed 19 years, and any other person dependent upon the policyholder.

(4) The style, arrangement, and overall appearance of the policy ~~shall~~ *may not* give ~~no~~ undue prominence to any portion of the text, and every printed portion of the text of the policy and of any endorsements or attached papers ~~shall~~ *must* be plainly printed in lightfaced type of a style in general use, the size of which ~~shall~~ *must* be uniform and not less than 10 point with a lowercase, unspaced alphabet length not less than 120 point.

(5) The "text" ~~shall~~ *must* include all printed matter except the name and address of the insurer, name or title of the policy, the brief description, if any, and captions and subcaptions.

(6) The exceptions and reductions of indemnity ~~shall~~ *must* be set forth in the policy and, other than those contained in 33-22-204 through *33-22-215 and 33-22-217 through* 33-22-231, ~~shall~~ *must* be printed, at the insurer's option, either included with the benefit provision to which they apply or under an appropriate caption such as "Exceptions" or "Exceptions and Reductions", except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of ~~such~~ *the* exception or reduction ~~shall~~ *must* be included with the benefit provision to which it applies.

(7) Each ~~such~~ form, including riders and endorsements, ~~shall~~ *must* be identified by a form number in the lower left-hand corner of the first page ~~thereof~~ *of the form.*

(8) The policy ~~shall~~ *may not* contain ~~no~~ *a* provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless ~~such~~ *the* portion is set forth in full in the policy, except in the case

of the incorporation of or reference to a statement of rates or classification of risks or short-rate table filed with the commissioner.

(9) Each individual disability policy, except for a single-premium nonrenewable policy, issued for delivery in this state on or after January 1, 1980, ~~shall~~ *must* contain a notice stating in substance that if the person to whom the policy is issued is not satisfied for any reason, ~~he~~ *the person* is permitted to return the policy within 10 days of its delivery, or ~~such~~ *a* longer period as the policy may provide, and to have refunded the amount of the premium paid. A policy returned pursuant to this subsection is void from the beginning."

Section 31. Section 33-22-202, MCA, is amended to read:

"**33-22-202. Required provisions — captions — omissions — substitutions — order.** (1) Except as provided in subsection (2) ~~below~~, each ~~such~~ policy delivered or issued for delivery to any person in this state must contain the provisions specified in 33-22-204 through 33-22-215, in the words in which the ~~same~~ *provisions* appear, except that the insurer may, at its option, substitute for one or more of ~~such~~ *the* provisions corresponding provisions of different wording approved by the commissioner which are in each instance not less favorable in any respect to the insured or the beneficiary. Each ~~such~~ provision must be preceded individually by the applicable caption shown or, at the option of the insurer, by ~~such~~ *the* appropriate individual or group captions or subcaptions as the commissioner may approve.

(2) If any ~~such~~ provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the commissioner, shall omit from ~~such~~ *the* policy any inapplicable provision or part of a provision and shall modify any inconsistent provision or part of a provision in ~~such~~ *a* manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

(3) The provisions ~~which~~ *that* are the subject of 33-22-204 through *33-22-215 and 33-22-217 through* 33-22-232 or any corresponding provisions which are used ~~in lieu thereof~~ in accordance with ~~such~~ *the cited* sections ~~shall~~ *must* be printed in the consecutive order of the provisions in ~~such~~ *the* sections or, at the option of the insurer, any ~~such~~ provision may appear as a unit in any part of the policy with other provisions to which it may be logically related, provided that the resulting policy ~~shall~~ *is* not ~~be~~ in whole or in part unintelligible, uncertain, ambiguous, abstruse, or likely to mislead a person to whom the policy is offered, delivered, or issued."

Section 32. Section 33-22-1703, MCA, is amended to read:

"**33-22-1703. Definitions.** As used in this part, the following definitions apply:

(1) "Emergency services" means services provided after suffering an accidental bodily injury or the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that without immediate medical attention the subscriber or insured could reasonably expect that:

(a) ~~his~~ *the subscriber's or insured's* health would be in serious jeopardy;

(b) ~~his~~ *the subscriber's or insured's* bodily functions would be seriously impaired; or

(c) a bodily organ or part would be seriously damaged.

(2) "Health benefit plan" means the health insurance policy or subscriber arrangement between the insured or subscriber and the health care insurer that defines the covered services and benefit levels available.

(3) "Health care insurer" means:

(a) an insurer that provides disability insurance as defined in 33-1-207;

(b) a health service corporation as defined in 33-30-101;

(c) a health maintenance organization as defined in 33-31-102;

(d) a fraternal benefit society as described in 33-7-105; *or*

(e) ~~an administrator as defined in 33-17-102; or~~

(~~f~~) any other entity regulated by the commissioner that provides health coverage.

(4) "Health care services" means health care services or products rendered or sold by a provider within the scope of the provider's license or legal authorization or services provided under Title 33, chapter 22, part 7.

(5) "Insured" means an individual entitled to reimbursement for expenses of health care services under a policy or subscriber contract issued or administered by an insurer.

(6) "Preferred provider" means a provider or group of providers who have contracted to provide specified health care services.

(7) "Preferred provider agreement" means a contract between or on behalf of a health care insurer and a preferred provider.

(8) "Provider" means an individual or entity licensed or legally authorized to provide health care services or services covered within Title 33, chapter 22, part 7.

(9) "Subscriber" means a certificate holder or other person on whose behalf the health care insurer is providing or paying for health care coverage."

Section 33. Section 80-2-203, MCA, is amended to read:

"**80-2-203. Participation in program — tax.** (1) ~~Any taxpayers~~ *A taxpayer* or ~~associations~~ *an association* of taxpayers engaged in the growing of crops other than specified ~~herein~~ *in this part* or other agricultural or horticultural products subject to injury or destruction by hail may, by ~~their~~ individual or joint election filed with and approved by the board of hail insurance, accept the provisions of this part and elect to become subject ~~thereto~~ *to this part*~~;~~. ~~and in such event such~~ *The* risks may be classified by the board and suitable levies *may be* imposed as ~~may be~~ agreed upon by the board and ~~such~~ *the* taxpayers~~;~~. ~~whereupon such~~ *The* taxpayers ~~shall be~~ *are* entitled to the benefits and protection afforded by the insurance provisions of this part.

(2) Every farmer taxpayer who signifies ~~his~~ *a* desire to become subject to the provisions of this part shall file in the office of the county assessor the properly filled out form not later than August 15 and ~~shall be~~ *is* chargeable with the tax ~~hereinafter~~ provided for on lands growing crops subject to injury or destruction by hail and shall share in the protection and benefits under the hail insurance provisions of this part. ~~Such~~ *The* application for hail insurance ~~shall be~~ *is* in full force and effect at ~~noon~~ *12:01 a.m.* the day *immediately* following the acceptance of the ~~same~~ *application* by the county assessor.

(3) This part ~~shall~~ *may* not be ~~so~~ construed ~~as~~ to empower anyone except the actual owner of the land to make ~~such~~ *the* land subject to the hail tax provided in this part."

Section 34. **Preexisting conditions.** (1) A policy or certificate of disability insurance may not exclude coverage for a condition for which medical advice or treatment was recommended by or received from a provider of health care services unless the condition occurred within 5 years preceding the effective date of coverage of an insured person. The condition may only be excluded for a maximum of 12 months.

(2) An insurer may use an application form designed to elicit the complete health history of an applicant and, on the basis of the answers on that application, perform underwriting in accordance with the insurer's established underwriting standards.

Section 35. Section 15-16-601, MCA, is amended to read:

"**15-16-601. Taxes or penalties illegally collected or duplicate taxes to be refunded.** (1) (a) A taxpayer is entitled to a refund on:

(i) taxes, interest, penalties, or costs paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(ii) the taxes paid for which a refund is allowed under 15-16-612 or 15-16-613; or

(iii) the portion of taxes paid that were mistakenly computed on government bonus or subsidy received by the taxpayer.

(b) Subject to the provisions in subsections (4) and (5), the county treasurer may, by order of the board of county commissioners, pay the refund to the taxpayer.

(2) (a) The refund applies to any payment that has been made to the state treasurer as provided in 15-1-504 if the board of county commissioners determines that a portion of the money paid should be refunded as provided in this section.

(b) The board of county commissioners may order the county treasurer to refund to the taxpayer the portion of the taxes, interest, penalties, and costs paid to the state treasurer.

~~(c) The county clerk and recorder shall, at the time for filing the report required by 15-1-505, certify to the state auditor, in the form as the state auditor may prescribe, the amounts refunded. In the next settlement of the county~~

~~treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts refunded.~~

(3) When a part of the taxes, interest, penalties, or costs referred to in this section were levied in behalf of a school district or municipal or other public corporation and collected by the county treasurer, the taxes must be refunded upon the order of the board of county commissioners.

(4) (a) An order for the refund of any taxes, interest, penalties, or costs under this section may not be made except upon a claim filed by the taxpayer who has paid the taxes, interest, penalties, or costs or his guardian or, in case of his death, by his executor or administrator.

(b) A taxpayer may file a claim for taxes, interest, penalties, or costs paid during the immediately preceding 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(c) Except as provided in subsections (6) and (7), if a refund pursuant to subsection (1) is ordered, the board of county commissioners shall order a refund for taxes illegally collected or for any duplicate taxes paid during the immediately preceding 10 years regardless of when the taxes were first illegally collected or when the duplicate taxes were first paid.

(5) (a) In the order to refund taxes as provided in subsection (4)(c), the board of county commissioners shall determine the method of repayment. The board may:

(i) refund the entire amount due the taxpayer within 60 days after the date of the order; or

(ii) refund the amount due the taxpayer in annual installments, for a period not to exceed 10 years.

(b) If the refund is made in annual installments as provided in subsection (5)(a)(ii), the taxpayer is entitled to interest on the unpaid balance at the greatest interest rate in effect on October 1 of each year of the installment period received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(c) In satisfying the requirements of subsection (5)(a)(ii), the first annual installment must be paid within 60 days after the date of the order by the board of county commissioners. Subsequent annual installments must be paid on the first business day following October 1 of the year the installment is due.

(d) The treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the annual installment of the taxpayer refund and costs for which the taxing jurisdiction is proratably responsible.

(6) The board of county commissioners shall refund any tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for any duplicate taxes paid as determined by the department of revenue. The refund is subject to the provisions of subsections (4) and (5).

(7) The board of county commissioners shall refund any net or gross proceeds tax, penalty, or interest when the department of revenue notifies the

board that an overpayment occurred. The department shall determine the amount of overpayment. The refund is subject to the provisions of subsections (4) and (5), but no refund may be granted for any taxes paid more than 5 years prior to the date the claim was received.

(8) All refunds ordered to be paid by the board of county commissioners must be paid by the county treasurer out of the general fund of the county, and the county treasurer shall then make transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made from the fund.

(9) Upon the entering of judgment under 15-2-306, the county commissioners of the affected county shall order a refund of the portion of the taxes that the state tax appeal board has judged should be refunded."

Section 36. **Repealer.** Sections 15-1-505, 33-17-206, and 33-22-216, MCA, are repealed.

Section 37. **Codification instruction.** [Section 34] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 34].

Section 38. **Effective date.** [Section 33 and this section] are effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 452

[HB 564]

AN ACT GENERALLY REVISING THE AGRICULTURAL WAREHOUSE, COMMODITY DEALER, AND GRAIN STANDARDS ACT RELATING TO LICENSE FEES, REVENUE ACCOUNTS, BONDING REQUIREMENTS, AND PASSAGE OF TITLE ON AGRICULTURAL COMMODITY SALES; PROVIDING FOR A PRODUCER'S LIEN ON AGRICULTURAL COMMODITIES; CREATING A COMMODITY DEALER/PUBLIC WAREHOUSE OPERATORS ACCOUNT AND STATUTORILY APPROPRIATING ACCOUNT FUNDS TO THE DEPARTMENT OF AGRICULTURE FOR OPERATION OF THE ACT; AMENDING SECTIONS 17-7-502, 80-4-402, 80-4-422, 80-4-425, 80-4-427, 80-4-429, 80-4-503, 80-4-505, 80-4-525, 80-4-527, 80-4-538, 80-4-602, 80-4-604, 80-4-608, AND 80-4-612, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 80-4-503 and 80-4-602 grant to the department of agriculture the authority to set license fees outside the statutory scale established in those sections. It is intended that the department, as part of the ongoing administration of the commodity dealer and public warehouse operator program, evaluate the amount of revenue generated by license fees and adjust the fees as necessary within the statutory maximum to ensure proper operation of the program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-4-402, MCA, is amended to read:

"**80-4-402. Definitions.** As used in parts 4 through 7 of this chapter, the following definitions apply:

(1) "Agent" means any person who contracts for or solicits any agricultural commodities from a producer or ~~warehouseman~~ *warehouse operator* or negotiates the consignment or purchase of any agricultural commodity on behalf of any commodity dealer.

(2) "Agricultural commodity" means any grain, beans, safflower, sunflower seeds, tame mustards, rapeseed, flaxseed, leguminous seed, or other small seed, and other agricultural commodities designated by rule of the department.

(3) "Bond" means the bond required to be filed by part 5 or 6 of this chapter and includes any equivalent established by department rule, as provided in 80-4-504 and 80-4-604.

(4) "Commodity dealer" means any person who engages in a business involving or, as part of ~~his~~ *the* business, participates in buying, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of any agricultural commodity in the state of Montana. The term does not include:

(a) a person engaged solely in storing, shipping, or handling agricultural commodities for hire;

(b) a person who buys agricultural commodities from a licensed commodity dealer;

(c) a person who does not purchase more than $30,000 worth of agricultural commodities from producers during a licensing year; however, once a person exceeds the $30,000 exemption, ~~he~~ *the person* shall obtain a license and is not eligible for the exemption for the succeeding year;

(d) a person who is the producer of agricultural commodities that ~~he~~ *the person* actually plants, nurtures, and harvests; or

(e) a person whose trading in agricultural commodities is limited to trading in commodity futures on a recognized futures exchange.

(5) "~~Credit sale~~ *Delayed payment* contract" means a *written* contract for the sale of an agricultural commodity when the sale price is to be paid at a date after delivery of the agricultural commodity to the buyer and includes but is not limited to those contracts commonly referred to as deferred payment contracts, deferred pricing contracts, *no-price-established contracts,* or price-later contracts. *A delayed payment contract does not include those contracts in which the parties intend payment to be made immediately upon determination of weights and grades.*

(6) "Department" means the department of agriculture provided for in 2-15-3001.

(7) "Depositor" means any person who deposits an agricultural commodity in a warehouse for storage, processing, handling, or shipment or who is the

owner or legal holder of an outstanding warehouse receipt or who is lawfully entitled to possession of the agricultural commodity.

(8) "Director" means the director of the department of agriculture.

(9) "Grain" means all grains for which standards have been established under the United States Grain Standards Act (7 U.S.C. 71 through 87) and all other agricultural commodities, such as mustard, oil seed crops, or other crops which may be designated by rule of the department.

(10) "Grain Standards Act" means the United States Grain Standards Act (7 U.S.C. 71 through 87).

(11) "Inspector" means any person ~~so~~ designated by the director to assist in the administration of parts 4 through 6 of this chapter. The term includes warehouse auditors or examiners.

(12) "Official grain inspectors" means any official personnel who perform or supervise the performance of official inspection services and certify the results ~~thereof~~ *of inspections*, including the grade of the grain.

(13) "Official grain samplers" or "samplers" means any official personnel who perform or supervise the performance of official sampling services and certify the results ~~thereof~~ *of the sampling.*

(14) "Official grain standards" means the standards of quality and condition of grain that establish the grades defined by the Grain Standards Act.

(15) "Official grain weighers" means any official personnel who perform or supervise the performance of class X or class Y weighing services and certify the results thereof, including the weight of the grain.

(16) "Person" means any individual, firm, association, corporation, partnership, or any other form of business enterprise.

(17) "Producer" means the owner, tenant, or operator of land in this state who has an interest in and receives all or part of the proceeds from the sale of agricultural commodities produced on that land.

(18) "Public warehouse" or "warehouse" means any elevator, mill, warehouse, subterminal grain warehouse, public warehouse, or other structure or facility in which, for compensation, agricultural commodities are received for storage, handling, processing, or shipment. The term includes facilities which commingle commodities belonging to different lots of agricultural commodities.

(19) *"Purchase contract" means a delayed payment contract or other written contract for the purchase of agricultural commodities by a commodity dealer.*

(20) "Receipt" means a warehouse receipt.

~~(20)~~*(21)* "Scale weight ticket" means a load slip or other evidence of delivery, other than a receipt, given to a depositor by a ~~warehouseman~~ *warehouse operator* licensed under the provisions of part 5 of this chapter upon initial delivery of the agricultural commodity to the warehouse.

~~(21)~~*(22)* "Station" means a warehouse located more than 3 miles from the central office of the warehouse.

~~(22)~~*(23)* "Subterminal warehouse" means any warehouse at which an intermediate function is performed in which agricultural commodities are customarily received from dealers or producers and where the commodities are accumulated prior to shipment.

~~(23)~~*(24)* "Terminal grain warehouse" means any warehouse authorized by a grain exchange to receive or disburse grain on consignment as presented by the rules and regulations of a grain exchange.

~~(24)~~*(25)* ~~"Warehouseman"~~ *"Warehouse operator"* means a person operating or controlling a public warehouse.

~~(25)~~*(26)* "Warehouse receipt" means every receipt, whether negotiable or nonnegotiable, issued under part 5 of this chapter by a ~~warehouseman~~ *warehouse operator*, except scale weight tickets."

Section 2. Section 80-4-422, MCA, is amended to read:

"**80-4-422.** ~~**Credit-sale**~~ ***Delayed payment or purchase*** **contracts.** (1) A commodity dealer who purchases agricultural commodities by ~~credit-sale~~ *purchase* contract shall maintain books, records, and other documents as required by the department to establish compliance with the provisions of this section.

(2) In addition to other required information, a ~~credit-sale~~ *purchase* contract must contain or provide for all of the following:

(a) the seller's *and purchaser's* name and address;

(b) the conditions of delivery;

(c) the amount and kind of agricultural commodities delivered;

(d) the price per unit or basis of value;

(e) the date payment is to be made; and

(f) a notice of financial risk involved in the ~~credit-sale~~ *delayed payment* contract, in a form the department shall adopt pursuant to the rulemaking authority provided in 80-4-403.

(3) Title to all agricultural commodities sold by ~~credit-sale~~ *purchase* contract is in the purchaser as of the time the ~~contract is executed~~ *agricultural commodities are delivered to and in physical control of the purchaser* unless the contract provides otherwise. The contract must be signed by both parties and executed in duplicate. One copy must be retained by the commodity dealer, and one copy must be ~~delivered~~ *provided* to the seller. Upon revocation, suspension, or termination of a *commodity dealer's or* ~~warehouseman's~~ *warehouse operator's* license, the department may advance the payment date for all ~~credit-sale~~ *delayed payment* contracts to a date not later than 30 days following the effective date of the revocation, suspension, or termination. When not otherwise provided, the purchase price for all agricultural commodities must be determined as of the effective date of revocation, suspension, or termination in

accordance with all other provisions of the contract. However, if the business of the commodity dealer is sold to another licensed commodity dealer, ~~credit sale~~ *purchase* contracts may be assigned to the purchasing commodity dealer.

(4) Any contract that does not satisfy the conditions imposed by this part is considered a sale other than a purchase contract and is subject to the provisions of 80-4-608."

Section 3. Section 80-4-425, MCA, is amended to read:

"**80-4-425. Action on bond by persons injured —** ***liability of surety — statute of limitations.*** (1) *All claims against a bond must be made by and through the department.* A person injured by the breach of an obligation for which a bond is given to the department may ~~take action against the bond in his own name to recover damages caused by the breach. The director shall then make demand upon the warehouseman or the commodity dealer and his surety for payment of damages. If the damages are not promptly paid, the director shall commence an action on the bond to enforce payment of damages.~~ *file a complaint with the department. The department shall then investigate the complaint and determine whether it is valid and whether there are any other outstanding obligations due. If the department finds that there are one or more valid obligations, the department shall make demand upon the warehouse operator or commodity dealer and the commodity dealer's surety for payment. If the payment is not made promptly, the department shall commence an action on the bond to enforce payment. If the department determines that a complaint is without merit, the department shall notify the complainant of that determination in writing. The complainant may then bring a contested case under Title 2, chapter 4, part 6, to the department for a determination of whether the department should pursue the claim against the bond.*

(2) ~~Liability of the surety upon the bond is limited to the amount of the bond. However, if~~ *If* two or more persons are injured by breach of the obligation for which the bond is given and the damages for violating the conditions of the bond exceed the specified amount of the bond, the recovery on the bond ~~shall~~ *must* be prorated by the surety among all of those injured.

(3) The liability of a surety under a bond extends to all obligations from commodity dealers' or public warehouse operators' transactions entered into during the year in which the bond was in effect, up to the maximum amount of the bond. Claims must be brought against the bond within 2 succeeding license years."

Section 4. Section 80-4-427, MCA, is amended to read:

"**80-4-427. Injunction.** If a person without a license is found to have engaged in any business for which a license is required under parts 5 and 6 of this chapter, the court shall enjoin ~~him~~ *that person* from further business until ~~he~~ *the person* has been ~~duly~~ licensed. It is not necessary that the department show that an individual has been injured by the actions complained of in order to issue the injunction. The procedure for injunctive relief is the same as any other action for an injunction under Title 27. *The department may, in its discretion, file the action in the first judicial district court.* The injunction provided by this section is an additional remedy to the criminal penalty provided for in 80-4-428."

Section 5. Section 80-4-429, MCA, is amended to read:

"**80-4-429. Penalty.** (1) Except as otherwise provided, any person who violates any provision of parts 4 through 6 of this chapter or rules promulgated ~~thereunder~~ *under parts 4 through 6* or who impedes, obstructs, hinders, or otherwise prevents or attempts to prevent the director or ~~his duly~~ *an* authorized representative in the performance of ~~his~~ *a* duty under parts 4 through 6 of this chapter is guilty of a misdemeanor and is punishable by imprisonment in a county jail not to exceed 6 months or by a fine of not more than $1,000, or both.

(2) A person who refuses to permit inspection of licensed premises, books, accounts, records, or other documents required by parts 4 through 7 of this chapter or who uses a scale weight ticket or ~~credit sale~~ *purchase* contract that fails to satisfy the requirements of parts 4 through 7 of this chapter is guilty of a misdemeanor.

(3) A person acting as a commodity dealer or ~~warehouseman~~ *warehouse operator* who knowingly sells warehouse-receipted agricultural commodities that ~~he~~ *the person* is not authorized to sell or who fails to pay for purchased agricultural commodities is guilty of a felony."

Section 6. Section 80-4-503, MCA, is amended to read:

"**80-4-503. Fees of department.** (1) The department shall collect an annual ~~warehouseman~~ *warehouse operator* license fee~~, based on the number of warehouses owned by the~~ *of $232 for each warehouse owned or operated by the* ~~warehouseman~~ *warehouse operator*~~;~~*.* ~~according to the following schedule:~~

~~For each warehouse listed in the application:~~

~~Capacity in Hundredweight~~	~~Rate~~
~~0 to 25,000~~	~~$ 35~~
~~25,001 to 50,000~~	~~60~~
~~50,001 to 125,000~~	~~85~~
~~125,001 to 250,000~~	~~110~~
~~250,001 to 375,000~~	~~135~~
~~over 375,000~~	~~160~~

(2) ~~The department shall collect a fee of $50 for each initial licensing inspection of a warehouse or station.~~

~~(3) The department shall collect a fee of $25 for each amendment of a license.~~ *If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed $500 for a facility.*

~~(4)~~*(3)* The department shall collect a fee of $150 a day or fraction ~~thereof~~ *of a day* for maintaining an employee of the department at a warehouse to supervise the correction of a deficiency.

~~(5)~~*(4)* All *license* fees *collected under subsection (1) and deficiency fees collected under subsection (3)* must be deposited into the ~~state treasury and credited to the general fund~~ *commodity dealer/public warehouse operators* account."

Section 7. Section 80-4-505, MCA, is amended to read:

"**80-4-505. Amount of bond — cancellation.** (1) The amount of the bond to be furnished for each warehouse must be fixed at a rate of 20 cents per hundredweight for the first 500,000 hundredweight of licensed capacity; 15 cents per hundredweight for the next 500,000 hundredweight of licensed capacity; and 10 cents per hundredweight for all licensed capacity over 1 million hundredweight. The amount of the bond may not be less than $20,000 or more than the maximum prescribed in 80-4-405. The licensed capacity is the maximum number of hundredweight of agricultural commodities that the warehouse can accommodate.

(2) If a ~~warehouseman~~ *warehouse operator* is also operating as a commodity dealer, ~~he~~ *the warehouse operator* shall also provide a bond as prescribed in 80-4-604.

(3) If there occurs a deficiency in net assets as required under 80-4-506, there shall be added to the amount of bond determined in accordance with subsection (1) an amount equal to that deficiency.

(4) Each ~~warehouseman~~ *warehouse operator* bond shall run continuously with the ~~warehouseman~~ license until canceled by the bonding company. ~~The aggregate liability of the surety may in no event exceed the sum of the bond.~~

(5) A 60-day written notice must be given to the department by the bonding company before any bond is canceled; however, ~~such~~ *the* cancellation does not terminate any liability of the surety incurred prior to the date of cancellation."

Section 8. Section 80-4-525, MCA, is amended to read:

"**80-4-525. Scale weight tickets — form — issuance.** (1) Scale weight tickets must be bound in books of convenient size and must be numbered consecutively. The original scale weight ticket must be delivered to the person from whom the agricultural commodities are received. One carbon copy of each scale weight ticket must remain as a permanent record.

(2) A scale weight ticket must be issued for each load of agricultural commodity received by the ~~warehouseman~~ *warehouse operator.*

(3) A scale weight ticket may not be issued or held in lieu of a warehouse receipt. ~~The retention of scale weight tickets in lieu of warehouse receipts by the owner of the grain is at the owner's risk.~~ *However, an agricultural commodity under scale weight ticket is considered warehoused liability, and title remains with the depositor until:*

(a) the agricultural commodity is sold under a purchase contract;

(b) the agricultural commodity is paid for under 80-4-608; or

(c) a warehouse receipt is issued.

(4) There must be plainly printed across the face of ~~such~~ *the* scale weight ticket issued by the ~~warehouseman~~ *warehouse operator,* in bold type, the words "THIS IS NOT A WAREHOUSE RECEIPT. IT MUST BE EXCHANGED FOR A WAREHOUSE RECEIPT IF GRAIN IS HELD IN STORAGE".

(5) All scale weight tickets must be signed by the ~~warehouseman~~ *warehouse operator* or ~~his~~ *the warehouse operator's* agent.

(6) All scale weight tickets must be converted into cash or warehouse receipts on demand."

Section 9. Section 80-4-527, MCA, is amended to read:

"**80-4-527. Warehouse receipt — issuance —** ***cancellation.*** (1) A warehouse receipt is a receipt issued by a licensed ~~warehouseman~~ *warehouse operator* on a form containing all the information required by 80-4-526.

(2) ~~No~~ *A* warehouse receipt may *not* be issued except for an agricultural commodity actually delivered to a warehouse for storage.

(3) All ~~warehousemen~~ *warehouse operators* are required to issue a warehouse receipt for each lot of agricultural commodity received for storage or make payment for the agricultural commodity.

(4) A warehouse receipt that does not in fact represent an agricultural commodity actually delivered into a warehouse for storage and the origin of which cannot be traced to the actual delivery of the grain represented:

(a) is not legal and is of no value;

(b) has no claim on the agricultural commodity stored in a warehouse; and

(c) has no claim on the ~~warehouseman's~~ *warehouse operator's* bond.

(5) All agricultural commodities in a warehouse belong to the holder of outstanding warehouse receipts except those commodities that are in excess of the total of all outstanding storage obligations. An outstanding warehouse receipt is a warehouse receipt that has not been returned and paid in full on the basis of grade, quality, and quantity by the ~~warehouseman~~ *warehouse operator* issuing it.

(6) If for convenience the holder of two or more warehouse receipts covering like agricultural commodities wishes to combine them, the new receipt ~~so issued~~ must state the fact that it was issued in lieu of existing receipts. An assembly or recapitulation statement must be made whenever receipts are so combined, and the number or other identification of the statement must be referenced on the new combined receipt. The assembly sheet must be kept on file in the warehouse office. Each canceled receipt must have stamped across its face "Canceled by No. __" (showing the number of the new combination receipt).

(7) A ~~warehouseman~~ *warehouse operator* who is a grower ~~and conducts such an enterprise~~ may receive ~~his~~ *the warehouse operator's* own grain and issue warehouse receipts for agricultural commodities, in the same manner and without discrimination, as though the warehouse and growing enterprises were of separate ownership. However, the ~~warehouseman~~ *warehouse operator* shall report to the department all warehouse receipts issued to ~~himself~~ *the warehouse operator* as a grower.

(8) When warehouse receipts are prepared on duplicate or triplicate forms, the original copy is the warehouse receipt and must be given upon request to the person storing the agricultural commodity covered by ~~such~~ *the* receipt. The

other copies ~~shall~~ *must* have plainly printed across the face the words "duplicate", "triplicate", or "nonnegotiable".

(9) Each warehouse receipt issued must show the amount of cash or value of any merchandise the ~~warehouseman~~ *warehouse operator* has advanced on the agricultural commodity represented by the receipt, but ~~such~~ *the* notation may not be construed as fixing the date of sale of ~~such~~ *the* grain.

(10) All warehouse receipts must be numbered consecutively as issued by each ~~warehouseman~~ *warehouse operator.*

(11) Warehouse receipts must be issued when storage is charged but no later than 30 days after delivery unless agreed to in writing by both parties.

(12) Warehouse receipts must be canceled by drawing a diagonal line and writing "CANCELED" across the face of the original copy of the warehouse receipt. The cancellation date and method of settlement, such as check number or purchase contract number, must also be noted on the face of the original copy of the warehouse receipt. The warehouse receipt holder or the receipt holder's agent shall sign and date the reverse side of the original copy of the warehouse receipt at the time of settlement. If the agricultural commodity is redelivered to the receipt holder, that fact must be noted."

Section 10. Section 80-4-538, MCA, is amended to read:

"**80-4-538. Warehouse shortage — remedies.** (1) For purposes of this section, whenever a ~~warehouseman~~ *warehouse operator* stores agricultural commodities of different kinds, a receipt holder has a claim against all commodities in storage, regardless of their kind, under ~~his~~ *the warehouse operator's* receipt.

(2) Whenever it appears, after an investigation, that a ~~warehouseman~~ *warehouse operator* does not have in ~~his~~ *the warehouse operator's* possession sufficient agricultural commodities to cover the outstanding warehouse receipts, scale weight tickets, or other evidence of storage liability issued or assumed by ~~him~~ *the warehouse operator* or when a ~~warehouseman~~ *warehouse operator* refuses to submit ~~his~~ *the warehouse operator's* books, papers, or property to lawful inspection, the department may give notice to the ~~warehouseman~~ *warehouse operator* to comply with the following requirements:

(a) to cover ~~such~~ *the* shortage;

(b) to give an additional bond as requested by the department; or

(c) to submit to ~~such~~ *an* inspection as the department considers necessary.

(3) If the ~~warehouseman~~ *warehouse operator* fails to comply with the terms of ~~such~~ *the* notice within 24 hours from the date of issuance of the notice or within ~~such~~ *a* further time as the department may allow, the department may petition the district court of the first judicial district, Lewis and Clark County, or the district court in the county where the licensee's principal place of business is located, as shown by the license application, for an order:

(a) authorizing the department to seize and take possession of any or all agricultural commodities in the warehouse or warehouses owned, operated, or controlled by the ~~warehouseman~~ *warehouse operator* and of all books, papers, and property of all kinds used in connection with the conduct or the operation of the warehouse business and any materials that pertain in any way to that business; and

(b) enjoining the ~~warehouseman~~ *warehouse operator* from interfering with the department in the discharge of its duties as required by this part.

(4) Upon taking possession, the department shall give written notice of its action to the surety on the bond of the ~~warehouseman~~ *warehouse operator* and may notify the holders of record, as shown by the ~~warehouseman's~~ *warehouse operator's* record, of all warehouse receipts or scale weight tickets issued for agricultural commodities to present their warehouse receipts or other evidence of deposits for inspection or to account for the ~~same~~ *receipts or evidence of deposits*. The department may ~~thereupon~~ cause an audit to be made of the affairs of the warehouse, including but not limited to the agricultural commodities of which there is an apparent shortage, to determine the amount of shortage and, if possible, to compute the shortage as to each depositor as shown by the ~~warehouseman's~~ *warehouse operator's* records. The department shall notify the ~~warehouseman~~ *warehouse operator* and the surety on ~~his~~ *the* bond of the amount of the shortage and notify each affected depositor by sending notices to the depositor's last-known address as shown by the records of the ~~warehouseman~~ *warehouse operator*.

(5) The department shall retain possession of the agricultural commodities in the warehouse or warehouses and the books, papers, and property of the ~~warehouseman~~ *warehouse operator* until ~~such time as~~:

(a) the ~~warehouseman~~ *warehouse operator* or the surety on the bond has satisfied the claims of all holders of warehouse receipts or other evidence of deposits;

(b) the surety on the bond has satisfied all ~~such~~ claims pro rata, if the shortage exceeds the amount of the bond; or

(c) the department is ordered by the court to surrender possession.

(6) If during or after the audit provided for in this section or at any other time the department has evidence that the ~~warehouseman~~ *warehouse operator* is insolvent or is unable to satisfy the claims of all holders of warehouse receipts or other evidence of deposits, the department may petition the *first judicial* district court for the appointment of the department to operate or liquidate the business of the warehouse.

(7) At any time within 10 days after the department takes possession of any agricultural commodities or the books, papers, or property of any warehouse, the ~~warehouseman~~ *warehouse operator* may serve notice on the department to appear in the *first judicial* district court ~~of the county in which the warehouse is located,~~ at a time to be fixed by the court, and show cause why the agricultural commodities, books, papers, and other property should not be restored to ~~his~~ *the warehouse operator's* possession.

(8) All necessary expenses incurred by the department in carrying out the provisions of this section may be recovered *at the discretion of the department from the assets of the licensee, from the agricultural commodities held by the licensee under warehouse receipt, or* in a separate civil action brought by the

department in *the first judicial* district court ~~or recovered at the same time and as part of the seizure action filed under subsection (3)(a)~~.

(9) As a part of the expenses ~~so~~ incurred, the department is authorized to include the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out this ~~section~~ *part.*

(10) The department shall set by rule the time limits for:

(a) notification of its action on the surety bond of a ~~warehouseman~~ *warehouse operator*;

(b) the holders of warehouse receipts or scale weight tickets to provide to the department ~~such~~ evidence of deposit; and

(c) satisfaction of the claims of all holders of warehouse receipts or other evidence of deposits."

Section 11. Section 80-4-602, MCA, is amended to read:

"**80-4-602. License fees.** (1) ~~The~~ *Except as provided in subsection (3), the* department shall collect an annual fee *of $232* for each commodity dealer license. ~~according to the following schedule:~~

~~Hundredweight (Previous license year cwt volume or estimated yearly cwt)~~	~~Rate (per facility)~~
~~0 to 25,000~~	~~$ 35~~
~~25,001 to 50,000~~	~~60~~
~~50,001 to 125,000~~	~~85~~
~~125,001 to 250,000~~	~~110~~
~~250,001 to 375,000~~	~~135~~
~~over 375,000~~	~~160~~

(2) ~~Each applicant shall also pay a fee of $25 for each truck operated by it in the operation of its business as a commodity dealer.~~ *If, after evaluation of the commodity dealer/public warehouse operator program, the department determines that revenue from license fees is inadequate to accomplish the purposes of this chapter, the department may by rule increase the license fees, but the fee may not exceed $500 for a facility.*

(3) The license fee for a commodity dealer who is licensed as a seed dealer under 80-5-202(4) is $100 a year if the majority of the dealer's annual expenditures for agricultural commodities is for agricultural seed intended for resale as agricultural seed.

~~(3)~~*(4)* All fees collected under this section must be placed in the ~~general fund~~ *commodity dealer/public warehouse operators account.*"

Section 12. Section 80-4-604, MCA, is amended to read:

"**80-4-604. Bonding requirement amounts — cancellation.** (1) An applicant for a license to operate as a commodity dealer shall, before a license may be issued, file with the department a surety bond or its equivalent, as established by department rule, payable to the state. ~~The aggregate liability of the surety may not exceed the sum of the bond.~~

(2) The bond for a commodity dealer may not exceed 2% of the value of the agricultural commodities purchased by the commodity dealer from the producer during the previous 12-month period. The bond for all new applicants is 2% of the estimated value of all agricultural commodities to be purchased during the coming 12-month period. The minimum amount of bond required by any commodity dealer is $20,000, and the maximum is prescribed in 80-4-405.

(3) A surety shall notify the commodity dealer and the department by certified mail at least 60 days prior to the cancellation of the bond. ~~The liability of the surety covers purchases made by the commodity dealer during the time the bond is in force.~~ A commodity dealer's bond filed with the department is continuous until canceled by the surety upon 60 days' notice; however, ~~such~~ cancellation does not terminate any liability of the surety incurred prior to the date of cancellation."

Section 13. Section 80-4-608, MCA, is amended to read:

"**80-4-608. Payment of purchase price — definitions.** (1) A person required to be licensed as a commodity dealer shall pay 90% of the purchase price to the owner or ~~his~~ *the owner's* agent for agricultural commodities upon delivery and demand by the owner or agent and the remaining 10% not later than 30 days after delivery by the owner or agent unless otherwise agreed to in writing by the parties. *Title to agricultural commodities sold to a commodity dealer under this section transfers to the commodity dealer upon physical delivery of the commodity.*

(2) As used in this section, the following definitions apply:

(a) "Delivery" means the transfer by the seller of title to and possession of agricultural commodities to the commodity dealer or to another person in accordance with the agreement between the seller and the commodity dealer.

(b) "Payment" means the actual payment or tender of payment of the agreed purchase price by the commodity dealer to the seller."

Section 14. Section 80-4-612, MCA, is amended to read:

"**80-4-612. Commodity dealer defaults — remedies.** (1) If the department finds that a commodity dealer has failed to comply with the terms of a written contract or has failed to pay for a commodity purchase under an oral agreement in the manner and within the time provided in 80-4-608, the department may petition the district court of the first judicial district, Lewis and Clark County, for an order authorizing the department to seize and take possession of:

(a) any agricultural commodities in the facilities owned, operated, or controlled by the commodity dealer;

(b) all books, papers, and property used in connection with the operation of the commodity dealer business; and

(c) any material that pertains in any way to that business.

(2) If during or after an audit or at any other time the department has evidence that the commodity dealer is insolvent or is unable to satisfy the claims of all commodity dealer creditors covered by the bond, the department may

petition the district court of the first judicial district, Lewis and Clark County, for the appointment of the department to operate or liquidate the business of the commodity dealer.

(3) All necessary expenses incurred by the department in carrying out the provisions of this part may be recovered at the discretion of the department from:

(a) the bond;

(b) the assets of the licensee;

(c) the agricultural commodities delivered for purchase but not yet paid for; or

(d) in a separate civil action brought by the department in the first judicial district court.

(4) The department is authorized to include as part of the recoverable expenses the cost of adequate liability insurance necessary to protect the department, its officers, and others engaged in carrying out the provisions of this part."

Section 15. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; *[section 17];* 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws

of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 16. **Creation of commodity dealer/public warehouse operators account — deposit of funds.** (1) There is an account in the state special revenue fund. All revenue received under this chapter must be deposited in the account.

(2) Money received as revenue under this chapter that is not immediately required for the purposes of this chapter must be invested under the provisions of the unified investment program established in Title 17, chapter 6, part 2. All earned interest must be deposited in the account.

Section 17. **Deposit of deficiency funds and liquidation funds.** Revenue based on actual expenses received from the liquidation of commodity dealers and public warehouse operators, as authorized in 80-4-538 and 80-4-612, and from deficiency fees, authorized in 80-4-503, must be deposited in the account established in [section 16] and is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of this chapter. Funds deposited under this chapter must be used to pay actual expenses incurred in the liquidation of commodity dealers and public warehouse operators or for the correction of storage deficiencies. Actual expenses include but are not limited to legal fees, court costs, travel expenses, per diem, and communication.

Section 18. **Producer's lien.** (1) Agricultural commodities contained on the premises of a public warehouse operator or commodity dealer, including agricultural commodities owned by the warehouse operator or commodity dealer, are subject to a first priority lien in favor of holders of outstanding warehouse receipts, purchase contracts, scale weight tickets, or any other evidence of storage or sale.

(2) The lien must be preferred to a lien or security interest in favor of a creditor of the warehouse operator or commodity dealer regardless of the time when the creditor's lien or security interest attached to the agricultural commodities. Notice of the lien need not be filed in order to perfect the lien.

(3) The lien is discharged as to agricultural commodities sold by the warehouse operator or commodity dealer to a buyer in the ordinary course of business. The sale does not discharge the lien in favor of an individual holder of outstanding warehouse receipts, purchase contracts, scale weight tickets, or other evidence of storage or sale, on the remaining agricultural commodities on the premises.

Section 19. **Codification instruction.** (1) [Sections 16 and 17] are intended to be codified as an integral part of Title 80, chapter 4, and the provisions of Title 80, chapter 4, apply to [sections 16 and 17].

(2) [Section 18] is intended to be codified as an integral part of Title 80, chapter 4, part 4, and the provisions of Title 80, chapter 4, part 4, apply to [section 18].

Section 20. **Code commissioner instruction.** Wherever the term "warehouseman" or its equivalent appears in Title 80, chapter 4, parts 4 through 7, or in legislation enacted by the 1993 legislature, the code commissioner shall substitute the term "warehouse operator" or its equivalent and make any necessary grammatical changes to reflect the name change.

Section 21. **Effective date.** [This act] is effective July 1, 1993.

Approved April 21, 1993.

CHAPTER NO. 453

[HB 613]

AN ACT GENERALLY REVISING THE LAWS RELATING TO COUNTY AND MUNICIPAL GENERAL OBLIGATION BONDS AND REVENUE BONDS; REVISING THE REDEMPTION PROCEDURE FOR GENERAL OBLIGATION BONDS; CLARIFYING THE AUTHORITY OF A MUNICIPALITY TO ISSUE REVENUE BONDS FOR WATER AND SEWER SYSTEMS WITHOUT AN ELECTION; CLARIFYING THE AUTHORITY OF A MUNICIPALITY TO ISSUE REVENUE BONDS WITHOUT AN ELECTION TO FINANCE AN IMPROVEMENT DISTRICT FOR A PEDESTRIAN MALL OR OFFSTREET PARKING; AMENDING SECTIONS 7-7-2268, 7-7-2269, 7-7-4268, 7-7-4269, 7-13-4301, AND 7-14-4714, MCA; AND REPEALING SECTIONS 7-13-4302, 7-13-4303, 7-13-4321, 7-13-4322, 7-13-4323, 7-13-4324, 7-13-4325, 7-13-4326, 7-13-4327, 7-13-4328, 7-13-4329, 7-13-4330, 7-13-4331, 7-13-4332, 7-13-4333, 7-13-4341, 7-13-4342, 7-13-4343, 7-13-4344, AND 7-13-4345, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-2268, MCA, is amended to read:

"**7-7-2268. Redemption of bonds ~~held by one other than state~~.** (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more outstanding ~~optional~~ bonds, or ~~coupons~~ *principal installments* in the case of amortization bonds, of the issue or series to which ~~such~~ *the* sinking and interest fund belongs, which bonds ~~or coupons~~ are not yet due but are then redeemable or will become redeemable on *or before* the next interest payment date, ~~and whenever such bonds or coupons are not held by the state of Montana,~~ the county treasurer ~~must~~ *shall* apply ~~such~~ *the* available money in ~~payment and~~ redemption of as many of ~~such~~ *the* bonds, or ~~coupons~~ *principal installments* in the case of amortization bonds, as the ~~same~~ *available money* will pay and redeem *to a redemption date on or before the next interest payment date, as fixed by the county treasurer.*

(2) The county treasurer ~~must~~ *shall* give notice to the holder of ~~such~~ *the* bonds ~~or coupons~~, if *ownership of the bonds is registered or is otherwise* known to ~~him~~ *the treasurer, to the registered owners at their addresses as they appear in the bond registration books* or to any bank or financial institution at which

~~such~~ *the* bonds ~~or coupons~~ are payable, *by mail sent* at least 15 days before the ~~next interest payment~~ *redemption* date, that ~~such~~ *the* bonds *or principal installments* ~~and coupons~~ will be paid and redeemed on ~~such~~ *that* date. *A defect in or failure to give notice may not affect the validity of the proceedings for the redemption of a bond or principal installment.* ~~The~~ *If the ownership of the bonds is not registered, the* county treasurer ~~must~~ *shall* also publish in the official newspaper of the county, once a week for 2 consecutive weeks immediately preceding ~~such~~ *the* interest payment date, a notice that ~~such~~ *the* bonds or ~~coupons~~ *principal installments* have been called ~~in~~ for redemption and will be paid in full on ~~such~~ *the* ~~interest payment~~ *redemption* date. *If actual notice of the call has been given through a different means for its redemption, the holder of a bond may waive published or mailed notice.*

(3) If ~~such~~ *the* bonds or ~~coupons~~ *principal installments* are payable at some bank or financial institution, the county treasurer ~~must~~ *shall* remit to ~~such~~ *the* bank or financial institution, before ~~such interest payment~~ *the redemption* date, an amount sufficient to pay and redeem ~~such~~ *the* bonds or ~~coupons~~ *principal installments with interest accrued on the bonds or principal installments.* If ~~such~~ *the* bonds are not presented for payment and redemption on ~~such interest payment~~ *the redemption* date, interest ~~thereon shall cease~~ *ceases* on ~~such~~ *that* date."

Section 2. Section 7-7-2269, MCA, is amended to read:

"**7-7-2269. Order of redemption of bonds.** All bonds or *principal installments of* amortization ~~bond coupons paid and~~ *bonds to be* redeemed under the provisions of 7-7-2267 or 7-7-2268 ~~must~~ *may* be paid and redeemed in the ~~numerical order in which the same were issued or become due~~ *order the county treasurer selects, consistent with the provisions of the resolution authorizing the issuance of the bonds.*"

Section 3. Section 7-7-4268, MCA, is amended to read:

"**7-7-4268. Redemption of bonds ~~held by one other than state~~.** (1) Whenever there is available money in any sinking and interest fund over and above the amount required for payment of principal and interest becoming due on the next interest payment date and sufficient to pay and redeem one or more of the outstanding ~~optional~~ bonds of the issue or series to which ~~such~~ *the* sinking and interest fund belongs, which bonds are not yet due but are then redeemable or will become redeemable on *or before* the next interest payment date, ~~and whenever such bonds are not held by the state,~~ the city treasurer or town clerk ~~must~~ *shall* apply ~~such~~ *the* available money in ~~payment and~~ redemption of as many of ~~such~~ *the* bonds as the ~~same~~ *available money* will pay and redeem *to a redemption date on or before the next interest payment date, as fixed by the city treasurer or town clerk.*

(2) The city treasurer or town clerk ~~must~~ *shall* give notice to the holder of ~~such~~ *the* bond or bonds, if *ownership of the bonds is registered or is otherwise* known to ~~him~~ *the treasurer, to the registered owners at their addresses as they appear in the bond registration books* or to any bank or financial institution at which ~~such~~ *the* bonds are payable, *by mail sent* at least 15 days before the ~~next interest payment~~ *redemption* date, that ~~such~~ bonds will be redeemed and paid on ~~such~~ *that* date. *A defect in or failure to give notice may not affect the validity of the proceedings for the redemption of a bond.* ~~The~~ *If the ownership of the bonds*

is not registered, the city treasurer or town clerk ~~must~~ *shall* also publish in ~~some~~ *a* newspaper of general circulation printed and published in the city or town and, if there ~~be~~ *is* none, then in ~~some~~ *a* newspaper of general circulation in ~~such~~ *the* city or town printed and published in the county in which ~~such~~ *the* city or town is situated a notice that ~~such~~ *the* bond or bonds have been called ~~in~~ for redemption and will be paid in full on ~~such interest payment~~ *the redemption* date. The notice ~~shall~~ *must* be published once a week for 2 successive weeks immediately preceding ~~such~~ *the* interest payment date. *If actual notice of the call has been given through a different means for its redemption, the holder of a bond may waive published or mailed notice.*

(3) If ~~such~~ *the* bonds are payable at ~~some~~ *a* bank or financial institution, the city treasurer or town clerk ~~must~~ *shall* remit to ~~such~~ *the* bank or institution, before ~~such interest payment~~ *the redemption* date, an amount sufficient to pay and redeem ~~such~~ *the* bonds. If ~~such~~ *the* bonds are not presented for redemption and payment on ~~such interest payment~~ *the redemption* date, interest ~~thereon shall cease~~ *ceases* on ~~such~~ *that* date."

Section 4. Section 7-7-4269, MCA, is amended to read:

"**7-7-4269. Order of redemption of bonds.** All bonds ~~paid and~~ *to be* redeemed under the provisions of 7-7-4267 or 7-7-4268 ~~must~~ *may* be ~~paid and~~ redeemed in the ~~numerical order in which the same were issued~~ *order the city treasurer or city clerk selects, consistent with the provisions of the resolution authorizing the issuance of the bonds.*"

Section 5. Section 7-13-4301, MCA, is amended to read:

"**7-13-4301. Establishment of sewage and water systems ~~— election required~~.** Any city or town~~, when authorized to do so by a majority vote of the qualified electors voting on the question,~~ may:

(1) establish, build, construct, reconstruct, ~~and/or~~ *or* extend:

(a) a storm ~~and/or~~ *or* sanitary sewerage system; ~~and/or~~

(b) a plant or plants for treatment or disposal of sewage ~~therefrom~~ *from the city or town*; ~~or~~

(c) a water supply ~~and/or~~ *or* distribution system; or

(d) any combination of ~~such~~ systems; and

(2) operate and maintain ~~such~~ *the* facilities for public use."

Section 6. Section 7-14-4714, MCA, is amended to read:

"**7-14-4714. Manner of financing district for pedestrian mall or offstreet parking.** An improvement district formed for the purpose of establishing a pedestrian mall or offstreet parking may be financed in accordance with the provisions of 7-12-4161 through 7-12-4168, 7-12-4173, and 7-12-4175 and in accordance with the methods of financing set forth ~~for the construction of water or sewer systems as set forth in 7-13-4321 through 7-13-4324, 7-13-4328, 7-13-4329, and 7-13-4341 through 7-13-4345~~ *in Title 7, chapter 7, part 44.*"

Section 7. **Repealer.** Sections 7-13-4302, 7-13-4303, 7-13-4321, 7-13-4322, 7-13-4323, 7-13-4324, 7-13-4325, 7-13-4326, 7-13-4327, 7-13-4328, 7-13-4329, 7-13-4330, 7-13-4331, 7-13-4332, 7-13-4333, 7-13-4341, 7-13-4342, 7-13-4343, 7-13-4344, and 7-13-4345, MCA, are repealed.

Approved April 21, 1993.

CHAPTER NO. 454

[HB 619]

AN ACT CLARIFYING THAT THE LIEN OF CERTAIN MEDICAL PRACTITIONERS APPLIES ONLY FOR SERVICES RELATING TO THE DIAGNOSIS AND TREATMENT OF MEDICAL CONDITIONS; AND AMENDING SECTIONS 71-3-1112 AND 71-3-1114, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1112, MCA, is amended to read:

"**71-3-1112. Purpose.** The purpose of this part is to establish lien rights ~~for~~ *of* physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals *for the value of services rendered for the diagnosis and treatment of medical conditions* when a person receiving medical treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance."

Section 2. Section 71-3-1114, MCA, is amended to read:

"**71-3-1114. Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals.** (1) Whenever a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital renders services *for the diagnosis and treatment of a medical condition* to a person injured through the fault or neglect of another, the physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital, upon giving the required notice of lien, has a lien for the value of *those* services rendered on:

(a) any claim or cause of action the injured person, ~~his~~ *the injured person's* estate, or successors may have for injury, disease, or death;

(b) any judgment the injured person, ~~his~~ *the injured person's* estate, or successors may obtain for injury, disease, or death; and

(c) all money paid in satisfaction of ~~such~~ *the* judgment or in settlement of the claim or cause of action.

(2) If a person is an insured or a beneficiary under insurance which provides coverage in the event of injury or disease, a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital, upon giving the required notice of lien, has a lien for the value of services

rendered *for the diagnosis and treatment of a medical condition* on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420."

Section 3. **Coordination instruction.** If Senate Bill No. 352 and [this act] are both passed and approved, then 71-3-1112 and 71-3-1114 must read as follows:

"71-3-1112. **Purpose.** The purpose of this part is to establish lien rights for physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals *for the value of services rendered and products provided for the diagnosis and treatment of medical conditions and to establish lien rights for psychologists, licensed social workers, and licensed professional counselors for services rendered and products provided* when a person receiving ~~medical~~ treatment:

(1) is injured through the fault or neglect of another; or

(2) is either insured or a beneficiary under insurance."

"71-3-1114. **Liens of physicians, nurses, physical therapists, occupational therapists, chiropractors, persons practicing dentistry, and hospitals *and liens of psychologists, licensed social workers, and licensed professional counselors.*** (1) *(a)* ~~Whenever~~ *Upon the required notice of a lien being given, there is a lien as provided in subsection (1)(b) whenever:*

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital renders services *or provides products for the diagnosis and treatment of a medical condition; or*

(ii) a psychologist, licensed social worker, or licensed professional counselor renders services or provides products; and

(iii) the services rendered or products provided under subsection (1)(a)(i) or (1)(a)(ii) are rendered or provided to a person injured through the fault or neglect of another.~~, the~~

(b) The physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, ~~or~~ hospital, *psychologist, licensed social worker, or licensed professional counselor* ~~upon giving the required notice of lien,~~ has a lien for the value of services rendered *or products provided* on:

~~(a)~~*(i)* any claim or cause of action *that* the injured person~~, his~~ *or the injured person's* estate~~,~~ or successors may have for injury, disease, or death;

~~(b)~~*(ii)* any judgment *that* the injured person~~, his~~ *or the* estate~~,~~ or successors may obtain for injury, disease, or death; and

~~(c)~~*(iii)* all money paid in satisfaction of ~~such~~ *the* judgment or in settlement of the claim or cause of action.

(2) *(a)* If a person is an insured or a beneficiary under insurance ~~which~~ *that* provides coverage in the event of injury or disease, *there is a lien as provided in subsection (2)(b) upon required notice of a lien being given by:*

(i) a physician, nurse, physical therapist, occupational therapist, chiropractor, person practicing dentistry, or hospital~~, upon giving the required notice of lien, has a lien~~ for the value of services rendered *or products provided for the diagnosis and treatment of a medical condition; or*

(ii) a psychologist, licensed social worker, or licensed professional counselor for services rendered or products provided.

(b) The lien is on all proceeds or payments, except payments for property damage, payable by the insurer.

(3) The lien is subject to the lien of an attorney provided in 37-61-420."

Approved April 21, 1993.

CHAPTER NO. 455

[HB 641]

AN ACT CLARIFYING THAT TAX REVENUE MUST BE DISTRIBUTED ACCORDING TO THE STATUTE GOVERNING ALLOCATION OF THE TAX THAT WAS IN EFFECT FOR THE PERIOD THE TAX REVENUE WAS RECORDED FOR ACCOUNTING PURPOSES; SPECIFYING THAT TAX REVENUE MUST BE RECORDED AS PRESCRIBED BY THE DEPARTMENT OF ADMINISTRATION IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AMENDING SECTIONS 15-1-501, 15-23-716, 15-25-122, 15-31-702, 15-35-108, 15-36-112, 15-36-126, 15-37-117, 15-38-106, 15-38-136, 15-51-103, 15-53-114, 15-59-108, 15-59-208, 15-60-210, 15-65-121, 15-65-136, 15-70-101, 15-71-104, 16-1-306, 16-1-401, 16-1-404, 16-1-408, 16-1-410, 16-1-411, 16-1-421, 16-1-422, 16-1-423, 16-11-119, 16-11-206, 23-5-610, 23-5-646, AND 39-71-2504, MCA; REPEALING SECTION 15-1-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-501, MCA, is amended to read:

"**15-1-501.** *(Temporary)* **Disposition of money from certain designated license and other taxes.** (1) The ~~state treasurer~~ *collecting department* shall deposit to the credit of the state general fund *in accordance with the provisions of subsection (6)* all money received ~~by him~~ from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must, *in accordance with the provisions of subsection (6),* be deposited as follows:

(a) 62.8% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, *in accordance with the provisions of subsection (6),* be deposited as follows:

(a) 61% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(4) The state treasurer shall also deposit to the credit of the state general fund all money received ~~by him~~ from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.

(6) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally accepted accounting principles.

~~(6)~~*(7)* All refunds of taxes must be attributed to the funds in which the taxes are deposited. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are deposited.

15-1-501. *(Effective July 1, 1993)* **Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund *in accordance with the provisions of subsection (6)* all money received ~~by him~~ from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must, *in accordance with the provisions of subsection (6),* be deposited as follows:

(a) 59.5% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 31.8% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must, *in accordance with the provisions of subsection (6),* be deposited as follows:

(a) 61% of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408;

(c) 28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and

(d) all interest and penalties to the credit of the state general fund.

(4) The ~~state treasurer~~ *department of revenue* shall also deposit to the credit of the state general fund all money received ~~by him~~ from the collection of license taxes, fees, and all net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.

(6) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally accepted accounting principles.

~~(6)~~*(7)* All refunds of taxes must be attributed to the funds in which the taxes are ~~deposited~~ *currently being recorded.* All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are ~~deposited~~ *currently being recorded.*"

Section 2. Section 15-23-716, MCA, is amended to read:

"**15-23-716.** *(Temporary)* **Surtax — distribution.** (1) Each person required to pay the coal gross proceeds tax under this part shall pay, in addition to the tax liability determined under 15-23-703, a surtax of 7% of the tax liability.

(2) Notwithstanding the provisions of 15-23-707, the money received from county treasurers from the surtax collected under this section must, *in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the state general fund."

Section 3. Section 15-25-122, MCA, is amended to read:

"**15-25-122. Disposition of proceeds.** ~~(1)~~ The department shall, *in accordance with the provisions of 15-1-501(6),* transfer all taxes collected pursuant to this chapter, less the administrative fee authorized in 15-25-111(1), ~~to the state treasurer on a monthly basis.~~

~~(2) The state treasurer shall deposit~~ *as follows:*

(1) one-third of the tax to the credit of the department of family services to be used for the youth evaluation program and chemical abuse aftercare programs~~.~~

~~(3) The treasurer shall credit~~*; and*

(2) the remaining two-thirds of the tax proceeds as follows:

(a) one-half to the department of justice to be used:

(i) for grants to youth courts to fund chemical abuse assessments; and

(ii) for grants to counties to fund services for the detention of juvenile offenders in facilities separate from adult jails, as authorized in 41-5-1002; and

(b) one-half to the account created by 44-12-206(3) if a state government law enforcement agency seized the drugs. If a local government law enforcement agency seized the drugs, then that amount must be credited to the treasurer or finance officer of the local government, be deposited in its general fund, and be used to enforce drug laws."

Section 4. Section 15-31-702, MCA, is amended to read:

"**15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations.** (1) All corporation license taxes, interest, and penalties collected from banks and savings and loan associations must, *in accordance with the provisions of 15-1-501(6),* be distributed in the following manner:

(a) 20% must be ~~remitted to the state treasurer to be~~ allocated as provided in 15-1-501(3); and

(b) 80% is statutorily appropriated, as provided in 17-7-502, for allocation to the various taxing jurisdictions within the county in which the bank or savings and loan association is located.

(2) The corporation license taxes, interest, and penalties distributed under subsection (1)(b) must be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing

authorities of the district in which the bank or savings and loan association is located.

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department of revenue shall provide a method by rule for equitable distribution among those taxing jurisdictions."

Section 5. Section 15-35-108, MCA, is amended to read:

"**15-35-108.** *(Temporary)* **Disposal of severance taxes.** Severance taxes collected under this chapter must, *in accordance with the provisions of 15-1-501(6),* be allocated ~~according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated~~ as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1992, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the general fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17 ½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 ¼% to the credit of the renewable resource development bond fund;

(e) 0% to a nonexpendable trust fund for the purpose of parks management. Income from this trust fund must be appropriated for the development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 ⅔% to the Montana arts council, to be allocated as follows:

(i) 42 ½% for operating costs; and

(ii) 57 ½% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(k) beginning July 1, 1991, and ending June 30, 1993, 3 ⅓% to a special revenue account to be used by the department of fish, wildlife, and parks for the development, operation, and maintenance of state parks and the stabilization and preservation of historic sites within the state park system;

(l) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates June 30, 1993—sec. 3, Ch. 615, L. 1991, and sec. 3, Ch. 8, Sp. L. January 1992.)*

15-35-108. *(Effective July 1, 1993)* **Disposal of severance taxes.** Severance taxes collected under this chapter must, *in accordance with the provisions of 15-1-501(6),* be allocated ~~according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated~~ as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17 ½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 ¼% to the credit of the renewable resource development bond fund;

(e) 3 ⅓% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 ⅔% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates July 1, 2003—sec. 4, Ch. 191, L. 1991.)*

15-35-108. *(Effective July 1, 2003)* **Disposal of severance taxes.** Severance taxes collected under this chapter must, *in accordance with the provisions of 15-1-501(6),* be allocated ~~according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated~~ as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17 ½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 ¼% to the credit of the renewable resource development bond fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 6. Section 15-36-112, MCA, is amended to read:

"**15-36-112. Disposition of oil and gas state and local government severance taxes — calculation of unit value for local government severance tax.** (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each taxing unit.

(2) For purposes of the distribution of local government severance taxes collected under this chapter, the department shall determine the unit value of oil and gas for each taxing unit as follows:

(a) The unit value for petroleum and other mineral or crude oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that taxing unit during 1988, excluding new and interim production.

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding new and interim production.

(3) The state and local government severance taxes collected under this chapter *must, in accordance with the provisions of 15-1-501(6),* ~~are~~ *be* allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4);

(b) The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) Except as provided in subsection (6), the county treasurer shall distribute the money received under subsection (4) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that ~~no~~ *a* distribution may *not* be made to a municipal taxing unit.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of local government severance tax money that would have gone to a taxing unit, as provided in subsection (5), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) The county treasurer shall first allocate the {local government severance} taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) If the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(7) The board of trustees of an elementary or high school district may reallocate the {local government severance} taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the {local government severance} taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district."

Section 7. Section 15-36-126, MCA, is amended to read:

"**15-36-126.** *(Temporary)* **Surtax.** (1) Each person required to pay the severance tax under this chapter on oil and gas production, other than production from a stripper well, shall pay, in addition to the tax liability computed as required in 15-36-101 and 15-36-121, a surtax of 7% of the tax liability.

(2) The additional tax must, *in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the state general fund."

Section 8. Section 15-37-117, MCA, is amended to read:

"**15-37-117.** *(Temporary)* **Disposition of metalliferous mines license taxes.** (1) Except as provided in subsection (4), metalliferous mines license taxes collected under the provisions of this part ~~are~~ *must, in accordance with the provisions of 15-1-501(6), be* allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the state resource indemnity trust fund, 15.5% of total collections each year;

(d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if ~~no~~ *an* impact plan has *not* been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 ⅓% is allocated to the county for planning or economic development activities;

(B) 33 ⅓% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 ⅓% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502.

(4) The proceeds of the surtax collected under 15-37-126 must, *in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the general fund.

15-37-117. *(Effective on receipt of taxes on production occurring prior to January 1, 1993)* **Disposition of metalliferous mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part ~~are~~ *must, in accordance with the provisions of 15-1-501(6), be* allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the state resource indemnity trust fund, 15.5% of total collections each year;

(d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if ~~no~~ *an* impact plan has *not* been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 ⅓% is allocated to the county for planning or economic development activities;

(B) 33 ⅓% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 ⅓% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502."

Section 9. Section 15-38-106, MCA, is amended to read:

"**15-38-106.** *(Temporary)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter ~~shall~~ *must* be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax ~~shall~~ *must* be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, *in accordance with the provisions of 15-1-501(6),* deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type. Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(3) The department shall examine the statement and compute the taxes ~~thereon~~ *to be imposed,* and the amount computed by the department ~~shall be~~ *is* the ~~taxes~~ *tax* imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess ~~shall~~ *must* be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.

15-38-106. *(Effective July 1, 1993)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter ~~shall~~ *must* be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax ~~shall~~ *must* be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, *in accordance with the provisions of 15-1-501(6),* deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905. Every person to whom the tax applies shall keep records in accordance with

15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(3) The department shall examine the statement and compute the taxes ~~thereon~~ *to be imposed*, and the amount computed by the department ~~shall be~~ *is* the ~~taxes~~ *tax* imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess ~~shall~~ *must* be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 10. Section 15-38-136, MCA, is amended to read:

"**15-38-136.** *(Temporary)* **Surtax.** (1) Each person required to pay the resource indemnity trust tax under this part shall pay, in addition to the tax liability computed as required in 15-38-104, a surtax of 7% of the tax liability.

(2) The additional tax must, *in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the state general fund."

Section 11. Section 15-51-103, MCA, is amended to read:

"**15-51-103. Disposition of revenue — interest on delinquency.** The department of revenue shall, *in accordance with the provisions of 15-1-501(6),* ~~receipt therefor and~~ promptly ~~turn the same over~~ *remit the collected taxes* to the state treasurer. Taxes not ~~met~~ *paid* on the due date ~~shall become~~ *are* delinquent, and a penalty of 10% plus interest at the rate of 1% per month or fraction of a month computed on the total of tax and penalty ~~shall~~ *must* be charged."

Section 12. Section 15-53-114, MCA, is amended to read:

"**15-53-114. Disposal of license taxes.** License taxes collected under this chapter ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be credited to the general fund of the state."

Section 13. Section 15-59-108, MCA, is amended to read:

"**15-59-108. Deposit of taxes.** All license taxes collected under the provisions of this part ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the general fund of the state."

Section 14. Section 15-59-208, MCA, is amended to read:

"**15-59-208. Deposit of license taxes.** All license taxes collected under the provisions of this part ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the general fund of the state."

Section 15. Section 15-60-210, MCA, is amended to read:

"**15-60-210. Disposition of fee.** All proceeds from the collection of utilization fees, including penalties and interest, must, *in accordance with the provisions of 15-1-501(6),* be deposited in the state general fund."

Section 16. Section 15-65-121, MCA, is amended to read:

"**15-65-121. Distribution of tax proceeds — general fund loan authority.** (1) The proceeds of the tax imposed by 15-65-111 must, *in accordance with the provisions of 15-1-501(6),* be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds *in accordance with the provisions of 15-1-501(6) and* as provided in subsections (1)(a) through (1)(c), the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the general fund. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the general fund is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, and to the university system, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program; and

(c) the balance of the proceeds as follows:

(i) 75% to be used directly by the department of commerce;

(ii) except as provided in subsection (1)(c)(iii), 25% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide;

(iii) if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The department of commerce may use general fund loans for efficient implementation of this section."

Section 17. Section 15-65-136, MCA, is amended to read:

"**15-65-136.** *(Temporary)* **Additional tax — allocation.** (1) An additional tax is imposed on the user of a facility at a rate equal to 0.28% of the accommodation charge collected by the facility.

(2) The additional tax must, *in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the state general fund."

Section 18. Section 15-70-101, MCA, is amended to read:

"**15-70-101. Disposition of funds.** All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must, *in accordance with the provisions of 15-1-501(6),* be ~~turned over promptly to the state treasurer, who shall place the money~~ *placed* in the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must, *in accordance with the provisions of 15-1-501(6),* be paid by the department of transportation from the state special revenue fund to the cities, towns, and counties.

(1) $14,000,000 of the funds collected under this chapter, except those collected by a justice's court, is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) $54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;

(b) $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(c) $7,623,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds allocated by this section to counties, cities, and towns must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the federal-aid primary or secondary highway system or urban extensions to those systems, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(3) All funds allocated by this section to counties, cities, and towns must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(4) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined by the ~~last~~ preceding official federal census.

(5) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, and counties to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(6) Except by a town or third-class city as provided in subsection (2), the funds authorized by this section may not be used for the purchase of capital equipment.

(7) Funds authorized by this section must be used for construction and maintenance programs only."

Section 19. Section 15-71-104, MCA, is amended to read:

"**15-71-104. Disposition of funds.** All taxes collected under this chapter ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be ~~turned over promptly to the state treasurer and the state treasurer shall place the same~~ *placed* in the state special revenue fund to the credit of the department of transportation."

Section 20. Section 16-1-306, MCA, is amended to read:

"**16-1-306. Revenue to be paid to state treasurer.** Except as provided in 16-1-404, 16-1-405, 16-1-408, 16-1-410, and 16-1-411, all fees, charges, taxes, and revenues collected by or under authority of the department ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be deposited ~~with the state treasurer. He shall deposit the funds~~ to the credit of the state general fund."

Section 21. Section 16-1-401, MCA, is amended to read:

"**16-1-401. Liquor excise tax.** (1) The department ~~is hereby authorized and directed to charge, receive, and~~ *shall* collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of:

(a) 16% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 13.8% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The department shall retain the amount of ~~such~~ *the* excise tax received in a separate account and shall, *in accordance with the provisions of 15-1-501(6),* deposit ~~with the state treasurer~~, to the credit of the general fund, ~~such~~ *the* sums collected and received not later than the 10th day of each ~~and every~~ month."

Section 22. Section 16-1-404, MCA, is amended to read:

"**16-1-404. License tax on liquor — amount — distribution of proceeds.** (1) The department ~~is hereby authorized and directed to charge, receive, and~~ *shall* collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed, and sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax ~~shall~~ *must* be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price ~~shall~~ *must* be computed by adding to the cost of ~~said~~ *the* liquor the state markup as designated by the department. The license tax ~~shall~~ *must* be figured in the same manner as the state excise tax and ~~shall be~~ *is* in addition to ~~said~~ *the* state excise tax. The department shall retain in a separate account the amount of the license tax ~~so~~ received. Thirty percent of these revenues are statutorily appropriated, as provided in 17-7-502, to the department and ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be allocated to the counties according to the amount of liquor purchased in each county to be distributed to the incorporated cities and towns, as provided in subsection (3). Four and one-half percent of these revenues are statutorily appropriated, as provided in 17-7-502, and ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes. The remaining revenues ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be deposited in the state special revenue fund

to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism. ~~Provided, however, in~~ *In* the case of purchases of liquor by a retail liquor licensee for use in ~~his~~ *the licensee's* business, the department shall make ~~such~~ regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in 16-1-405. That proportion of the license tax is statutorily appropriated, as provided in 17-7-502, to the department, which shall pay quarterly to each county treasurer the proportion of the license tax due each county, *in accordance with the provisions of 15-1-501(6),* to be allocated to the incorporated cities and towns of the county.

(3) The license tax proceeds allocated to the county under subsection (2) for use by cities and towns ~~shall~~ *must* be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distribution of funds to the cities and towns ~~shall~~ *must* be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

(4) The license tax proceeds that are allocated to the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism ~~shall~~ *must* be credited quarterly to the department of corrections and human services. The legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder ~~shall~~ *must* be distributed as provided in 53-24-206."

Section 23. Section 16-1-408, MCA, is amended to read:

"**16-1-408. Additional tax.** An additional tax of $1.30 per barrel is levied and imposed as provided by 16-1-406. One dollar of ~~this~~ *the* additional tax ~~is to~~ *must, in accordance with the provisions of 15-1-501(6),* be deposited, notwithstanding 16-1-306 and 16-1-410 or any other provision, with the state treasurer to the credit of the department of corrections and human services each quarter for the treatment, rehabilitation, and prevention of alcoholism as approved by the state, and 30 cents of ~~this~~ *the* additional tax ~~is to~~ *must* be deposited in the general fund."

Section 24. Section 16-1-410, MCA, is amended to read:

"**16-1-410.** *(Temporary)* **Tax revenue allocation.** Subject to 16-1-422, all revenue received from taxes on beer under 16-1-406 and 16-1-408 over and above $1.50 per barrel of 31 gallons ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the ~~state treasurer~~ *department of revenue* who shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census ~~shall~~ *must* be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town ~~shall~~ *must* be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section ~~shall~~ *must* be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health.

16-1-410. *(Effective on receipt of taxes or fees for September 1993)* **Tax revenue allocation.** All revenue received from taxes on beer under 16-1-406 and 16-1-408 over and above $1.50 per barrel of 31 gallons ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the ~~state treasurer~~ *department of revenue* who shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census ~~shall~~ *must* be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town ~~shall~~ *must* be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section ~~shall~~ *must* be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health."

Section 25. Section 16-1-411, MCA, is amended to read:

"**16-1-411.** *(Temporary)* **Tax on wine.** (1) A tax of 27 cents per liter is ~~hereby~~ levied and imposed on table wine imported by any table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor ~~shall~~ *must* be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department ~~shall~~ *must* be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 ⅓ cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The taxes computed and paid in accordance with 16-1-423, 16-2-301, and this section ~~shall~~ *must* be the only taxes imposed by the state or any of its subdivisions, including cities and towns.

(5) The proceeds of the surtax imposed by 16-1-423 must be deposited in the state general fund.

16-1-411. *(Effective on receipt of taxes or fees for September 1993)* **Tax on wine.** (1) A tax of 27 cents per liter is ~~hereby~~ levied and imposed on table wine imported by any table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor ~~shall~~ *must* be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department ~~shall~~ *must* be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 ⅓ cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 ⅓ cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section ~~shall~~ *must* be the only tax imposed by the state or any of its subdivisions, including cities and towns."

Section 26. Section 16-1-421, MCA, is amended to read:

"**16-1-421.** *(Temporary)* **Surtax on liquor — distribution.** (1) In addition to the amount of tax liability determined under 16-1-401 through 16-1-403, each person subject to taxation under 16-1-401 through 16-1-403 shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must, *in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the state general fund."

Section 27. Section 16-1-422, MCA, is amended to read:

"**16-1-422.** *(Temporary)* **Surtax on beer — distribution.** (1) After the amount of tax liability has been determined under 16-1-406 and 16-1-408, each wholesaler subject to taxation under this part shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must, *in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the state general fund."

Section 28. Section 16-1-423, MCA, is amended to read:

"**16-1-423.** *(Temporary)* **Surtax on table wine — distribution.** (1) In addition to the amount of tax liability determined under 16-1-411, each table wine distributor subject to taxation under this part shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must, *in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the state general fund."

Section 29. Section 16-11-119, MCA, is amended to read:

"**16-11-119.** *(Temporary)* **Disposition of taxes — retirement of bonds.** (1) Except as provided in subsection (2), all money collected under the provisions of 16-11-111, less the expense of collecting the taxes, must, *in accordance with the provisions of 15-1-501(6),* be ~~paid to the state treasurer and~~ deposited as follows: 72.79% in the long-range building program fund in the debt service fund type and 27.21% in the long-range building program fund in the capital projects fund type.

(2) In fiscal year 1993, $1,133,624 is transferred from the long-range building program fund in the capital projects fund type to the general fund. *(Terminates June 30, 1993—sec. 2, Ch. 3, Sp. L. July 1992.)*

16-11-119. *(Effective July 1, 1993)* **Disposition of taxes — retirement of bonds.** All ~~moneys~~ *money* collected under the provisions of 16-11-111, less the expense of collecting all the taxes levied, imposed, and assessed by ~~said~~ *that* section, ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be ~~paid to the state treasurer and~~ deposited as follows: 72.79% in the long-range building program fund in the debt service fund type and 27.21% in the long-range building program fund in the capital projects fund type.

16-11-119. *(Effective August 15, 1993)* **Disposition of taxes — retirement of bonds.** All ~~moneys~~ *money* collected under the provisions of 16-11-111, less the expense of collecting all the taxes levied, imposed, and assessed by ~~said~~ *that* section, ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be ~~paid to the state treasurer and~~ deposited as follows: 70.89% in the long-range building program fund in the debt service fund type and 29.11% in the long-range building program fund in the capital projects fund type."

Section 30. Section 16-11-206, MCA, is amended to read:

"**16-11-206. Wholesaler's discount — disposition of taxes.** The taxes specified in this part that are paid by the wholesaler ~~shall~~ *must* be paid to the department in full less a 5% defrayment for ~~his~~ *the wholesaler's* collection and administrative expense and ~~shall~~ *must, in accordance with the provisions of 15-1-501(6),* be deposited by the department in the long-range building program debt service fund. Refunds of the tax paid ~~shall~~ *must* be made as provided in 15-1-503 in cases where the tobacco products purchased become unsalable."

Section 31. Section 23-5-610, MCA, is amended to read:

"**23-5-610.** *(Temporary)* **Video gambling machine gross income tax — records — distribution — quarterly statement and payment.** (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts are not repaid by insurance and if a law enforcement agency investigated the theft.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in ~~such~~ *the* form ~~as~~ the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to ~~him~~ *the operator,* together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall, *in accordance with the provisions of 15-1-501(6),* forward one-third of the tax collected under subsection (3) and the surtax imposed by 23-5-646 to the general fund.

(b) The department shall, *in accordance with the provisions of 15-1-501(6),* forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury.

23-5-610. *(Effective on receipt of taxes for calendar quarter ending June 30, 1993)* **Video gambling machine gross income tax — records — distribution — quarterly statement and payment.** (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts are not repaid by insurance and if a law enforcement agency investigated the theft.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in ~~such~~ *the* form ~~as~~ the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to ~~him~~ *the operator*, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall, *in accordance with the provisions of 15-1-501(6),* forward one-third of the tax collected under subsection (3) to the general fund.

(b) The department shall, *in accordance with the provisions of 15-1-501(6),* forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury."

Section 32. Section 23-5-646, MCA, is amended to read:

"**23-5-646.** *(Temporary)* **Surtax — distribution.** (1) In addition to the amount of tax liability determined under 23-5-610, each licensed operator subject to taxation under this part shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must, *in accordance with the provisions of 15-1-501(6),* be deposited to the credit of the state general fund."

Section 33. Section 39-71-2504, MCA, is amended to read:

"**39-71-2504. Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation bond repayment account.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must, *in accordance with the provisions of 15-1-501(6),* be deposited in the workers' compensation tax account. All ~~such~~ money deposited in the workers' compensation tax account must be credited to the workers' compensation bond repayment account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation bonds issued under 39-71-2354 and 39-71-2355 and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated,

as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 34. **Repealer.** Section 15-1-502, MCA, is repealed.

Section 35. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all tax periods beginning after December 31, 1992, and to taxes collected by audit after December 31, 1992, or taxes collected after December 31, 1992, if the payment was made after the date on which the tax was payable.

Section 36. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 456

[SB 81]

AN ACT PROHIBITING THE TAKING OF CRAYFISH FOR SALE OR COMMERCIAL DISTRIBUTION EXCEPT FROM PRIVATE PONDS OR FOR FISHING BAIT; PROVIDING A PENALTY; AND AMENDING SECTION 87-4-609, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Unlawful taking of crayfish — penalty.** (1) It is unlawful for a person to take crayfish from the waters of the state, except from private fish ponds regulated under 87-4-603 or as provided in subsection (2), for sale or commercial distribution.

(2) A person may take crayfish from the waters of the state for sale or commercial distribution as fishing bait under rules adopted by the department under 87-4-609.

(3) A person who violates this section is guilty of a misdemeanor and, if convicted, may be fined not less than $50 or more than $500 or may be imprisoned in the county jail for not more than 6 months, or both.

Section 2. Section 87-4-609, MCA, is amended to read:

"**87-4-609. Regulation of commercial taking of aquatic fish food organisms — permit — rulemaking authority.** (1) The department shall regulate the taking, for sale or commercial distribution, of *crayfish for fishing bait,* crayfish *from private fish ponds regulated under 87-4-603,* mysis shrimp, and other aquatic organisms that provide a food source for fish.

(2) It is unlawful for a person to take aquatic fish food organisms for commercial purposes without obtaining a permit from the department. A permit applicant shall provide the department with sufficient details of the proposed operation to take any aquatic fish food organism for sale or commercial distribution to enable the department to evaluate any potential overharvest or conflict with existing fishing and recreational uses of the waters.

(3) The department may:

(a) deny a permit if it determines that there is substantial potential that the proposed operation may harm a fishery or conflict with existing recreational uses of the waters;

(b) condition a permit to restrict the method of taking, the location of the taking, and the quality and quantity of harvest, to prevent overharvest or conflict with existing fishing and recreational uses of the waters; or

(c) require a permittee to submit harvest data to the department.

(4) A permit may be revoked for a violation of the conditions of the permit.

(5) The department may adopt rules for the regulation of commercial taking of aquatic fish food organisms, including but not limited to the setting of seasons, methods of taking, quantities of harvest, size limitations, and reporting requirements for a particular aquatic fish food organism, in order to prevent overharvest or conflict with fishing and recreational uses of the waters."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 87, chapter 4, and the provisions of Title 87 apply to [section 1].

Approved April 21, 1993.

CHAPTER NO. 457

[SB 91]

AN ACT EXTENDING WORKERS' COMPENSATION BENEFITS TO CERTAIN INMATES EMPLOYED WHILE PARTICIPATING IN PRERELEASE CENTER PROGRAMS AND DIVERSIONARY PROGRAMS; AND AMENDING SECTION 39-71-744, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-744, MCA, is amended to read:

"**39-71-744. Benefits not due while claimant is incarcerated** — ***exceptions.*** *(1)* ~~A~~ *Except as provided in subsection (2), a* claimant is not eligible for ~~any~~ disability or rehabilitation compensation benefits while the claimant is incarcerated *in a correctional institution, such as the Montana state prison, the Swan River forest camp, or the Montana women's correctional center,* as the result of conviction of a felony. The insurer remains liable for medical benefits. ~~No~~ *A* time limit on benefits otherwise provided in this chapter is *not* extended due to a period of incarceration.

(2) A person who is employed while participating in a prerelease center program or a diversionary program is eligible for temporary total benefits as provided in 39-71-701 and medical benefits for a work-related injury received while participating in a prerelease center program or a diversionary program. Other disability or rehabilitation benefits are not payable while the worker is participating in a prerelease center. This subsection does not prohibit the reinstatement of other benefits upon release from incarceration, nor does it apply to an employee performing community service described in 39-71-118(1)(f)."

Approved April 21, 1993.

CHAPTER NO. 458

[SB 256]

AN ACT DEFINING A NONRESIDENT AS AN "EMPLOYEE OR WORKER IN THIS STATE"; PROVIDING FOR ELECTION OF COVERAGE FOR CERTAIN NONRESIDENTS; REQUIRING OUT-OF-STATE EMPLOYERS ENGAGED IN THE CONSTRUCTION INDUSTRY TO OBTAIN WORKERS' COMPENSATION COVERAGE FOR THEIR OUT-OF-STATE EMPLOYEES UNDER THE PROVISIONS OF MONTANA LAW; AMENDING SECTIONS 39-71-117, 39-71-118, AND 39-71-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** (1) "Employer" means:

(a) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof;

(b) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) An employer defined in subsection (1) who utilizes the services of a worker furnished by another person, association, contractor, firm, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) Notwithstanding the provisions of subsection (3), ~~a~~ *an interstate or intrastate* common or contract motor carrier doing business in this state who utilizes drivers in this state is considered the employer, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the driver in this state is certified as an independent contractor as provided in 39-71-401(3); or

(b) the person, association, contractor, firm, or corporation furnishing drivers in this state to a motor carrier has obtained workers' compensation insurance on the drivers in Montana both at the inception of employment and during all phases of the work performed."

Section 2. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, ~~workman,~~ and volunteer firefighter defined.** (1) The ~~terms~~ *term* "employee"~~, "workman",~~ or "worker" ~~mean~~ *means*:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for ~~such~~ *the* corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined ~~above~~ *in this subsection* while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an airman or other person employed as a volunteer under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(2) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(3) (a) If the employer is a partnership or sole proprietorship, ~~such~~ *the* employer may elect to include as an employee within the provisions of this chapter any member of ~~such~~ *the* partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of ~~such~~ *an* election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (3)(d). A partner or sole proprietor is not considered an employee within this chapter until ~~such~~ notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.

(4) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 12.

(5) An employee~~, workman,~~ or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is

presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(6) For purposes of this section, an "employee~~, workman,~~ or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state; ~~or~~

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer~~.~~*;*

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (6)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(7) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (6)(b) or (6)(d) as a condition of approving the election under subsection (6)(d)."

Section 3. Section 39-71-402, MCA, is amended to read:

"**39-71-402. Extraterritorial application and reciprocity — exception.** (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of ~~such~~ employment, the provisions of this chapter ~~shall~~ apply to ~~such~~ *the* worker as though ~~he~~ *the worker* were injured within this state.

(2) ~~If~~ *Except as provided in subsection (5), if* a worker from another state and ~~his~~ *the worker's* employer from another state are temporarily engaged in work within this state, this chapter ~~shall~~ *does* not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of ~~such~~ *the* other state ~~which~~ *that* applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in ~~such~~ *the* other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of ~~such~~ *the* other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of

Montana ~~shall be~~ *is* prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

(5) ~~The provisions of this section do not apply to the construction industry as defined in 39-71-116.~~ *Employers from another state that are engaged in the construction industry, as defined in 39-71-116, and that employ workers from another state shall obtain coverage for those workers under the provisions of this chapter.*"

Section 4. **Code commissioner instruction.** Wherever the term "workman" appears in Title 39, chapter 71, or in legislation enacted by the 1993 legislature that is intended to be codified in Title 39, chapter 71, the code commissioner shall change the term to "worker" or delete the term and make appropriate changes in grammar.

Section 5. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 459

[SB 258]

AN ACT CLARIFYING THAT A WORKERS' COMPENSATION INSURER IS ENTITLED TO SUBROGATION UNLESS THE INJURED EMPLOYEE IS ABLE TO DEMONSTRATE DAMAGES IN EXCESS OF THE WORKERS' COMPENSATION BENEFITS AND THE THIRD-PARTY RECOVERY COMBINED; AND AMENDING SECTION 39-71-414, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-414, MCA, is amended to read:

"**39-71-414. Subrogation.** (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the ~~third party~~ *third-party* action, ~~he~~ *the employee* shall give the insurer reasonable notice of ~~his~~ *the* intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including ~~attorneys'~~ *attorney* fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including ~~attorneys'~~ *attorney* fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the ~~third -party~~ *third-party* action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement ~~which~~ *that* is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including ~~attorneys'~~ *attorney* fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) Regardless of whether the amount of compensation and other benefits payable under the Workers' Compensation Act have been fully determined, the insurer and the claimant's heirs or personal representative may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation and may not be reopened by the department.

(6) (a) The insurer is entitled to full subrogation rights under this section, ~~even though~~ *unless* the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. ~~The insurer may subrogate against the entire settlement or award of a third-party claim brought by the claimant or his personal representative, without regard to the nature of the damages.~~ *If the insurer is entitled to subrogation under this section, the insurer may subrogate against the entire settlement or award of a third-party claim brought by the claimant or the claimant's personal representative without regard to the nature of the damages.*

(b) If ~~no~~ *a* survival action ~~exists~~ *does not exist* and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement.

(7) Regardless of whether the amount of compensation and other benefits payable have been fully determined, the insurer and the claimant may stipulate the proportion of the third-party settlement to be allocated under subrogation. Upon review and approval by the department, the agreement constitutes a compromise settlement of the issue of subrogation and may not be reopened by the department."

Approved April 21, 1993.

CHAPTER NO. 460

[SB 280]

AN ACT IMPLEMENTING THE 1992 STATE WATER PLAN; INCLUDING WATER QUALITY AS A CRITERION FOR WATER PERMIT, CHANGE AUTHORIZATION, CONTROLLED GROUND WATER AREA, AND BASIN CLOSURE DETERMINATIONS; AMENDING SECTIONS 85-2-311, 85-2-319, 85-2-402, AND 85-2-506, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the department of natural resources and conservation authority to adopt administrative rules. The bill adds statutory criteria for the department to consider in the processing of an application for a permit, change authorization, controlled ground water area, or basin closure. In adopting rules implementing this bill and in interpreting the new statutory language, it is the intent of the legislature that the department and board of natural resources and conservation should assess the magnitude, character, duration, and geographical extent of the projected effects on the uses of water as classified and utilize this assessment in a practical manner.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-311, MCA, is amended to read:

"**85-2-311. Criteria for issuance of permit.** (1) Except as provided in subsections ~~(2)~~ *(3)* and ~~(3)~~ *(4)*, the department shall issue a permit if the applicant proves by ~~substantial credible~~ *a preponderance of* evidence that the following criteria are met:

(a) there are unappropriated waters in the source of supply at the proposed point of diversion:

(i) at times when the water can be put to the use proposed by the applicant;

(ii) in the amount the applicant seeks to appropriate; and

(iii) during the period in which the applicant seeks to appropriate, the amount requested is reasonably available;

(b) the water rights of a prior appropriator will not be adversely affected;

(c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;

(d) the proposed use of water is a beneficial use;

(e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved; ~~and~~

(f) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use;

(g) the water quality of a prior appropriator will not be adversely affected;

(h) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and

(i) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(2) The applicant is required to prove that the criteria in subsections (1)(g) through (1)(i) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (1)(g), (1)(h), or (1)(i), as applicable, may not be met. For the criteria set forth in subsection (1)(h), only the department of health and environmental sciences or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection.

~~(2)~~*(3)* The department may not issue a permit for an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the applicant proves by clear and convincing evidence that:

(a) the criteria in subsection (1) are met;

(b) the rights of a prior appropriator will not be adversely affected;

(c) the proposed appropriation is a reasonable use. ~~Such a~~ *A* finding ~~shall~~ *must* be based on a consideration of the following:

(i) the existing demands on the state water supply, as well as projected demands such as reservations of water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing beneficial uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

~~(3)~~*(4)* (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the criteria in this subsection ~~(3)~~ *(4)* must be met before out-of-state use may occur.

(b) The department may not issue a permit for the appropriation of water for withdrawal and transportation for use outside the state unless the applicant proves by clear and convincing evidence that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (1) or ~~(2)~~ *(3)* are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the applicant has proved by clear and convincing evidence that the requirements of subsections ~~(3)(b)(ii)~~ *(4)(b)(ii)* and ~~(3)(b)(iii)~~ *(4)(b)(iii)* are met, the department shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the application could feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a permit or a lease to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation, lease, and use of water.

~~(4)~~*(5)* To meet the ~~substantial credible~~ *preponderance of* evidence standard in this section, the applicant shall submit independent hydrologic or other evidence, including water supply data, field reports, and other information developed by the department, the U.S. geological survey, or the U.S. soil conservation service and other specific field studies, demonstrating that the criteria are met.

~~(5)~~*(6)* An appropriation, diversion, impoundment, use, restraint, or attempted appropriation, diversion, impoundment, use, or restraint contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized appropriation, diversion, impoundment, use, or other restraint. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to appropriate, divert, impound, use, or otherwise restrain or control waters within the boundaries of this state except in accordance with this section."

Section 2. Section 85-2-319, MCA, is amended to read:

"**85-2-319. Permit action in highly appropriated basins or subbasins.** (1) The legislature may by law preclude permit applications, or the department may by rule reject permit applications or modify or condition permits issued in a highly appropriated basin or subbasin.

(2) A rule may be adopted under this section only upon a petition signed by at least 25% or 10, whichever is less, of the users of water in the source of supply within a basin or subbasin *or upon petition of the department of health and environmental sciences alleging facts under subsection (2)(d)*. The petition must be in a form as prescribed by the department and must allege facts showing that throughout or at certain times of the year or for certain beneficial uses:

(a) there are no unappropriated waters in the source of supply;

(b) the rights of prior appropriators will be adversely affected; ~~or~~

(c) further uses will interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved*; or*

(d) in the case of a petition filed by the department of health and environmental sciences:

(i) the water quality of an appropriator will be adversely affected by the issuance of permits;

(ii) further use will not be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); or

(iii) the ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will be adversely affected by the issuance of permits.

(3) Within 60 days after submission of a petition, the department shall:

(a) deny the petition in writing, stating its reasons for denial;

(b) inform the petitioners that the department must study the allegations further before denying or proceeding further with the petition; or

(c) initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(4) Title 2, chapter 4, parts 1 through 4, govern rulemaking proceedings conducted under this section, except that in addition to the notice requirements of those parts, the department notice of the rulemaking hearing must be published at least once in each week for 3 successive weeks, not less than 30 days before the date of the hearing, in a newspaper of general circulation in the county or counties in which the source is located. The department shall serve by mail a copy of the notice, not less than 30 days before the hearing, upon each person or public agency known from the examination of the records of the department to be a claimant, appropriator, or permitholder of water in the source."

Section 3. Section 85-2-402, MCA, is amended to read:

"**85-2-402.** *(Temporary)* **Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections ~~(3)~~ *(4)* through ~~(5)~~ *(6)*, the department shall approve a change in appropriation right if the appropriator proves by ~~substantial credible~~ *a preponderance of* evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) Except for a lease authorization pursuant to 85-2-436 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

~~(3)~~*(4)* The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by ~~substantial credible~~ *a preponderance of* evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

~~(4)~~*(5)* The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and ~~(3)~~ *(4)* are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

~~(5)~~*(6)* (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or ~~(3)~~ *(4)* are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections ~~(5)(b)(ii)~~ *(6)(b)(ii)* and ~~(5)(b)(iii)~~ *(6)(b)(iii)* will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

~~(6)~~*(7)* For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a change might adversely affect the rights of other persons.

~~(7)~~*(8)* The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

~~(8)~~*(9)* Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been properly completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the change approval.

~~(9)~~*(10)* If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(10)~~*(11)* The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

~~(11)~~*(12)* A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

~~(12)~~*(13)* A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)*

85-2-402. *(Effective July 1, 1999)* **Changes in appropriation rights.** (1) An appropriator may not make a change in an appropriation right except as permitted under this section and with the approval of the department or, if applicable, of the legislature.

(2) Except as provided in subsections ~~(3)~~ *(4)* through ~~(5)~~ *(6)*, the department shall approve a change in appropriation right if the appropriator proves by ~~substantial credible~~ *a preponderance of* evidence that the following criteria are met:

(a) The proposed use will not adversely affect the water rights of other persons or other planned uses or developments for which a permit has been issued or for which water has been reserved.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

~~(3)~~*(4)* The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by ~~substantial credible~~ *a preponderance of* evidence that:

(a) the criteria in subsection (2) are met;

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

~~(4)~~*(5)* The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and ~~(3)~~ *(4)* are met; and

(b) the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

~~(5)~~*(6)* (a) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(b) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or ~~(3)~~ *(4)* are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(c) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections ~~(5)(b)(ii)~~ *(6)(b)(ii)* and ~~(5)(b)(iii)~~ *(6)(b)(iii)* will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(d) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

~~(6)~~*(7)* For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that such a change might adversely affect the rights of other persons.

~~(7)~~*(8)* The department or the legislature, if applicable, may approve a change subject to such terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

~~(8)~~*(9)* Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been properly completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works that the appropriation has been properly completed in substantial accordance with the terms and conditions of the change approval.

~~(9)~~*(10)* If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

~~(10)~~*(11)* The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

~~(11)~~*(12)* A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

~~(12)~~*(13)* A change in appropriation right contrary to the provisions of this section is invalid. ~~No~~ *An* officer, agent, agency, or employee of the state may *not* knowingly permit, aid, or assist in any manner ~~such~~ *an* unauthorized change in appropriation right. ~~No~~ *A* person or corporation may *not*, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section."

Section 4. Section 85-2-506, MCA, is amended to read:

"**85-2-506. Controlled ground water areas — designation or modification.** (1) The board may designate or modify controlled ground water areas as provided in this part.

(2) Designation or modification of an area of controlled ground water use may be proposed to the board by the department on its own motion, *by petition of a state or local public health agency for identified public health risks,* or by petition signed by at least 20 or one-fourth of the users (whichever is the lesser number) of ground water in a ground water area ~~wherein~~ *in which* there are alleged to be facts showing:

(a) that ground water withdrawals are in excess of recharge to the aquifer or aquifers within ~~such~~ *the* ground water area;

(b) that excessive ground water withdrawals are very likely to occur in the near future because of consistent and significant increases in withdrawals from within the ground water area;

(c) that significant disputes regarding priority of rights, amounts of ground water in use by appropriators, or priority of type of use are in progress within the ground water area;

(d) that ground water levels or pressures in the area in question are declining or have declined excessively; ~~or~~

(e) that excessive ground water withdrawals would cause contaminant migration ~~and a degradation of ground water quality within the ground water area~~*;*

(f) that ground water withdrawals adversely affecting ground water quality within the ground water area are occurring or are likely to occur~~.~~*; or*

(g) that water quality within the ground water area is not suited for a specific beneficial use defined by 85-2-102(2)(a).

(3) When ~~such~~ a proposal is ~~thus~~ made, the board shall fix a time and place for a hearing, which time ~~shall~~ *may* not be less than 90 days from the making of the proposal. The place for the hearing ~~shall~~ *must* be within or as close as practical to the controlled ground water area.

(4) The department shall publish a notice of the hearing, setting forth ~~therein~~:

(a) the names of the petitioners;

(b) the description by legal subdivisions (section, township, range) of all lands included in or proposed to be included in the ground water area or subarea;

(c) the purpose of the hearing; and

(d) the time and place of the hearing where any interested person may appear, either in person or by attorney, file written objections to the granting of the proposal, and be fully heard.

(5) ~~Such~~ *The* notice of hearing ~~shall~~ *must* be published at least once in each week for 3 successive weeks not less than 30 days before the date of the hearing in a newspaper of general circulation in the county or counties in which the ground water area or subarea is located. The department shall also cause a copy of the notice, together with a copy of the petition, to be served by mail, not less than 30 days before the hearing, upon each well driller licensed in Montana whose address is within any county in which any part of the area in question is located; upon each person or public agency known from an examination of the records in the department's office to be a claimant or appropriator of ground water in the area in question (claimant or appropriator meaning one who diverts, impounds, or withdraws ground water and not merely one who uses or obtains ground water from another who diverts, impounds, or withdraws ground water); upon the bureau; and upon the mayor or chairman of the governing body of each incorporated municipality located in whole or in part within the proposed ground water area. The department may also serve notice upon any other person or state or federal agency that the department feels may be interested in or affected by the proposed designation or modification of a controlled ground water area. The petition need not be served on any petitioner. A copy of the notice, together with a copy of the proposal, ~~shall~~ *must* be mailed to each person at ~~his~~ *the person's* last-known address, and ~~such~~ service ~~shall be~~ *is* complete upon depositing it in the post office, postage prepaid, addressed to each person on whom it is to be served. Publication and mailing of ~~such~~ *the* notice as prescribed ~~herein~~ *in this section,* when completed, ~~shall be deemed~~ *is considered* to be sufficient notice of ~~such~~ *the* hearing to all interested persons."

Section 5. **Rulemaking authority.** The department may adopt rules to implement the provisions of 85-2-311, 85-2-319, and 85-2-402.

Section 6. **Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 85, chapter 2, and the provisions of Title 85, chapter 2, apply to [section 5].

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Retroactive applicability.** [Sections 1 and 3] apply retroactively, within the meaning of 1-2-109, to all applications for a permit or change in appropriation right that the department has not noticed out for objection as of [the effective date of this act].

Section 9. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 461

[SB 292]

AN ACT CLARIFYING THE APPROPRIATION OF ADMINISTRATIVE COSTS FOR THE YOUTH DETENTION SERVICES GRANT PROGRAM; AMENDING SECTION 23-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-7-402, MCA, is amended to read:

"**23-7-402. Disposition of revenue.** (1) A minimum of 45% of the money paid for tickets or chances must be paid out as prize money. The prize money is statutorily appropriated, as provided in 17-7-502, to the lottery.

(2) Commissions paid to lottery ticket or chance sales agents are not a state lottery operating expense.

(3) That part of all gross revenue not used for the payment of prizes, commissions, and operating expenses, together with the interest earned on the gross revenue while the gross revenue is in the enterprise fund, is net revenue. Except for the amount required to be paid under subsection (5), net revenue must be paid quarterly from the enterprise fund established by 23-7-401 to the superintendent of public instruction for distribution as state equalization aid to the public schools of Montana as provided in 20-9-343. The net revenue is statutorily appropriated, as provided in 17-7-502, to the superintendent of public instruction.

(4) The spending authority of the lottery may be increased in accordance with this section upon review and approval of a revised operation plan by the budget office.

(5) (a) ~~For the fiscal year beginning July 1, 1991, 1.6% of the net revenue derived under subsection (3) must be paid quarterly to the board of crime control.~~

~~(b) For the fiscal year beginning July 1, 1992, and thereafter,~~ *An amount equal to* 9.1% of the net revenue derived under subsection (3), but not to exceed $1 million in any fiscal year, must be paid to the board of crime control.

~~(c)~~*(b)* All money paid to the board of crime control under this subsection (5) must be used to fund state grants to counties for youth detention services *and to cover the costs of administering the grant program* as authorized in 41-5-1002. The ~~revenue is~~ *grants are* statutorily appropriated, as provided in 17-7-502, to the board of crime control. *The costs of administering the grant program must be paid pursuant to a legislative appropriation.*"

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved April 21, 1993.

CHAPTER NO. 462

[SB 314]

AN ACT TREATING EACH SERIES, PORTFOLIO, OR OTHER SUBDIVISION OF AN INVESTMENT COMPANY OR SIMILAR ISSUER AS A SEPARATE ISSUER OF SECURITIES; REQUIRING EACH SUBDIVISION TO PAY A PORTFOLIO REGISTRATION FEE; AND AMENDING SECTIONS 30-10-115 AND 30-10-209, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-115, MCA, is amended to read:

"**30-10-115. Deposits to the general fund.** *(1)* All fees, examination charges, and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter, *except for portfolio registration fees described in 30-10-209(1)(d),* must be deposited in the general fund.

(2) All portfolio registration fees collected under 30-10-209(1)(d) must be deposited in the state special revenue account to the credit of the state auditor's office. The funds allocated by this section to the state special revenue account may only be used to defray the expenses of the state auditor's office in discharging its administrative and regulatory powers and duties in relation to portfolio registration. Any excess fees must be deposited in the general fund."

Section 2. Section 30-10-209, MCA, is amended to read:

"**30-10-209. Fees.** The following fees ~~shall~~ *must* be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of $200 for the first $100,000 of initial issue or portion thereof in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum of $1,000.

(b) Each year thereafter, a registration of securities may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of an additional registration fee to be computed at 1/10 of 1% of the aggregate offering price of ~~such~~ *the* securities ~~which~~ *that* are to be offered in this state during that year, even though the maximum fee was paid the preceding year. ~~In no event shall the~~ *The* additional registration fee *may not* be less than $200 or more than $1,000. The registration statement for ~~such~~ *the* securities may be amended to increase the amount of securities to be offered.

(c) If a registrant sells securities in excess of the aggregate amount registered for sale in this state, the registrant may file an amendment to the registration statement to include the excess sales. If the registrant fails to file an amendment before the expiration date of the registration order, ~~he~~ *the registrant* shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration of the excess securities is effective retroactively to the date of the existing registration.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a

portfolio registration fee to be calculated as provided in subsections (1)(a) through (1)(c). The portfolio registration fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115.

(2) (a) For registration of a broker-dealer or investment adviser, the fee ~~shall be~~ *is* $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesman or investment adviser representative, the fee ~~shall be~~ *is* $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee ~~shall be~~ *is* the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee ~~shall~~ *must* be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee ~~shall be~~ *is* $50.

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) ~~All~~ *Except for portfolio registration fees established in this section, all* fees, examination charges, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted ~~hereunder~~ *under parts 1 through 3 of this chapter* must be deposited in the general fund."

Approved April 21, 1993.

CHAPTER NO. 463

[SB 323]

AN ACT AUTHORIZING THE ESTABLISHMENT OF A BOOT CAMP INCARCERATION PROGRAM FOR OFFENDERS CONVICTED OF CERTAIN FELONIES; PROVIDING FOR POTENTIAL SENTENCE REDUCTION FOR SUCCESSFUL COMPLETION OF THE PROGRAM; PROVIDING GUIDELINES FOR THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it authorizes the department of corrections and human services to adopt rules concerning the establishment and operation of the boot camp incarceration program. It is the intent of the legislature that in adopting rules the department look to provisions adopted in other states that operate successful "boot camp" type programs for male and female offenders.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 3], unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in 2-15-2301.

(2) "Reduction of sentence" includes changing an incarceration sentence to a grant of probation.

Section 2. **Sentence reduction for offenders.** A sentencing court retains jurisdiction for purposes of this section. A sentencing court may order a reduction of sentence for a convicted offender who:

(1) is certified by the department as having successfully completed the boot camp incarceration program; and

(2) applies to the court within 1 year after beginning to serve a sentence at a correctional institution.

Section 3. **Boot camp incarceration program — eligibility — rulemaking.** (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

(2) In order to be eligible for participation in the boot camp incarceration program, an inmate must:

(a) be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by life imprisonment or death;

(b) be less than 35 years of age; and

(c) pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program.

Section 4. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 53, chapter 30, and the provisions of Title 53, chapter 30, apply to [sections 1 through 3].

Section 5. **Effective date.** [This act] is effective July 1, 1993.

Approved April 21, 1993.

CHAPTER NO. 464

[SB 329]

AN ACT REVISING THE REQUIREMENT FOR PREVAILING WAGE ON A PROJECT FINANCED FROM THE PROCEEDS OF BONDS ISSUED ON OR AFTER JULY 1, 1993; AMENDING SECTIONS 17-5-1526, 17-5-1527, 18-2-403, 90-5-114, AND 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-1526, MCA, is amended to read:

"**17-5-1526. Procedure prior to financing projects.** (1) The board may finance projects, other than major projects, under this part only when it finds that:

(a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;

(b) the financing to be provided by the board for a project does not exceed either $800,000 or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; ~~and~~

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves ~~therefor~~ *for payment of the debt service*, and to meet all costs and expenses of issuing and servicing the bonds*; and* *(g) an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.*

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if ~~no~~ *a* request for a local hearing is *not* received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes."

Section 2. Section 17-5-1527, MCA, is amended to read:

"**17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either $10 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than $1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over $1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; ~~and~~

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves ~~therefor~~ *for payment of the debt service,* and to meet all costs and expenses of issuing and servicing the bonds*; and*

(g) an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and within 14 days shall advise the board if it elects to conduct the hearing; or

(b) if ~~no~~ *a* request for a local hearing is *not* received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes."

Section 3. Section 18-2-403, MCA, is amended to read:

"**18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception.** (1) In any contract let for state, county, municipal, school, or heavy highway construction, services, repair, or maintenance work under any law of this state, there ~~shall~~ *must* be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy highway construction, must contain a provision requiring the contractor to pay*:*

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, ~~and travel allowance provisions~~ *that:*

(i) meets the requirements of the Employee Retirement Income Security Act of 1974~~,~~ *and other bona fide programs approved by the United States department of labor; and*

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy highway construction, there must be inserted a provision to require the contractor to pay the heavy highway construction wage rates established statewide for such project.

(4) A contract let for a project costing more than $25,000 and financed ~~in whole or in part by tax-exempt industrial revenue bonds~~ *from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993,* must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed *unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.*

(5) ~~No~~ *A* contract may *not* be let to any person, firm, association, or corporation refusing to execute an agreement with the ~~above-mentioned~~ provisions *described in subsections (1) through (4)* in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in ~~such~~ a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(6) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from ~~his~~ *the contractor's* obligation to pay the standard prevailing wage rate and places ~~such~~ *the* obligation on the public contracting agency."

Section 4. Section 90-5-114, MCA, is amended to read:

"**90-5-114. Preference of Montana labor.** *(1)* Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(2) A contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, must contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed."

Section 5. Section 90-7-302, MCA, is amended to read:

"**90-7-302. Bonds and notes of the authority.** (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed $150 million, exclusive of bonds or notes issued to refund its outstanding bonds or notes.

(2) Bonds must be authorized, ~~and~~ *must be* dated, and ~~shall~~ *must* mature as the authority may specify, except that ~~no~~ *a* bond may *not* mature more than 40 years from the date of its issue. Bonds ~~shall~~ *must* bear interest at the rate or rates, be in the denominations, be in the proper registered or bearer form, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times which the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves ~~therefor~~ *for payment of the principal and interest*;

(c) meet all obligations in connection with the lease or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority, before issuing any bonds, shall certify that an applicant has submitted a statement that indicates that any contract let for a project costing more than $25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision requiring the contractor to

pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

~~(6)~~*(7)* The authority may combine, for the purposes of a single offering, bonds financing more than one facility under this chapter."

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 465

[SB 334]

AN ACT INCREASING PESTICIDE APPLICATOR AND DEALER LICENSE FEES AND DESIGNATING THE REVENUE TO A WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; INCREASING FARM PESTICIDE APPLICATOR FEES AND ALLOCATING THE REVENUE TO EDUCATIONAL AND TRAINING PROGRAMS; PROVIDING THAT THE DEPARTMENT OF AGRICULTURE MAY ESTABLISH STANDARDS FOR PESTICIDE STORAGE, PESTICIDE MIXING OR LOADING SITES, AND BULK PESTICIDE FACILITIES; ALLOWING THE USE OF CANCELED PESTICIDES UNDER CERTAIN CONDITIONS; CHANGING FARM APPLICATOR QUALIFICATION STANDARDS TO PURCHASE AND USE RESTRICTED-USE PESTICIDES; ALLOWING FOR CERTAIN LOCAL GOVERNMENT REGULATION OF PESTICIDES; AMENDING SECTIONS 80-8-105, 80-8-111, 80-8-201, 80-8-203, 80-8-205, 80-8-207, 80-8-209, AND 80-8-213, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill to provide direction to the department of agriculture for adoption of rules to implement the standards and procedures needed for a waste pesticide and pesticide container collection, disposal, and recycling program, including fees on the volume, type, classification, or other characteristics of a waste pesticide or waste pesticide container, to offset the cost of conducting the program. The department shall establish special collection programs for persons who desire to dispose of or recycle unwanted pesticides or pesticide containers, provided that certain specific pesticides or pesticide containers may be excluded from this program. Persons who have complied with the waste pesticide or pesticide container collection, disposal, and recycling program may not be subject to any state administrative or judicial penalty. The department, when entering into a cooperative agreement with the Montana state university extension service, shall ensure in the agreement that at least $20 of the farm applicator fee imposed in [section 8] is dedicated to county extension service programs for conducting local farm applicator pesticide educational and training programs for use of restricted-use pesticides.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-105, MCA, is amended to read:

"**80-8-105. Rules.** (1) The department may adopt by reference without a public hearing regulations adopted under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules necessary to carry out this chapter.

(2) The rules may prescribe methods of:

(a) registration, suspension or cancellation of registration, application, use or restricting use, prohibiting use, offering or exposing for sale of any pesticide;

(b) determining whether pesticides are highly toxic to ~~man~~ *humans*;

(c) determining standards of coloring or discoloring for pesticides and subjecting pesticides to the requirements of 80-8-202;

(d) licensing commercial applicators, operators, and dealers, establishing methods of recordkeeping for applicators, operators, and dealers, and providing for the review of the records by the department's authorized agent and the submission of the records to the department upon written request;

(e) issuing farm applicator special-use permits and the maintenance and submission of records by farm applicators issued special-use permits;

(f) collection, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) operating and maintaining equipment used by applicators;

(h) developing examinations which ~~shall~~ *must* be held periodically throughout the state;

(i) establishing the form and content of all applications for licenses and permits;

(j) designating pesticides that may be sold at retail for home, yard, garden, and lawn use. The department may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) revoking licenses and permits;

(l) registering or controlling any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) registering pesticide-fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

(n) establishing registration procedures for devices, with a fee not to exceed $5 per type of device, specifying classes of devices to be registered and providing for additional requirements;

(o) imposing conditions for renewal of dealer, applicator, and operator licenses and permits, including requalification training;

(p) establishing procedures for implementing and administering the civil penalties under 80-8-306; ~~and~~

(q) establishing fees for training courses and materials*;*

(r) establishing standards and procedures for administering a waste pesticide and pesticide container collection, disposal, and recycling program;

(s) establishing special fees on waste pesticides or pesticide containers collected under the waste pesticide and pesticide container collection, disposal, and recycling program. These fees may be based upon volume, type, classification, or other characteristics of a pesticide or a pesticide container and may include a credit for pesticide applicator, dealer, or operator license or permit fees.

(t) establishing standards for pesticide storage, pesticide mixing or loading sites, and bulk pesticide facilities.

(3) (a) Consistent with the provisions of Title 80, chapter 15, whenever the department finds that ~~those~~ rules are necessary to carry out the purposes and intent of this chapter, the rules may relate to the time, place, manner, and method of registration, suspension or cancellation of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time, and ~~shall~~ *must* encompass all reasonable factors ~~which~~ *that* the department considers necessary to prevent damage or injury to:

(i) persons, animals, crops, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the rules, the department shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department may, without notice or hearing, issue necessary orders or rules to protect the public health, welfare, and safety. An order or rule issued under this subsection is effective for the period prescribed by the Montana Administrative Procedure Act. If the department determines that the emergency order or rule should remain in effect, a public hearing under 80-8-106 ~~shall~~ *must* be held within the above period to determine whether the order or rule should be adopted by the department.

(5) All rules and orders issued by the department ~~shall~~ *must* be *made* in writing~~,~~ *and must be available at the department for public inspection.* ~~shall be~~

~~entered in full in books to be kept by the department for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours.~~ Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department ~~shall~~ *must* include and be based upon written findings of fact. A copy of any rule or order certified by the department ~~shall~~ *must* be received in evidence in all courts of this state with the same effect as the original."

Section 2. Section 80-8-111, MCA, is amended to read:

"**80-8-111. ~~Voluntary waste~~ *Waste* pesticide *and pesticide container collection, disposal, and recycling program* ~~reporting system — proposed program — pesticide information~~.** (1) The department shall establish a ~~voluntary reporting system to encourage pesticide applicators and other persons to report:~~ *waste pesticide and pesticide container collection, disposal, and recycling program. The program must be funded by license, permit, and special fees designated for that purpose in this chapter. The department may also establish waste pesticide and pesticide container fees and accept grants, gifts, and other funds to finance this program.*

~~(a) the types and volume of waste pesticides in their possession; and~~

~~(b) the county where the waste pesticides are stored.~~

(2) The department *may cooperate and contract with a person to conduct and manage the waste pesticide and pesticide container collection, disposal, and recycling program.* ~~shall inventory the waste pesticide information reported under subsection (1) and develop a proposed waste pesticide disposal program for consideration by the legislature in 1993.~~

(3) ~~All waste pesticide information reported to the department under subsection (1) is confidential. The department may summarize the information for purposes of preparing a waste pesticide inventory report that is public information. If a waste pesticide disposal program is not approved by the legislature in 1993, the department shall destroy the waste pesticide information received under subsection (1).~~ *(a) The department shall establish a collection program for waste pesticides and pesticide containers. In order to participate in this program, a person shall:*

(i) notify the department in advance of the type and amount of waste pesticide or pesticide containers that will be delivered for collection; and

(ii) deliver the waste pesticide or pesticide containers for collection by the department at a time and location designated by the department.

(b) A person may not be subject to an administrative or judicial penalty or action under this chapter as a result of participation in the waste pesticide or pesticide container collection, disposal, and recycling program pursuant to this section.

(4) The department may designate types of waste pesticides or pesticide containers that it will not collect for disposal and recycling under this program.

(5) The department shall provide pesticide applicators, dealers, and operators who participate in the waste pesticide and pesticide container collec-

tion, disposal, and recycling program and who are subject to a license or permit fee under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213 with a credit against the fees levied pursuant to 80-8-105(2)(s), provided that:

(a) the credit does not exceed the amount of the license or permit fee paid by the applicator, dealer, or operator under 80-8-203, 80-8-205, 80-8-207, 80-8-209, or 80-8-213; and

(b) each applicator, dealer, or operator may receive only one credit for each permit or license period.

(6) The department shall consult affected local governments before implementing the collection program under this section."

Section 3. **Deposit of waste pesticide and pesticide container collection, disposal, and recycling fees.** (1) All license, permit, and special fees paid to the department to fund the waste pesticide and pesticide container collection, disposal, and recycling program and any grants or gifts accepted by the department pursuant to 80-8-111(1) must be deposited in an account in the state special revenue fund.

(2) Money in the account must be used by the department to administer the waste pesticide and pesticide container collection, disposal, and recycling program provided for in 80-8-111. Unencumbered and unexpended money remaining in the account at the end of the fiscal year may not lapse but must be carried forward for the purposes of this subsection until appropriated by subsequent legislative action.

Section 4. Section 80-8-201, MCA, is amended to read:

"**80-8-201. Registration.** (1) Every pesticide distributed, sold, or offered for sale within ~~this~~ *the* state or delivered for transportation or transported in intrastate commerce or between points within ~~this~~ *the* state ~~shall~~ *must* be registered with the department. The registration ~~shall~~ *must* be renewed annually by the manufacturer, formulator, or distributor of the pesticide. The department shall register all federally approved pesticides, and those registered are subject to registration fees and all other provisions of this chapter. All registrations of pesticides expire on December 31 following the date of issuance unless otherwise terminated.

(2) The applicant for registration shall file with the department a statement including:

(a) the name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) a complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is ~~so~~ registered, and a statement of all claims to be made for it, including directions for use;

(c) the trade and chemical name of the pesticide;

(d) if requested by the department, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement ~~shall be~~ *is* required only ~~with respect to~~ *for* information ~~which~~ *that* is different from that furnished when the pesticide was registered or last reregistered.

(3) ~~Any~~ *A* pesticide imported into ~~this~~ *the* state ~~which~~ *that* is subject to *and has been registered under* the provisions of ~~any~~ *a* federal act providing for the registration of pesticides ~~and has been registered under the provisions of a federal act shall~~ *must* be registered in the state. However, the state may restrict the sale or use and application of the pesticide by type of dealer, applicator, time, and place and may establish special registrations of pesticides as outlined in subsection (8) of this section and 80-8-105(3). The annual registration fee must also be paid, and registration information required by the department must be provided.

(4) The applicant shall pay an annual fee of $70 for each pesticide registered. A registration fee is not required to register a federally approved experimental use permit.

(5) The department may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department that the composition of the ~~article~~ *pesticide* warrants the proposed claims for it and if the ~~article~~ *pesticide* and its labeling and other material required to be submitted comply with the requirements of 80-8-202, ~~it~~ *the department* shall register the ~~article~~ *pesticide.*

(6) If it does not appear to the department that the ~~article~~ *pesticide* warrants the proposed claims for it or if the ~~article~~ *pesticide* and its labeling and other material required to be submitted do not comply with this chapter, ~~it~~ *the department* shall notify the applicant of the manner in which the ~~article~~ *pesticide*, labeling, or other material required to be submitted fails to comply with the chapter ~~so as to afford~~ *to provide* the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections upon receipt of the notice, the department may refuse to register the ~~article~~ *pesticide.* The department may suspend or cancel the registration of a pesticide whenever it does not appear that the ~~article~~ *pesticide* or its labeling comply with this chapter or whenever scientific evidence proves that the ~~article~~ *pesticide* endangers ~~man~~ *humans* or the general environment afforded protection under 80-8-105(3)(a). When an application for registration is refused or the department proposes to suspend or cancel a registration, the registrant may pursue administrative remedies under the Montana Administrative Procedure Act and rules of the department.

(7) Registration is not required in the case of a pesticide shipped from one plant in ~~this~~ *the* state to another plant in ~~this~~ *the* state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish, wildlife, and parks shall review all applications for registration of an experimental-use permit or a registration for special local needs. The applicant shall pay a one-time fee of $70 for a special local need or experimental-use permit registration. The departments shall utilize the same requirements and standards for reviewing registrations established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted ~~thereunder~~ *under the act.* The department of agriculture shall provide the departments of health and environmental sciences and fish, wildlife, and parks with a complete copy of the application, related correspondence, and a statement of the depart-

ment of agriculture's proposed action on the application. The departments of health and environmental sciences and fish, wildlife, and parks shall approve or disapprove the application within 10 days after the receipt of the application. If the departments of health and environmental sciences, agriculture, and fish, wildlife, and parks are in agreement with the proposed registration, the department of agriculture shall issue the registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department of agriculture shall issue the registration.

(c) The registrant applying for registration ~~shall~~ *must* be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish, wildlife, and parks.

(d) Following the interagency conference and, if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 80-8-108 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration ~~shall~~ *must* be accepted by the departments and implemented by the department of agriculture.

(9) *(a)* Pesticides registered under any federal law when canceled for sale and use in total or in part by a federal agency responsible for registration are considered canceled in total or in part for sale and use in Montana. The cancellation is effective on the final date of sale or use allowed under the federal law and rules or orders of the federal agency. ~~If~~ *Except as provided in subsection (9)(b), if* the federal cancellation allows existing stock to be used past the final date of cancellation, ~~such~~ *the* sale or use in this state may not exceed 2 years. The department shall provide technical assistance to any person in possession of ~~such~~ *the* products to ~~insure~~ *ensure* their proper disposal, relabeling, or removal.

(b) Pesticide products canceled under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136a-1(i)(5) may be sold and used according to environmental protection agency labeling requirements or other requirements for a period not to exceed 6 years from the date that distribution from the registrant, formulator, manufacturer, or distributor is terminated."

Section 5. Section 80-8-203, MCA, is amended to read:

"**80-8-203. Commercial applicator.** (1) It ~~shall be~~ *is* unlawful for ~~any~~ *a* person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. ~~The~~ *An* application ~~shall~~ *for a pesticide applicator's license must* be accompanied by a fee of $45. ~~Applicators applying for a dealer's license under this chapter shall be required to pay only a $20 licensing fee for the dealer's license.~~ The provisions of this subsection ~~shall~~ *do* not apply to ~~any~~ *a* person employed only to operate ~~any~~ equipment used for the application of ~~any~~ *a* pesticide ~~and in which~~ *if* the person has no financial interest or other control over ~~such apparatus~~ *the* *equipment* other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators ~~shall~~ *must* be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided ~~for under~~ *in* 80-8-205.

(3) ~~Veterinarians~~ *A veterinarian* licensed as provided in Title 37, chapter 18, part 3, ~~shall~~ *is* not ~~be~~ required to be licensed to apply nonrestricted pesticides, provided that ~~these veterinarians shall register~~ *the veterinarian registers* with the department each year~~;~~*.* ~~provided further that the veterinarians~~ *The veterinarian must* ~~shall be required to~~ meet all other requirements and rules of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians when adopting rules.

(4) An applicator is responsible for the use of any pesticide by an operator or employee under the applicator's supervision or employment.

(5) The department shall assess an additional annual license fee of $30 on applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to [section 3]."

Section 6. Section 80-8-205, MCA, is amended to read:

"**80-8-205. Commercial operator.** *(1)* The department of agriculture may establish procedures for controlling pesticide operators including necessary fees by regulation.

(2) The department may by rule establish a fee to be paid by commercial operators to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to [section 3]."

Section 7. Section 80-8-207, MCA, is amended to read:

"**80-8-207. Dealers.** (1) It is unlawful for ~~any~~ *a* person to sell, offer for sale, deliver, or have delivered within ~~this~~ *the* state ~~any~~ *a* pesticide without first ~~procuring~~ *obtaining* a license from the department of agriculture for each calendar year or portion ~~thereof~~ *of a year*. A separate dealer's license and fee ~~shall be~~ *is* required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide ~~fieldmen~~ *field personnel* or ~~salesmen~~ *salespeople* employed directly out of the same location or outlet and under a licensed dealer ~~shall~~ *are* not ~~be~~ required to obtain a license. The dealer shall furnish the department *with* the names and addresses of its ~~fieldmen~~ *field personnel* and ~~salesmen~~ *salespeople* selling pesticides within the state.

(2) The application for a license ~~shall~~ *must* be accompanied by a fee of $45. Dealers applying for renewal of *a* license shall do so on or before March 1 of ~~that~~ *the* calendar year. ~~Any~~ *A* dealer applying for renewal of *a* license after March 1 ~~shall~~ *must* be assessed a $25 late licensing fee.

(3) The dealer shall require the purchaser of ~~any~~ *a* restricted pesticide to exhibit ~~his~~ *the purchaser's* license or permit issued under authority of this chapter before completing a sale.

(4) ~~Dealers may make one application for two annual licenses if the application is accompanied by a $45 licensing fee for each year of the state biennium.~~ *The department shall assess an additional annual license fee of $30 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to [section 3].*

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 ~~shall~~ *are* not ~~be~~ required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians ~~shall~~ register with the department each year. However, the certified pharmacies and veterinarians ~~shall be required to~~ *must* meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules."

Section 8. Section 80-8-209, MCA, is amended to read:

"**80-8-209. Farm applicators.** (1) Farm applicators shall obtain a special-use permit prior to purchasing and using ~~any~~ *a* pesticide designated by the department as a restricted-use pesticide. The fee for the permit is ~~$15~~ *$35*. The special-use permit ~~shall be~~ *is* effective for 5 calendar years. The department may establish a staggered years system of issuing permits. *Revenue generated by the permit fee must be expended in the following manner:*

(a) $15 to the department to administer the permitting program;

(b) $5 to the Montana state university extension service for the development of educational materials for farm pesticide applicators; and

(c) $15 to the extension service of the county in which the permit applicant resides for farm pesticide applicator certification and training programs.

(2) Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting ~~any~~ *an* agricultural commodity on property owned, leased, or rented by ~~such~~ *the* applicator.

(3) Farm applicators shall qualify for their first permit by either passing a graded written examination or attending a training course approved by the department and taking an ungraded written examination. The examinations and course *must meet the minimum certification standards and procedures established by the environmental protection agency except as otherwise provided by this chapter.* ~~shall require and demonstrate practical knowledge of the applicator's ability to:~~

~~(a) recognize common pests to be controlled and damage caused by them;~~

~~(b) read and understand the label and labeling information, including the common name of the pesticide(s) applied, pest(s) to be controlled, timing and~~

~~methods of application, safety precautions, any preharvest or reentry restrictions, and any specific disposal procedures;~~

~~(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticides to be used under particular circumstances, taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;~~

~~(d) recognize local environmental situations that must be considered during application to avoid contamination; and~~

~~(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident.~~

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides that are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) The department shall require farm applicators to requalify for renewal of the 5-year permit by attending ~~a program consisting of 6 hours of training~~ *an approved training program*. The department shall establish by rule a uniform system of administering the requalification training program. The department may credit only training related to the standards set forth in subsection (3).

(6) Provisions of this chapter relating to certification of farm applicators do not apply to ~~any~~ *a* farm applicator applying nonrestricted pesticides on ~~his~~ *the applicator's* own land or on lands of ~~his~~ neighbors if ~~he~~ *the farm applicator*:

(a) operates farm property and operates and maintains pesticide application equipment primarily for ~~his~~ *the applicator's* own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not ~~publicly hold himself out as~~ *represent to the public that the farm applicator is* a pesticide applicator;

(c) operates ~~his~~ pesticide application equipment only in the vicinity of ~~his~~ *the applicator's* own property and for the accommodation of ~~his~~ immediate neighbors.

(7) (a) The department shall assess an additional permit fee of $15 on farm applicators to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(b) Farm applicators must be assessed the fee at the beginning of the next 5-year permit renewal period. The department may assess a prorated fee for a farm applicator becoming licensed within a 5-year permit renewal period.

(c) Fees collected under this subsection (7) must be deposited in the state special revenue account pursuant to [section 3]."

Section 9. Section 80-8-213, MCA, is amended to read:

"**80-8-213. Government agencies.** (1) All state agencies, municipal corporations, or any other governmental ~~agency shall be~~ *agencies are* subject to the provisions of this chapter and rules adopted ~~thereunder~~ *under this chapter* concerning the application or sale of pesticides. Applicators and operators applying pesticides and dealers selling pesticides for agencies, municipal corporations, or any governmental agencies ~~shall be~~ *are* subject to the provisions of 80-8-203 through 80-8-208.

(2) The department shall issue a limited commercial applicator's or dealer's license for an annual fee of $50, which ~~shall be~~ *is* valid only when ~~such~~ *an* applicator or dealer is applying or selling pesticides for ~~such agencies~~ *a state agency, municipal corporation, or any other governmental agency,* provided that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas.

(3) *(a)* A governmental agency shall pay ~~the annual applicator's fee~~ for *each of* its first four employee applicators~~.~~*:*

(i) an annual applicator's fee of $50; and

(ii) an additional fee of $25 to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(b) ~~The~~ *A governmental* agency shall pay ~~an annual fee of $5~~ for each additional employee applicator*:*

(i) an annual applicator's fee of $5; and

(ii) an additional fee of $15 to fund the waste pesticide and pesticide container collection, disposal, and recycling program.

(c) A government agency may not be required to pay more than $600 annually for the licensing of employees as applicators and operators.

(d) Fees collected pursuant to this subsection (3) for the purpose of funding the waste pesticide and pesticide container collection, disposal, and recycling program must be deposited in the state special revenue account pursuant to [section 3].

(4) Government employees becoming certified applicators only to qualify for conducting pesticide education courses may not be charged a license fee but are limited to providing ~~such~~ *the* courses. Government operators are subject to rules adopted pursuant to 80-8-205, including the license fee."

Section 10. **Local pesticide regulation.** (1) A unit of local government may adopt an ordinance to regulate pesticide application that may include notification, provided that the ordinance is fully consistent with the authorities provided for in Title 80, chapter 8, and rules adopted under Title 80, chapter 8. The department shall develop a policy for the review and approval of local pesticide ordinances. A unit of local government shall submit a proposed ordinance to the department for verification that the proposed ordinance is consistent with the authorities provided for in Title 80, chapter 8. The ordinance may not be adopted until it has been approved by the department.

(2) A unit of local government may petition the department in writing to adopt rules to address specific local conditions, as provided in 80-8-105(3)(a). The petition must document:

(a) the need for a rule, including the reason that existing rules do not address the particular pesticide application;

(b) the need for specific local rules; and

(c) that a situation exists that threatens or is likely to threaten public health or environmental quality in the jurisdiction of the unit of local government.

(3) Local rules may be administered, enforced, and financed by a unit of local government:

(a) through a cooperative agreement with the department as provided under this section; or

(b) after the department adopts rules authorizing a unit of local government to administer, enforce, and finance an ordinance.

(4) Within 30 days of receiving the petition, the department shall respond to the unit of local government, stating:

(a) whether the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of this section; and

(b) the procedures and time period for the promulgation of rules by the department, provided that the petition conforms to the purpose of Title 80, chapter 15, and to the provisions of this section.

(5) The department may enter into a cooperative agreement with a unit of local government for the administration and enforcement of local rules adopted under 80-8-105(3)(a).

(6) Except as provided in subsection (1), a local government ordinance may not regulate or prohibit the registration, labeling, distribution, use, or sale of pesticides. It is not the intent of this subsection to prevent local responsibilities for zoning, fire codes, or disposal of pesticides pursuant to Title 75, chapter 10, part 4.

(7) The department shall maintain and, upon request, distribute a register of ordinances adopted by local governing bodies pursuant to subsection (1).

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Codification instruction.** [Sections 3 and 10] are intended to be codified as an integral part of Title 80, chapter 8, and the provisions of Title 80, chapter 8, apply to [sections 3 and 10].

Section 13. **Effective date.** [Sections 4(9)(b) and 10 and this section] are effective on passage and approval.

Section 14. **Termination.** [Sections 1(2)(r) and (2)(s), 2, 3, 5(5), 6(2), 7(4), 8(7), and 9(3)(a)(ii), (3)(b)(ii), and (3)(d)] terminate June 30, 1999.

Approved April 21, 1993.

CHAPTER NO. 466

[SB 348]

AN ACT AUTHORIZING FULL-TIME SPECIAL PUPILS TO BE REGULARLY ENROLLED FOR ANB PURPOSES; AMENDING SECTIONS 20-7-431, 20-7-457, 20-9-147, 20-9-303, 20-9-311, 20-9-313, 20-9-321, AND 20-9-507, MCA; REPEALING SECTION 20-7-458, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because 20-7-431 gives the superintendent of public instruction rulemaking authority to implement changes in special education funding distribution.

It is the intent of the legislature to enhance student and taxpayer equity by revising the method of distributing special education state funding to school districts and special education cooperatives. A revision in funding distribution methods may necessitate transitional steps to minimize disruption of program services to students. It is intended that the superintendent of public instruction implement the changes in the funding provisions of this bill to assist a smoother transition and to minimize the impact of the changes to students and districts.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-431, MCA, is amended to read:

"**20-7-431. Allowable cost schedule for special programs — superintendent to make rules — annual accounting.** (1) For the purpose of determining the foundation program amount for special education as defined in 20-9-321, the following ~~schedule of~~ allowable costs ~~must be followed by the school district in preparation of its special education budget for state aid request purposes~~ and *reports must be reviewed* by the superintendent of public instruction ~~in his review and approval of the budget (~~for the purposes of determining the amount of the foundation program for special education ~~for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with 20-9-311 and 20-9-313)~~ *payments and a district's special education expenditures*:

(a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

(i) *the cost of* salaries and benefits of special program teachers, regular program teachers, *and* teacher aides, ~~special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full time in the special program; if such personnel are shared between special and regular programs—a portion of the entire cost~~ corresponding to the ~~entire~~ working time ~~which~~ *that* each person devotes to the special program;

(ii) *the total cost of* teaching supplies and textbooks ~~if used exclusively~~ for special programs~~—the actual total cost~~;

(iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a student's individualized education program;

~~(iii) other expenses:~~

(iv) activities associated with teacher assistance teams that provide prereferral intervention;

~~(A)~~*(v) the cost of* contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies~~—the actual total cost~~;

~~(B)~~*(vi)* transportation costs for special education *instructional* personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings~~—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes~~;

(b) ~~supportive~~ *related* services, including:

(i) *the cost of* salaries and benefits of professional supportive personnel~~—the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program~~, *corresponding to the working time that each person devotes to the special program.* Professional supportive personnel may include *special education supervisors, speech-language pathologists, audiologists,* counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

(ii) *the cost of* salaries and benefits of clerical personnel who assist professional personnel in supportive services~~—the entire cost if employed full time in the special program; if the personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each person devotes to the special program~~, *corresponding to the working time that each person devotes to the special program*;

~~(c) equipment:~~

~~(i) equipment—the actual total cost;~~

~~(ii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost;~~

~~(iii) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost;~~

~~(iv) repair and maintenance of equipment—the actual total cost.~~

(iii) the cost of supplies for special programs;

(iv) activities associated with teacher assistance teams that provide prereferral interventions;

(v) the cost of contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by public or private agencies;

(vi) transportation costs for special education related services personnel who travel on an itinerant basis from school to school or district to district or to in-state child study team meetings or in-state individualized education program meetings;

(vii) equipment purchase, rental, repair, and maintenance required to implement a student's individualized education program;

(viii) the additional cost of special education cooperatives or joint boards, including operation and maintenance, travel, recruitment, and administration.

(2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board of public education for~~:~~

~~(a)~~ keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs~~;~~

~~(b) defining the total special program caseload that must be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(b) of this section; and~~

~~(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(c)(i) of this section~~.

(3) An annual accounting of all expenditures of school district general fund money for special education must be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for the accounting.

~~(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget may not be reimbursed under the foundation program for special education.~~

~~(5)~~*(4)* Allowable costs prescribed in this section do not include the costs of the teachers' retirement system, the public employees' retirement system, the federal social security system, or the costs for unemployment compensation insurance.

~~(6)~~*(5)* (a) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve a foundation program amount for special education that exceeds legislative appropriations; however, any unexpended balance from the first year of a biennial appropriation may be spent in the second year of the biennium in addition to the second year appropriation.

(b) If the total *special education* allowable cost ~~of the special education budgets~~ *payment, as determined in 20-9-321,* exceeds legislative appropriations available for special education, each district shall receive a pro rata share of the available appropriations ~~based upon prioritized budget items as established by~~

~~the superintendent of public instruction. The amount of the approved budgets in excess of the available appropriations may not be reimbursed under the foundation program for special education and is the responsibility of the school district.~~"

Section 2. Section 20-7-457, MCA, is amended to read:

"**20-7-457. Funding provisions for special education purposes of cooperatives or joint boards.** (1) The superintendent of public instruction shall pay directly to a cooperative or to a joint board formed under 20-3-361 *prior to July 1, 1992,* for special education purposes the ~~approved~~ *special education* allowable ~~costs for contracted special education services from the state special revenue fund for state equalization aid as provided in 20-9-343~~ *cost payments determined pursuant to 20-9-321*. ~~The total of the payments must be within the limit set by the legislature for approved special education budgets.~~

(2) A school district that elects to participate in a cooperative for special education purposes shall agree in the cooperative contract to participate for a period of at least 3 years.

(3) A school district that elects to participate in a joint board formed under 20-3-361 for special education purposes shall confirm in writing to the joint board by October 1 of the current school fiscal year the district's intention to participate or to not participate in a joint board agreement for the next school fiscal year.

(4) ~~After June 30, 1990, a~~ *A* cooperative that has not met the requirements of 20-7-453 and 20-7-454 may not be funded under the provisions of this section except by approval of the superintendent of public instruction. The superintendent shall adopt rules for approval of full service education cooperatives ~~formed after June 30, 1990~~.

(5) A full service education cooperative may establish a retirement fund, a miscellaneous programs fund, and a transportation fund, as provided for in 20-9-201, for the purposes of a full service education cooperative contract and the purposes allowed by law.

(6) Before July 1, 1994, the superintendent of public instruction, after consulting with regional representatives, shall define boundaries for cooperatives established for special education programs that incorporate the territory of all public school districts.

(7) Restructuring of cooperatives established for providing special education services must:

(a) be limited to a statewide total of no more than 23;

(b) include districts that are adjacent to each other and not overlapping into another cooperative's territory; and

(c) provide that all districts located within a cooperative's boundary may voluntarily become a cooperative member."

Section 3. Section 20-9-147, MCA, is amended to read:

"20-9-147. Approval to amend general fund budget for ensuing school fiscal year. (1) The trustees of a district may determine that expenses from the following sources will need to be funded by the general fund budget in the ensuing school fiscal year:

(a) a budget amendment authorized under the provisions of 20-9-161 through 20-9-163;

(b) metal mines tax reserve fund authorized in 20-9-231;

(c) special education expenditures approved under the provisions of 20-9-321~~(3)~~*(8)*;

(d) transfer of services from or dissolution of a special education cooperative; and

(e) tuition receipts deposited in the miscellaneous programs fund.

(2) Whenever the trustees determine that expenses from the sources in subsection (1) will need to be funded by the general fund in the ensuing year, the trustees shall petition the superintendent of public instruction for approval to add the expenditures from any of the sources to the current year's general fund budget for the purposes of calculating the ensuing year's general fund budget limitation. The petition must set forth in writing the specific reasons for the request and a report of the actual expenditures.

(3) The superintendent of public instruction shall promptly approve or disapprove the petition for approval to add the expenditures from the sources in subsection (1) to the current year's general fund budget for the purposes of calculating the ensuing year's general fund budget."

Section 4. Section 20-9-303, MCA, is amended to read:

"20-9-303. Definition of foundation program — nonisolated school foundation program financing — special education funds. (1) As used in this title, the term "foundation program" means the minimum expenditures that are sufficient to provide for the educational program of a school. The foundation program relates only to those expenditures authorized by a district's general fund budget and may not include expenditures from any other fund. It is financed by:

(a) county equalization money, as provided in 20-9-331 and 20-9-333;

(b) state equalization aid, as provided in 20-9-343;

(c) appropriations for special education; and

(d) a district levy as provided in subsection (3) for support of a school not approved as an isolated school under the provisions of 20-9-302.

(2) The foundation program includes:

(a) amounts in support of general education programs as provided in the schedules in 20-9-316 through 20-9-320; and

(b) payments in support of special education programs under 20-9-321.

(3) An elementary school having an ANB of nine or fewer pupils for 2 consecutive years which is not approved as an isolated school under the provisions of 20-9-302 may budget and spend the schedule amount, but the county and state shall participate in financing one-half of the foundation program, and the district shall finance the remaining one-half by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the foundation program.

(4) Funds provided to support the special education ~~accounting budget~~ *program* may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education must be accounted for separately from the balance of the school district general fund. ~~Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration part of this title.~~ The ~~unexpended balance~~ *amount* of the special education ~~accounting budget carries over to the next year to~~ *allowable cost payment that is not matched with district funds, as required in 20-9-321, will* reduce *by a like amount* the ~~amount of funding required to finance the~~ district's ensuing year's foundation program amount for special education."

Section 5. Section 20-9-311, MCA, is amended to read:

"**20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging must be computed by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180. However, when a school district has approval to operate less than 180 school days under 20-9-804, the total must be calculated in accordance with the provisions of 20-9-805. For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days. Attendance for a part of a morning session or a part of an afternoon session by a pupil must be counted as attendance for one-half day. In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), attendance at or absence from a regular session of the program for at least 2 hours of either a morning or an afternoon session ~~will~~ *must* be counted as one-half day attended or absent as the case may be. If a variance has been granted as provided in 20-1-302, ANB ~~will~~ *must* be computed in a manner prescribed by the superintendent of public instruction, but ~~in no case may~~ the ANB *may not* exceed one-half for each kindergarten pupil. When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, including pupil-instruction-related days, ~~his~~ *the* absence after the 10th day of absence may not be included in the aggregate days of absence and ~~his~~ *the pupil's* enrollment in the school may not be considered in the calculation of the average number belonging until ~~he resumes~~ attendance at school *is resumed.*

~~(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he is~~

~~considered a full-time special pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he is considered regularly enrolled for ANB purposes.~~

~~(3)~~*(2)* The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town located in the district and 3 miles from any other school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes; or

(ii) a school of the district is located more than 3 miles from any other school of the district and ~~no~~ incorporated territory is *not* involved in the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for the district.

~~(4)~~*(3)* When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction."

Section 6. Section 20-9-313, MCA, is amended to read:

"20-9-313. **Circumstances under which the regular average number belonging may be increased.** The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the

county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

(3) a district anticipates an increase in the average number belonging due to the closing of any private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of public instruction and must be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is the same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on the official school census or as determined by some other procedure approved by the superintendent of public instruction; *or*

~~(6) a full-time special pupil, as defined in 20-9-311, in a given school fiscal year may no longer be considered a full-time special pupil in the ensuing school fiscal year (the superintendent of public instruction may grant one ANB for the pupil for the ensuing school fiscal year); or~~

~~(7)~~*(6)* a high school district provides early graduation for any student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil-instruction days in the 12th grade. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction."

Section 7. Section 20-9-321, MCA, is amended to read:

"**20-9-321. Foundation program and contingency funds for special education.** (1) For the purpose of establishing the foundation program amount for a current year special education program for a school district, the superintendent of public instruction shall determine the total ~~estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program~~ *special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors*:

(a) the ~~estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431~~ *district ANB student count as established pursuant to 20-9-311 and 20-9-313*;

(b) ~~the number of pupils expected to be enrolled in the program~~ *a per-ANB amount for the special education instructional block grant*; ~~and~~

(c) a per-ANB amount for the special education related services block grant;

(d) weighted cost factors for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration;

(e) district and cooperative expenditure reports; and

~~(e)~~*(f)* any other data required by the superintendent of public instruction ~~for budget justification purposes and~~ to administer the provisions of ~~20-9-315 through~~ *20-7-431 and* 20-9-321.

(2) ~~The total amount of allowable costs approved by the superintendent of public instruction is the special education foundation program amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district.~~ *Special education allowable cost payments must be granted to each school district and cooperative with a special education program as follows:*

(a) An instructional block grant must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(b) A special education related services block grant must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education related services amount. The special education related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board. If a cooperative or joint board meets the requirements of 20-7-457, the special education related services block grant must be weighted for the factors in subsection (1)(d).

(3) The superintendent of public instruction shall annually determine the per-ANB special education instructional and special education related services block grant amounts based on the prior years' trustees' expenditure data for special education instruction and related services.

(4) The superintendent of public instruction shall adopt rules necessary to implement this section.

(5) A district shall provide a 25% local contribution for special education, matching every $3 of state special education instructional and special education related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education related services grant amount to the special education cooperative, but the district is not required to match the weighted funding factors.

(6) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's foundation program payment.

(7) If a district's allowable costs of special education, as verified by the trustees' reports, exceed by at least 10% the total of the special education instructional and special education related services block grants plus the required district match, the district is eligible for a 65% reimbursement of the costs that exceed the additional 10%. A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred.

~~(3)~~*(8)* Any amount of the special education allowable costs for a district approved under the provisions of subsection (2) that is an increase in the approved allowable costs from the previous school fiscal year and is a result of expanded programs or recalculations of the special education allowable costs base may be deposited and managed in the separate account of the miscellaneous programs fund of the district that is prescribed in ~~subsection (4)~~ *20-9-507.*

~~(4) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district foundation program for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507. However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the budget amendment provisions of 20-9-161(6), allowable costs for the given year may be funded in the miscellaneous programs fund by other revenue sources and added to the foundation program amount for special education for the subsequent school year under the provisions of 20-9-147. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.~~

~~(5) (a) The special education contingency funds in subsection (4):~~

~~(i) are biennially appropriated;~~

~~(ii) are for emergencies that may arise in the special education programs of school districts or special education cooperatives; and~~

~~(iii) may be used to fund positions that have gone unfilled for a full school fiscal year and for which state special education funds were not awarded.~~

~~(b) The board of trustees of a district or the management board of a special education cooperative may apply for contingency funding by submitting to the superintendent of public instruction, in the form prescribed by the superintendent of public instruction, written documentation that describes the need for the funds.~~

~~(6) The sum of the previous year special education expenses as defined in subsections (3) and (4) and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.~~

~~(7)~~*(9)* The foundation program amount for special education *determined in this section* must be added to the foundation program *schedule* amount ~~of the regular program ANB defined in~~ *determined pursuant to* 20-9-311 ~~and 20-9-313~~ *through 20-9-320* to obtain the total foundation program amount for the district."

Section 8. Section 20-9-507, MCA, is amended to read:

"**20-9-507. Miscellaneous programs fund.** (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-307(4), 20-5-312(8), and 20-9-321~~(3)~~*(8)* other than money under the provisions of Title I of Public Law 81-874 or federal money designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district or may be a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall cause a separate accounting to be maintained for each federal grant program and for the aggregate of all reimbursement money.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

Section 9. **Repealer.** Section 20-7-458, MCA, is repealed.

Section 10. **Effective dates.** (1) [Section 5] is effective January 1, 1994.

(2) [Sections 1, 3, 4, and 6 through 9] are effective July 1, 1994.

Approved April 21, 1993.

CHAPTER NO. 467

[SB 381]

AN ACT DEFINING UNDERINSURED EMPLOYERS AS EMPLOYERS WHO KNOWINGLY MISREPRESENT EMPLOYEES' WORK DESCRIPTIONS IN ORDER TO PAY LOWER WORKERS' COMPENSATION PREMIUMS; PROVIDING FOR THE COLLECTION OF PAYMENTS; PROVIDING PENALTIES OR FINES; AND CREATING REMEDIES FOR ENFORCEMENT BY THE DEPARTMENT OF LABOR AND INDUSTRY.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definition of underinsured employer.** For purposes of [sections 1 through 4], the term "underinsured employer" means an employer who knowingly misrepresents the duties of an employee in order to pay lower workers' compensation rates than the employer would have been required to pay if the character of the employee's work had been properly classified. The term "knowingly" has the meaning as defined in 45-2-101.

Section 2. **Penalties and remedies for underinsuring.** (1) (a) The department may require that an underinsured employer pay to the department a penalty of up to double the premium that the employer would have paid if the employer had properly classified the employee or $200, whichever is greater. In determining the amount for the calculation of the penalty under this subsection (a), the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was underinsured. The department shall determine the amount of the penalty based upon the gravity of the violation and the clarity of the relevant classification codes. The determination by the department is subject to the provisions in 39-71-204.

(b) The penalty provided in subsection (1)(a) may be assessed against the employer for each employee not properly classified.

(c) The fund must receive from an underinsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the underinsured employer. However, the uninsured employer's liability under this subsection (c) may not exceed $50,000.

(2) When the department discovers an underinsured employer, it may order the employer to cease operations until the employer's employees are properly classified and the correct premium rates are being paid to the insurer.

(3) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may bring a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(4) The department may institute and maintain in the name of the state, through the attorney general or the county attorney, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

(5) This section does not limit a private insurer's civil remedies to collect premiums owed by the employer for paying insufficient premiums due to misclassification of employees.

Section 3. **Collection of payments from underinsured employer.** If, upon demand of the department, an underinsured employer refuses to make the payments due under [section 2], the amount due may be collected by the department through suit. The department may settle through compromise with the underinsured employer the amount to be collected.

Section 4. **Creation of underinsured employers' fund.** (1) There is created a fund into which the money collected under [sections 2 and 3] must be deposited. The department shall administer the fund and use the money deposited into the fund to administer and enforce the provisions of [sections 1 through 4].

(2) Any surplus in the fund may not be kept in the fund and must be deposited in the uninsured employers' fund to be used for the purposes of that fund as provided in 39-71-502.

Section 5. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 1 through 4].

Approved April 21, 1993.

CHAPTER NO. 468

[HB 174]

AN ACT ALLOWING A POLICE OFFICER AND A SHERIFF'S DEPUTY COVERED BY A COLLECTIVE BARGAINING AGREEMENT TO APPEAL A DISCIPLINARY ACTION PURSUANT TO A GRIEVANCE PROCEDURE CONTAINED IN A COLLECTIVE BARGAINING AGREEMENT; PROVIDING THAT IN A CITY OR TOWN WITH A POLICE COMMISSION, THE MAYOR, CITY MANAGER, OR CHIEF EXECUTIVE, RATHER THAN THE POLICE COMMISSION, HAS THE AUTHORITY TO TAKE DISCIPLINARY ACTION AGAINST A MEMBER OF THE POLICE FORCE; PROVIDING FOR APPEALS TO THE POLICE COMMISSION; AMENDING SECTIONS 7-32-2109, 7-32-2110, 7-32-4152, 7-32-4153, 7-32-4155, 7-32-4156, 7-32-4157, 7-32-4158, 7-32-4160, 7-32-4161, AND 7-32-4164, MCA; AND REPEALING SECTIONS 7-32-4162 AND 7-32-4163, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-32-2109, MCA, is amended to read:

"**7-32-2109. Right to hearing on termination of deputy sheriff's employment.** *(1)* ~~Any~~ *A* deputy sheriff whose employment is terminated ~~may, within 30 days from the date of the termination of his employment, make application~~ *has a right of appeal:*

(a) to the district court of the county ~~wherein~~ *where* the deputy was employed ~~for a hearing before the court, with or without jury, on the charges resulting in the deputy's termination of employment or discharge~~*; or*

(b) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the deputy sheriff is covered by a collective bargaining agreement.

(2) The appeal to the district court must be made within 30 days from the date of the termination of employment."

Section 2. Section 7-32-2110, MCA, is amended to read:

"**7-32-2110. Reinstatement of deputy sheriff.** In the event that ~~a deputy prevails at the hearing provided for in 7-32-2109, he shall be entitled to~~ *a termination is reversed or modified, the deputy must* be reinstated as a deputy sheriff at the same salary ~~he~~ received *by the deputy* prior to ~~his~~ *the* discharge or termination of employment. ~~and he shall also be~~ *The deputy is also* entitled to ~~any~~ rights that might have accrued to ~~his~~ *the deputy's* benefit prior to ~~his~~ *the* discharge or termination of employment, including ~~that~~ *the* salary ~~which he~~ *that the deputy* would have received but for the termination."

Section 3. Section 7-32-4152, MCA, is amended to read:

"**7-32-4152. Term and compensation of members of police commission.** (1) The appointees to the police commission shall hold office for 3 years, and one ~~such~~ member must be appointed annually at the first regular meeting of the city council or commission in May of each year. However, a member serving on the commission during the hearing or deciding of ~~a case~~ *an appeal* under 7-32-4155 shall continue to serve on the commission for that ~~case~~ *appeal* until a decision has been made; a new member may not sit on the commission for ~~such~~ business.

(2) The compensation of the members of ~~such~~ *a* board ~~shall~~ *must* be fixed by the city council or commission, not to exceed $10 per day or more than $50 per month for any month for each member in cities of the first and second class."

Section 4. Section 7-32-4153, MCA, is amended to read:

"**7-32-4153. Meaning of word mayor.** Wherever the word "mayor" is used in 7-32-4109, ~~and~~ 7-32-4160, ~~through 7-32-4163~~ *and 7-32-4161,* it is intended to include "city manager", "city commissioner", or any other name or designation used to identify or designate the chief executive of any city or municipality."

Section 5. Section 7-32-4155, MCA, is amended to read:

"**7-32-4155. Role of police commission in hearing and deciding ~~charges against~~ *appeals brought by* policemen.** (1) The police commission ~~shall have the~~ *has* jurisdiction and it ~~shall be~~ *is* its duty to hear~~, try,~~ and decide ~~all charges~~ *appeals* brought by ~~any person or persons against~~ any member or officer of the police department~~, including any charge that such member or officer:~~

~~(a) is incompetent or has become incapacitated, by age, disease, or otherwise, to discharge the duties of his office;~~

~~(b) has been guilty of neglect of duty, of misconduct in his office, or of conduct unbecoming a police officer;~~

~~(c) has been found guilty of any crime; or~~

~~(d) whose conduct has been such as to bring reproach upon the police force~~ *who has been disciplined, suspended, removed, or discharged by an order of the mayor, city manager, or chief executive.*

(2) It is the duty of the police commission, at the time set for hearing ~~a charge against~~ *an appeal of* a police officer, to ~~forthwith proceed to~~ hear~~, try,~~ and determine the ~~charge~~ *appeal* according to the rules of evidence applicable to courts of record in the state."

Section 6. Section 7-32-4156, MCA, is amended to read:

"**7-32-4156. ~~Charges~~ *Appeals* to be in writing.** ~~Any charge~~ *An appeal* brought ~~against~~ *by* any member of the police force must be in writing in the form required by the police commission, and a copy ~~thereof~~ must be served upon the

~~accused officer or member~~ *mayor, city manager, or chief executive* at least ~~15~~ *30* days before the time fixed for the hearing of ~~such charge~~ *the appeal.*"

Section 7. Section 7-32-4157, MCA, is amended to read:

"**7-32-4157. Rights of ~~accused policeman~~ *police officer*.** The ~~accused shall have~~ *appealing police officer has* the right to be present at the ~~trial~~ *hearing* in person and by counsel and to be heard and to give and furnish evidence in ~~his defense~~ *the police officer's appeal.*"

Section 8. Section 7-32-4158, MCA, is amended to read:

"**7-32-4158. Police commission ~~trials~~ *hearings* open to public.** All ~~trials shall~~ *hearings must* be open to the public."

Section 9. Section 7-32-4160, MCA, is amended to read:

"**7-32-4160. Decision by police commission ~~— veto power of mayor~~.** ~~(1)~~ The police commission ~~must~~ *shall*, after the conclusion of the hearing ~~or trial~~, decide ~~whether the charge was proven or not proven~~ *the appeal* and ~~shall~~ *must* have the power, by a decision of a majority of the commission, to ~~discipline, suspend, remove, or discharge any officer who shall have been found guilty of the charge filed against him~~ *sustain, modify, or overrule the disciplinary order of the mayor, city manager, or chief executive.*

~~(2) Such action of the police commission shall, however, be subject to modification or veto by the mayor, made in writing and giving reasons therefor, which shall become a permanent record of the police commission; provided, however, that where and when the police commission decides the charge not proven, the decision is final and conclusive and is not subject to modification or veto by the mayor or to any review.~~

~~(3) Where the police commission decides the charge proven, the mayor, within 5 days from the date of the filing of such findings and decision with the city clerk, may modify or veto such findings and decision.~~"

Section 10. Section 7-32-4161, MCA, is amended to read:

"**7-32-4161. Enforcement of decision.** ~~When a charge against a member of the police force is found proven by the board and is not vetoed by the mayor, the~~ *The* mayor ~~must~~ *shall* make an order enforcing the decision of the ~~board or the decision as modified if modified by the mayor~~ *police commission.* ~~Such~~ *The* decision or order ~~shall be~~ *is* subject to review by the district court of the proper county on all questions of fact and all questions of law."

Section 11. Section 7-32-4164, MCA, is amended to read:

"**7-32-4164. ~~District court review~~ *Right to appeal.*** *A member of the police force who is disciplined, suspended, removed, or discharged as a result of a decision by the mayor, city manager, or chief executive has a right of appeal:*

(1) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the member is covered by a collective bargaining agreement; or

(2) to ~~The~~ *the police commission. A final decision of the police commission may be appealed to the* district court of the proper county. ~~shall have jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force, but no~~ *The district court has jurisdiction to review all questions of fact and all questions of law in a suit brought by any officer or member of the police force. A* suit to review ~~such hearing or trial~~ *a decision or an order* or for reinstatement to office ~~shall~~ *may not* be maintained unless the ~~same~~ *suit* is begun within a period of 60 days after the decision ~~of~~ *by* the police commission ~~or order of the mayor~~ has been filed with the city clerk."

Section 12. **Repealer.** Sections 7-32-4162 and 7-32-4163, MCA, are repealed.

Approved April 21, 1993.

CHAPTER NO. 469

[HB 236]

AN ACT PROVIDING FOR IMMUNITY FROM CIVIL SUIT FOR A HEALTH CARE PROVIDER WHO DISCLOSES HEALTH CARE INFORMATION TO A PATIENT OR THE PATIENT'S DESIGNEE PURSUANT TO A WRITTEN AUTHORIZATION FOR DISCLOSURE; AND SPECIFYING THE FORM OF THE WRITTEN AUTHORIZATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Immunity of health care providers pursuant to written authorization — form required.** A health care provider who discloses health care information within the possession of the provider, including health care information from another provider, is immune from any civil cause of action by the patient or the patient's heirs or successors in interest that is based upon delivery to the patient or the patient's designee of health care information concerning the patient that is contained in the health care provider's patient file if the information is disclosed in accordance with a written authorization using the following language:

"All health care information in your possession, whether generated by you or by any other source, may be released to me or to ______________(named person) for ______________(purpose of the disclosure). This release is subject to revocation at any time. The revocation is effective from the time it is communicated to the health care provider. If not revoked, the release terminates in accordance with 50-16-527.

....

(Signature of patient)"

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 50, chapter 16, part 5, and the provisions of Title 50, chapter 16, part 5, apply to [section 1].

Approved April 21, 1993.

CHAPTER NO. 470

[HB 245]

AN ACT ESTABLISHING EXCLUSIVE GROUNDS FOR LANDLORDS' TERMINATION OF RENTAL AGREEMENTS WITH TENANTS WHO OWN MOBILE HOMES OR RENT SPACE IN MOBILE HOME PARKS; AMENDING SECTIONS 70-24-103 AND 70-24-311, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana residents currently face a housing crisis that includes a lack of affordable housing and a lack of available mobile home park spaces; and

WHEREAS, mobile homes are not "mobile" without substantial moving costs and the potential for substantial damage to the mobile homes; and

WHEREAS, under 70-24-441 landlords of mobile home parks may, without supplying a reason, evict tenants who rent space in mobile home parks; and

WHEREAS, if evicted unfairly, mobile home owners who rent space in mobile home parks may be forced to sell their mobile homes at a fraction of their costs and within an unreasonable amount of time (30 days pursuant to 70-24-441) in order to comply with the eviction.

THEREFORE, the Legislature of the State of Montana finds it necessary to define justifiable and reasonable grounds on which landlords may evict mobile home owners who rent space in mobile home parks.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-103, MCA, is amended to read:

"**70-24-103. General definitions.** Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Court" means the appropriate district court or the appropriate justice's court.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor, or sublessor of*:*

(a) the dwelling unit or the building of which it is a part ~~and~~*;*

(b) a mobile home park; or

(c) ~~and also means~~ a manager of the premises who fails to disclose ~~his~~ *the* managerial position.

(6) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.

(7) "Mobile home park" means a trailer court as defined in 50-52-101.

~~(6)~~*(8)* "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

~~(7)~~*(9)* "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

~~(8)~~*(10)* "Person" includes an individual or organization.

~~(9)~~*(11)* "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances ~~therein~~ *in the structure*, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

~~(10)~~*(12)* "Rent" means all payments to be made to the landlord under the rental agreement.

~~(11)~~*(13)* "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

~~(12)~~*(14)* "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.

~~(13)~~*(15)* "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

~~(14)~~*(16)* "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Section 2. **Mobile home parks — grounds for termination of rental agreement.** (1) A landlord of a mobile home park may terminate a rental agreement only by following the procedure set forth in 70-24-422 and only for one or more of the following reasons:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement;

(b) late payment of rent, late charges, or common area maintenance fees as established in the rental agreement three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by 70-24-422;

(c) violation of a mobile home park rule that creates an immediate threat to the health and safety of any resident of the mobile home park if the violation has not been remedied 24 hours after the violator is given written notice of the violation;

(d) two or more violations within a 12-month period of any combination of one or more mobile home park rules, the violation of which would have a significant adverse impact on the mobile home park or its residents and which are so designated;

(e) two or more violations within a 12-month period of the same rule;

(f) two or more violations of 70-24-321(1) within a 12-month period or any violation of 70-24-321(2);

(g) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, endangers other residents or mobile home park personnel, or causes substantial damage to the mobile home park premises;

(h) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other residents or the landlord of the mobile home park, or the landlord's documentation of a violation of the provisions of Title 45, chapter 9;

(i) changes in the use of the land if the requirements of subsection (2) are met; or

(j) a legitimate business reason of the landlord if the requirements of subsection (3) are met.

(2) If a landlord plans to change the use of all or part of the land composing the mobile home park from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the mobile home park.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice, the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner and tenant of the mobile home owner written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) (a) A landlord may terminate the rental agreement of a mobile home owner or a tenant of a mobile home owner if the landlord, by the termination:

(i) does not violate a provision of this section or any other state statute; and

(ii) has a legitimate business reason.

(b) A landlord shall give the mobile home owner or the tenant of a mobile home owner a minimum of 90 days' written notice of termination.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(b), only one notice per violation per month may be included in the calculation.

Section 3. Section 70-24-311, MCA, is amended to read:

"**70-24-311. Landlord authorized to adopt rules.** (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time he enters into the rental agreement or when it is adopted.

(2) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of his bargain, it is not valid until 7 days after notice to the tenant in the case of a week to week tenancy or 30 days' notice in the case of tenancies from month to month.

(3) A rule adopted by a landlord of a mobile home park must be in writing and must be given to each mobile home owner or tenant of a mobile home owner residing in the mobile home park and to each new resident upon arrival."

Section 4. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 70, chapter 24, and the provisions of Title 70, chapter 24, apply to [section 2].

Section 5. **Effective date.** [This act] is effective 30 days after passage and approval.

Approved April 21, 1993.

CHAPTER NO. 471

[HB 617]

AN ACT PROVIDING THAT THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES MAY OBTAIN FEDERAL CERTIFICATION FOR SPECIFIC PRISON INDUSTRIES PROGRAMS; PROVIDING THAT THE DEPARTMENT MAY CONTRACT WITH PRIVATE COMPANIES FOR THE EMPLOYMENT OF INMATES IN A FEDERALLY CERTIFIED PRISON INDUSTRIES PROGRAM; ALLOWING THE DEPARTMENT TO COLLECT 15 PERCENT OF AN INMATE'S NET WAGES FOR DEPOSIT IN THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT; ALLOWING THE DEPARTMENT TO CHARGE INMATES WHO ARE PARTICIPATING IN FEDERALLY CERTIFIED PRISON INDUSTRIES PROGRAMS FOR ROOM AND BOARD; PROVIDING THAT INMATES EMPLOYED BY A PRIVATE COMPANY MUST BE PAID THE SAME RATE AS THE RATE PAID FOR SIMILAR WORK AND MUST BE COVERED BY THE STATE COMPENSATION MUTUAL INSURANCE FUND; ALLOWING PRODUCTS OR SERVICES OF A CERTIFIED PRISON INDUSTRIES PROGRAM TO BE PROVIDED TO PUBLIC AND PRIVATE ENTITIES; CLARIFYING THAT REVENUE RAISED FROM A PRISON INDUSTRIES PROGRAM MAY BE USED FOR THE PAYMENT OF INMATE WAGES; AND AMENDING SECTIONS 39-71-118, 53-1-301, 53-30-131, 53-30-132, AND 53-30-133, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, ~~workman,~~ and volunteer firefighter defined. (1) The terms "employee"~~, "workman",~~ or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for ~~such~~ corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an airman or other person employed as a volunteer under 67-2-105; ~~or~~

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(g) an inmate working in a federally certified prison industries program authorized under 53-1-301.

(2) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(3) (a) If the employer is a partnership or sole proprietorship, ~~such~~ *the* employer may elect to include as an employee within the provisions of this chapter any member of ~~such~~ *the* partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of ~~such~~ *an* election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (3)(d). A partner or sole proprietor is not considered an employee within this chapter until ~~such~~ notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than

$900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.

(4) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 12.

(5) An employee, workman, or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(6) For purposes of this section, an "employee~~, workman,~~ or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state; or

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer."

Section 2. Section 53-1-301, MCA, is amended to read:

"**53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates.** (1) Except as provided in subsection ~~(3)~~ *(4)*, the department may:

(a) establish industries in institutions ~~which~~ *that* will result in the production or manufacture of ~~such~~ products and the rendering of ~~such~~ services as may be needed by any department or agency of the state or any political subdivision ~~thereof~~ *of the state*, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) *obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;*

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction *and for the employment of inmates in federally certified prison industries programs*;

~~(c)~~*(d)* print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

~~(d)~~*(e)* fix the sale price for goods produced or manufactured at institutions. Prices ~~shall~~ *may* not exceed prices existing in the open market for goods of comparable quality.

~~(e)~~*(f)* require institutions to purchase needed goods from other institutions;

~~(f)~~*(g)* provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

~~(g)~~*(h)* provide for construction projects, up to the aggregate sum of $25,000 per project, *performed* by residents of institutions~~; provided, however, said,~~ *except when the* construction work is ~~not~~ covered by a collective bargaining agreement;

~~(h)~~*(i)* provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

~~(i)~~*(j)* provide for the manufacture at an institution of motor vehicle license plates and other related articles;

~~(j)~~*(k)* ~~with the approval of the department,~~ sell manufactured or agricultural products and livestock on the open market;

~~(k)~~*(l)* provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

~~(l)~~*(m)* pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which ~~he~~ *the inmate or resident* is working*;*

(n) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and

(o) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) (a) ~~Payment~~ *Except as provided for in subsection (2)(b), payment* for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; *and*

(v) regard for safety of others.

(b) The maximum rate of pay ~~shall~~ *must* be determined by the appropriation established for each program*, except that inmates employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.*

(3) *Premiums for workers' compensation and occupational disease coverage must be paid by the prison industries program or by the department of institutions. If the department pays the premium, reimbursement for premium payments for workers' compensation and occupational disease coverage must be made to the department by the private company contracting with the federally certified prison industries program for services and products.*

(4) Except as provided in subsection ~~(4)~~ *(5)*, furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

~~(4)~~*(5)* Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4."

Section 3. Section 53-30-131, MCA, is amended to read:

"**53-30-131. Prison industries training program — purpose and scope.** (1) In addition to any institutional industry operated at the Montana state prison under Title 53, chapter 1, part 3, the department of corrections and human services shall conduct a prison industries training program.

(2) The purpose of the prison industries training program is to:

(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;

(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release.

(3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.

(4) The program may provide training and experience involving cultivation, production, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, livestock, furniture, office and electrical equipment, and motor vehicles. ~~Such~~ *The* products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch *and products or services of a federally certified prison industries program*, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities."

Section 4. Section 53-30-132, MCA, is amended to read:

"**53-30-132. Inmate participation and status — prison industries training program — *wages and benefits*.** (1) An inmate participating in the prison industries training program may be granted a good time allowance, not to exceed 15 days per month, notwithstanding the limits contained in 53-30-105, for outstanding participation in the program as defined by rules adopted by the department of corrections and human services. ~~Such~~ *The* good time allowance has the same effect as a good time allowance granted under 53-30-105, and the provisions of subsections (2) and (3) of 53-30-105 apply to ~~such~~ *the* good time allowance. However, ~~no~~ *an* inmate may *not* receive good time for participation in this program under any other section or rule ~~which~~ *that* would duplicate the good time authorized ~~herein~~ *in this section*.

(2) While engaged in on-the-job training and production, inmates *not employed in a federally certified prison industries program* may be paid a wage commensurate with their production function. ~~Such wages shall~~ *Wages must* be established at a rate that encourages efficient production and effective levels of inmate participation. *Inmates employed in a federally certified prison industries program must be paid as provided in 53-1-301(2).*

(3) Inmates *not* working in ~~the~~ *a federally certified* prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to ~~such~~ *the* inmates. *Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.*

(4) Able-bodied persons committed to the Montana state prison as adult offenders shall be required to perform work as provided for by the department of corrections and human services."

Section 5. Section 53-30-133, MCA, is amended to read:

"**53-30-133. Administration of prison industries training program.** (1) (a) The prison industries training program need not be a self-supporting program. The department of corrections and human services may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates. All revenue raised through the program may be used only for the program *and payment of inmate wages.*

(b) State agencies, local governments, school districts, authorities, and other local government entities are encouraged to explore the possibilities of using the prison industries training program. State agencies shall cooperate with the department of corrections and human services in notifying governmental entities within the state of the program and of the services and products that are available.

(2) (a) The department of corrections and human services shall adopt rules implementing this program and shall, as provided in 5-11-210, report to the legislature its continuing plans and recommendations in implementing this program. Any price lists established by the department are exempt from the provisions of Title 2, chapter 4 ~~(the Montana Administrative Procedure Act)~~, but the department may, if it considers it an effective method of dissemination, publish ~~such~~ *the* price lists in the Montana Administrative Register or the Administrative Rules of Montana, or both.

(b) The department of corrections and human services is subject to program audits of the prison industries training program by the legislative auditor."

Approved April 21, 1993.

CHAPTER NO. 472

[SB 320]

AN ACT PROVIDING A TIME LIMIT IN WHICH TO CHALLENGE BOARD OF LAND COMMISSIONERS' MINING DECISIONS; ALLOWING THE AWARD OF COSTS AND ATTORNEY FEES FOR CHALLENGES; EXTENDING THE COMPLETENESS REVIEW PERIOD FOR APPLICATIONS FOR NEW PERMITS; DEFINING AND PROVIDING CRITERIA FOR AMENDMENTS TO MINE PERMITS; AMENDING SECTIONS 82-4-303, 82-4-337, AND 82-4-351, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 3] requires the department of state lands to adopt administrative rules. In adopting rules, the department shall establish application content requirements and amendment processing procedures that are consistent with the permitting requirements established in this bill.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Limitations of actions.** Legal actions seeking review of a board decision granting or denying an exploration license or operating permit issued under this part must be filed within 90 days after the decision is made.

Section 2. **Award of costs and attorney fees.** When issuing a final order in an action challenging the grant or denial of an exploration license or operating permit issued under this part, the court may award costs of litigation, including reasonable attorney and expert witness fees, to a prevailing or substantially prevailing party whenever, in its discretion, the court determines an award is appropriate.

Section 3. **Amendment to operating permits.** (1) During the term of an operating permit issued under this part, an operator may apply for an amendment to the permit. The operator may not apply for an amendment to delete disturbed acreage except following reclamation, as required under 82-4-336, and bond release for the disturbance, as required under 82-4-338.

(2) The department may by rule establish criteria for the classification of amendments as major or minor. The department shall adopt rules establishing requirements for the content of applications for major and minor amendments and the procedures for processing minor amendments.

(3) Applications for major amendments must be processed pursuant to 82-4-337.

(4) The department shall review an application for a minor amendment and provide a notice of decision on the adequacy of the application within 30 days. If the department does not respond within 30 days, then the permit is revised in accordance with the application.

(5) The department is not required to prepare an environmental assessment or an environmental impact statement for the following categories of action:

(a) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review pursuant to Title 75, chapter 1;

(b) administrative actions, such as routine, clerical, or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services, and personnel actions;

(c) repair or maintenance of the permittee's equipment or facilities;

(d) investigation and enforcement actions, such as data collection, inspection of facilities, or enforcement of environmental standards;

(e) ministerial actions, such as actions in which the agency does not exercise discretion, but acts upon a given state of facts in a prescribed manner;

(f) approval of actions that are primarily social or economic in nature and that do not otherwise affect the human environment;

(g) changes in a permit boundary that increase disturbed acres that are insignificant in impact relative to the entire operation, provided that the increase is less than 10 acres or 5% of the permitted area, whichever is less; and

(h) changes in an approved operating plan or reclamation plan for an activity that was previously permitted, provided that the impacts of the change will be insignificant relative to the impacts of the entire operation and there is less than 10 acres of additional disturbance.

Section 4. Section 82-4-303, MCA, is amended to read:

"**82-4-303. Definitions.** As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

~~(2)~~*(3)* "Board" means the board of land commissioners or a state employee or state agency as may succeed to its powers and duties under this part.

~~(3)~~*(4)* "Commissioner" means the commissioner of state lands provided for in 2-15-3202.

~~(4)~~*(5)* "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

~~(5)~~*(6)* "Department" means the department of state lands.

~~(6)~~*(7)* "Disturbed land" means that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and it comprises that area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from the operation and which have not been previously reclaimed under the reclamation plan.

~~(7)~~*(8)* "Exploration" means all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

~~(8)~~*(9)* "Mineral" means any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

~~(9)~~*(10)* "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

~~(10)~~*(11)* "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

~~(11)~~*(12)* "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

~~(12)~~*(13)* "Placer deposit" means naturally occurring, scattered or unconsolidated valuable minerals in gravel or alluvium lying above bedrock.

~~(13)~~*(14)* "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

~~(14)~~*(15)* "Reclamation plan" means the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed. The proposal ~~shall~~ *must* include, to the extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around the disturbed areas where necessary to prevent pollution of those waters or unnecessary erosion;

(g) the method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents as may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

~~(15)~~*(16)* (a) "Small miner" means a person, firm, or corporation that engages in the business of mining or reprocessing of tailings or waste materials that does not remove from the earth during any calendar year material in excess of 36,500 tons in the aggregate, that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2), and that conducts:

(i) an operation resulting in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations which disturb and leave unreclaimed less than 5 acres per operation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation;

(B) at least 1 mile apart at their closest point; and

(C) not operated simultaneously except during seasonal transitional periods not to exceed 30 days.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation, exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases.

~~(16)~~*(17)* "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

~~(17)~~*(18)* "Underground mining" means all methods of mining other than surface mining.

~~(18)~~*(19)* "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit, and it comprises and includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

~~(19)~~*(20)* "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 5. Section 82-4-337, MCA, is amended to read:

"**82-4-337. Inspection — issuance of operating permit — modification.** (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within *60 days of receipt of the initial application and within* 30 days of receipt *of responses to notices of deficiencies. The initial completeness notice must note all deficiency issues, and the department may not in a later completeness notice raise an issue pertaining to the initial application that was not raised in the initial notice. The department may, however, raise any deficiency during the adequacy review pursuant to subsection (1)(b).* The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within ~~30 days of receipt~~ *the appropriate review period.*

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within ~~such~~ *the* time period, the operating permit ~~shall~~ *must* be issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond which will be required.

(c) ~~No~~ *A* permit may *not* be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(6).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any ~~such~~ extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) If the department decides to hire a third-party contractor to prepare an environmental impact statement on the application, the department shall prepare a list of no fewer than four contractors acceptable to the department and shall provide the applicant with a copy of the list. The applicant shall provide the department with a list of at least 50% of the contractors from the department's list. The department shall select its contractor from the list provided by the applicant.

~~(iii)~~*(iv)* Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit ~~shall~~ *must* be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit ~~shall~~ *must* be granted for the period required to complete the operation and ~~shall be~~ *is* valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit ~~shall~~ *must* provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection."

Section 6. Section 82-4-351, MCA, is amended to read:

"82-4-351. **Reasons for denial of permit.** (1) ~~A~~ *An application for a* permit *or an application for an amendment to a permit* may be denied for ~~any of~~ the following reasons:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) A denial of a permit ~~shall~~ *must* be in writing ~~and~~, state the reasons ~~therefor~~ *for denial, and be based on a preponderance of the evidence.*"

Section 7. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [sections 1 through 3].

Section 8. **Saving clause.** [This act] does not affect penalties that were incurred or proceedings that were begun before [the effective date of this act].

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act]

is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved April 21, 1993.

CHAPTER NO. 473

[HB 49]

AN ACT GENERALLY REVISING THE COSMETOLOGY LAWS; REDEFINING CERTAIN TERMS; REQUIRING A HIGH SCHOOL DIPLOMA TO PRACTICE COSMETOLOGY; REDUCING THE NUMBER OF HOURS OF PROFESSIONAL TEACHER TRAINING ANNUALLY REQUIRED OF ACTIVE TEACHERS; AND AMENDING SECTIONS 37-31-101, 37-31-301, 37-31-302, 37-31-304, 37-31-305, 37-31-308, 37-31-311, 37-31-312, 37-31-322, 37-31-331, AND 39-51-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-31-101, MCA, is amended to read:

"**37-31-101. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of cosmetologists provided for in 2-15-1857.

(2) "Booth" means any part of a ~~cosmetological establishment~~ *cosmetology salon* or manicuring ~~shop~~ *salon* that is rented or leased for the performance of cosmetologist services, as specified in 39-51-204(1)(l).

(3) "~~Cosmetological establishment~~ *Cosmetology salon*" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and ~~which~~ *that* must have a manager-operator in charge.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(6) "Manicuring ~~shop~~ *salon*" means premises, a building, or part of a building in which the art of manicuring is practiced.

(7) "Practice and teaching of cosmetology" ~~includes~~ *means* work ~~generally and usually~~ included in the terms "hairdressing", "manicuring", and "beauty culture" and performed in ~~so-called hairdressing and beauty shops~~ *cosmetology salons, in* booths, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology ~~shall~~ *may* not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established

store or place of business holding a license from the state of Montana as ~~such~~ *a* store or place of business."

Section 2. Section 37-31-301, MCA, is amended to read:

"37-31-301. **Prohibited acts.** (1) Without an appropriate license issued under this chapter, it ~~shall be~~ *is* unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology or school of manicuring;

(c) manage or operate a cosmetology ~~shop~~ *salon,* manicuring ~~shop~~ *salon, or* booth~~, or beauty parlor~~;

(d) teach in a school of cosmetology or school of manicuring;

(e) practice manicuring for compensation;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for ~~any~~ *a* person who owns, manages, or controls a cosmetology ~~shop~~ *salon* to employ or use an unlicensed person as a cosmetologist or manicurist;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed ~~establishment~~ *salon* as provided in this chapter, except when a licensed operator is requested by a customer to go to a place other than a licensed ~~establishment~~ *salon* and is sent to ~~such~~ *a* customer from a licensed ~~establishment~~ *salon*;

(d) for ~~any~~ *a* person who owns, manages, or controls a manicuring ~~shop~~ *salon* to employ or use an unlicensed person as a manicurist;

(e) to operate a manicuring school without complying with 37-31-311;

(f) to violate any of the provisions of this chapter."

Section 3. Section 37-31-302, MCA, is amended to read:

"37-31-302. **License required to practice, teach, or operate ~~shop~~ *salon*, booth, or school.** (1) ~~No~~ *A* person may *not* practice or teach cosmetology or practice or teach manicuring without a license.

(2) ~~No~~ *A* place may *not* be used or maintained for the teaching of cosmetology or manicuring for compensation except under a certificate of registration.

(3) ~~No~~ *A* person may *not* operate or manage a ~~beauty shop~~ *cosmetology salon* or a manicuring ~~shop~~ *salon* or practice cosmetology or manicuring without a manager-operator license.

(4) ~~No~~ *A* person may *not* operate or conduct a school of cosmetology or a school of manicuring and teach the art of cosmetology or manicuring without a license to teach cosmetology.

(5) ~~No~~ *A* person may *not* manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, or corporation desiring to operate a ~~cosmetological establishment~~ *cosmetology salon* shall make an application to the department for a certificate of registration and license. The application ~~shall~~ *must* be accompanied by the annual registration fee.

(7) ~~No~~ *A* license may *not* be issued until the inspection fees required in 37-31-312 have been paid."

Section 4. Section 37-31-304, MCA, is amended to read:

"**37-31-304. Qualifications of applicants for license to practice.** (1) Before a person may practice cosmetology, ~~he must~~ *the person shall* obtain a license to practice cosmetology from the department. Before a person may practice manicuring, ~~he must~~ *the person shall* obtain a license to practice manicuring from the department unless ~~he~~ *the person* is licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant ~~must~~ *may not* be ~~not~~ less than 18 years of age ~~and~~, *must be* of good moral character, and must ~~have completed 2 years of high school or~~ possess *a high school diploma or* the equivalent of a high school diploma recognized by the superintendent of public instruction. *A person may apply to the board for an exception to the educational requirement of a high school diploma or the equivalent of a high school diploma. The board shall adopt by rule procedures for granting an exception.* The applicant must have completed a ~~continuous~~ course of study of at least 2,000 hours in a registered ~~beauty~~ *cosmetology* school~~, which course of study has been distributed over a period of not less than 10 months or more than 14 months,~~ and must have received a diploma from the ~~beauty~~ *cosmetology* school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file with the department a written application to take the examination and shall deposit with the department the required examination fee and pass an examination as to ~~his~~ fitness to practice cosmetology.

(3) (a) To be eligible to take the examination to practice manicuring, an applicant ~~must~~ *may not* be ~~not~~ less than 18 years of age~~,~~*;* *must* be of good moral character~~,~~*;* possess a high school diploma, ~~an~~ *the* equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical center program~~,~~*;* and *must* have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring. *A person may apply to the board for an exception to the educational requirement of a high school diploma, the equivalent of a high school diploma, or a vocational-technical center certificate of completion. The board shall adopt by rule procedures for granting an exception.*

(b) A person qualified under subsection (3)(a) ~~must~~ *shall* file with the department a written application to take the examination and deposit with the department the required examination fee."

Section 5. Section 37-31-305, MCA, is amended to read:

"37-31-305. **Qualifications of applicants for license to teach.** (1) Before a person may teach manicuring to persons seeking only to be licensed to practice manicuring or teach cosmetology, ~~he must~~ *the person shall* obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a ~~beauty operator~~ *cosmetologist* for 3 continuous years immediately prior to taking the teachers' examination."

Section 6. Section 37-31-308, MCA, is amended to read:

"37-31-308. **Examination — reexamination — exemption for handicapped persons.** (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology ~~shall~~ *must* be held at places and times specified by the board. The examinations ~~shall~~ *must* be supervised by the board. The examinations may not be confined to a specific method or system. The examinations ~~shall~~ *must* be conducted by persons who hold ~~a~~ current ~~license~~ *licenses* to practice in the profession for which the applicant is being examined.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until ~~he~~ *the applicant* has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring ~~must~~ *shall* meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology ~~must~~ *shall* wait 1 year before reapplying to take the examination. Upon reapplying, the applicant ~~must~~ *shall* provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology or manicuring by the department of social and rehabilitation services ~~shall~~ *are*, for a period of 1 year immediately following their graduation, ~~be~~ exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required training in a ~~beauty~~

cosmetology school or manicuring school, the department shall issue the person the necessary certificate or license to practice the profession in this state."

Section 7. Section 37-31-311, MCA, is amended to read:

"**37-31-311. Schools — certificate of registration — requirements — bond — curriculum.** (1) ~~No~~ *A* person, firm, partnership, or corporation may *not* operate a school for the purpose of teaching cosmetology for compensation or for the purpose of teaching manicuring for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate ~~shall~~ *must* be filed with the department on a form prescribed by the board.

(2) ~~No~~ *A* school for teaching cosmetology may *not* be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It ~~shall have~~ *has* in its employ *either* a licensed teacher who is at all times in the immediate supervision of the work of the school~~,~~ or other teachers *who* the board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It ~~shall possess~~ *possesses* apparatus and equipment the board determines ~~is~~ necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It ~~shall maintain~~ *maintains* a school term of not less than 2,000 hours and ~~shall prescribe~~ *prescribes* a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction ~~shall~~ *must* be prescribed by the board.

(d) It ~~shall keep~~ *keeps* a daily record of the attendance of each student, ~~establish~~ *establishes* grades, and ~~hold~~ *holds* examinations before issuing diplomas.

(e) ~~No~~ *An* owner or person in charge of a school of cosmetology may *not* permit a person to sleep in or use for residential purposes~~,~~ or *for* any other purpose ~~which~~ *that* would ~~tend to~~ make the room unsanitary~~,~~ a room used wholly or in part for a school of cosmetology.

(3) ~~No~~ *A* school for teaching manicuring may *not* be granted a certificate of registration unless it complies with subsections (2)(a) and (2)(d) and the following requirements:

(a) It ~~must possess~~ *possesses* apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of manicuring.

(b) It ~~must maintain~~ *maintains* a school term and a course of practical training and technical instruction as prescribed by the board.

(c) ~~No~~ *An* owner or person in charge of a school of manicuring may *not* permit a person to sleep in or use for residential purposes~~,~~ or *for* any other purpose that would ~~tend to~~ make the room unsanitary~~,~~ a room used wholly or in part for a school of manicuring.

(4) Licenses or certificates of registration for schools of cosmetology and schools of manicuring may be refused, revoked, or suspended, as provided in 37-31-331.

(5) ~~No~~ *A* teacher or student teacher may *not* be permitted to practice cosmetology or manicuring on the public in a school of cosmetology or a school of manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(6) The board may make further rules necessary for the proper conduct of schools of cosmetology and schools of manicuring.

(7) The board shall require the person, firm, partnership, or corporation operating a school of cosmetology or a school of manicuring to furnish a good and sufficient bond in the amount of $5,000 and in a form and manner prescribed by the board.

(8) ~~No~~ *A* professional ~~beauty shop~~ *cosmetology salon* or manicuring ~~shop~~ *salon* may *not* be operated in connection with a school of cosmetology or school of manicuring.

(9) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology."

Section 8. Section 37-31-312, MCA, is amended to read:

"**37-31-312. Inspection.** (1) The department shall appoint one or more inspectors, each of whom shall devote ~~his~~ time to inspecting ~~beauty parlors~~ *cosmetology salons* and performing other duties as the department, in cooperation with the board, may direct. The inspectors may enter a ~~beauty parlor~~ *cosmetology salon,* manicuring ~~shop~~ *salon,* booth, school of cosmetology, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, ~~any~~ *a* ~~cosmetological establishment~~ *cosmetology salon* or manicuring ~~shop~~ *salon* ~~must~~ *shall* pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a ~~cosmetological establishment~~ *cosmetology salon* or manicuring ~~shop~~ *salon,* upon payment of the initial inspection fee, a temporary permit authorizing the ~~cosmetological establishment~~ *cosmetology salon* or manicuring ~~shop~~ *salon* to operate for a period ~~of~~ not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The department shall cause an inspector, appointed as provided in subsection (1), to conduct an annual inspection of each ~~cosmetological establishment~~ *cosmetology salon* and manicuring ~~shop~~ *salon* in the state."

Section 9. Section 37-31-322, MCA, is amended to read:

"**37-31-322. Renewal — continuing education — delinquency fee.** (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and *by* the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and ~~shall~~ *must* be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of licenses to teach cosmetology must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed ~~30~~ *15* hours' professional teacher training at a school approved by the board.

(b) A person holding a license to teach cosmetology but not actively engaged either full-time or part-time in teaching cosmetology or manicuring during the preceding year may renew the license by paying the required fee. A person holding a license to teach cosmetology but not actively engaged in teaching cosmetology or manicuring either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology or manicuring must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person ~~holding~~ *who holds* a license to teach cosmetology and *who is* not actively engaged either full-time or part-time in teaching cosmetology or manicuring from teaching as a substitute for an active teacher.

(3) A fee prescribed by the board ~~shall~~ *must* be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline."

Section 10. Section 37-31-331, MCA, is amended to read:

"**37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing.** (1) The board may refuse to issue, *may* refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a ~~cosmetological establishment~~ *cosmetology salon*, manicuring ~~shop~~ *salon*, school of cosmetology, or school of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of health and environmental sciences for the regulation of ~~cosmetological establishments~~ *cosmetology salons*, manicuring ~~shops~~ *salons*, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) However, the board may not refuse to authorize the department to issue or renew a license or revoke or suspend a license already issued until after notice and opportunity for a hearing."

Section 11. Section 39-51-204, MCA, is amended to read:

"**39-51-204. Exclusions from definition of employment.** (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-202(2). If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(b) household and domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(ii) keeps separate books and records to account for the employment of persons in domestic service.

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection:

(i) "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a ~~cosmetological establishment~~ *cosmetology salon* as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the ~~cosmetological establishment~~ *cosmetology salon* or barbershop shall not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) employment of sole proprietors or working members of a partnership;

(o) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

(4) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter."

Approved April 22, 1993.

CHAPTER NO. 474

[HB 157]

AN ACT REVISING THE PENALTIES FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS AND FOR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE; AUTHORIZING SEIZURE AND FORFEITURE OF MOTOR VEHICLES FOR THIRD OR SUBSEQUENT VIOLATIONS OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS OR DRIVING WITH A BLOOD ALCOHOL CONCENTRATION OF 0.10 OR MORE; AND AMENDING SECTIONS 61-8-714 AND 61-8-722, MCA.

WHEREAS, Officer Mark Cady, 29 years old, is a 3-year veteran of the Billings Police Department; and

WHEREAS, Officer Cady is married and the father of two young children; and

WHEREAS, in the early morning hours of September 19, 1992, Officer Cady was seriously injured in a traffic accident while on duty; and

WHEREAS, the traffic accident occurred while an intoxicated driver was fleeing the scene of a personal injury accident; and

WHEREAS, Officer Cady's patrol car was hit at a high rate of speed by the fleeing driver; and

WHEREAS, the driver of the fleeing vehicle was intoxicated at the time of the accident and had a prior conviction for driving under the influence of alcohol or drugs; and

WHEREAS, Officer Cady and his family have suffered terribly because of the actions of an irresponsible driver involved in an alcohol-related traffic offense; and

WHEREAS, the community and the people of the State of Montana have been deprived of the loyal and continuous services of a dedicated public servant; and

WHEREAS, driving under the influence of alcohol or drugs remains a serious problem in this state and current penalties often do not deter multiple violations of the DUI laws; and

WHEREAS, in Montana during 1991, 92 victims died and 2,000 individuals were injured in alcohol- or drug-related accidents; and

WHEREAS, additional penalties for multiple offenders may deter multiple violations and prevent the kind of tragedy that Officer Cady and his family have suffered and may prevent other families from suffering in the same way.

THEREFORE, the Legislature finds it fitting to enact the following legislation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-714, MCA, is amended to read:

"**61-8-714. Penalty for driving under influence of alcohol or drugs.** (1) Except as provided in subsections (7) and (8), a person convicted of a violation of 61-8-401 shall be punished by imprisonment in the county jail for not less than 24 consecutive hours or more than 60 days and shall be punished by a fine of not less than $100 or more than $500. The imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(2) Except as provided in subsection (7), on a second conviction, ~~he~~ *the person* shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days, at least 48 hours of which must be served consecutively, or more than 6 months. Except as provided in subsection (7), 3 days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being.

(3) *(a)* Except as provided in subsection (7), on the third or subsequent conviction, ~~he~~ *the person* shall be punished by imprisonment for a term of not less than 30 days, at least 48 hours of which must be served consecutively, or more than 1 year and by a fine of not less than $500 or more than $1,000. Except as provided in subsection (7), notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the imprisonment sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under [section 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may, in the sentencing court's discretion and upon recommendation of a certified chemical dependency counselor, include alcohol or drug treatment, or both. On conviction of a second or subsequent offense under this section, in addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which must include alcohol or drug treatment, or both. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure. As long as the alcohol information course is approved as provided in this subsection and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of ~~his~~ *the defendant's* choice. The treatment provided to the defendant at a treatment program must be at a level appropriate to ~~his~~ *the defendant's* alcohol problem, as determined by the judge based upon the recommendation from the certified chemical dependency counselor.

(5) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statute in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then all records and data relating to the prior conviction are confidential criminal justice information, as defined in 44-5-103,

and public access to the information may only be obtained by district court order upon good cause shown.

(6) For the purpose of calculating subsequent convictions under this section, a conviction for a violation of 61-8-406 also constitutes a conviction for a violation of 61-8-401.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

Section 2. Section 61-8-722, MCA, is amended to read:

"**61-8-722. Penalty for driving with excessive alcohol concentration.** (1) Except as provided in subsection (7), a person convicted of a violation of 61-8-406 shall be punished by imprisonment for not more than 10 days and shall be punished by a fine of not less than $100 or more than $500.

(2) Except as provided in subsection (7), on a second conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 30 days and by a fine of not less than $300 or more than $500.

(3) *(a)* Except as provided in subsection (7), on a third or subsequent conviction of a violation of 61-8-406, he shall be punished by imprisonment for not less than 48 consecutive hours or more than 6 months and by a fine of not less than $500 or more than $1,000.

(b) (i) On the third or subsequent conviction, the court, in addition to any other penalty imposed by law, shall order the motor vehicle owned and operated by the person at the time of the offense to be seized and subjected to the procedure provided under [section 3].

(ii) A vehicle used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture unless it appears that the owner or other person in charge of the vehicle consented to or was privy to the violation. A vehicle may not be forfeited under this section for any act or omission established by the owner to have been committed or omitted by a person other than the owner while the vehicle was unlawfully in the possession of a person other than the owner in violation of the criminal laws of this state or the United States.

(iii) Forfeiture of a vehicle encumbered by a security interest is subject to the secured person's interest if the person did not know and could not have reasonably

known of the unlawful possession, use, or other act on which the forfeiture is sought.

(4) The provisions of 61-5-205(2), 61-5-208(2), and 61-11-203(2)(d), relating to revocation and suspension of driver's licenses, apply to any conviction under 61-8-406.

(5) In addition to the punishment provided in this section, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of corrections and human services, which may include alcohol or drug treatment, or both, if considered necessary by the counselor conducting the program. Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in a course or treatment program. If the defendant fails to attend the course or the treatment program, the counselor shall notify the court of the failure.

(6) For the purpose of determining the number of convictions under this section, "conviction" means a final conviction, as defined in 45-2-101, in this state or a similar statute in another state or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this state or another state, which forfeiture has not been vacated. An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction. If there has been no additional conviction for an offense under this section for a period of 5 years after a prior conviction under this section, then the prior offense must be expunged from the defendant's record.

(7) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The defendant, if financially able, shall bear the expense of the imprisonment in the facility. The court may impose restrictions on the defendant's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be, but is not required to be, a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject a defendant referred by the sentencing court.

(8) Except for the initial 24 hours on a first offense or the initial 48 hours on a second or subsequent offense, the court may order that a term of imprisonment imposed under this section be served by imprisonment under home arrest as provided in Title 46, chapter 18, part 10."

Section 3. **Forfeiture procedure.** (1) A motor vehicle forfeited under 61-8-714 or 61-8-722 must be seized by the arresting agency within 10 days after the conviction and disposed of as provided in Title 44, chapter 12, part 2. Except as provided in this section, the provisions of Title 44, chapter 12, part 2, apply to the extent applicable.

(2) Forfeiture proceedings under 44-12-201(1) must be instituted by the arresting agency within 20 days after the seizure of the motor vehicle.

(3) For purposes of 44-12-203 and 44-12-204, there is a rebuttable presumption of forfeiture. The owner of the motor vehicle may rebut the presumption by

proving a defense under 61-8-714(3)(b)(ii) or 61-8-722(3)(b)(ii) or by proving that the owner was not convicted of a third or subsequent offense under 61-8-401 or 61-8-406. It is not a defense that the convicted person owns the motor vehicle jointly with another person.

(4) (a) For purposes of 44-12-206, the proceeds of the sale of the motor vehicle must be distributed first to the holders of security interests who have presented proper proof of their claims, up to the amount of the interests or the amount received from the sale, whichever is less, and the remainder to the general fund of the arresting agency.

(b) A holder of a security interest may petition the sentencing court for transfer of title to the motor vehicle to the holder of the security interest if the secured interest is equal to or greater than the estimated value of the motor vehicle.

(5) Actions the court may take under 44-12-205(3) to protect the rights of innocent persons include return of the motor vehicle without a sale to an owner who is unable to present an adequate defense under this section but is found by the court to be without fault.

Section 4. **Codification instruction.** [Section 3] is intended to be codified as an integral part of Title 61, chapter 8, part 4, and the provisions of Title 61, chapter 8, part 4, apply to [section 3].

Approved April 22, 1993.

CHAPTER NO. 475

[HB 169]

AN ACT INCREASING THE COMPETITIVE BID LIMITS FOR MUNICIPAL PURCHASE AND CONSTRUCTION CONTRACTS; DECREASING THE LIMIT ON MUNICIPAL INSTALLMENT PURCHASE CONTRACTS; AND AMENDING SECTIONS 7-5-4302 AND 7-5-4306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-4302, MCA, is amended to read:

"**7-5-4302. Competitive, advertised bidding required for certain purchase and construction contracts.** (1) Except as provided in 7-5-4303 or 7-5-4310, all contracts for the purchase of any automobile, truck, other vehicle, road machinery, other machinery, apparatus, appliances, or equipment~~,~~*;* for any materials or supplies of any kind~~,~~ *in excess of $20,000;* or for construction, repair, or maintenance *in excess of $25,000* ~~for which must be paid a sum exceeding $10,000~~ must be let to the lowest responsible bidder after advertisement for bids.

(2) ~~Such~~ *The* advertisement ~~shall~~ *must* be made in the official newspaper of the city or town if there ~~be such~~ *is an* official newspaper, and if not, it ~~shall~~ *must* be made in a daily newspaper of general circulation published in the city or town if there ~~be such and, otherwise,~~ *is a newspaper. If there is no newspaper, the advertisement must be made* by posting in three of the most public places in the city or town. ~~Such~~ *The* advertisement, if by publication in a newspaper, ~~shall~~

must be made once each week for 2 consecutive weeks, and the second publication ~~shall~~ *must* be made not less than 5 days or more than 12 days before the consideration of bids. If ~~such~~ *the* advertisement is made by posting, 15 days must elapse, including the day of posting, between the time of the posting of ~~such~~ *the* advertisement and the day set for considering bids.

(3) The council may postpone action ~~as to~~ *on* any ~~such~~ contract until the next regular meeting after bids are received in response to ~~such~~ *the* advertisement and may reject any ~~and all~~ bids and readvertise as provided ~~herein~~ *in this section.*"

Section 2. Section 7-5-4306, MCA, is amended to read:

"**7-5-4306. Use of installment purchase contract.** (1) Subject to the requirements of subsection (2), when the amount to be paid under ~~any such~~ *an installment purchase* contract ~~shall exceed the amount set forth in 7-5-4302(1)~~ *exceeds $4,000,* the council may provide for the payment of ~~such an~~ *the* amount in installments extending over a period of not more than 5 years~~;~~, provided that at the time of entering into ~~such~~ *the* contract, there ~~shall be~~ *is* an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to meet and take care of ~~such~~ *the* portion of the contract price ~~as is~~ payable during the then-current fiscal year. ~~and the~~ *The* budget for each following year in which any portion of ~~such~~ *the* purchase price is to be paid ~~shall~~ *must* contain an appropriation for the purpose of paying ~~the same~~ *that portion.*

(2) When ~~such amount~~ *the purchase price* is extended over a term of 2 years, at least 40% ~~thereof shall~~ *of the amount must* be paid the first year and the remainder the second year. When ~~such~~ *the* amount is extended over a term of 3 years, at least one-third ~~thereof shall~~ *of the amount must* be paid each year. If ~~such~~ *the* amount is extended over a term of 4 years, at least one-fourth is to be paid each year. If ~~such~~ *the* amount is extended over a term of 5 years, at least one-fifth is to be paid each year."

Approved April 22, 1993.

CHAPTER NO. 476

[HB 220]

AN ACT REQUIRING A HEALTH CARE FACILITY TO NOTIFY AN EMERGENCY SERVICES PROVIDER OF EXPOSURE TO AN INFECTIOUS DISEASE; AND AMENDING SECTIONS 50-16-701, 50-16-702, 50-16-703, 50-16-704, 50-16-705, AND 50-16-1007, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-16-701, MCA, is amended to read:

"**50-16-701. Definitions.** As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

~~(1)~~*(2)* "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying the emergency services provider of exposure.

(4) "Emergency services provider" means a person employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

(5) "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

~~(2)~~*(6)* "Health care facility" means a health care facility as defined in 50-5-101.

~~(3)~~*(7)* "Infectious disease" means a communicable disease ~~designated by department rule as~~ transmittable through an ~~unprotected~~ exposure, *including the diseases of human immunodeficiency virus, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningococcal meningitis, and other diseases that may be designated by department rule.*

(8) "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this chapter and by rule.

~~(4)~~*(9)* "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

~~(5) "Unprotected exposure" means exposure of a person to an infectious disease in a manner defined by department rule as likely to allow transmission of the disease, including but not limited to mouth-to-mouth resuscitation and commingling of the blood or body fluids of the person and a patient.~~"

Section 2. Section 50-16-702, MCA, is amended to read:

"**50-16-702. ~~Report~~ *Notification of exposure to infectious disease — report* of ~~unprotected~~ exposure to disease.** (1) *(a)* ~~A report may be filed, as provided in subsection (2), by a person:~~

~~(a) employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, corrections officer, or ambulance service attendant; and~~

~~(b) who, in his official capacity with the public or private organization, attends or assists in transporting a patient to a health care facility and~~ *If an emergency services provider acting in an official capacity attends a patient prior to or during transport or assists in transporting a patient to a health care facility* ~~believes he has sustained an unprotected exposure.~~

~~(2) A person who qualifies in subsection (1) may submit to the health care facility, on a form prescribed by the department, a report of unprotected exposure that contains his name and other information required by the department, including a description of the unprotected exposure~~ *and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the required form to the health care facility on the emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. A designated officer shall submit the form verifying that there was an exposure.*

~~(3)~~*(b)* If the exposure described ~~in the report~~ *on the form* occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control, then submission of the ~~report~~ *form* to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

(c) Upon receipt of a request from a designated officer, the health care facility shall notify the designated officer in writing:

(i) whether or not the patient was infected with an infectious disease;

(ii) whether or not a determination has been made; and

(iii) the name of the disease and the date of transport if the patient was infected.

(d) The designated officer shall then notify the emergency services provider.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall notify the designated officer and the department within 48 hours after the determination has been made. The department shall, within 24 hours, notify the designated officer of the emergency services provider who transported the patient."

Section 3. Section 50-16-703, MCA, is amended to read:

"**50-16-703. Notification of precautions after ~~unprotected~~ exposure to infectious disease.** (1) After a patient is transported to a health care facility, a physician shall inform the health care facility *within 24 hours* if~~:~~

~~(a)~~ the physician determines that the transported patient has an infectious disease~~;~~

~~(b) a report of unprotected exposure to that patient has been filed; and~~

~~(c) the physician believes the unprotected exposure is capable of transmitting the infectious disease~~.

(2) The health care facility shall orally notify within 48 hours after the time of diagnosis and notify in writing within 72 hours after diagnosis *the designated officer of the emergency services provider who attended the patient prior to or during transport or who transported the patient with the infectious disease.* ~~the person who filed the report in 50-16-702 of~~

(3) The notification must state the disease to which ~~he~~ *the emergency services provider* ~~may have been~~ *was* exposed and the appropriate medical precautions and treatment that the exposed person needs to take."

Section 4. Section 50-16-704, MCA, is amended to read:

"**50-16-704. Confidentiality — penalty for violation — immunity from liability.** (1) The names of the person who suffered the ~~unprotected~~ exposure and the person diagnosed as having an infectious disease may not be released to anyone, *including the emergency services provider who was exposed,* except as required by department rule concerning reporting of communicable disease or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, ~~or~~ a physician, *or the designated officer of an emergency services provider's organization* may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact ~~a~~ *an exposed* person ~~filing a report~~ of ~~unprotected~~ exposure are unsuccessful."

Section 5. Section 50-16-705, MCA, is amended to read:

"**50-16-705. Rulemaking authority.** The department shall adopt rules to:

(1) define what constitutes an ~~unprotected~~ exposure to an infectious disease;

(2) specify the infectious diseases subject to this part;

(3) specify the information about an ~~unprotected~~ exposure that must be included in a report of ~~unprotected~~ exposure; and

(4) specify recommended medical precautions and treatment for each infectious disease subject to this part."

Section 6. Section 50-16-1007, MCA, is amended to read:

"**50-16-1007. Testing — counseling — informed consent — penalty.** (1) An HIV-related test may be ordered only by a health care provider and only after receiving the written informed consent of:

(a) the subject of the test;

(b) the subject's legal guardian;

(c) the subject's next of kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated;

(ii) there is no legal guardian;

(iii) there are medical indications of an HIV-related condition; and

(iv) the test is advisable in order to determine the proper course of treatment of the subject; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in a hospital; and

(ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

(2) When a health care provider orders an HIV-related test, ~~he~~ *the provider* also certifies that informed consent has been received prior to ordering an HIV-related test.

(3) Before the subject of the test executes an informed consent agreement, the health care provider ordering the test or ~~his~~ *the provider's* designee must give pretest counseling to:

(a) the subject;

(b) the subject's legal guardian;

(c) the subject's next of kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated; and

(ii) there is no guardian; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in the hospital; and

(ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

(4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous testing is available at one of the counseling-testing sites established by the department, or elsewhere.

(5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, as part of ~~his~~ *a* written informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.

(6) At the time the subject of a test or the subject's representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company must ensure that:

(a) negative results can be obtained by the subject or ~~his~~ *the subject's* representative upon request; and

(b) positive results are returned to the health care provider designated by the subject or ~~his~~ *the subject's* representative.

(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(9) Subsections (1) through (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702~~(1)~~ has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the centers for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek written informed consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If written informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection, "written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

(11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of $1,000 or imprisonment for up to 6 months, or both."

Section 7. **Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease.** (1) The health care facility and the emergency services organization shall develop internal procedures for implementing the provisions of this chapter and department rules.

(2) The health care facility shall have available at all times a person to receive the form provided for in 50-16-702 containing a report of exposure to infectious disease.

(3) The health care facility shall designate an infectious disease control officer and an alternate who will be responsible for maintaining the required records and notifying designated officers in accordance with the provisions of this chapter and the rules promulgated under this chapter.

(4) The emergency services organization shall name a designated officer and an alternate.

Section 8. **Codification instruction.** [Section 7] is intended to be codified as an integral part of Title 50, chapter 16, part 7, and the provisions of Title 50, chapter 16, part 7, apply to [section 7].

Approved April 22, 1993.

CHAPTER NO. 477

[HB 522]

AN ACT PROVIDING PROTECTION FOR STATE EMPLOYEES WHOSE POSITIONS ARE ELIMINATED AS A RESULT OF PRIVATIZATION, REORGANIZATION OF A STATE AGENCY, OR CLOSURE OF OR A REDUCTION IN FORCE AT A STATE AGENCY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 6] may be cited as the "State Employee Protection Act".

Section 2. **Definitions.** As used in [sections 1 through 6], the following definitions apply:

(1) "Agency" has the meaning provided in 2-18-101 but does not include the Montana university system.

(2) "Employee" means a person employed by the state who has achieved permanent status, as defined in 2-18-101, or employed by the senate or house

of representatives during the 53rd legislature for a period of at least 8 continuous weeks.

(3) "Privatization" means contracting with the private sector to provide a service normally or traditionally provided directly by an employee of an agency.

Section 3. **General protection — job register — seniority preference.** (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, or closure of or a reduction in force at an agency is entitled to:

(a) notice of announcements for jobs for which the employee may qualify that arise within the terminating agency or within state government. Notices must be provided by the state for a period of 1 year from the date of separation.

(b) access to any job retraining and career development programs provided by the state through the Job Training Partnership Act service delivery areas dislocated worker programs, provided that the employee begins participating in a program within 1 year after the elimination of the employee's position; and

(c) inclusion in a special job register from which all agencies shall attempt to hire employees prior to seeking applications from the general public. The employee must be listed in the job register according to the occupational categories in which the employee is qualified for employment.

(2) (a) An agency attempting to hire from the job register shall consider the employee's qualifications and length of state service. If two or more employees listed in the job register are equally qualified for a vacant position, the agency shall select the employee with the longest continuous state service.

(b) If there is not an employee listed on the job register who meets the job qualifications for the vacant position, the agency may hire a qualified external applicant or establish a training assignment, according to state policy.

Section 4. **Salary and benefits protection — employee transfer.** (1) An employee whose position is eliminated as a result of privatization, reorganization of an agency, or closure of or a reduction in force at an agency and who is subsequently transferred to a different position in a state agency is entitled to:

(a) the same hourly salary as previously received if the new position is at the same grade level as the one previously held;

(b) retain all accrued sick leave credits;

(c) retain, cash out, or use accrued vacation leave credits to extend the employee's effective layoff date; and

(d) relocation expenses as provided in state policy.

(2) Relocation expenses must be paid by the hiring agency, and the funds expended by the hiring agency must be reimbursed from the funds appropriated for this purpose.

Section 5. **Continuation of health insurance and employer contributions.** (1) During the period of unemployment as a result of privatization, reorganization of an agency, or closure of or a reduction in force at an agency, the employee is entitled to remain covered by the state's group health insurance plan and to the continuation of the employer's contribution to the employee's group health insurance for 6 months from the effective date of layoff or until the employee becomes employed, whichever occurs first. This section does not apply to employees of the senate or house of representatives.

(2) For the purposes of this section, the term "agency" includes the Montana university system.

Section 6. **Notice.** (1) Except as provided in subsection (2), an employee and the employee's collective bargaining unit, if any, must be notified as soon as possible prior to privatization, reorganization of any agency, or closure of or a reduction in force at an agency. When 25 or more employees are affected, the notice must be given at least 60 days prior to the privatization, reorganization, agency closure, or reduction in force.

(2) When privatization, reorganization, an agency closure, or a reduction in force affects fewer than 25 employees, each employee affected must be notified at least 14 days prior to the privatization, reorganization, agency closure, or reduction in force.

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [sections 1 through 6].

Section 9. **Coordination instruction.** If House Bill No. 517 is passed and approved establishing a retirement incentive window, then employees accepting the retirement incentive benefits provided in House Bill No. 517 are not eligible for the benefits provided by [this act].

Section 10. **Effective date.** [This act] is effective on passage and approval.

Section 11. **Termination.** [This act] terminates July 1, 1995.

Approved April 22, 1993.

CHAPTER NO. 478

[HB 608]

AN ACT ALLOCATING A PORTION OF THE RESOURCE INDEMNITY TAX PROCEEDS; ESTABLISHING MINIMUM FUNDING LEVELS FOR GRANT PROGRAMS; CHANGING THE DISTRIBUTION OF INTEREST EARNINGS FROM THE RESOURCE INDEMNITY TRUST FUND; COMBINING THE WATER DEVELOPMENT AND RENEWABLE RESOURCE DEVELOPMENT PROGRAMS TO CREATE THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; REINVESTING THE INTEREST EARNINGS OF THE WATER STORAGE STATE SPECIAL REVENUE ACCOUNT; AMENDING

SECTIONS 15-38-106, 15-38-202, 17-5-701, 17-5-702, 17-5-706, 85-1-102, 85-1-601, 85-1-602, 85-1-603, 85-1-604, 85-1-605, 85-1-606, 85-1-608, 85-1-609, 85-1-610, 85-1-611, 85-1-612, 85-1-613, 85-1-614, 85-1-615, 85-1-616, 85-1-617, 85-1-618, 85-1-619, 85-1-620, 85-1-621, 85-1-623, 85-1-631, 85-2-105, 90-2-1103, 90-2-1104, AND 90-2-1105, MCA; REPEALING SECTIONS 85-1-607, 90-2-101, 90-2-102, 90-2-103, 90-2-104, 90-2-107, 90-2-108, 90-2-109, 90-2-110, 90-2-111, 90-2-112, 90-2-121, 90-2-122, 90-2-123, 90-2-124, 90-2-125, 90-2-126, 90-2-127, AND 90-2-128, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

STATEMENT OF INTENT

This bill is introduced as a result of a legislative request to combine the water development and renewable resource development programs. These grant and loan programs have been administered as essentially one program for the past 4 bienniums. The renewable resource grant and loan program keeps the critical elements of both the water development and renewable resource development programs and does not expand either eligible projects or eligible applicants.

The long-range planning subcommittee of the appropriations and finance and claims committees stated its intent to establish minimum funding levels for these grant programs in House Bill No. 6 (Chapter 551, Laws of 1991) and House Bill No. 8 (Chapter 552, Laws of 1991) passed by the 1991 legislature. Over the past several bienniums grant funding has decreased. At the same time, revenues allocated to the water development, renewable resource development, and reclamation and development accounts have increased. Appropriations to natural resource agencies have made up the difference and have increased at a rate surpassing the growth in resource indemnity trust (RIT) interest income. This bill establishes minimum funding levels for the renewable resource grant and loan program, the reclamation and development grants program, and the water storage account.

In order to reflect the combining of the water development and renewable resource development programs, the allocation of interest earnings from the RIT is changed. Currently, 30% and 8%, respectively, of the RIT interest earnings are allocated to water development and the renewable resource development state special revenue accounts. This bill would eliminate these accounts. In their place, the renewable resource grant and loan program state special revenue account would be established and 38% of the RIT interest earnings would be allocated to this account.

Resource indemnity tax proceeds are allocated to the renewable resource grant and loan program and the reclamation and development grants state special revenue accounts. This will ensure funding for the operation of state natural resource agencies.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-106, MCA, is amended to read:

"15-38-106. *(Temporary)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter shall be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type. Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(3) The department shall examine the statement and compute the taxes thereon, and the amount computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess shall be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.

15-38-106. *(Effective July 1, 1993)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter ~~shall~~ *must* be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax ~~shall~~ *must* be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that*:*

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905*;*

(b) 15% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and

(c) 15% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104.

(3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

~~(3)~~*(4)* The department shall examine the statement and compute the taxes ~~thereon~~, and the amount computed by the department ~~shall~~ *must* be the taxes imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess ~~shall~~ *must* be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 2. Section 15-38-106, MCA, is amended to read:

"**15-38-106.** *(Temporary)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter shall be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax shall be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type. Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(3) The department shall examine the statement and compute the taxes thereon, and the amount computed by the department shall be the taxes imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess shall be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer.

15-38-106. *(Effective July 1, ~~1993~~ 1995)* **Payment of tax — records — collection of taxes — refunds.** (1) The tax imposed by this chapter ~~shall~~ *must* be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax ~~shall~~ *must* be paid to the department at the time the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall deposit the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that*:*

(a) 14.1% of the proceeds must be deposited in the ground water assessment account established by 85-2-905*;*

(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and

(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104.

(3) Every person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

~~(3)~~*(4)* The department shall examine the statement and compute the taxes ~~thereon~~, and the amount computed by the department ~~shall~~ *must* be the taxes imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess ~~shall~~ *must* be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 3. Section 15-38-202, MCA, is amended to read:

"**15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, ~~shall~~ *must* be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund ~~shall~~ *must* annually be added to the trust fund until it has reached the sum of $10 million.

Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts ~~shall~~ *must* be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101; ~~and~~

(ii) ~~beginning in fiscal year 1992,~~ an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161*;*

(iii) $1,025,000 to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iv) $2,200,000 to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(v) beginning in fiscal year 1994, $250,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(b) The remainder of the interest income is allocated as follows:

(i) ~~Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30%~~ *Thirty-eight percent* of the interest income of the resource indemnity trust fund must be allocated to the ~~water development~~ *renewable resource grant and loan program* state special revenue account created by 85-1-604.

(ii) ~~Beginning in fiscal year 1988, 12%~~ *Fifteen percent* of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) ~~Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2.~~

~~(iv) Beginning in fiscal year 1990, 46%~~ *Forty-one and one-half percent* of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

~~(v)~~*(iv)* ~~Beginning in fiscal year 1990, 4%~~ *Five and one-half percent* of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recom-

mendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 4. Section 15-38-202, MCA, is amended to read:

"**15-38-202.** *(Effective July 1, 1995)* **Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, ~~shall~~ *must* be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund ~~shall~~ *must* annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts ~~shall~~ *must* be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101; ~~and~~

(ii) ~~beginning in fiscal year 1992,~~ an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161~~.~~*;*

(iii) beginning in fiscal year 1996, $2 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants;

(iv) beginning in fiscal year 1996, $3 million to be deposited into the reclamation and development grants state special revenue account, created by 90-2-1104, for the purpose of making grants; and

(v) beginning in fiscal year 1996, $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(b) The remainder of the interest income is allocated as follows:

(i) ~~Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30%~~ *Thirty-six percent* of the interest income of the resource indemnity trust fund must be allocated to the ~~water development~~ *renewable resource grant and loan program* state special revenue account created by 85-1-604.

(ii) ~~Beginning in fiscal year 1988, 12%~~ *Eighteen percent* of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) ~~Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2.~~

~~(iv) Beginning in fiscal year 1990, 46%~~ *Forty percent* of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

~~(v)~~*(iv)* ~~Beginning in fiscal year 1990, 4%~~ *Six percent* of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 5. Section 17-5-701, MCA, is amended to read:

"**17-5-701. State of Montana coal severance tax bonds.** This part provides for the issuance of state of Montana coal severance tax bonds (also referred to as coal severance tax bonds in this part) to:

(1) finance ~~water resource development~~ *renewable resource* projects ~~and activities~~ in the state designed to provide, during and after extensive coal mining, a healthy economy, the alleviation of social and economic impacts created by coal development, and a clean and healthful environment for present and future generations; and

(2) finance loans to local governments for infrastructure projects under Title 90, chapter 6, part 7."

Section 6. Section 17-5-702, MCA, is amended to read:

"**17-5-702. Purpose and intent.** (1) The purpose of the coal severance tax trust fund bond provisions of this part is to establish the authority to issue and sell coal severance tax bonds that have been approved by act of the legislature for financing specific ~~water resource development~~ *renewable resource* projects ~~and activities~~ in the state authorized by the legislature and to guarantee redemption of ~~such~~ *the* bonds by revenue derived from the receipts from the coal severance tax imposed by Title 15, chapter 35, part 1, and such other money as the legislature may from time to time determine.

(2) The legislature intends that projects to be financed by coal severance tax bonds include ~~water resource development~~ *renewable resource* projects ~~and activities~~ as part of the ~~water development~~ program established in Title 85, chapter 1, part 6. The legislature further intends that the income from ~~water resource development~~ *renewable resource* projects ~~and activities~~ in excess of the amount required for debt service and operation and maintenance of those projects and activities be deposited in the ~~water development~~ *renewable resource grant and loan program* state special revenue account established in 85-1-604."

Section 7. Section 17-5-706, MCA, is amended to read:

"**17-5-706. Authority to issue coal severance tax bonds.** The board of examiners, upon approval of the legislature as hereinafter provided, shall issue and sell coal severance tax bonds to finance ~~such~~ approved ~~water resource development~~ *renewable resource* projects ~~and activities~~ when authorized to do so by any law that sets out the amount and purpose of the issue. Each project

~~or activity shall~~ *must* be separately approved as to amount by a two-thirds vote of each house of the legislature."

Section 8. Section 85-1-102, MCA, is amended to read:

"**85-1-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

(4) "Cost of works" means the cost of construction, including any rehabilitation or alteration of the project; the cost of all lands, property, rights, easements, and franchises acquired which are deemed necessary for the construction; the cost of all water rights acquired or exercised by the department in connection with those works; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction; cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project; administrative expense; and other expenses as may be necessary or incident to the financing authorized in this part and the construction of the works and the placing of the works in operation.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(7) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity not eligible for loans and grants under 85-1-605 but does not include a governmental entity such as an agency,

local government, or political subdivision of the state, the United States, or any agency thereof, or any other governmental entity.

(8) "Project" means any one of the works defined in this section or any combination of works which are physically connected or jointly managed and operated as a single unit.

(9) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(10) "Renewable resource grant and loan program state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the water development program as set forth in 85-1-604.

(11) "Renewable resource loan debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury to be used as provided in 85-1-619.

~~(10)~~*(12)* "~~Water development~~ *Renewable resource loan proceeds* account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to finance loans under the provisions of the ~~water development~~ *renewable resource grant and loan* program to agencies, local governments, and political subdivisions of the state, private persons, and any other eligible recipients and to purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

~~(11)~~*(13)* "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation of rivers and streams, and providing greater local and state control of Montana water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

~~(12) "Water development debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury to be used as provided in 85-1-619.~~

~~(13)~~*(14)* "Water development project" means a project as defined in subsection (8), except that water development projects*:*

(a) are not limited to projects owned or operated by the department*; and*

(b) for purposes of the renewable resource grant and loan program, must include water development activities.

~~(14) "Water development state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the water development program as set forth in 85-1-604.~~

(15) "Works" means all property and rights, easements, and franchises relating to property and considered necessary or convenient for the operation of the works and all water rights acquired or exercised by the department in connection with those works and includes all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and pumping units, mains, pipelines, and waterworks systems and includes all works for the conservation, development, storage, distribution, and utilization of water, including without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial, or other uses and for fire protection."

Section 9. Section 85-1-601, MCA, is amended to read:

"**85-1-601. Purpose and policies.** (1) The legislature finds and declares that in order that the people of Montana may enjoy the ~~full economic and recreational~~ benefits of the state's water *and other renewable* resources, the state must establish this long-term ~~water development~~ *renewable resource grant and loan* program providing financial and administrative assistance to private *for-profit, private nonprofit,* local *government,* and state *government* entities for ~~water~~ *renewable* resource ~~development~~ *grant and loan* projects ~~and activities~~.

(2) The purpose of the ~~water development~~ *renewable resource grant and loan* program is to further the state's policies, set forth in 85-1-101, regarding the conservation, development, and beneficial use of water resources *and to invest in renewable natural resource projects that will preserve for the citizens of Montana the economic and other benefits of the state's natural heritage.*

(3) The legislature recognizes ~~that water is one of the most valuable and important~~ *the value of Montana's* renewable resources ~~in Montana~~; therefore, it is appropriate that a portion of the taxes *and other revenue from* ~~on the removal of~~ nonrenewable resources be ~~dedicated to the conservation, development, and beneficial use of water resources~~ *invested in the replacement of nonrenewable resources with the development of renewable resource projects that will continue to provide tax and other revenue and will preserve for the citizens the economic and other benefits of the state's natural heritage.*

(4) The *conservation,* development, *management, and preservation* of water *and other renewable* resources ~~is of a~~ *are* high ~~priority~~ *priorities* because a large portion of Montana's present and future economy is based either directly or indirectly on the wise use of ~~water~~ *these resources.*

(5) Developments supported by this part may not significantly diminish the quality of existing public resources, such as land, air, fish, wildlife, and recreation opportunities.

~~(5)~~*(6)* This ~~water development~~ *renewable resource grant and loan* program ~~is an integral~~ *supports, in* part, ~~of~~ the implementation and development of the comprehensive, coordinated, multiple-use water resources plan known as the "state water plan". *In making funding recommendations for grants and loans, the department shall give preference to projects that will implement state water plan priorities if, in all other respects, the proposed projects are equal in public benefit and technical feasibility.*"

Section 10. Section 85-1-602, MCA, is amended to read:

"85-1-602. Objectives. *(1)* The department shall administer a ~~water development~~ *renewable resource grant and loan* program to ~~accomplish such objectives as rehabilitation of state-owned water projects and works; promotion of private, local government, and state water development;~~ *enhance Montana's renewable resources through projects that measurably conserve, develop, manage, or preserve resources. Either grants or loans may be provided to fund the following:*

(a) feasibility, design, research, and resource assessment studies;

(b) preparation of construction, rehabilitation, or production plans; and

(c) construction, rehabilitation, production, education, or other implementation efforts.

(2) Projects that may enhance renewable resources in Montana include but are not limited to:

(a) development of ~~water-based~~ *natural resource-based* recreation ~~and the protection of water resources for the benefit of agriculture, flood control, and other uses~~;

(b) development of offstream and tributary storage;

(c) ~~encouragement of projects or programs that improve~~ *improvement of* water use efficiency, including development of new, efficient water systems, rehabilitation of older, less efficient water systems, and acquisition and installation of measuring devices required under 85-2-113; and development of state-tribal, state-federal, and state-tribal-federal water projects*; and*

(d) advancement of farming practices that reduce agricultural chemical use. ~~The storage of water for existing and future beneficial uses shall be given the highest priority unless a water development project or activity designed to accomplish another objective is demonstrated to be more beneficial to a greater number of people.~~

(3) The ~~water development~~ *renewable resource grant and loan* program is the key implementation portion of the state water plan and ~~shall~~ *must* be administered *to encourage grant and loan applications for projects designed* to accomplish the objectives of the plan."

Section 11. Section 85-1-603, MCA, is amended to read:

"85-1-603. ~~Water development~~ *Renewable resource loan* debt service fund created — coal severance tax allocated — ~~water development~~ *renewable resource* loan loss reserve fund created. (1) (a) There is created a ~~water development~~ *renewable resource loan* debt service fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the ~~water development~~ *renewable resource loan* debt service fund, as received:

(i) ~~1 1/4%~~ *2 1/2%* of all money from time to time received from the coal severance tax collected under Title 15, chapter 35, and remaining after allocation of ~~such~~ *the* tax under 15-35-108(1) and (2);

(ii) any principal and accrued interest under 85-1-613~~(3)(a)~~*(4)(a)* received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;

(iii) all interest income earned on proceeds of ~~water development~~ *renewable resource grant and loan program* bonds;

(iv) revenue or money otherwise required to be paid into the ~~water development~~ *renewable resource grant and loan program* state special revenue account pursuant to 85-1-604, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and

(v) money received from the ~~water development~~ *renewable resource* loan loss reserve fund as the result of a loan loss.

(2) (a) There is ~~created~~ a ~~water development~~ *renewable resource* loan loss reserve fund within the debt service fund type established in 17-2-102.

(b) The state pledges and allocates and directs to be credited to the ~~water development~~ *renewable resource* loan loss reserve fund all accrued interest under 85-1-613~~(3)(b)~~*(4)(b)* received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.

(c) If the department determines that a loan loss has occurred on a loan made pursuant to this part, funds from the ~~water development~~ *renewable resource* loan loss reserve fund must be transferred to the ~~water development~~ *renewable resource loan* debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss."

Section 12. Section 85-1-604, MCA, is amended to read:

"**85-1-604. ~~Water development~~ *Renewable resource grant and loan program* state special revenue account created — revenues allocated — limitations on appropriations from account.** (1) There is created a ~~water development~~ *renewable resource grant and loan program* state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the ~~water development~~ *renewable resource loan* debt service fund pursuant to 85-1-603, there ~~shall~~ *must* be paid into the ~~water development~~ *renewable resource grant and loan program* state special revenue account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) ~~30%~~ *38%* of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the ~~water development~~ *renewable resource loan* debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; ~~and~~

(d) any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests*; and*

(e) 20% of the resource indemnity tax proceeds.

(3) Appropriations may be made from the ~~water development~~ *renewable resource grant and loan program* state special revenue account for the following purposes and subject to the following conditions:

(a) *The amount of resource indemnity trust fund interest earnings allocated under 15-38-202(2)(b) must be used for renewable resource grants.*

(b) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection ~~(3)(a)~~ *(b)* is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection ~~(3)(b)~~ *(3)(c)*.

~~(b)~~*(c)* An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection ~~(3)(a)~~ *(3)(b)* and only that amount may be appropriated from the account for~~:~~

~~(i) the rehabilitation of state-owned projects and works, including the rehabilitation of spillways of state-owned dams;~~

~~(ii) the formulation of downstream emergency warning and evacuation plans for state-owned dams;~~

~~(iii) the development of the hydropower potential of state-owned dams;~~

~~(iv) assistance in the implementation of the water reservations established under 85-2-316 of conservation districts;~~

~~(v) the promotion of the development of offstream and tributary storage;~~

~~(vi) the promotion of joint state-tribal, state-federal, and state-tribal-federal water development;~~

~~(vii) projects or programs that improve water use efficiency, including development of new, efficient water systems, rehabilitation of older, less efficient water systems, and acquisition and installation of measuring devices required under 85-2-113;~~

~~(viii) administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, office space, and other necessities incurred in the administration of the water development program except the administration of loans and grants; and~~

~~(ix) any other~~ expenditures that meet the policies and objectives of the ~~state water development~~ *renewable resource grant and loan* program. *If the amount* *of money available for appropriation under this subsection (c) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(d).*

~~(e)~~*(d)* An amount less than or equal to that paid into the account from the sources provided for in ~~(c) and (d) of subsection (2)~~ *subsections (2)(c) and (2)(d) and any excess from subsection (3)(c)* and only that amount may be appropriated from the account for loans and grants for ~~water development~~ *renewable resource* projects ~~and activities~~; for purchase of liens and operation of property as provided in 85-1-615; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants.

~~(4) An amount equal to 25% of the money available for grants under subsection (3)(c) must be transferred to the water storage state special revenue account created in 85-1-631.~~"

Section 13. Section 85-1-605, MCA, is amended to read:

"**85-1-605. Grants, loans, and bonds for state and local government assistance.** (1) The department may recommend to the legislature that grants and loans be made from ~~coal severance tax proceeds~~ *revenue* deposited in the ~~water development~~ *renewable resource grant and loan program* state special revenue account, that loans be made from ~~water development bond proceeds~~ *renewable resource bond proceeds* deposited in the ~~water development~~ *renewable resource loan proceeds* account *established in 85-1-617(5)*, and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government or to a city, county, or other political subdivision or local government body of the state. The legislature may approve by appropriation or other appropriate means those grants and loans it finds consistent with the policies and purposes of the program.

(2) *Nothing in this part creates or expands a state or local government's authority to incur debt, and the legislature may authorize loans only to state and local government entities otherwise structured to incur debt.*

(3) Loans may not be authorized except to a state or local government entity that agrees to secure the authorized loan with its bond.

(4) In addition to implementing those projects approved by the legislature, the department may request up to 10% of the *grant* funds available ~~for grants~~ *and up to $1 million for loans* from the ~~water development~~ *renewable resource grant and loan program state* special revenue account *and the renewable resource loan proceeds account* in any biennium to be used for emergencies. These emergency *grant projects or loan* projects, *or both,* ~~must~~ *may not be made because of the gross negligence of the state or local government applicant, must* be approved by the department, and *must* be defined as those projects *otherwise eligible for either grant funding or loan funding, or both,* ~~which~~ *that,* if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating ~~such~~ *the* funds, the department shall inform the legislative finance committee of the legislature.

~~(3)~~*(5)* The grants and loans provided for by this section may be made for *projects that enhance renewable resources in the state through conservation, development, management, or preservation; for assessing feasibility or planning; for implementing renewable resource projects* ~~the purchase, lease, development, or construction of water development projects and activities for the conservation, management, use, development, or protection of the water and related agricultural, land, fish, wildlife, and water recreation resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for and the rehabilitation, expansion, and modification of water development projects; for other water development projects and activities that will enhance the water resources of the state~~; and for similar purposes approved by the legislature."

Section 14. Section 85-1-606, MCA, is amended to read:

"**85-1-606. Grants and loans to private persons.** (1) To encourage the construction and development of ~~water~~ *water-related* ~~development~~ projects ~~and activities~~, the department may make grants and loans to private persons from funds appropriated from the ~~water development~~ *renewable resource grant and loan program* state special revenue account and may make loans to private persons from the ~~water development~~ *renewable resource loan proceeds* account.

(2) The department shall publicize the statutes and rules governing grants and loans to private persons for ~~water~~ *water-related* ~~development~~ projects ~~and activities~~, set and publicize application deadlines, and accept applications for grants and loans.

(3) The department shall review, evaluate, and select *the* ~~water~~ *water-related* ~~development~~ projects ~~and activities~~ for which grants or loans may be awarded."

Section 15. Section 85-1-608, MCA, is amended to read:

"**85-1-608. Applications for grants and loans to private persons.** (1) A private person may apply for a grant or loan to finance a ~~water~~ *water-related* ~~development~~ project ~~or activity~~ to be constructed, developed, and operated in Montana.

(2) An application for a loan or grant must be in the form prescribed by ~~the board~~ *rule* and contain or be accompanied by any information necessary to adequately describe the proposed project ~~or activity~~ and necessary for evaluation of the proposed project ~~or activity~~ under the criteria set out in 85-1-609 and 85-1-610."

Section 16. Section 85-1-609, MCA, is amended to read:

"**85-1-609. Eligibility for a loan or grant to a private person.** The department may not award a grant or loan to a private person unless the department finds, based on the application and the department's investigation and evaluation of the proposal, that:

(1) the proposed ~~water~~ *water-related* ~~development~~ project ~~or activity~~:

(a) will promote, enhance, or advance the purpose, policies, and objectives of the ~~water development~~ *renewable resource grant and loan* program;

(b) will be constructed, developed, and operated within the state of Montana;

(c) will be economically feasible. (A project ~~or activity~~ is economically feasible if the project benefits exceed the project costs. The department shall consider only ~~tangible~~ *quantifiable* benefits and costs in calculating economic feasibility.)

(d) will be an efficient use of natural resources, including water, energy, land, and air. (An efficient use is one that minimizes waste.)

(e) will provide multipurpose facilities to the extent practicable;

(f) will comply with statutory and regulatory standards protecting the quality of resources such as air, water, land, fish, wildlife, and recreational opportunities;

(g) will provide associated public benefits in addition to any private benefits the project ~~or activity~~ may provide; and

(h) is needed to accomplish the purpose for which the ~~water development~~ project ~~or activity~~ is proposed;

(2) the applicant has adequate financial resources to construct, operate, and maintain the ~~water development~~ project ~~or activity~~. The department shall consider financial resources from any source for which the applicant has qualified, including a ~~water development~~ *renewable resource* grant or loan.

(3) the applicant holds or can acquire all necessary lands, other than public lands, and interests ~~therein~~ *in the lands* and water rights necessary for the construction, operation, and maintenance of the proposed ~~water development~~ project ~~or activity~~;

(4) if the application is for a loan, the applicant is ~~credit-worthy~~ *creditworthy* and able and willing to enter into a contract with the department for loan repayment and construction or development of the proposed ~~water development~~ project ~~or activity~~; and

(5) if the application is for a grant, the applicant is able and willing to enter into a contract with the department for construction or development of the proposed ~~water development~~ project ~~or activity~~."

Section 17. Section 85-1-610, MCA, is amended to read:

"**85-1-610. Evaluation of grants and loans to private persons.** The department shall consider the following criteria and preferences in evaluating applications and selecting the recipients of grants and loans for ~~water~~ *water-related* ~~development~~ projects ~~and activities~~ that are eligible for funding under 85-1-609:

(1) The extent and desirability of the public benefits that will be provided must be considered.

(2) A ~~water~~ *water-related* ~~development~~ project ~~or activity~~ that will be used as part of a family farm ~~shall~~ *must* be given preference. A family farm is one

devoted primarily to agriculture under the ownership and operation of a resident Montana family.

(3) A ~~water~~ *water-related* ~~development~~ project ~~or activity~~ that will utilize or develop water reserved under 85-2-316 ~~shall~~ *must* be given preference. ~~An activity includes all necessary work associated with a project, beginning with application preparation through the implementation of a water reservation by a qualified state applicant.~~

(4) The department, to the extent practicable, shall attempt to achieve geographic balance in the promotion of ~~water development~~ *renewable resource grant and loan* projects ~~and activities~~ through the awarding of loans and grants to private persons.

(5) The extent to which the ~~water development~~ project ~~or activity~~ will ~~fully~~ *effectively* utilize water resources and promote the conservation and efficient use of the water resource ~~shall~~ *must* be evaluated and considered.

(6) Projects ~~or activities~~ that could not be accomplished without the assistance of a loan or grant ~~shall~~ *must* be given preference.

(7) The department shall give due consideration to any other factor that, in the department's judgment, is important to the evaluation of the ~~water development~~ project ~~or activity~~ in light of the purposes, policies, and objectives of the ~~water development~~ *renewable resource grant and loan* program."

Section 18. Section 85-1-611, MCA, is amended to read:

"**85-1-611. Department to solicit views.** The department shall solicit and consider in its evaluation of proposed projects ~~and activities~~ the views of interested and affected departments, boards, agencies, commissions, and other subdivisions of the state, including local political subdivisions, of the federal government, and of other interested and affected persons."

Section 19. Section 85-1-612, MCA, is amended to read:

"**85-1-612. Rulemaking authority.** The ~~board~~ *department* shall adopt rules:

(1) prescribing *a reasonable application fee and* the form and content of applications for grants and loans;

(2) governing the application of the criteria for awarding loans and grants to private persons;

(3) providing for the servicing of loans including arrangements for obtaining security interests and the establishment of reasonable fees or charges to be made; ~~and~~

(4) describing the terms and conditions for making grants and loans, the security instruments, and the agreements necessary*;*

(5) describing the ranking criteria used to evaluate and prioritize grants to governmental entities; and

(6) specifying any other procedures necessary to accomplish the objectives of the renewable resource grant and loan program."

Section 20. Section 85-1-613, MCA, is amended to read:

"**85-1-613. Limits on loans.** (1) ~~No~~ *A* loan *to a private person* for a ~~water development~~ *renewable resource grant and loan program* project ~~or activity~~ may *not* be made from the ~~water development~~ *renewable resource grant and loan program* state special revenue account or ~~water development~~ *the renewable resource loan proceeds* account ~~that~~ *if the loan* exceeds the ~~least~~ *lesser* of $200,000~~, 10% of the estimated total funds potentially available for loans in the water development state special revenue account and water development account in the biennium in which the loan will be made,~~ or 80% of the fair market value of the security given ~~therefor~~ *for the project.* In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors it considers important.

(2) A loan to a state or local government for a renewable resource grant and loan program project may not be made by the department from the renewable resource grant and loan program state special revenue account or renewable resource loan proceeds account if the loan exceeds the lesser of $200,000 or the project sponsor's remaining debt capacity.

~~(2)~~*(3)* The period for repayment of loans may not exceed 30 years.

~~(3)~~*(4)* The ~~board shall from time to time establish the~~ interest rate at which loans may be made under this part ~~that is~~ *must be* sufficient to:

(a) cover the bond debt service for a loan; and

(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs."

Section 21. Section 85-1-614, MCA, is amended to read:

"**85-1-614. Limits on grants from ~~water development~~ *renewable resource grant and loan program* state special revenue account.** *(1)* The maximum grant awarded to a private person may not exceed *the lesser of:*

(a) 5% of the estimated total funds potentially available in the ~~water development~~ *renewable resource grant and loan* state special revenue account for *public and private* grants in the biennium in which the grant will be made*;* or

(b) 25% of the total project cost~~, whichever is less~~.

(2) This part does not limit the amount of grant funds that may be appropriated by the legislature to fund a state or local government project."

Section 22. Section 85-1-615, MCA, is amended to read:

"**85-1-615. Security interests — purchase, operation, and resale of encumbered property.** (1) The state has a lien upon a project constructed with money from the ~~water development~~ *renewable resource grant and loan* state special revenue account or ~~water development~~ *the renewable resource loan* *proceeds* account for the amount of the loan and interest due the state. This lien may attach to any project facilities, equipment, easements, real property, and property of any kind or nature owned by the debtor, including all water rights. The department shall file with the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien ~~shall be~~ *is* valid until paid in full or otherwise discharged. The lien ~~shall~~ *must* be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under 85-1-604~~(3)(e)~~*(3)(d)* or 85-1-617, the state may:

(a) purchase a lien that is prior to the state's lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or

(c) purchase a prior lien as provided in (2)(a) and operate property as provided in (2)(b).

(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower."

Section 23. Section 85-1-616, MCA, is amended to read:

"**85-1-616. Administration of loans and grants.** The department shall:

(1) administer the loan and grant program established by this part;

(2) service loans made or contract and pay for the servicing of loans, including arrangements for obtaining security interests; and

(3) collect reasonable fees or charges for the servicing of loans, including arrangements for obtaining security interests. The fees and charges must be deposited in the ~~water development~~ *renewable resource grant and loan program* state special revenue account ~~pursuant to~~ *established in* 85-1-604."

Section 24. Section 85-1-617, MCA, is amended to read:

"**85-1-617. Issuing *renewable resource* bonds — *renewable resource loan proceeds account.*** (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell ~~water development~~

renewable resource bonds of the state in the amount and manner it considers necessary and proper to finance the ~~water development~~ *renewable resource grant and* loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds ~~so~~ issued and interest and redemption premiums payable ~~thereon~~ *on the bonds* according to their terms.

(2) Each series of ~~water development~~ *renewable resource* bonds may be issued by the board of examiners, upon request of the ~~board of natural resources and conservation~~ *department*, at public or private sale, in ~~such~~ denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with ~~such~~ provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at ~~such~~ *a* rate or rates, maturing at ~~such~~ *a* rate or rates, maturing at ~~such~~ *a* time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at ~~such~~ earlier times and prices and upon ~~such~~ notice, with ~~such~~ provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of ~~such~~ *a* banking institution or institutions within or outside the state~~, as~~ *that* the board of examiners shall determine subject to the limitations contained in this section and 17-5-731.

(3) In the issuance of each series of ~~water development~~ *renewable resource* bonds, the interest rates and the maturities and ~~any~~ mandatory redemption provisions ~~thereof shall~~ *contained in the bonds must* be established in ~~such~~ *a* manner that the funds then specifically pledged and appropriated by law to the ~~water development~~ *renewable resource loan* debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of ~~such~~ bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. ~~Such~~ *The* bonds, notes, and ~~any~~ interest coupons appurtenant ~~thereto~~ *to the bonds or notes* must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all ~~such~~ bonds and notes issued and sold.

(5) There is created a ~~water development~~ *renewable resource loan proceeds* account within the state special revenue fund established in 17-2-102.

(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the ~~water development~~ *renewable resource loan proceeds* account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the ~~water development~~ *renewable resource loan* debt service fund and the ~~water development~~ *renewable resource* loan loss reserve fund pursuant to 85-1-603. All

proceeds of refunding bonds must be deposited in the ~~water development~~ *renewable resource loan* debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board *of examiners*, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Section 25. Section 85-1-618, MCA, is amended to read:

"**85-1-618. Restrictions on use of bond proceeds.** ~~Water development~~ *Renewable resource* bond proceeds may be used only for the purpose of making loans as provided in the ~~water development~~ *renewable resource grant and loan* program or for purchasing liens and operating property as provided in 85-1-615."

Section 26. Section 85-1-619, MCA, is amended to read:

"**85-1-619. Debt service fund — pledge and administration of sufficient balance.** (1) The legislature may levy, impose, assess, and pledge and appropriate to the ~~water development~~ *renewable resource loan* debt service fund any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the ~~water development~~ *renewable resource loan* debt service fund, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that fund and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all ~~such~~ bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the ~~water development~~ *renewable resource loan* debt service fund must be used to pay interest, principal, and redemption premiums when due and payable with respect to ~~water development~~ *renewable resource* bonds, and for bonds issued prior to 1985, to accumulate a reserve for the further security of ~~such~~ *the* payments.

(3) After the reserve provided for in subsection (2) for bonds issued prior to 1985 has been accumulated in the ~~water development~~ *renewable resource loan* debt service fund, money at any time received in the ~~water development~~ *renewable resource loan* debt service fund in excess of that amount must be transferred by the treasurer to the ~~water development~~ *renewable resource grant and loan program* state special revenue account."

Section 27. Section 85-1-620, MCA, is amended to read:

"**85-1-620. ~~Water development~~ *Renewable resource* refunding bonds.** (1) The board of examiners may issue refunding bonds at ~~such~~ times and in ~~such~~ amounts, if any, as may be necessary to pay principal or interest due that cannot be paid from funds then on hand in the ~~water development~~ *renewable resource loan* debt service fund. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of extending the maturities ~~thereof~~ *of the outstanding bonds* ~~so far as~~

determined by the board of examiners to be necessary to assure that the funds then pledged to the ~~water development~~ *renewable resource loan* debt service fund will be sufficient for payment of principal and interest due in subsequent years. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of reducing the interest cost or the total amount of principal and interest payable ~~thereon~~ *on the outstanding bonds.*

(2) ~~No refunding~~ *Refunding* bonds may *not* be issued and sold more than 3 months before all *of the* bonds refunded ~~thereby~~ mature or are called for redemption unless the proceeds ~~thereof~~ *of the refunded bonds*, with any other funds in the ~~water development~~ *renewable resource loan* debt service fund that are needed and available for the purpose or securities purchased from ~~such~~ proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow, for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds, so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(3) ~~No new~~ *New* debt may *not* be created by the issuance of refunding bonds in accordance with this section, but ~~such~~ *the* refunding bonds ~~shall~~ *must* evidence the debt previously created and ~~shall~~ *must* be secured by the pledge of the full faith and credit and taxing powers of the state and ~~by the further provisions of this part~~ *secured* in the same manner as the bonds refunded ~~thereby~~ *by other provisions of this part.*"

Section 28. Section 85-1-621, MCA, is amended to read:

"**85-1-621. Report to the legislature.** The department shall prepare a biennial report to the legislature describing the status of the ~~water development~~ *renewable resource grant and loan* program. The report must describe ongoing projects ~~and activities~~ and ~~those which~~ *projects that* have been completed during the biennium. The report must identify and rank in order of priority the projects for which the department *has received applications.* ~~desires to seek congressional authorization and funding and the efforts the department will undertake in attempting to secure such authorization and funding.~~ The report must also describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations. A copy of the report ~~shall~~ *must* be submitted to the president of the senate and the speaker of the house, to the members of the water policy committee established in 85-2-105, and, as provided in 5-11-210, to the legislature."

Section 29. Section 85-1-623, MCA, is amended to read:

"**85-1-623. Authorization of ~~water development~~ *renewable resource* bonds.** The legislature, through the enactment of this section by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed $10 million and the issuance and sale of ~~water development~~ *renewable resource* bonds in this amount for the purpose of providing funds appropriated to the ~~water development~~ *renewable resource loan proceeds* account for loans as provided in the ~~water development~~ *renewable resource grant* *and loan* program or for the purchase of liens and operation of property as provided in 85-1-615."

Section 30. Section 85-1-631, MCA, is amended to read:

"**85-1-631. Water storage state special revenue account created — revenues allocated — appropriations from account.** (1) There is a water storage state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the water storage state special revenue account~~:~~

~~(a)~~ money *allocated* from the *resource indemnity trust fund interest earnings pursuant to 15-38-202* ~~water development state special revenue account as provided in 85-1-604; and~~

~~(b) money from the renewable resource development account as provided in 90-2-111~~.

(3) Money that was not encumbered or expended from the water storage state special revenue account during the previous biennium must remain in the account.

(4) Deposits to the water storage state special revenue account are to be placed in short-term investments and accrue interest, which must be deposited in the water storage state special revenue account.

~~(4)~~*(5)* The purpose of the water storage state special revenue account is to provide money for loans and grants exclusively for water storage projects, including the purchase or lease of property; planning, feasibility, and design studies; and other costs related to construction, rehabilitation, expansion, and modification of water storage projects.

~~(5)~~*(6)* The department shall administer this section as an integral part of the ~~water development~~ *renewable resource grant and loan* program, using, to the extent possible, the same procedures for soliciting, determining eligibility, and rating water storage project proposals and for administering grants and loans, subject to the same limitations, as applied to other ~~water development~~ *renewable resource* grants and loans.

~~(6)~~*(7)* The following preferences must be considered in ranking proposals for water storage grants and loans:

(a) first preference is for the rehabilitation of water storage projects that resolve threats to life and property;

(b) second preference is for the improvement or expansion of existing water storage projects; and

(c) third preference is for the development of new water storage projects."

Section 31. Section 85-2-105, MCA, is amended to read:

"**85-2-105. Water policy committee.** (1) There is a permanent water policy committee of the legislature. The committee consists of eight members. The senate committee on committees and the speaker of the house of representatives shall each appoint four members on a bipartisan basis. The committee shall elect its chairman and vice-chairman. The committee shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the committee shall:

(a) advise the legislature on the adequacy of the state's water policy and of important state, regional, national, and international developments which affect Montana's water resources;

(b) oversee the policies and activities of the department of natural resources and conservation, other state executive agencies, and other state institutions, as they affect the water resources of the state; and

(c) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the committee shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's ~~water development~~ *renewable resource grant and loan* program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water resources data management system maintained by the department under 85-2-112; and

(e) report to the legislature as provided in 5-11-210.

(4) The environmental quality council shall provide staff assistance to the committee. The committee may contract with experts and consultants, in addition to receiving assistance from the environmental quality council, in carrying out its duties under this section."

Section 32. Section 90-2-1103, MCA, is amended to read:

"**90-2-1103. Definitions.** As used in this part, the following definitions apply:

~~(1) "Board" means the board of natural resources and conservation provided for in 2-15-3302.~~

~~(2)~~*(1)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(3)~~*(2)* "Financially feasible" means that adequate funds are available to complete the project as approved.

~~(4)~~*(3)* "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

~~(5)~~*(4)* "Mineral development" means exploration, extraction, processing, or other activity related to the production of a mineral.

~~(6)~~*(5)* "Mitigation" means the act of rectifying an impact by repairing, rehabilitating, or restoring the affected environment; reducing or eliminating an impact over time by operations that preserve or maintain the environment; or compensating for an impact by replacing or providing substitute resources or habitats.

~~(7)~~*(6)* "Project" means a planned and coordinated action or series of actions addressing an objective consistent with the policy and purpose of the reclamation and development grants program. A project may consist of problem analysis, feasibility or design studies, environmental monitoring, remedial action plans or implementation, technology demonstration, research, construction or acquisition of capital facilities, or other related actions.

~~(8)~~*(7)* "Public benefits" means those benefits that accrue to citizens as a group and enhance the common well-being of the people of Montana.

~~(9)~~*(8)* "Public resources" means the natural resources of the state, including air, water, soil, minerals, vegetation, and fish and wildlife, and the economic, social, and cultural conditions of Montana citizens.

~~(10)~~*(9)* "Reclamation and development grants account" means the reclamation and development grants special revenue account established in 90-2-1104.

~~(11)~~*(10)* "Technically feasible" means that a project or activity can be designed, constructed, operated, or carried out to accomplish its objectives, utilizing accepted engineering and other technical principles and concepts."

Section 33. Section 90-2-1104, MCA, is amended to read:

"**90-2-1104. Reclamation and development grants account.** (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from*:*

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202*; and*

(b) the resource indemnity trust tax under the provisions of 15-38-106.

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded prior to funding of projects."

Section 34. Section 90-2-1105, MCA, is amended to read:

"**90-2-1105. Adoption of rules.** The ~~board~~ *department* may adopt rules to:

(1) prescribe the form and content of applications for grants;

(2) describe the terms and conditions of making grants;

(3) prescribe a monitoring program to evaluate the effectiveness of funded projects; and

(4) develop any other procedures necessary to accomplish the objectives of the reclamation and development grants program."

Section 35. **Repealer.** Sections 85-1-607, 90-2-101, 90-2-102, 90-2-103, 90-2-104, 90-2-107, 90-2-108, 90-2-109, 90-2-110, 90-2-111, 90-2-112, 90-2-121, 90-2-122, 90-2-123, 90-2-124, 90-2-125, 90-2-126, 90-2-127, and 90-2-128, MCA, are repealed.

Section 36. **Effective dates.** (1) [Sections 1, 3, and 5 through 36] are effective July 1, 1993.

(2) [Sections 2 and 4] are effective July 1, 1995.

Section 37. **Termination.** [Section 1] terminates June 30, 1995.

Approved April 22, 1993.

CHAPTER NO. 479

[HB 668]

AN ACT REVISING THE APPLICATION PROCEDURE FOR A CULTURAL AND AESTHETIC GRANT FOR A COUNTY OR MUNICIPAL FACILITY; SPECIFYING THE TYPES OF SUPPORT FOR THE FACILITY; AND AMENDING SECTION 22-2-308, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-2-308, MCA, is amended to read:

"**22-2-308. Application procedure — grant criteria.** (1) A grant for a facility owned *and operated* by a county or municipality must require financial ~~and in-kind~~ support for the facility from the county or municipality. *A grant for a facility owned by a county or municipality but operated by a nonprofit organization is expected to have financial support from the county or municipality, but must have, at a minimum, in-kind support for the facility from the county or municipality.* The grant application form, which must be prescribed by the Montana arts council, must request specific information about the level of local support for the project *and the facility.*

(2) An applicant for a historic preservation project ~~must~~ *shall* cooperate with the state historic preservation office. A letter from the state historic preservation office, stating any agreements reached with the applicant, must be received by the Montana arts council before the grant funds may be released."

Approved April 22, 1993.

CHAPTER NO. 480

[SB 169]

AN ACT DIRECTING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO TRANSFER THE BUILDINGS AND LAND OF THE OLD MONTANA STATE PRISON COMPLEX TO THE POWELL COUNTY MUSEUM AND ARTS FOUNDATION FOR CONTINUED OPERATION AS A MUSEUM.

WHEREAS, the State of Montana still owns the Montana Territorial Prison, more commonly known as the old Montana State Prison, in the city of Deer Lodge in Powell County, Montana; and

WHEREAS, since at least 1980, the Department of Corrections and Human Services has leased the old Montana State Prison to the city of Deer Lodge, which has, since 1980, assigned that lease to the Powell County Museum and Arts Foundation; and

WHEREAS, the Powell County Museum and Arts Foundation has maintained the old Montana State Prison as a museum and regional tourist attraction and has expended substantial sums of money for the operation and maintenance of the prison complex, all of which have benefited the prison structure and the economy of the Powell County area and have been made for the education and enjoyment of the public; and

WHEREAS, continued operation of the old Montana State Prison as a museum by the Powell County Museum and Arts Foundation will fulfill a substantial governmental purpose by contributing to the local economies of the city of Deer Lodge and of Powell County and by providing for the care and upkeep of the prison complex without public expense; and

WHEREAS, the city of Deer Lodge, Powell County, the Powell County Museum and Arts Foundation, and the Department of Corrections and Human Services desire to make the land available to the Foundation for museum purposes; and

WHEREAS, transfer of the prison complex to the Powell County Museum and Arts Foundation will recognize the consideration paid over the years by the Foundation in the form of the expenditure of funds for the maintenance and upkeep of the prison complex.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Disposition of old Montana state prison complex to Powell County museum and arts foundation.** (1) The department of corrections and human services is directed to transfer the interest of the state of Montana in the Montana territorial prison, commonly known as the old Montana state prison, which property is further described in subsection (2), by 99-year lease to the Powell County museum and arts foundation or its successor for operation as a museum. The lease must guarantee the rights of the Montana law enforcement museum that were established in the December 14, 1989, lease between the Powell County museum and arts foundation and the Montana law enforcement museum.

(2) The property is described as all the buildings comprising the Montana state prison complex, which constitutes blocks 52, 53, 61 (lots 5 through 10), 62, 63, 66, 67, and 68 (lots 1 through 10) of the original townsite of the city of Deer Lodge, all situated in the northwest quarter of section 4, township 6 north of the official plat thereof on file at the Powell County courthouse.

(3) The department of corrections and human services shall establish appropriate conditions to protect the interests of the state on the transfer of the property, including a provision for reversion should the property cease to be used for museum purposes. The commitment to expend sums of money, the past expenditure of money in the development of the property for use for museum purposes, and the dedication of the property as so developed for public use for the benefit of all Montanans may be considered as a part or all of the consideration necessary to constitute full market value if it is determined that the state cannot transfer the property without obtaining full market value for it.

(4) The provisions of Title 77, chapter 2, part 3, do not apply to the transfer of land directed by this section.

Approved April 22, 1993.

CHAPTER NO. 481

[SB 192]

AN ACT DIRECTING THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO REVIEW BENEFITS PAID BY PUBLIC RETIREMENT SYSTEMS AND TO RECOMMEND COST-OF-LIVING ADJUSTMENTS TO THE LEGISLATURE; AND AMENDING SECTIONS 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-12-201, AND 19-13-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-304, MCA, is amended to read:

"**19-3-304. Powers and duties of board.** (1) The board may establish ~~such~~ rules ~~as~~ *that* it ~~deems~~ *considers* proper for the administration and operation of the retirement system and enforcement of this chapter, subject to its limitation. The board shall establish ~~those~~ uniform rules ~~as~~ *that* are necessary to determine credit for fractional years of service.

(2) The board shall determine who are employees within the meaning of this chapter. The board ~~shall be~~ *is* the sole authority under this chapter ~~as to~~ *for determining* the conditions under which persons may become members of and receive benefits under the retirement system. The board shall determine and may modify allowances for service and disability under this chapter. All persons in similar circumstances ~~shall~~ *must* be treated alike.

(3) The board shall maintain ~~such~~ records and accounts it determines necessary for the administration of this chapter.

(4) Upon the basis of the findings of the actuary pursuant to 19-3-305, the board shall adopt those actuarial tables and those rates of regular interest it determines appropriate to comply with the provisions of this chapter.

(5) The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living."

Section 2. Section 19-5-201, MCA, is amended to read:

"**19-5-201. Powers and duties of board.** (1) The board is the trustee of all moneys collected for the retirement system and may establish such rules as it considers necessary. Within the limitations of this chapter, the board is charged with and is the authority as to its proper administration, operation, and enforcement. *The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.*

(2) The board is the authority as to the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

~~(2)~~*(3)* The board shall keep such data as is necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund and shall adopt for the retirement system one or more mortality tables."

Section 3. Section 19-6-201, MCA, is amended to read:

"**19-6-201. Board to make rules.** The board is the trustee of all moneys collected for the retirement system. It may establish such rules as it considers necessary to carry out its functions under this chapter. *The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.* The board shall determine the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike."

Section 4. Section 19-7-201, MCA, is amended to read:

"**19-7-201. Functions of the board.** (1) The board is the trustee of all moneys collected for the retirement system and is charged with the proper administration, operation, and enforcement of this chapter. *The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.* It may establish such rules as it considers necessary.

(2) The board shall prescribe the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike.

(3) It shall keep the data necessary for actuarial valuation purposes. It shall have biennial actuarial investigations made into the mortality and service experience of the members and the beneficiaries of the account and shall adopt one or more mortality tables."

Section 5. Section 19-8-201, MCA, is amended to read:

"**19-8-201. Board to make rules.** The board is charged with the proper administration, operation, and enforcement of this chapter. *The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.* The board may make such rules as it considers necessary and shall determine the conditions under which persons may become members of and receive benefits under the retirement system. All persons in similar circumstances shall be treated alike."

Section 6. Section 19-9-201, MCA, is amended to read:

"**19-9-201. Powers and duties of board.** (1) The board is authorized to administer, interpret, and enforce the provisions of this chapter.

(2) The board shall establish such uniform rules as are necessary to administer the provisions of this chapter. The board is the sole authority under this chapter as to the conditions under which persons may become members of and receive benefits under the retirement system. The board shall determine and may modify allowances for retirement and disability under this chapter.

(3) The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living."

Section 7. Section 19-12-201, MCA, is amended to read:

"**19-12-201. Administration of chapter.** The board shall administer the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, and all payments made under 19-12-103, 19-12-405, 19-12-407, and 19-12-506 shall be made by warrants drawn by the board. *The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.*"

Section 8. Section 19-13-202, MCA, is amended to read:

"**19-13-202. Power and duties of board.** The powers and duties of the board include:

(1) administering, interpreting, and enforcing the provisions of this chapter;

(2) establishing uniform rules to administer the provisions of this chapter;

(3) determining the conditions under which persons may become members of and receive benefits under the retirement system; ~~and~~

(4) determining allowances for retirement and disability under this chapter; *and*

(5) reviewing the sufficiency of benefits paid by the retirement system and recommending to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living."

Section 9. **Coordination instruction.** If Senate Bill No. 385 is passed and approved and if it repeals 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202, then [sections 2 through 6 and 8 of this act], which amend the sections previously enumerated, are void.

Approved April 22, 1993.

CHAPTER NO. 482

[SB 373]

AN ACT GENERALLY REVISING THE LAWS RELATING TO MOTOR VEHICLES; CLARIFYING THE PROCESS FOR THE FILING OF COLLATERAL LIENS; INCREASING TITLE TRANSFER FEES FOR OFF-HIGHWAY VEHICLES; REVISING THE DEFINITION OF MOTOR VEHICLE BROKERS; CLARIFYING THE PROCESS OF LICENSING MOBILE HOME DEALERS; CLARIFYING SURETY LANGUAGE IN REGARD TO BONDED TITLES; AMENDING SECTIONS 23-2-508, 23-2-611, 23-2-811, 23-2-812, 61-1-318, 61-1-501, 61-3-103, 61-3-208, AND 61-4-101, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-508, MCA, is amended to read:

"**23-2-508. Certificate of ownership — filing of security interests.** (1) Except as provided in subsection (9), a motorboat or sailboat 12 feet in length or longer may not be operated upon the waters of the state unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a motorboat or sailboat 12 feet in length or longer shall apply for a certificate of ownership and a certificate of number with the county treasurer of the county in which the owner resides, upon forms furnished by the department of justice. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town or county;

(c) business or home address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number;

(i) name and address of the dealer or other person from whom acquired, if known; and

(j) other information as the department of justice may require.

(3) The application is to be accompanied by documentation of ownership, such as an invoice, a bill of sale, a foreign title, an official certificate of boat number, a fee in lieu of tax receipt, or a certificate of ownership of a trailer purchased with the motorboat or sailboat. An applicant who fails to provide proof of ownership shall provide a certified statement describing how the motorboat or sailboat 12 feet in length or longer was acquired, from whom acquired, if known, and other information requested by the department of justice.

(4) If a certificate of ownership has previously been issued under the provisions of this part, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to motorboats or sailboats 12 feet in length or longer that are purchased as new and unused vessels or that were operated when the provisions of this part were not in force and effect.

(5) A motorboat or sailboat 12 feet in length or longer that does not have a manufacturer's or other identifying number on the motorboat or sailboat must be assigned an identification number by the department of fish, wildlife, and parks. A fee of $1 must be paid to the department for an assignment of number.

(6) Upon completion of the application, the county treasurer shall issue to the applicant two copies of the certificate of number application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application for a certificate of ownership to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership containing that information in the application considered necessary by the department and a permanent boat number. The certificate of ownership need not be renewed annually and is valid as long as the person holding it owns the vessel.

(7) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(8) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, $3.50 of which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(9) A person who, on July 1, 1988, is the owner of a motorboat or sailboat 12 feet in length or longer with a valid certificate of number issued by the state is not required to file an application for a certificate of ownership for the motorboat or sailboat unless ~~he~~ *the person* transfers a part of ~~his~~ *the person's* interest in the motorboat or sailboat or ~~he~~ renews the certificate of number for the motorboat or sailboat.

(10) ~~A security interest in a boat is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been perfected as provided in this section. The lien notice must be filed on a form approved by the department of justice.~~ The department of justice may not file a *voluntary* security interest or ~~other~~ lien unless it is accompanied by or specified in the application for a certificate of ownership of the boat encumbered. If the *approved* lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete boat description, the amount of the lien, and the signature of the debtor. The department of justice shall file ~~the~~ *voluntary* security ~~interest or lien~~ *interests and liens* by entering the name and address of the secured party upon the face of the certificate of ownership. *Involuntary liens must be filed against the record of the boat encumbered.* The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the boat is to be registered. The owner of a boat is the person entitled to operate and possess the boat.

(11) A security interest in a boat held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9~~, and no endorsement on the certificate of title is necessary for perfection~~.

(12) Whenever a security interest or lien is filed against a boat that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This boat is subject to additional security interest on file with the Department of Justice." No other information regarding the additional security interests need be endorsed on the certificate.

(13) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(14) ~~A~~ *Except as provided in subsection (15), a voluntary* security interest or ~~other~~ lien ~~as provided in this section~~ is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(15) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the

lien notice is delivered to the department of justice, of the existence of the security interest.

~~(15)~~*(16)* Upon default under a chattel mortgage or conditional sales contract covering a boat, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a boat all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

~~(16)~~*(17)* A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that ~~he~~ *the person* fails to file the satisfaction.

~~(17)~~*(18)* Upon receipt of *notice of* any *involuntary* liens~~, notice of liens dependent on possession,~~ or attachments against the record of any boat registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

~~(18)~~*(19)* It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

~~(19)~~*(20)* A fee of $4 must be paid to the department of justice to file any security interest or other lien against a boat. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of any security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 2. Section 23-2-611, MCA, is amended to read:

"**23-2-611. Certificate of ownership — filing of security interests.** (1) A snowmobile may not be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets, or highways unless a certificate of ownership has first been obtained from the department of justice in accordance with the laws of this state.

(2) The owner of a snowmobile shall apply for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose. The forms must require the following information:

(a) name of the owner;

(b) residence of the owner, by town and county;

(c) business or home mail address of the owner;

(d) name and address of any lienholder;

(e) amount due under any contract or lien;

(f) name of the manufacturer;

(g) model number or name;

(h) identification number; and

(i) name and address of the dealer or other person from whom acquired.

(3) The application must be signed by at least one owner or by a properly authorized officer or representative of the owner.

(4) If a certificate of ownership has previously been issued under the provisions of 23-2-601 through 23-2-644, the application for a new certificate must be accompanied by the immediately previous certificate. This subsection does not apply to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of 23-2-601 through 23-2-644 were not in force and effect.

(5) Upon completion of the application, on forms furnished by the department of justice, the county treasurer shall issue to the applicant two copies of the application, one of which must be marked "file copy". The treasurer shall forward one copy and the original application to the department of justice, which shall enter the information contained in the application upon the corresponding records of its office and shall furnish the applicant a certificate of ownership, which must contain that information in the application considered necessary by the department of justice, and a permanent ownership number. The certificate of ownership is not to be renewed annually and is valid as long as the person holding it owns the snowmobile.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, $3.50 of which must be forwarded by the county treasurer to the department of justice and deposited in the general fund.

(8) ~~A security interest in a snowmobile is not valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been perfected as provided in this section. The lien notice must be filed on a form approved by the department of justice.~~ The department of justice may not file a *voluntary* security interest or ~~other~~ lien unless it is accompanied by or specified in the application for a certificate of ownership of the snowmobile encumbered. If the *approved* lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete snowmobile description, the amount of the lien, and the signature of the debtor. The department of justice shall file ~~the~~ *voluntary* security ~~interest or lien~~

interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. *Involuntary liens must be filed against the record of the snowmobile encumbered.* The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county treasurer of the county in which the snowmobile is to be registered. The owner of a snowmobile is the person entitled to operate and possess the snowmobile.

(9) A security interest in a snowmobile held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9~~, and no endorsement on the certificate of title is necessary for perfection~~.

(10) Whenever a security interest or lien is filed against a snowmobile that is subject to two security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "NOTICE. This snowmobile is subject to additional security interest on file with the Department of Justice". No other information regarding the additional security interests need be endorsed on the certificate.

(11) Satisfactions or statements of release filed with the department of justice under this part must be retained for a period of 8 years after receipt, after which they may be destroyed.

(12) ~~A~~ *Except as provided in subsection (13), a voluntary* security interest or ~~other~~ lien ~~as provided in this section~~ is perfected on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(13) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department of justice shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department of justice, of the existence of the security interest.

~~(13)~~*(14)* Upon default under a chattel mortgage or conditional sales contract covering a snowmobile, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of a snowmobile, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

~~(14)~~*(15)* A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department of justice the sum of $1 for each day that ~~he~~ *the person* fails to file the satisfaction.

~~(15)~~*(16)* Upon receipt of *notice of* any *involuntary* liens~~, notice of liens dependent on possession,~~ or attachments against the record of any snowmobile registered in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

~~(16)~~*(17)* It is not necessary to refile with the department of justice any instruments on file in the office of the county clerk and recorder on October 1, 1989.

~~(17)~~*(18)* A fee of $4 must be paid to the department of justice to file any security interest or other lien against a snowmobile. The $4 fee must cover the cost of filing a satisfaction or release of the security interest and the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file with the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the general fund in accordance with 15-1-504."

Section 3. Section 23-2-811, MCA, is amended to read:

"**23-2-811. Certificate of ownership — procedure — fee — filing security interest.** (1) ~~No~~ *An* off-highway vehicle may *not* be operated upon any public lands, trails, easements, lakes, rivers, or streams unless a certificate of ownership has first been obtained from the department of justice.

(2) The owner of an off-highway vehicle shall apply for a certificate of ownership to the county treasurer of the county in which the owner resides, on a form furnished by the department of justice for that purpose. The form must include:

(a) the name of the owner;

(b) the residence of the owner, by town and county;

(c) the business address or home mailing address of the owner;

(d) the name and address of any lienholder;

(e) the amount due under any contract, mortgage, or lien;

(f) the name of the manufacturer;

(g) the model number or name;

(h) the identification number; and

(i) the name and address of the dealer or other person from whom the off-highway vehicle was acquired.

(3) The application must be signed by at least one owner or by a properly authorized agent of the owner.

(4) The application for a new certificate of ownership must be accompanied by the immediately previous certificate. This subsection does not apply to off-highway vehicles that are purchased as new and unused machines or that were operated before January 1, 1990.

(5) (a) After the owner completes the application form, the county treasurer shall issue to the applicant two copies of the completed application, with one marked "file copy", and shall forward one copy and the original application to the department of justice. The department of justice shall enter the information contained in the application upon the corresponding records of its office and shall send the applicant a certificate of ownership containing a permanent ownership number and information from the application considered necessary by the department of justice.

(b) The certificate of ownership is not required to be renewed annually and is valid as long as the person holding it owns the off-highway vehicle.

(6) The owner shall at all times retain possession of the certificate of ownership, except when it is being transmitted to and from the department of justice for endorsement or cancellation.

(7) Upon application for a certificate of ownership, a fee of $5 must be paid to the county treasurer, of which:

(a) $3.50 must be forwarded to the department of justice for deposit in the general fund; and

(b) $1.50 must be retained by the county treasurer for the cost of administering this section.

(8) ~~A security interest in an off-highway vehicle is not valid against creditors, subsequent purchasers, or encumbrancers unless a lien notice, showing that a security interest has been created, has been perfected as provided in this section on a form approved by the department of justice.~~ The department of justice may not file a *voluntary* security interest or ~~other~~ lien unless it is accompanied by or specified in the application for a certificate of ownership of the encumbered off-highway vehicle. If the *approved* lien notice is transmitted to the department of justice, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, a complete description of the off-highway vehicle, the amount of the lien, and the signature of the debtor. The department of justice shall file ~~the~~ *voluntary* security ~~interest or lien~~ *interests and liens* by entering the name and address of the secured party upon the face of the certificate of ownership. *Involuntary liens must be filed against the record of the off-highway vehicle encumbered.* The department of justice shall mail a statement certifying the filing of a security interest or lien to the secured party. The department of justice shall mail the certificate of ownership to the owner at the address given on the certificate. However, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department of justice shall return the certificate of ownership to the county

treasurer of the county where the vehicle is to be registered. The owner of an off-highway vehicle is the person entitled to operate and possess the vehicle.

(9) A security interest in an off-highway vehicle held as inventory by a dealer must be perfected in accordance with Title 30, chapter 9~~, and no endorsement on the certificate of title is necessary for perfection~~.

(10) Whenever a security interest or lien is filed against an off-highway vehicle that is subject to two or more security interests previously perfected under this section, the department of justice shall endorse on the face of the certificate of ownership: "Notice. This off-highway vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(11) Satisfaction or statements of release filed with the department of justice under this section must be retained for a period of 8 years from the date of receipt, after which they may be destroyed.

(12) ~~A~~ *Except as provided in subsection (13), a voluntary* security interest or ~~other~~ lien is perfected ~~as provided in this section~~ on the date the lien notice is delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(13) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department of justice. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

~~(13)~~*(14)* Upon default under a chattel mortgage or conditional sales contract covering an off-highway vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In the case of attachment of an off-highway vehicle, the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable, except that deposits must be made with the department of justice.

~~(14)~~*(15)* A conditional sales vendor, chattel mortgagee, or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sale contract within 15 days after receiving final payment shall pay to the department of justice the sum of $1 for each day after the expiration of the 15-day period that ~~he~~ *the person* fails to file the satisfaction.

~~(15)~~*(16)* Upon receipt of *notice of* any *involuntary* liens~~, notices of liens dependent on possession,~~ or attachments against the record of an off-highway vehicle in this state, the department of justice shall within 24 hours mail to the owner, conditional sales vendor, mortgagee, or their assignee a notice of the lien, showing the date of execution of the lien and, in the case of attachment, the full title of the court, the action, and the name of the attorney for the plaintiff or the name of the attaching creditor, or both.

~~(16)~~*(17)* It is not necessary to refile with the department of justice instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

~~(17)~~*(18)* A fee of $4 must be paid to the department of justice to file a security interest or other lien against an off-highway vehicle. The $4 fee includes and covers the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department of justice and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department of justice for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department of justice or for filing an assignment of a security interest or other lien on file with the department of justice. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Section 4. Section 23-2-812, MCA, is amended to read:

"**23-2-812. Transfer of interest.** (1) To transfer a certificate of ownership for an off-highway vehicle registered under 23-2-817, the person whose title or interest is to be transferred shall endorse the certificate of ownership in the appropriate space on the reverse side of the certificate and have ~~his~~ *the* signature acknowledged before a notary public.

(2) (a) Within 20 calendar days after the date of notarization, the transferee shall apply to the county treasurer of the county in which ~~he~~ *the transferee* resides for:

(i) transfer of the endorsed certificate of ownership;

(ii) registration of the off-highway vehicle; and

(iii) issuance of a decal as required by 23-2-804.

(b) The county treasurer shall forward the application and the original certificate of ownership to the department of justice, which shall file the application upon receipt.

(c) A certificate of ownership may not be issued by the department until the outstanding certificates are surrendered to that office or their loss is established.

(d) The county treasurer shall collect a fee of ~~$4~~ *$5* for each application for transfer of ownership, of which:

(i) ~~$3~~ *$3.50* must be forwarded to the department of justice for deposit in the general fund; and

(ii) ~~$1~~ *$1.50* must be retained by the county treasurer for the cost of administering this section.

(3) To effect by operation of law a transfer of interest in an off-highway vehicle, the provisions of 61-3-201(3) are applicable.

(4) (a) A person who purchases a new or used off-highway vehicle from an off-highway vehicle dealer licensed under 23-2-818 shall, within 20 calendar

days after the purchase date, apply to the county treasurer of the county in which ~~he~~ *the person* resides for:

(i) a certificate of ownership;

(ii) registration of the off-highway vehicle; and

(iii) a decal as required by 23-2-804.

(b) During this period the sticker provided for in subsection (6) must remain affixed to the off-highway vehicle.

(5) It is not a violation of this part for a purchaser to operate a newly acquired off-highway vehicle without a certificate of ownership, a certificate of registration, and a decal during the first 20 days of ownership.

(6) Prior to the delivery of the off-highway vehicle to the purchaser, the dealer shall issue and affix to the off-highway vehicle a sticker, in a form to be prescribed by the department of justice, containing the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the off-highway vehicle, including its identification number. The dealer shall keep a copy of the sticker for ~~his~~ *the dealer's* records and shall send a copy of the sticker to the department of justice.

(7) The provisions of subsection (2) do not apply to the transfer of an off-highway vehicle to an off-highway vehicle dealer licensed under 23-2-818 who intends to resell the vehicle and who operates it only for demonstration purposes. Every dealer, upon a transfer of interest, shall deliver the certificate of ownership with an application for a new certificate executed by the new owner in accordance with the provisions of this part. The department of justice, upon receipt of the certificate of ownership and application for a new certificate, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership showing the name of the lienholder and the amount due under the contract, mortgage, or lien as required by 23-2-811(2)(d) and (2)(e)."

Section 5. Section 61-1-318, MCA, is amended to read:

"**61-1-318. Broker.** "Broker" means a person~~, other than a dealer as defined in 61-1-314,~~ engaged in the business of offering to procure or procuring motor vehicles or who ~~holds himself out~~ *represents to the public* through solicitation, advertisement, or otherwise ~~as~~ *that the person is* one who offers to procure or procures motor vehicles by negotiating purchases, contracts, sales, or exchanges~~,~~ and who does not store, display, or take ownership of any vehicles for the purpose of selling vehicles."

Section 6. Section 61-1-501, MCA, is amended to read:

"**61-1-501. ~~Housetrailer~~ *Mobile home or housetrailer*.** ~~"Housetrailer"~~ *"Mobile home" or "housetrailer"* means a trailer or a semitrailer ~~which~~ *that* is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways or a trailer or semitrailer whose chassis and exterior shell is designed and constructed for use as a housetrailer~~, as defined above,~~ but ~~which~~ *that* is used permanently or temporarily for the advertising, sales, display, or promotion of merchandise or services or for any commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier."

Section 7. Section 61-3-103, MCA, is amended to read:

"**61-3-103. Filing of security interests, perfection, rights, procedure, fees.** (1) ~~No security interest in a motor vehicle shall be valid as against creditors, subsequent purchasers, or encumbrancers unless a lien notice, on a form approved by the department, that shows a security interest has been created, has been perfected as provided in this section.~~ The department ~~shall~~ *may* not file any *voluntary* security interest or ~~other~~ lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file ~~the~~ *voluntary* security ~~interest or lien~~ *interests and liens* by entering the name and address of the secured party upon the face of the certificate of ownership. *Involuntary liens must be filed against the record of the vehicle encumbered.* The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess ~~such~~ *the* motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under the provisions of 61-4-101, must be perfected in accordance with Title 30, chapter 9~~, and no endorsement on the certificate of title is necessary for perfection~~.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." No other information regarding such additional security interests need be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter ~~shall~~ *must* be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) ~~A~~ *Except as provided in subsection (6), a voluntary* security interest or ~~other~~ lien~~, as provided in this section,~~ is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) ~~Security~~ *Voluntary security* interests or ~~other~~ lien filings that do not require transfer of ownership are perfected ~~when received by the department~~ *on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department.* On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 ~~shall~~ *are* ~~be~~ applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment ~~shall be~~ *is* required to pay the department the sum of $1 for each day ~~thereafter~~ that ~~he~~ *the person* fails to file such satisfaction.

(9) Upon receipt of *notice of* any *involuntary* liens~~, or notice of liens dependent on possession,~~ or attachments~~, etc.,~~ against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any thereof a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff ~~and/or~~ *and* attaching creditor.

(10) It ~~shall~~ *is* not ~~be~~ necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee shall include and cover the cost of filing a satisfaction or release of the security interest and also the cost of entering such satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid *to* the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department~~,~~ or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Section 8. Section 61-3-208, MCA, is amended to read:

"**61-3-208. Affidavit and bond for certificate.** (1) If an applicant for a motor vehicle certificate of title cannot provide the department with a certificate of title transferred to the applicant, the department may issue a certificate of title for the vehicle if the applicant furnishes an affidavit in a form prescribed by the department.

(2) The affidavit must be signed and sworn to before an officer authorized to administer oaths and affirmations. The affidavit must accompany the application for the certificate of title and include:

(a) the facts and circumstances through which the applicant acquired ownership and possession of the motor vehicle;

(b) information as required by the department to enable it to determine what security interests, liens, and encumbrances against the motor vehicle, if any, are outstanding against the motor vehicle;

(c) the date and the amount secured by the security interests, liens, and encumbrances, if any; and

(d) a statement that the applicant has the right to have a certificate of title issued.

(3) If after examination of the application, affidavit, and any other evidence the department determines that a certificate of title for the motor vehicle should be issued to the applicant, the department shall require the applicant to file with the department a good and sufficient bond before issuing the certificate of title. The bond must be:

(a) in an amount equal to the value of the motor vehicle as determined under the provisions of 61-3-503(1)(c) for the year in which the application for certificate of title is made;

(b) conditioned to indemnify a prior owner, lienholder, subsequent purchaser, secured creditor, or encumbrancer of the motor vehicle, and any respective successors in interest, against expenses, losses, or damages caused by the issuance of the certificate or by a defect in or undisclosed security interest upon the right, title, and interest of the applicant in the motor vehicle~~.~~*; and*

(c) issued by a surety company authorized to do business in the state.

(4) Any interested person has a right of action to recover on the bond for a breach of its conditions, but the aggregate liability of the surety to all persons may not exceed the amount of the bond.

(5) Unless the department has been notified of a pending action to recover the bond, the department shall return the bond at the earlier of:

(a) 3 years from the date of issuance of the certificate of title; or

(b) the date of surrender of the valid certificate of title to the department if the vehicle is no longer registered in this state."

Section 9. Section 61-4-101, MCA, is amended to read:

"**61-4-101. Application for dealer's license or wholesaler's license.** (1) (a) A verified application *for licensure as a dealer or wholesaler* must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:

(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, *mobile homes,* or special mobile equipment as defined in 61-1-104 ~~for licensure as a dealer~~; or

(ii) business as a wholesaler as defined in 61-1-319 ~~in order to be licensed as a wholesaler~~.

(b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

~~(b)~~*(c)* The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any 1 calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

~~(c)~~*(d)* Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department prior to the expiration of the license, the licensee may operate ~~his~~ *the* business and display dealer or demonstrator plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as provided in this subsection, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that ~~he~~ *the dealer* is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates; or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set forth in subsections (i) and (ii) of subsection (2)(a) ~~above~~, provide:

(i) a statement that the:

(A) applicant has an established place of business that includes a lot or lots upon which motor vehicles may be displayed and a permanent nonresidential building on or contiguous to the lot or lots where records are kept and sales are made; or

(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;

(ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that ~~he~~ *the person* is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

(c) If two or more vehicle dealer or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's established place of business shall display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's or wholesaler's license shall also file with his application a bond of $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the $25,000 surety bond only if special mobile equipment,

commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers are sold; otherwise, all other trailer dealer, motorcycle dealer, or wholesaler license applicants shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct ~~his~~ *the* business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required."

Section 10. **Effective dates.** (1) [Sections 1 through 3, 5 through 9, and this section] are effective October 1, 1993.

(2) [Section 4] is effective January 1, 1994.

Approved April 22, 1993.

CHAPTER NO. 483

[SB 427]

AN ACT ALLOWING A TAXING JURISDICTION THAT INCLUDED SPECIAL IMPROVEMENT DISTRICT REVOLVING FUND LEVIES IN THE LIMITATION ON THE AMOUNT OF TAXES LEVIED TO CONTINUE TO INCLUDE THE AMOUNT OF THE LEVY WITHIN THE DOLLAR AMOUNT LIMITATION; AMENDING SECTION 15-10-412, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Initiative Measure No. 105 limited certain property taxes to 1986 levels; and

WHEREAS, the Legislature enacted Chapter 654, Laws of 1987 (Senate Bill No. 71), in order to clarify the application of the provisions of Initiative Measure No. 105; and

WHEREAS, during the implementation of the limit on property taxes, ambiguity existed in the application of the various pieces of implementing legislation to certain mill levies.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in classes four and eleven is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four or class eleven property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4);

(j) levies authorized under 7-6-502 for juvenile detention programs; and

(k) elementary and high school districts.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2).

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402.

(13) A taxing jurisdiction that included special improvement district revolving fund levies in the limitation on the amount of taxes levied prior to [the effective date of this act] may continue to include the amount of the levies within the dollar amount due in each taxing unit for the 1986 tax year even if the necessity for the revolving fund has diminished and the levy authority has been transferred."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1993.

CHAPTER NO. 484

[HB 233]

AN ACT REQUIRING THE DRIVER OF A MOTOR VEHICLE TO YIELD TO A PEDESTRIAN CROSSING THE ROADWAY WITHIN A CROSSWALK WHEN THE PEDESTRIAN IS NOT UPON THE HALF OF THE ROADWAY UPON WHICH THE VEHICLE IS TRAVELING AND WHEN THE PEDESTRIAN IS NOT CLOSE ENOUGH TO BE IN DANGER; AND AMENDING SECTION 61-8-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-502, MCA, is amended to read:

"**61-8-502. Pedestrians' right-of-way in crosswalk.** (1) ~~When~~ *(a) Except as provided in subsection (1)(b), when* traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a *marked* crosswalk ~~when the pedestrian is upon the half of the roadway upon which the vehicle is traveling or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger~~ *or within an unmarked crosswalk at an intersection,* but ~~no~~ *a* pedestrian ~~shall~~ *may not* suddenly leave a curb or other place of safety and walk or run into the path of a vehicle ~~which~~ *that* is so close that it is impossible for the driver to yield. This provision ~~shall~~ *does* not apply under the conditions stated in 61-8-503(2).

(b) When a vehicle is stopped at a marked crosswalk or at an unmarked crosswalk at an intersection, the driver of a vehicle may make a right-hand turn if the pedestrian is in the opposite half of the roadway and is not in danger.

(2) ~~Whenever any~~ *When a* vehicle is stopped at a marked crosswalk or at ~~any~~ *an* unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway, the driver of any other vehicle approaching from the rear ~~shall~~ *may* not overtake and pass ~~such~~ *the* stopped vehicle.

(3) It is unlawful for any person to drive a motor vehicle through a column of school children crossing a street or highway or past a member of the school safety patrol while the member of the school safety patrol is directing the movement of children across a street or highway and while the school safety patrol member is holding ~~his~~ *an* official signal in the stop position."

Approved April 22, 1993.

CHAPTER NO. 485

[HB 308]

AN ACT REQUIRING A COUNTY TREASURER TO NOTIFY THE COMMISSIONERS OF AN IRRIGATION DISTRICT WHEN DISTRICT ASSESSMENTS ARE PAID; AND AMENDING SECTION 85-7-2136, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-2136, MCA, is amended to read:

"**85-7-2136. Collection of taxes or assessment.** (1) On or before the third Monday in August of each year, the board of commissioners shall furnish the agent of the department of revenue in each county in which any of the lands of the district are situated a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The agent of the department of revenue in each county shall immediately ~~thereafter~~ *upon receipt of the list,* and prior to the delivery of the assessment book to the county treasurer, cause the assessment roll to be entered in the assessment book of the county for each year.

(2) It is the duty of the county treasurer of each county in which any irrigation district is located, in whole or in part, to collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

~~(3)~~*(4)* If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

~~(4)~~*(5)* When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on such installment. However, the payment may not be considered a redemption of the property from the tax sale but must be credited on account of any redemption that may be made. In case of any payment pursuant to this subsection, a separate tax receipt must issue showing exactly what assessments have been paid and must show that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect or receive or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is paid as ~~herein~~ permitted *in this section* and the receipt for the payment presented to the county treasurer at the time the taxes are paid, or paid at the same time."

Approved April 22, 1993.

CHAPTER NO. 486

[HB 367]

AN ACT CLARIFYING REQUIREMENTS CONCERNING THE OATH OF OFFICE TO BE TAKEN BY ELECTED AND APPOINTED MUNICIPAL OFFICIALS; AMENDING SECTION 7-1-4137, MCA; REPEALING SECTIONS 7-3-4318 AND 7-4-4108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4137, MCA, is amended to read:

"**7-1-4137. Oath of office.** *(1)* Every elected *and appointed* municipal officer shall take the oath of office prescribed in Article III, section 3, of the Montana constitution. ~~The~~ *Before the officer performs any official duties, the* oath of office, certified by the official before whom the ~~same~~ *oath* was taken, ~~shall~~ *must* be filed. *An elected officer shall file the oath* with the county election administrator ~~before the officer exercises any official duties~~. *Except as provided in subsection (2), an appointed officer shall file the oath with the city clerk.*

(2) A person appointed to fill a vacancy in an elected municipal office shall file the oath of office with the county election administrator."

Section 2. **Repealer.** Sections 7-3-4318 and 7-4-4108, MCA, are repealed.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 22, 1993.

CHAPTER NO. 487

[HB 422]

AN ACT ESTABLISHING STANDARDS FOR ADOPTION OF RULES GOVERNING MOBILE HOME PARKS; AUTHORIZING THE CREATION OF MOBILE HOME PARK TENANT ASSOCIATIONS; AND AMENDING SECTIONS 70-24-103, 70-24-311, AND 70-24-431, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-103, MCA, is amended to read:

"**70-24-103. General definitions.** Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Court" means the appropriate district court or the appropriate justice's court.

(3) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part *or of a mobile home park* and ~~also means~~ *includes* a manager of the premises who fails to disclose ~~his~~ *the* managerial position *and the operator of a mobile home park.*

(6) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.

(7) "Mobile home park" means a trailer court as defined in 50-52-102.

~~(6)~~*(8)* "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

~~(7)~~*(9)* "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

~~(8)~~*(10)* "Person" includes an individual or organization.

~~(9)~~*(11)* "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

~~(10)~~*(12)* "Rent" means all payments to be made to the landlord under the rental agreement.

~~(11)~~*(13)* "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

~~(12)~~*(14)* "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.

~~(13)~~*(15)* "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

~~(14)~~*(16)* "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Section 2. **Mobile home parks — park rules.** (1) A mobile home park landlord may adopt a rule concerning the rental occupancy of a mobile home space and the use of common areas and facilities in accordance with 70-24-311. A rule may not be unreasonable, and a rule that does not apply uniformly to all mobile home residents of a similar class creates a rebuttable presumption, as defined in 70-24-431, that the rule is unfair.

(2) Each common area facility must be open or available to residents at all reasonable hours, and the hours of a common recreational facility must be posted at the facility.

Section 3. **Resident associations — meetings.** (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the mobile home park landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenant association.

(2) The mobile home park landlord may not prohibit meetings by a tenant association or tenants relating to mobile home living.

Section 4. **Mobile home park landlord's road maintenance obligations.** In addition to the obligations imposed by 70-24-303, the mobile home park landlord shall maintain common roads within the mobile home park in a safe condition, including arranging for snow plowing as is reasonable to keep the roads passable.

Section 5. Section 70-24-311, MCA, is amended to read:

"70-24-311. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform ~~him~~ *the tenant* of what ~~he~~ *the tenant* must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time ~~he~~ *the tenant* enters into the rental agreement or when it is adopted.

(2) As provided in subsection (1) and in conformance with the provisions of this chapter, the landlord of a mobile home park may adopt written rules concerning the tenant's use and occupancy of the premises.

(3) All rules must be written and must be given to each mobile home park tenant who resides in a mobile home park and to all new tenants of a mobile home park.

~~(2)~~*(4)* If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of ~~his~~ *the tenant's* bargain, it is not valid until 7 days after notice to the tenant in the case of a week to week tenancy or 30 days' notice in the case of tenancies from month to month."

Section 6. Section 70-24-431, MCA, is amended to read:

"**70-24-431. Retaliatory conduct by landlord prohibited.** (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union, *mobile home park tenant association,* or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against him for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact must find the existence of the fact presumed unless

and until evidence is introduced which would support a finding of its nonexistence.

(4) Notwithstanding subsections (1), (2), and (3) of this section, a landlord may bring an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of ~~his~~ *the tenant's* family, or other persons on the premises with his consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2)."

Section 7. **Codification instruction.** [Sections 2 through 4] are intended to be codified as an integral part of Title 70, chapter 24, and the provisions of Title 70, chapter 24, apply to [sections 2 through 4].

Approved April 22, 1993.

CHAPTER NO. 488

[SB 428]

AN ACT PROVIDING THAT LOTTERY PROCEEDS IN EXCESS OF $5,000 ARE SUBJECT TO THE STATE WITHHOLDING TAX; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Policy and purpose.** (1) It is the policy and intent of the legislature that lottery proceeds received by a person who redeems a ticket or chance to win a prize on a ticket or chance purchased in Montana under the provisions of Title 23, chapter 7, is Montana source income, notwithstanding the residence of the person or entity that redeems the ticket. This policy statement affirms that the legislature has always considered lottery proceeds to be Montana source income.

(2) The purpose of [section 2] is to ensure that lottery proceeds that are Montana source income are subject to the withholding tax under the individual income tax laws of the state.

Section 2. **Withholding of lottery winnings.** (1) When making any payment of winnings that are subject to withholding, the state lottery commission, created under Title 23, chapter 7, part 2, shall deduct and withhold from the payment a tax in an amount equal to 10% of the payment.

(2) For the purposes of this section, the phrase "winnings that are subject to withholding" means the proceeds in excess of $5,000 won from a lottery game operated pursuant to Title 23, chapter 7.

(3) Every person who receives a payment of winnings that are subject to withholding shall furnish the state lottery commission with a signed statement containing the name, address, and taxpayer identification number of the recipient and of every person entitled to any portion of the payment. The signed statement must be treated as a statement under oath or equivalent affirmation for the purposes of 45-7-202, relating to the criminal offense of false swearing.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 1 and 2].

Section 4. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to all lottery proceeds subject to the withholding tax regardless of when the prize was won.

Approved April 22, 1993.

CHAPTER NO. 489

[HB 7]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; AND ESTABLISHING CONDITIONS FOR GRANTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations for reclamation and development grants.** (1) The amounts listed in [section 2] are appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account from funds allocated for appropriation from the interest income of the resource indemnity trust fund set forth in Title 15, chapter 38, with the exception of those allocations made in 15-38-202 and 75-1-1101.

(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4].

Section 2. **Approved grant projects.** (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation reclamation and development grants program report to the 53rd legislature for the 1995 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
MONTANA BOARD OF OIL AND GAS CONSERVATION	
Kevin-Sunburst Plugging and Reclamation Project	$299,000
MONTANA BOARD OF OIL AND GAS CONSERVATION	
Cat Creek Plugging and Reclamation Project	214,810
GOVERNOR/LIEUTENANT GOVERNOR'S OFFICES	
The Montana Office of Public Policy Dispute Resolution	127,667
TOWN OF WALKERVILLE	
Walkerville Reclamation Project	50,000*
BROADWATER CONSERVATION DISTRICT	
White's Gulch Placer Mine Reclamation Project	296,300*
TOOLE COUNTY	
North Toole County Oil Field Reclamation Project	273,284*
This grant requires a $25,000 in-kind match.	
FISH, WILDLIFE, AND PARKS, DEPARTMENT OF	
Elk Creek Placer Mined Channel Reconstruction	72,850*
TOWN OF COLUMBUS AND TOWN OF JOLIET	
Waste Stream Reduction — Oil Recycling	41,172
CARBON CONSERVATION DISTRICT	
RC&Ds Affecting Change Through Local Leadership	300,000
HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF	
Nonpoint Source Pollution Control in Montana	300,000*
MONTANA BUREAU OF MINES AND GEOLOGY	
Acid-Mine Drainage Prevention, Control, and Treatment — Stockett/Sand Coulee Area	148,623*
DEER LODGE VALLEY CONSERVATION DISTRICT	
Developing Acid/Heavy Metal-Tolerant Cultivars	120,000
GLACIER COUNTY CONSERVATION DISTRICT	
Comprehensive Evaluation of Ground Water Contamination — Red River Drainage	150,000*

VALLEY COUNTY	
Fort Peck Reservoir Breakwater	100,000
NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF	
Arsenic Transport and Mobility	50,000
RAVALLI COUNTY	
A Lake for Better Water Quality	300,000*
BUTTE-SILVER BOW	
Mitigation of Mining and Smelting Damage Through Urban Forestry	150,000
TOWN OF HOT SPRINGS	
Camas Therapy Center	150,000

If this project receives funding in House Bill No. 6, then this appropriation is void.

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 1995 biennium pursuant to 17-7-302.

Section 3. **Coordination of fund sources for grants program projects.** (1) A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and either the water development program or the renewable resource development program may not receive duplicative funding.

(2) The funding provided to the projects approved in [section 2] and identified by an asterisk (*) following the grant amount is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of health and environmental sciences.

Section 4. **Conditions of grants.** Disbursement of grant funds under [sections 1 through 6] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scope of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendations section of the project narrative of the reclamation and development grants program report for the 1995 biennium.

(4) An agreement between the department and the grant applicant must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. **Other appropriations.** There is appropriated to any entity of state government that receives a grant under [sections 1 through 6], the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

Section 6. **Reversion of funds.** All funds appropriated from the reclamation and development grants special revenue account under [sections 1 through 6] that are unspent and unencumbered on June 30, 1995, revert to that account.

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 23, 1993.

CHAPTER NO. 490

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECT GRANT AWARDS; APPROPRIATING MONEY FOR CULTURAL AND AESTHETIC PROJECT GRANTS; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana.

Section 1. **Appropriation of cultural and aesthetic grant funds — priority of disbursement.** (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by this section. Money must be disbursed in priority order, first to projects covered under subsection (2), and second to projects listed in subsection (3). The Montana arts council shall disburse money to projects authorized by this section through grant contracts between the Montana arts council and the grant recipient. The award contract binds the parties to conditions, if any, listed with the appropriation in subsection (3).

(2) If the money in the cultural and aesthetic projects account is insufficient in the biennium ending June 30, 1993, to fund projects in the amount for which they were approved, the approved amount for the projects is reappropriated from the account until money has been disbursed to fully cover appropriations or until October 1, 1994, whichever comes first.

(3) The following projects are approved and the following amounts are appropriated to the Montana arts council for the biennium ending June 30, 1995, from the cultural and aesthetic projects account:

(a) Special Projects — $4,500 or Less

	Recommend
Fort Belknap Ventures	$4,400
Gallatin County Historical Society	4,000
Butte Symphony Orchestra	4,000
Treasure County 89'ers, Inc.	4,500
Mineral County Fair	2,000
Condition: The grantee shall consult with the Montana committee for the humanities to access other resources and with Salish-Kootenai cultural committees in St. Ignatius and Elmo regarding development of the Native American portion of their program.	
Northern Showcase	2,500
Condition: The grant is to pay for staff time to market the series, with more emphasis spent on outreach to the community.	
Theater Arts Dept. & Flathead Valley Community College	1,000
Condition: The grant must be used to import a guest artistic director and not to fund an existing faculty member or community theater member.	
Historic Lewistown Accord	1,250
Montana Agricultural Center & Museum	2,000
Montana Committee for the Humanities	40,000
Rattlesnake Productions, Inc.	25,000
Native Voices Public TV	20,000
Vigilante Theater Company	20,000
Custer County Art Center	21,495
Condition: It is required that $9,500 of the grant must be used for the rural arts initiative.	
Montana Performing Arts Consortium	40,000
Condition: The grant is limited to funding operations, the quick grant program, and the state component of a national endowment for the arts dance on tour grant, if available.	
Northern Cheyenne Cultural Committee	15,000
Condition: Any surplus revenue from the project must be used by the Northern Cheyenne cultural committee for future cultural projects.	
Western Heritage Center	14,000
Aleph Movement Theater, Inc.	27,660
Helena Presents	25,000
Montana Ass'n of Symphony Orchestras	15,000
Montana Historical Society	12,000
Great Falls Symphony Ass'n	12,000

Beall Park Art Center	8,000
Northern Lights Institute	15,000
Alberta Bair Theater	20,000
Montana Indian Art & Culture Ass'n	11,000
Montana Historical Society Archives	25,000
Fort Peck Fine Arts Council, Inc.	15,000
Condition: It is required that $8,000 of the grant must be used for the rural arts initiative.	
Writer's Voice of Billings YMCA	7,500
Copper Village Museum & Arts Center	8,500
Condition: The grant must be used for the rural arts initiative.	
Office of Public Instruction	15,000
Fort Peck Fine Arts Council, Inc.	12,000
Hellgate Writers, Inc.	13,000
Bigfork Center for the Performing Arts Foundation	20,000
Historical Museum at Fort Missoula	12,500
Starfire Productions, Inc.	10,000
Condition: The organization shall use plays that have been developed to address the issue of sexual abuse and/or work with experts in the field of sexual abuse in developing its play.	
Montana Historical Society Museum	5,000
Livingston Depot Foundation	12,000
Condition: It is required that $6,000 must be used for the rural arts initiative.	
Helena Symphony Society	7,500
Missoula Cultural Exchange	10,000
Missoula Community Access TV	7,500
Dawson County Arts Unlimited	5,000
Condition: The grant may be used only for travel and rent.	
Billings Symphony Society	10,000
Yellowstone Chamber Players	10,000
Very Special Arts Montana	10,000
Sqelix'u/Aqlcmaknik Center	4,500
Museum of Fine Art - UM	9,000
Helena City Planning Department	2,500

Holter Museum of Art, Inc.	10,000
Young Audiences of Western Montana	7,500
Helena Art Center	3,000
Montana State University Libraries	7,500
Center for Native American Studies - MSU	2,000
Condition: The grant may be used only for the art component of Native American awareness week.	
Glacier Orchestra and Chorale, Inc.	10,000
Bozeman Symphony Orchestra	8,000
Montana Chorale	10,000

(b) Operational Support

Shakespeare in the Parks	$30,000
Montana Repertory Theater	30,000
Montana Art Gallery Directors Ass'n	30,000
Hockaday Center for the Arts	10,000
Condition: It is required that $8,000 of the grant must be used for the rural arts initiative.	
Montana Dance Arts Ass'n	5,000
Montana Institute of the Arts Foundation	20,000
Condition: The grant is to support current operations and may not be used to fund new staff.	
Montana Preservation Alliance	3,000
Condition: The grant may not be used for the newsletter.	
Montana Alliance for Arts Education	10,000
Big Sky Indian Market/NACI	3,000
Montana State Theater Ass'n	3,000
Granite County Museum & CC	8,000
Condition: The grant is for current level operating expenses and may not be used for increased staff.	
Montana Ballet Company, Inc.	5,000

(c) Capital Expenditure

Missoula Children's Theater	$40,000
Paris Gibson Square Museum of Art	40,000
C.M. Russell Museum	22,500
Community Improvement Organization	4,000

Condition: The grant is available upon receipt of documentation from the state historic preservation office that plans for renovation are approved.	
Archie Bray Foundation	22,500
Kohrs Memorial Library	12,000
Condition: The grant may be used only for historic preservation and not for new construction.	
Yellowstone Art Center	60,000
Condition: The grant is available upon receipt of documentation that the state historic preservation office concerns are satisfied.	
Billings Preservation Society	8,000
Friends of Intake Church	1,600
Condition: The grant is available upon receipt of documentation of property ownership by mondak historical society, of architectural review, and of approval of actual project plans by the state historic preservation office.	
Montana Institute of the Arts Foundation	25,000
Condition: The grant must be used for preliminary design consultation, feasibility study, and preplanning. Documentation must be received regarding continued active participation in the project by representatives of northern plains Indian tribes.	
Garnet Preservation Ass'n	9,000
Condition: The grant is available upon documentation from the state historic preservation office concerning compliance with historic preservation standards.	
Rosebud County Historical Society	10,000
Blaine County Museum	10,000
Condition: The grant must be used for historic preservation and restoration of the building.	
Billings Studio Theater	10,000
Park County Museum	1,750
Upper Blackfoot Historical Society	3,000
Condition: The grant is available upon receipt of documentation from the state historic preservation office regarding moving the structure and the effect on historic value.	
Pondera History Ass'n	4,000
Condition: The grant is available upon receipt of a revised budget that reflects \$3 in matching funds or in-kind goods and services for each \$1 in cultural trust grant funds. The grant must be used for structural evaluation and planning.	
Tobacco Valley Improvement Ass'n	1,000
Condition: The grant is available upon receipt of a revised budget that reflects \$3 in matching funds or in-kind goods and services for each \$1 in cultural trust grant funds.	

(d) Endowment Development

Grants for Endowment Development

Helena Presents	$40,000
Bitterroot Public Library Foundation	8,000
Hockaday Center for the Arts	8,000
Alberta Bair Theater	10,000
Gallatin County Historical Society	8,000
Archie Bray Foundation	10,000
Beall Park Art Center	8,000
Billings Symphony Society	10,000
International Choral Festival	8,000
Glacier Orchestra and Chorale, Inc.	8,000
Montana Chamber Orchestra	4,000
Arlee Historical Society	3,320

(4) An amount not to exceed $11,000 from money that may revert from appropriations made in subsection (3) is appropriated to the Montana arts council to conduct project evaluations. The evaluations must be done after July 1, 1994, and results must be included in a report to the 54th legislature on the projects funded by this section.

(5) The amount of $150,000 is appropriated to the Montana arts council from money that may revert from appropriations made in [section 1(3)] to match national endowment for the arts funds. The appropriation in this subsection may be used only for rural and other underserved programs throughout the state.

Section 2. **Appropriation of cultural and aesthetic grant funds.** The following project is approved and the following amount is appropriated to the Montana arts council for the biennium ending June 30, 1995, from the cultural and aesthetics projects account:

Daly Mansion Preservation Trust	109,280

Condition: If the amount of this appropriation exceeds the amount needed to retire the debt for the mansion then the amount in excess of the debt shall revert.

Section 3. **Reversion of granted money.** (1) On October 1, 1994, money reappropriated in [section 1(2)] but not disbursed reverts to the cultural and aesthetic projects account provided for in 15-35-108.

(2) On July 1, 1995, the unencumbered balance of the 1995 biennium grants reverts to the cultural and aesthetic projects account provided for in 15-35-108.

Section 4. **Pro rata reduction of grant awards.** If money in the cultural and aesthetic projects account is insufficient to fund projects at the appropriation levels contained in [section 1(3)], the Montana arts council shall allocate the available money on a pro rata basis to the authorized projects.

Section 5. **Effective date.** [Section 2 and this section] are effective on passage and approval.

Approved April 23, 1993.

CHAPTER NO. 491

[HB 181]

AN ACT REVISING THE DEFINITIONS, REGISTRATION FEES, AND PENALTIES APPLICABLE TO THE PRACTICE OF APICULTURE; AMENDING SECTIONS 80-6-101, 80-6-105, AND 80-6-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because additional rulemaking authority is extended to the department of agriculture's present authority to regulate apiculture in the following sections:

(1) The definition of "bee diseases" in 80-6-101(2) is intended to allow the department to establish by rule what specific diseases of bees are subject to regulation.

(2) Section 80-6-303(2) is intended to grant the department the authority to establish a penalty matrix that sets out the kinds of administrative penalties that are applicable to violations of Montana apiculture law and to delineate the degrees of penalty that may be assessed for initial and subsequent administrative violations.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-6-101, MCA, is amended to read:

"**80-6-101. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apiary" means a place where one or more colonies of bees are kept or one or more hives containing honeycombs or bee combs are kept.

(2) "Bee diseases" means ~~American or European foulbrood, sacbrood, bee paralysis, bee parasites, or other~~ *a* disease or abnormal condition of egg, larval, pupal, or adult stages of bees. *Specific bee diseases that are subject to regulation under parts 1 through 3 of this chapter must be designated by department rule.*

(3) "Bees" means any stage of the bees in the genus Apis.

(4) "Colony" means the hive and all equipment used in connection with the hive.

(5) "Department" means the department of agriculture, provided for in 2-15-3001.

(6) "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipula-

tion of bees, honey, wax, and hives and includes containers of honey and wax used in an apiary or in transporting bees and their products and apiary supplies.

(7) "Family unit" means two or more persons living together or residing in the same dwelling, house, or other place of residence.

(8) "General apiary" means an apiary other than a pollination apiary, landowner apiary, or hobbyist apiary.

(9) "Hive" means a frame hive, box hive, box, barrel, log gum, skep, or other receptacle or container or a part of a container, natural or artificial, used as a domicile for bees.

(10) "Hobbyist apiary" means an apiary owned by a hobbyist beekeeper.

(11) "Hobbyist beekeeper" means a person who owns a total of no more than five hives.

(12) "Landowner" means the person who has the use and exclusive possession of the land upon which a landowner apiary is to be registered. However, a person leasing or renting land for the primary purpose of locating or establishing an apiary is not considered a landowner.

(13) "Landowner apiary" means an apiary owned by a landowner as defined in this section.

(14) "Persons" means individuals, associations, partnerships, or corporations.

(15) "Pest" means the African honeybee (Apis mellifera scutellata) and those honeybees Africanized by interbreeding with the African honeybee, as identified by rule of the department.

(16) "Pollination apiary" means an apiary operated for pollination of a commercial seed, fruit, or other commercial agricultural product as provided in 80-6-112.

(17) "Queen apiary" means an apiary or premises in which queen bees are reared or kept for sale or gift."

Section 2. Section 80-6-105, MCA, is amended to read:

"**80-6-105. Registration fees.** (1) Each year before a certificate of registration may be issued for an apiary, the owner or applicant for the certificate shall pay the department a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed:

1 to 10 colonies of bees	$ ~~10.00~~ *20*
11 to 200 colonies	~~25.00~~ *50*
201 to 500 colonies	~~40.00~~ *80*
501 to 1,000 colonies	~~70.00~~ *140*
1,001 to 3,000 colonies	~~100.00~~ *200*

3,001 to 5,000 colonies	~~140.00~~ *280*
5,001 colonies and upward	~~200.00~~ *400*

(2) If, after registration, additional or new colonies are authorized for a registered apiary, fees ~~shall~~ *must* be paid by the registrant in accordance with the schedule in subsection (1) for the total number of colonies for that year."

Section 3. Section 80-6-303, MCA, is amended to read:

"**80-6-303. Penalty.** *(1)* A person violating *or aiding in the violation of* parts 1 through 3 *or rules adopted under parts 1 through 3* is ~~guilty of~~ *subject to one or both of the following penalties:*

(a) an administrative civil penalty of not more than $1,000 for each offense. Assessment of a penalty under this subsection (a) may be made in conjunction with any other warning, order, or administrative action that is issued by the department under this part. The proceeds of an administrative civil penalty must be deposited in the general fund.

(b) ~~a misdemeanor and shall be fined~~ *if the offense is a misdemeanor, a fine of* not less than $25 or more than $500 or ~~imprisoned~~ *imprisonment* in the county jail not exceeding 1 year, or both ~~fined and imprisoned~~.

(2) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts of penalties for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (1)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(3) This part may not be construed as requiring the department or its representatives to report violations of this part when it is believed that the public interest will be best served by a suitable notice of warning."

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved April 23, 1993.

CHAPTER NO. 492

[HB 529]

AN ACT STATUTORILY APPROPRIATING A PORTION OF THE DRIVER'S LICENSE REINSTATEMENT FEE MONEY TO THE DEPARTMENT OF JUSTICE FOR THE PURCHASE AND MAINTENANCE OF EQUIPMENT USED TO ANALYZE BREATH FOR THE PRESENCE OF ALCOHOL; AMENDING SECTIONS 17-7-502 AND 61-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-107, MCA, is amended to read:

"**61-2-107.** *(Temporary)* **License reinstatement fee to fund county drinking and driving prevention programs — balance transferred.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of $100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) (a) The department shall deposit one-half of the fees collected under subsection (1) in the general fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108.

(b) The remaining fees collected under subsection (1) that are not allocated under subsection (2)(a) must be deposited in the general fund. On or before June 30, 1993, the department shall transfer to the general fund the balance of money in the state special revenue account collected as license reinstatement fees. *(Terminates July 1, 1993—sec. 7(1), Ch. 5, Sp. L. January 1992.)*

61-2-107. *(Effective July 1, 1993)* **License reinstatement fee to fund county drinking and driving prevention programs.** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of $100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) (a) The department shall deposit one-half of the fees collected under subsection (1) in the general fund to be *appropriated and* used for funding county drinking and driving prevention programs as provided in 61-2-108. *For each fiscal year, an amount up to $50,000 of the money from the fees remaining in the general fund after appropriation for those programs is statutorily appropriated, as provided in 17-7-502, to the department to purchase and maintain equipment used to analyze breath for the presence of alcohol.*

(b) The remaining fees collected under subsection (1) that are not allocated under subsection (2)(a) must be deposited in an account in the state special revenue fund to be distributed to county treasurers. The department shall distribute to each county treasurer money in the account collected as license reinstatement fees in that county. The county treasurer shall distribute the money to each incorporated city or town in the county in the ratio that the population of the incorporated city or town bears to the total population of incorporated cities or towns in the county, based on figures provided by the most recent official census. An incorporated city or town shall distribute the money to state and local government entities, and private entities working with state and local government entities, that operate programs within the county that address the problems and concerns of minors, including but not limited to substance abuse and delinquency and chemical-free youth facilities and programs. Up to one-half of the money distributed under this subsection (b) may be used for adult chemical dependency programs and law enforcement training programs and for equipment for local government law enforcement agencies within the respective jurisdiction."

Section 2. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; *61-2-107;* 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 23, 1993.

CHAPTER NO. 493

[HB 559]

AN ACT PROVIDING THAT APPLICANTS FOR ADMISSION TO THE STATE BAR OF MONTANA PAY THE APPLICATION FEE TO THE STATE BAR INSTEAD OF TO THE CLERK OF THE SUPREME COURT; PROVIDING FOR AN ANNUAL REPORT BY THE STATE BAR TO THE COURT ON FEES COLLECTED AND SPENT; AND AMENDING SECTION 37-61-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-61-205, MCA, is amended to read:

"**37-61-205. Application and examination fees.** (1) Every applicant for admission to the bar ~~must~~ *shall* pay to the ~~clerk of the supreme court~~ *state bar of Montana,* at the time ~~he~~ *the applicant* files ~~his~~ *an* application for admission ~~a~~ *to the bar, an application* fee commensurate with the cost of processing the application as determined by the supreme court.

(2) In addition to the fee provided for in subsection (1), the supreme court may charge an examination fee commensurate with the cost of administering the bar examination. *The examination fee must be paid to the clerk of the supreme court when the applicant files the application for admission to the bar.*

(3) All money collected *and spent* from fees ~~herein~~ provided for ~~shall~~ *in subsection (1) must be accounted for annually in a report by the state bar of Montana to the supreme court. The report must provide details of fees collected and categories of expenditures for processing applications and must be in a form satisfactory to the supreme court. All money collected from fees provided for in subsection (2) must* be deposited with the state treasurer by the clerk of the supreme court and placed in the general fund."

Approved April 23, 1993.

CHAPTER NO. 494

[SB 119]

AN ACT GENERALLY REVISING THE LAW CONCERNING ESTATES, WILLS, AND DONATIVE TRANSFERS; REVISING THE ELECTIVE SHARE OF A SURVIVING SPOUSE; INCREASING EXEMPT PROPERTY; REVISING THE LAW CONCERNING WRITINGS INTENDED AS WILLS; REVISING THE RULES OF CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING INSTRUMENTS; REVISING THE LAW CONCERNING PROBATE AND NONPROBATE TRANSFERS; PROVIDING FOR HONORARY TRUSTS AND TRUSTS FOR PETS; PROVIDING FOR NONPROBATE TRANSFERS ON DEATH; PROVIDING FOR PAYABLE-ON-DEATH DESIGNATIONS ON ACCOUNTS IN FINANCIAL INSTITUTIONS; PROVIDING FOR TRANSFER-ON-DEATH REGISTRATION FOR SECURITIES; REVISING THE STATUTORY FORM POWER OF ATTORNEY; AMENDING SECTIONS 3-7-402, 32-3-501, 70-1-703, 72-1-103, 72-1-108, 72-2-101, 72-2-102, 72-2-103, 72-2-104, 72-2-105, 72-2-201, 72-2-202, 72-2-203, 72-2-204, 72-2-205, 72-2-206, 72-2-207, 72-2-210, 72-2-212, 72-2-213, 72-2-214, 72-2-301, 72-2-302, 72-2-304, 72-2-305, 72-2-306, 72-2-311, 72-2-312, 72-2-313, 72-2-314, 72-2-321, 72-2-322, 72-2-323, 72-2-401, 72-2-402, 72-2-502, 72-2-504, 72-2-512, 72-2-513, 72-2-514, 72-2-515, 72-2-516, 72-2-517, 72-2-518, 72-2-519, 72-2-601, 72-2-602, 72-2-702, 72-2-703, 72-2-704, 72-2-705, 72-2-706, 72-2-707, 72-2-801, 72-2-802, 72-2-803, 72-2-804, 72-3-212, 72-3-213, 72-3-222, 72-11-101, 72-11-102, 72-11-103, 72-11-104, 72-12-206, 72-16-313, 72-31-201, 72-31-202, 72-31-203, 72-31-204, 72-31-205, 72-31-206, 72-31-207, 72-31-208, 72-31-211, 72-31-212, AND 72-36-206, MCA; REPEALING SECTIONS 32-1-442, 32-1-443, 33-20-151, 70-1-309, 72-1-102, 72-1-110, 72-2-303, 72-2-501, 72-2-503, 72-2-511, 72-10-101, 72-10-102, 72-10-103, 72-10-104, 72-10-105, 72-10-106, 72-10-107, 72-10-108, 72-10-109, 72-10-110, 72-10-111, 72-10-112, 72-10-113, 72-10-201, 72-10-202, 72-10-203, 72-10-204, 72-11-105, 72-11-201, 72-11-202, 72-11-203, 72-11-204, 72-11-205, 72-11-301, 72-11-302, 72-11-303, 72-11-304, 72-11-305, 72-11-306, 72-11-307, 72-11-308, 72-11-309, 72-11-310, 72-11-311, 72-11-312, 72-11-313, 72-11-314, 72-11-315, 72-11-316, 72-11-317, 72-11-318, 72-11-319, 72-11-320, 72-11-321, 72-11-322, 72-11-331, 72-11-332, 72-11-333, 72-12-104, 72-12-201, 72-12-202, 72-12-203, 72-12-204, 72-12-205, 72-12-301, 72-12-302, 72-12-501, 72-12-502, 72-12-503, 72-12-601, 72-12-602, 72-12-603, 72-12-604, 72-12-605, 72-12-701, 72-12-702, 72-12-703, 72-12-704, 72-12-801, 72-12-802, 72-12-803, 72-12-901, 72-12-1001, 72-12-1002, 72-12-1003, 72-12-1004, 72-13-101, 72-13-102, 72-13-103, 72-13-201, 72-13-202, 72-13-203, 72-13-301, 72-31-209, 72-31-210, 72-31-213, 72-31-214, 72-31-215, AND 72-31-216, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-7-402, MCA, is amended to read:

"**3-7-402. Disqualification of water judge or master.** (1) A water judge may *withdraw or may* disqualify ~~himself or~~ the water master in any proceeding or pertinent portion ~~thereof~~ *of a proceeding* in which ~~his~~ *the judge's* or the water master's impartiality might reasonably be questioned.

(2) A water judge may also *withdraw or may* disqualify ~~himself or~~ the water master in the following circumstances:

(a) if ~~he~~ *the judge* or the water master has a personal bias or prejudice concerning a party of personal knowledge or disputed evidentiary facts concerning the proceeding;

(b) if in private practice ~~he~~ *the judge* or the water master served as a lawyer in the matter in controversy or a lawyer with whom ~~he~~ *the judge* or the water master previously practiced law served during ~~such~~ *the* association as a lawyer concerning the matter or the judge or the lawyer has been a material witness concerning it;

(c) if ~~he~~ *the judge* or the water master has served in governmental employment and in ~~such~~ *that* capacity participated as counsel, adviser, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(d) if ~~he~~ *the judge* or the water master knows that ~~he~~ *the judge* or the water master, individually or as a fiduciary, or ~~his~~ *the judge's* or the water master's spouse or minor child residing in ~~his~~ *the judge's* or the water master's household has a financial interest in the subject matter in controversy or in a party to the proceeding or any other interest that could be substantially affected by the outcome of the proceeding; or

(e) if ~~he~~ *the judge* or the water master or ~~his~~ *the judge's* or the water master's spouse or a person within the third degree of relationship to any of them (as calculated according to 72-11-101 through ~~72-11-105~~ *72-11-104*) or the spouse of such a person:

(i) is a party to the proceeding or an officer, director, or trustee of a party;

(ii) is known by the judge or water master to have an interest that could be substantially affected by the outcome of the proceeding;

(iii) is to the judge's or water master's knowledge likely to be a material witness in the proceeding.

(3) A water judge should ~~inform himself~~ *be informed* about ~~his~~ *the judge's* and the water master's personal and fiduciary financial interests and make a reasonable effort to ~~inform himself~~ *be informed* about the personal financial interests of ~~his~~ *the judge's* and the water master's spouse and minor children residing in ~~his~~ *the judge's* or the water master's respective household."

Section 2. Section 70-1-703, MCA, is amended to read:

"**70-1-703. Conveyances to an estate.** Unless a contrary intention appears, a devise, as defined in 72-1-103~~(8)~~, or an inter vivos conveyance of a property interest to the estate of a named or otherwise designated person passes the interest as if the interest had been owned by that person. The interest may pass to the heirs of that person, may be used to satisfy devises made in ~~his~~ *that person's* will, or may be used to satisfy claims for debts or taxes."

Section 3. Section 72-1-103, MCA, is amended to read:

"**72-1-103. General definitions.** Subject to additional definitions contained in the subsequent chapters ~~which~~ *that* are applicable to specific chapters, ~~or~~ parts, *or sections* and unless the context otherwise requires, in ~~this code~~ *chapters 1 through 5,* the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

~~(1)~~*(2)* "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

~~(2)~~*(3)* "Beneficiary", as it relates to*:*

(a) a trust ~~beneficiaries~~ *beneficiary,* includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer*;* ~~and,~~

(b) ~~as it relates to~~ a charitable trust, includes any person entitled to enforce the trust*;*

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an insurance or annuity policy, an account with POD designation, or a security registered in beneficiary form (TOD);

(ii) a pension, profit-sharing, retirement, or similar benefit plan; or

(iii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary designation; a donee, appointee, or taker in default of a power of appointment; and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(a) an insurance or annuity policy, an account with POD designation, or a security registered in beneficiary form (TOD);

(b) a pension, profit-sharing, retirement, or similar benefit plan; or

(c) any other nonprobate transfer at death.

~~(3)~~*(5)* "Child" includes ~~any~~ *an* individual entitled to take as a child under ~~this code~~ *chapters 1 through 5* by intestate succession from the parent whose relationship is involved *and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.*

~~(4)~~*(6)* "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, whether arising in contract, in tort, or otherwise, and liabilities of the estate ~~which~~ *that* arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes~~,~~ *or* demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

~~(5)~~*(7)* "Clerk" or "clerk of court" means the clerk of the district court.

~~(6)~~*(8)* "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

~~(7)~~*(9)* "Court" means the *district* court *in this state* having jurisdiction in matters relating to the affairs of decedents. ~~This court in this state is known as district court.~~

(10) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

~~(8)~~*(11)* "Devise" when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.

~~(9)~~*(12)* "Devisee" means ~~any~~ *a* person designated in a will to receive a devise. ~~In~~ *For purposes of chapter 3, in* the case of a devise to an existing trust or trustee or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

~~(10)~~*(13)* "Disability" means cause for a protective order as described by 72-5-409.

~~(11)~~*(14)* "Distributee" means any person who has received property of a decedent from ~~his~~ *the decedent's* personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in ~~his~~ *the trustee's* hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

~~(12)~~*(15)* "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to ~~this code~~ *chapters 1 through 5* as originally constituted and as it exists from time to time during administration.

~~(13)~~*(16)* "Exempt property" means that property of a decedent's estate ~~which~~ *that* is described in 72-2-802.

~~(14)~~*(17)* "Fiduciary" includes *a* personal representative, guardian, conservator, and trustee.

~~(15)~~*(18)* "Foreign personal representative" means a personal representative ~~of~~ *appointed by* another jurisdiction.

~~(16)~~*(19)* "Formal proceedings" means ~~those~~ *proceedings* conducted before a judge with notice to interested persons.

(20) "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

~~(17)~~*(21)* "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

~~(18)~~*(22)* "Heirs", *except as controlled by [section 70],* means ~~those~~ persons, including the surviving spouse *and the state,* who are entitled under the statutes of intestate succession to the property of a decedent.

~~(19)~~*(23)* "Incapacitated person" ~~is as defined~~ *has the meaning provided* in 72-5-101.

~~(20)~~*(24)* "Informal proceedings" means ~~those~~ *proceedings* conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

~~(21)~~*(25)* "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person ~~which may be affected by the proceeding~~. ~~It~~ *The term* also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

~~(22)~~*(26)* "Issue" of a person means ~~all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code~~ *a descendant as defined in subsection (10).*

(27) "Joint tenants with the right of survivorship" includes co-owners of property held under circumstances that entitle one or more to the whole of the

property on the death of the other or others but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

~~(23)~~*(28)* "Lease" includes an oil, gas, coal, or other mineral lease.

~~(24)~~*(29)* "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

~~(25)~~*(30)* "Minor" means a person who is under 18 years of age.

~~(26)~~*(31)* "Mortgage" means any conveyance, agreement, or arrangement in which property is used as security.

~~(27)~~*(32)* "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of ~~his~~ death.

~~(28)~~*(33)* "Organization" ~~includes~~ *means* a corporation, ~~government or governmental subdivision or agency,~~ business trust, estate, trust, partnership, *joint venture,* ~~or~~ association, ~~two or more persons having a joint or common interest~~ *government or governmental subdivision or agency,* or any other legal *or commercial* entity.

~~(29)~~*(34)* "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under ~~this code~~ *chapters 1 through 5* by intestate succession from the child whose relationship is in question *and excludes any person who is only a stepparent, foster parent, or grandparent.*

(35) "Payor" means a trustee, insurer, business entity, employer, government, governmental agency or subdivision, or any other person authorized or obligated by law or a governing instrument to make payments.

~~(30)~~*(36)* "Person" means an individual, a corporation, an organization, or other legal entity.

~~(31)~~*(37)* "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

~~(32)~~*(38)* "Petition" means a written request to the court for an order after notice.

~~(33)~~*(39)* "Proceeding" includes action at law and suit in equity.

~~(34)~~*(40)* "Property" includes both real and personal property or any interest ~~therein~~ *in that property* and means anything that may be the subject of ownership.

~~(35)~~*(41)* "Protected person" ~~is as defined~~ *has the meaning provided* in 72-5-101.

~~(36)~~*(42)* "Protective proceeding" ~~is as defined~~ *has the meaning provided* in 72-5-101.

~~(37)~~*(43)* "~~Securities~~ *Security*" includes any note~~,~~*;* stock~~,~~*;* treasury stock~~,~~*;* bond~~,~~*;* debenture~~,~~*;* evidence of indebtedness~~,~~*;* certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease~~,~~*;* collateral trust certificate~~,~~*;* transferable share~~,~~*;* voting trust certificate*;* ~~or,~~ in general, any interest or instrument commonly known as a security*;* ~~or~~ any certificate of interest or participation~~,~~*;* *or* any temporary or interim certificate, receipt, or certificate of deposit for~~,~~ or any warrant or right to subscribe to or purchase any of the foregoing.

~~(38)~~*(44)* "Settlement", in reference to a decedent's estate, includes the full process of administration, distribution, and closing.

~~(39)~~*(45)* "Special administrator" means a personal representative as described by chapter 3, part 7.

~~(40)~~*(46)* "State" ~~includes any~~ *means a* state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, ~~and~~ *or* any territory or *insular* possession subject to the ~~legislative authority~~ *jurisdiction* of the United States.

~~(41)~~*(47)* "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

~~(42)~~*(48)* "Successors" means ~~those~~ persons, other than creditors, who are entitled to property of a decedent under ~~his~~ *the decedent's* will or ~~this code~~ *chapters 1 through 5.*

~~(43)~~*(49)* "Supervised administration" refers to the proceedings described in chapter 3, part 4.

(50) "Survive", except for purposes of [sections 103 through 112], means that an individual has neither predeceased an event, including the death of another individual, nor is considered to have predeceased an event under 72-2-205 or [section 62]. The term includes its derivatives, such as "survives", "survived", "survivor", and "surviving".

~~(44)~~*(51)* "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(52) "Testator" includes an individual of either sex.

~~(45)~~*(53)* "Trust" includes ~~any~~ *an* express trust, private or charitable, with additions thereto, wherever and however created. ~~It~~ *The term* also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. ~~"Trust"~~ *The term* excludes other constructive trusts~~,~~ and ~~it~~ excludes resulting trusts~~,~~*;* conservatorships~~,~~*;* personal representatives~~,~~*;* *trust accounts as defined in [sections 83 through 112];* custodial arrangements pursuant to chapter 26 of this title~~,~~*;* business trusts providing for certificates to be issued to beneficiaries~~,~~*;* common trust funds~~,~~*;* voting trusts~~,~~*;* security arrangements~~,~~*;* liquidation trusts~~,~~*;* ~~and~~ trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind*;* and any arrangement under which a person is nominee or escrowee for another.

~~(46)~~*(54)* "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

~~(47)~~*(55)* "Ward" ~~is as defined~~ *means an individual described* in 72-5-101.

~~(48)~~*(56)* "Will" includes codicil and any testamentary instrument ~~which~~ *that* merely appoints an executor, ~~or~~ revokes or revises another will, *nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.*"

Section 4. Section 72-1-108, MCA, is amended to read:

"**72-1-108.** ~~**Evidential rules applicable — evidence as to**~~ ***Evidence of*** **death or status.** ~~(1)~~ In ~~proceedings under this code~~ *addition to* the rules of evidence in courts of general jurisdiction, ~~including any relating to simultaneous deaths, are applicable unless specifically displaced by the code.~~ *the following rules relating to a determination of death or status apply:*

~~(2)~~*(1)* ~~In addition, the following rules relating to determination of death and status are applicable:~~ *Death occurs when an individual is determined to be dead under 50-22-101.*

~~(a)~~*(2)* A certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie ~~proof~~ *evidence* of the fact, place, date, and time of death and the identity of the decedent.

~~(b)~~*(3)* A certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that ~~a person~~ *an individual* is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances, and places disclosed by the record or report.

~~(c)~~*(4)* In the absence of prima facie evidence of death under subsection (2)~~(a)~~ or ~~(2)(b)~~ *(3)*, the fact of death may be established by clear and convincing evidence, including circumstantial evidence.

~~(d)~~*(5)* ~~A person~~ *An individual* whose death is not established under subsections (2)~~(a)~~ through ~~(2)(c)~~ *(4)*, who is absent for a continuous period of 5 years, during which ~~he~~ *the individual* has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. ~~His~~ *The individual's* death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

(6) In the absence of evidence disputing the time of death stated on a document described in subsection (2) or (3), a document described in subsection (2) or (3) that states a time of death 120 hours or more after the time of death of another individual, however the time of death of the other individual is determined, establishes by clear and convincing evidence that the individual survived the other individual by 120 hours."

Section 5. Section 72-2-101, MCA, is amended to read:

"**72-2-101.** ~~**Renunciation of succession**~~ ***Disclaimer of property interests.*** (1) *(a)* A person or ~~his personal representative or~~ the representative of ~~an incapacitated or protected~~ *a* person ~~who is an heir, devisee, person succeeding~~

~~to a renounced interest, donee, appointee, grantee, recipient, or beneficiary under a trust or other nontestamentary instrument or under a power of appointment exercised by a testamentary or nontestamentary instrument, surviving joint owner or surviving joint tenant, or beneficiary or owner of an insurance contract or any incident of ownership therein may renounce,~~ *to whom an interest in or with respect to property or an interest in the property devolves by whatever means may disclaim it* in whole or in part~~, the right of succession to any property or interest therein, including a future interest,~~ by *delivering or* filing a written ~~renunciation~~ *disclaimer* under this section. ~~The instrument shall:~~

~~(a) describe the property or interest renounced;~~

~~(b) be signed by the person renouncing; and~~

~~(c) declare the renunciation and the extent thereof.~~

(b) The right to disclaim exists notwithstanding:

(i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(ii) any restriction or limitation on the right to disclaim contained in the governing instrument.

(c) For purposes of this subsection (1), the "representative of a person" includes a personal representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained person, or a person whose identity or address is unknown; and an agent acting on behalf of the person within the authority of a power of attorney. The representative of a person may rely on a general family benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

(2) ~~The court may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce, modify, amend, or otherwise deviate from any restriction on or power of administration, management, or allocation of benefit upon finding that such restriction on the exercise of the power may defeat or impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. Such authority shall be exercised, after hearing and upon notice to all known persons beneficially interested in such trust, in the manner directed by the court.~~ *The following rules govern the time when a disclaimer must be filed or delivered:*

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant may disclaim as a separate interest any property or interest in property devolving to the joint tenant by right of survivorship. A surviving joint tenant may disclaim the entire interest in any property or interest in the property that is the subject of a joint tenancy devolving to the joint tenant if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit under it.

~~(3)~~*(d)* ~~The instrument of renunciation must be received by the transferor of the interest, his legal representative, the personal representative of a deceased transferor, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates. To be effective for purposes of determining inheritance and estate taxes, the instrument must be received not later than the date which is 9 months after the later of the date on which the transfer creating the interest in a person is made or the date on which the person attains 18 years of age. If the circumstances that establish the right of a person to renounce an interest arise as a result of the death of an individual, the instrument must also be filed in the court of the county where proceedings concerning the decedent's estate are pending or where they would be pending if commenced.~~ If real property or an interest ~~therein~~ *in the property* is ~~renounced~~ *disclaimed*, a copy of the ~~renunciation~~ *disclaimer* may be recorded in the office of the ~~county~~ clerk and recorder of the county in which the ~~real estate is situated~~ *property or interest disclaimed is located.* ~~No person entitled to a copy of the instrument is liable for any proper distribution or disposition made without actual notice of the renunciation, and no person making a proper distribution or disposition in reliance upon the renunciation is liable for any such distribution or disposition in the absence of actual notice that an action has been instituted contesting the validity of the renunciation.~~

(3) The disclaimer must:

(a) describe the property or interest disclaimed;

(b) declare the disclaimer and extent of the disclaimer; and

(c) be signed by the disclaimant.

(4) The following are the effects of a disclaimer:

(a) ~~Unless the transferor of the interest has otherwise provided, the~~ *If* property or *an* interest ~~renounced~~ *in property devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised by a testamentary instrument, or under the laws of intestacy and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest* devolves as ~~though~~ *if* the ~~person renouncing~~ *disclaimant* had predeceased the decedent ~~or~~, *but* if ~~the appointment was exercised by a~~ *by law or under the* testamentary instrument~~,~~ ~~as though the person renouncing had predeceased the donee of the power~~ *the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the decedent, the disclaimed interest passes by representation to the descendants of the disclaimant who survive the decedent.* A future interest that takes effect in possession or enjoyment after the termination of the estate or interest ~~renounced~~ *disclaimed* takes effect as ~~though~~ *if* the ~~person renouncing~~ *disclaimant* had predeceased the decedent ~~or the donee of the power~~. A ~~renunciation~~ *disclaimer* relates back for all purposes to the date of the death of the decedent ~~or the donee of the power~~.

(b) If property or an interest in property devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would take the disclaimant's share by representation were the disclaimant to predecease the effective date of the instrument, the disclaimed interest passes by representation to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of the instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and on all persons claiming through or under either of them.

(5) ~~(a)~~ The right to ~~renounce~~ *disclaim* property or an interest ~~therein~~ *in the property* is barred by:

~~(i)~~*(a)* an assignment, conveyance, encumbrance, pledge, or transfer of *the* property or interest~~,~~ or a contract therefor;

~~(ii)~~*(b)* a written waiver of the right to ~~renounce~~ *disclaim*;

~~(iii)~~*(c)* an acceptance of the property or interest or benefit ~~thereunder~~ *under it*; or

~~(iv)~~*(d)* a sale of the property or interest under judicial sale made before the ~~renunciation is effected~~ *disclaimer is made.*

~~(b) The right to renounce exists notwithstanding any limitation on the interest of the person renouncing in the nature of a spendthrift provision or similar restriction.~~

~~(c) A renunciation or a written waiver of the right to renounce is binding upon the person renouncing or person waiving and all persons claiming through or under him.~~

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest ~~therein~~ *in property* under any other statute.

(7) ~~Within 30 days of receipt of a written instrument of renunciation by the transferor of the interest, the renouncer, his legal representative, the personal representative of the decedent, the trustee of any trust in which the interest being renounced exists, or the holder of the legal title to the property to which the interest relates, as the case may be, shall attempt to notify in writing those persons who are known or ascertainable with reasonable diligence who are recipients or potential recipients of the renounced interest of the renunciation and the interest or potential interest such recipient will receive as a result of the renunciation.~~

~~(8) Any~~ *An* interest in property ~~which~~ *that* exists on ~~July 1, 1983, may be renounced after October 1, 1983, as provided in this section. An interest that has arisen prior to July 1, 1983, in any person other than the person renouncing is not destroyed or diminished by any action of the person renouncing taken under this section~~ *[the effective date of this act] as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after [the effective date of this act].*"

Section 6. Section 72-2-102, MCA, is amended to read:

"**72-2-102. Waiver of** ***right to elect and of other*** **rights** ~~**by spouse.**~~ *(1)* The right of election of a surviving spouse and the rights of the surviving spouse to homestead allowance, exempt property, and family allowance or any of them may be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the ~~party waiving after fair disclosure~~ *surviving spouse.*

(2) A surviving spouse's waiver is not enforceable if the surviving spouse proves that:

(a) the surviving spouse did not execute the waiver voluntarily; or

(b) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the decedent.

(3) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(4) Unless it provides to the contrary, a waiver of "all rights", ~~(~~or equivalent language~~)~~, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits ~~which~~ *that* would otherwise pass to ~~him~~ *that spouse* from the other by intestate succession or by virtue of ~~the provisions of~~ any will executed before the waiver or property settlement."

Section 7. Section 72-2-103, MCA, is amended to read:

"**72-2-103. Effect of divorce, annulment, or *decree of* separation ~~decree~~.** (1) ~~A person~~ *An individual* who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage ~~he~~ *the individual* is married to the decedent at the time of death. A decree of separation ~~which~~ *that* does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of chapter 2, parts 2, 6, 7, and 8 and of 72-3-501 through 72-3-508, a surviving spouse does not include:

(a) ~~a person~~ *an individual* who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless ~~they~~ subsequently *they* participate in a marriage ceremony purporting to marry each to the other or ~~subsequently~~ live together as ~~man~~ *husband* and wife;

(b) ~~a person~~ *an individual* who, following ~~a~~ *an invalid* decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third ~~person~~ *individual*; or

(c) ~~a person~~ *an individual* who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights."

Section 8. Section 72-2-104, MCA, is amended to read:

"**72-2-104. ~~Homicide — effect~~ *Effect of homicide* on intestate succession, wills, *trusts*, joint assets, life insurance, and beneficiary designations.** *(1) For purposes of this section, the following definitions apply:*

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

~~(1)~~*(2)* ~~A surviving spouse, heir, or devisee~~ *An individual* who feloniously and intentionally kills the decedent ~~is not entitled to any~~ *forfeits all* benefits under ~~the will or under~~ this chapter~~, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent~~ *with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.*

~~(2) Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.~~

~~(3) A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.~~

~~(4) Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.~~

~~(5) A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.~~

~~(6) This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.~~

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer; and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) Provisions of a governing instrument that are not revoked by this section are given effect as if the killer disclaimed all revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(8) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(b) Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or

deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(9) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

~~(7)~~*(10)* For the purposes of this section, a felonious and intentional killing includes a deliberate homicide as defined in 45-5-102 and a mitigated deliberate homicide as defined in 45-5-103."

Section 9. Section 72-2-105, MCA, is amended to read:

"**72-2-105. Contracts concerning succession.** (1) A contract to make a will or devise or not to revoke a will or devise or to die intestate, if executed after July 1, 1975, ~~can~~ *may* be established only by:

(a) provisions of a will stating material provisions of the contract;

(b) an express reference in a will to a contract and extrinsic evidence proving the terms of the contract; or

(c) a writing signed by the decedent evidencing the contract.

(2) The execution of a joint will or mutual wills does not create a presumption of a contract not to revoke the will or wills."

Section 10. Section 72-2-201, MCA, is amended to read:

"**72-2-201. Intestate estate.** *(1)* Any part of ~~the~~ *a decedent's* estate ~~of a decedent~~ not effectively disposed of by ~~his~~ will passes *by intestate succession* to ~~his~~ *the decedent's* heirs as prescribed in ~~the following sections of this code~~ *chapters 1 through 5, except as modified by the decedent's will.*

(2) A decedent may by will expressly exclude or limit the right of an individual or class to succeed to property of the decedent passing by intestate succession. If that individual or a member of that class survives the decedent, the share of the decedent's intestate estate to which that individual or class would

have succeeded passes as if that individual or each member of that class had disclaimed an intestate share."

Section 11. Section 72-2-202, MCA, is amended to read:

"**72-2-202. Share of spouse.** The intestate share of ~~the~~ *a decedent's* surviving spouse is:

(1) ~~if there is no surviving issue or if there are surviving issue all of whom are issue of the surviving spouse also,~~ the entire ~~remaining~~ *intestate* estate *if:*

(a) no descendant or parent of the decedent survives the decedent; *or*

~~(2)~~*(b)* ~~if there are surviving issue one or more of whom are not issue~~ *all of the decedent's surviving descendants are also descendants* of the surviving spouse~~, as follows:~~

~~(a) if there is surviving only one child or the issue of one child, one-half of the intestate estate;~~

~~(b) if there are surviving two or more children, the issue of two or more deceased children, or one or more children and the issue of one or more deceased children, one-third of the intestate estate~~ *and there is no other descendant of the surviving spouse who survives the decedent;*

(2) the first $200,000, plus three-fourths of any balance of the intestate estate, if no descendant of the decedent survives the decedent but a parent of the decedent survives the decedent;

(3) the first $150,000, plus one-half of any balance of the intestate estate, if all of the decedent's surviving descendants are also descendants of the surviving spouse and the surviving spouse has one or more surviving descendants who are not descendants of the decedent;

(4) the first $100,000, plus one-half of any balance of the intestate estate, if one or more of the decedent's surviving descendants are not descendants of the surviving spouse."

Section 12. Section 72-2-203, MCA, is amended to read:

"**72-2-203. Share of heirs other than surviving spouse.** ~~The~~ *Any* part of the intestate estate not passing to the *decedent's* surviving spouse under 72-2-202, or the entire intestate estate if there is no surviving spouse, passes ~~as follows~~ *in the following order to the individuals designated below who survive the decedent*:

(1) to the ~~issue of the decedent; if they are all of the same degree of kinship to the decedent, they take equally, but if of unequal degree, then those of more remote degree take~~ *decedent's descendants* by representation;

(2) if there is no surviving ~~issue~~ *descendant,* to ~~his parent or~~ *the decedent's* parents equally *if both survive or to the surviving parent*;

(3) if there is no surviving ~~issue or~~ *descendant* or parent, to the ~~brothers and sisters and the children or grandchildren of any deceased brother or sister,~~ *descendants of the decedent's parents or either of them* by representation;

(4) if there is no surviving ~~issue~~ *descendant,* parent, ~~brother, sister,~~ or ~~children or grandchildren of a deceased brother or sister, to the next of kin in equal degree, except that where there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote~~ *descendant of a parent and the decedent is:*

(a) survived by one or more grandparents or descendants of grandparents:

(i) one-half to:

(A) the decedent's paternal grandparents equally if both survive;

(B) the surviving paternal grandparent; or

(C) the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

(ii) the other one-half to the decedent's maternal relatives in the same manner; or

(b) not survived by a grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate to the decedent's relatives on the other side in the same manner as the half~~.~~*;*

(5) (a) if there is no surviving descendant, grandparent, or descendant of a grandparent, to the person of the closest degree of kinship with the decedent. Except as provided in subsection (5)(b), if more than one person is of that closest degree, those persons share equally.

(b) If more than one person is of the closest degree as provided in subsection (5)(a) but they claim through different ancestors, those who claim through the nearer ancestor shall receive to the exclusion of those claiming through a more remote ancestor."

Section 13. Section 72-2-204, MCA, is amended to read:

"**72-2-204. Representation.** *(1) As used in this section, the following definitions apply:*

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under 72-2-205.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-205.

(2) (a) If ~~representation is called for by this code~~, *under 72-2-203(1), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants,* the estate *or part of the estate is divided into decedent's descendants and the estate or part of the estate* is divided into as many *equal* shares as there are*:*

(i) surviving ~~heirs~~ *descendants* in the ~~nearest degree of kinship and deceased persons in the same degree who left issue who survive the decedent, each surviving heir in the nearest degree receiving one share and the share of~~

~~each deceased person in the same degree being divided among his issue in the same manner~~ *generation nearest to the decedent that contains one or more surviving descendants; and*

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(3) (a) If, under 72-2-203(3) or (4), a decedent's intestate estate or a part of the intestate estate passes by representation to the descendants of the decedent's deceased parents or either of them or to the descendants of the decedent's deceased paternal or maternal grandparents or either of them, the estate or part of the estate is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest the deceased parents or either of them or nearest the deceased grandparents or either of them that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

Section 14. Section 72-2-205, MCA, is amended to read:

"**72-2-205. Requirement that heir survive decedent ~~by~~ *for* one hundred twenty hours.** ~~Any person~~ *An individual* who fails to survive the decedent by 120 hours is ~~deemed~~ *considered* to have predeceased the decedent for purposes of homestead allowance, exempt property, and intestate succession, and the decedent's heirs are determined accordingly. If ~~the time of death of the decedent or of the person who would otherwise be an heir or the times of death of both cannot be determined and~~ it ~~cannot be~~ *is not* established *by clear and convincing evidence* that ~~the person~~ *an individual* who would otherwise be an heir ~~has~~ survived the decedent by 120 hours, it is ~~deemed~~ *considered* that the ~~person~~ *individual* failed to survive for the required period. This section is not to be applied ~~where~~ *if* its application would result in a taking of intestate estate by the state under 72-2-207."

Section 15. Section 72-2-206, MCA, is amended to read:

"**72-2-206. Advancements.** *(1)* If ~~a person~~ *an individual* dies intestate as to all ~~his~~ *or a portion of the individual's* estate, property ~~which he~~ *the decedent* gave ~~in his~~ *during the decedent's* lifetime to an *individual who, at the decedent's death, is an* heir is treated as an advancement against the ~~latter's~~ *heir's intestate* share ~~of the estate~~ only if:

(a) the decedent declared in a contemporaneous writing ~~by the decedent~~ or *the heir* acknowledged in writing ~~by the heir to be~~ *that the gift is* an advancement*; or*

(b) the decedent's contemporaneous writing or the heir's written acknowledgment otherwise indicates that the gift is to be taken into account in computing the division and distribution of the decedent's intestate estate.

(2) For ~~this purpose~~ *purposes of subsection (1),* ~~the~~ property advanced is valued as of the time the heir came into possession or enjoyment of the property or as of the time of ~~death of~~ the ~~decedent~~ *decedent's death,* whichever first occurs.

(3) If the recipient of the property fails to survive the decedent, the property is not taken into account in computing the *division and distribution of the decedent's* intestate ~~share to be received by the recipient's issue~~ *estate,* unless the ~~declaration or acknowledgment~~ *decedent's contemporaneous writing* provides otherwise."

Section 16. Section 72-2-207, MCA, is amended to read:

"**72-2-207. No taker ~~— escheat to state~~.** If there is no taker under the provisions of ~~72-2-202 and 72-2-203~~ *this chapter,* the intestate estate passes to the state of Montana."

Section 17. Section 72-2-210, MCA, is amended to read:

"**72-2-210. ~~Persons~~ *Individuals* related to decedent through two lines.** ~~A person~~ *An individual* who is related to the decedent through two lines of relationship is entitled to only a single share based on the relationship that would entitle ~~him~~ *the individual* to the larger share."

Section 18. Section 72-2-212, MCA, is amended to read:

"**72-2-212. Afterborn heirs.** ~~Relatives of the decedent conceived before his death but born thereafter inherit as if they had been born in the lifetime of the decedent.~~ *An individual in gestation at a particular time is treated as living at that time if the individual lives 120 hours or more after birth.*"

Section 19. Section 72-2-213, MCA, is amended to read:

"**72-2-213. ~~Establishment of parent-child~~ *Parent and child* relationship.** *(1)* ~~If~~ *Except as provided in subsections (2) and (3),* for the purposes of intestate succession~~, a relationship of parent and child must be established to determine succession~~ by, through, or from a person~~:~~*, an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under Title 40, chapter 6, part 1.*

~~(1)~~*(2)* An adopted ~~person~~ *individual* is the child of an adopting parent *or parents* and not of the natural parents, ~~except that~~ *but* adoption of a child by the spouse of ~~a~~ *either* natural parent has no effect on*:*

(a) the relationship between the child and either natural parent*; or*

(b) the right of the child or a descendant of the child to inherit from or through the other natural parent.

~~(2) In cases not covered by subsection (1), a person is the child of its parents regardless of the marital status of its parents, and the parent and child relationship may be established under the Uniform Parentage Act, Title 40, chapter 6, part 1.~~

(3) Inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the parent's and has not refused to support the child."

Section 20. Section 72-2-214, MCA, is amended to read:

"**72-2-214. Alienage.** No ~~person~~ *individual* is disqualified to take as an heir because ~~he~~ *the individual* or ~~a person~~ *an individual* through whom ~~he~~ *the individual* claims is *or has been* an alien ~~unless the country in which he resides does not allow reciprocity~~."

Section 21. **Debts to decedent.** A debt owed to a decedent is not charged against the intestate share of any individual except the debtor. If the debtor fails to survive the decedent, the debt is not taken into account in computing the intestate share of the debtor's descendants.

Section 22. Section 72-2-301, MCA, is amended to read:

"**72-2-301. Who may make a will.** ~~Any person~~ *An individual* 18 or more years of age who is of sound mind may make a will."

Section 23. Section 72-2-302, MCA, is amended to read:

"**72-2-302. Execution — *witnessed wills — holographic wills.*** *(1)* Except as provided ~~for holographic wills, writings within 72-2-312, and wills within~~ *in 72-2-303,* 72-2-306, *72-2-312, and subsection (2) of this section,* ~~every~~ *a* will ~~shall~~ *must* be*:*

(a) in writing*;*

(b) signed by the testator or in the testator's name by some other ~~person~~ *individual* in the testator's *conscious* presence and by ~~his~~ *the testator's* direction*;* and

(c) ~~shall be~~ signed by at least two ~~persons~~ *individuals,* each of whom *signed within a reasonable time after having* witnessed either the signing *of the will as described in subsection (1)(b)* or the testator's acknowledgment of ~~the~~ *that* signature or *acknowledgment* of the will.

(2) A will that does not comply with subsection (1) is valid as a holographic will, whether or not witnessed, if the signature and material portions of the document are in the testator's handwriting.

(3) Intent that the document constitute the testator's will may be established by extrinsic evidence, including, for holographic wills, portions of the document that are not in the testator's handwriting."

Section 24. Section 72-2-304, MCA, is amended to read:

"**72-2-304. Self-proved will.** (1) ~~Any~~ *A* will may be simultaneously executed, attested, and made self-proved by acknowledgment thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state ~~where~~ *in which* execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, ..., the testator, sign my name to this instrument this ...... day of ......, 19...., and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my ~~last~~ will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

....
Testator

We, ..., ..., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as ~~his last~~ *the testator's* will and that ~~he~~ *the testator* signs it willingly (or willingly directs another to sign for ~~him~~ *the testator*), ~~and~~ that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

....
Witness

....
Witness

THE STATE OF ....
COUNTY OF ....

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this ...... day of ......

(SEAL) (Signed)....................................
(Official capacity of officer)
....

(2) An attested will may *be made self-proved* at any time ~~subsequent to~~ *after* its execution ~~be made self-proved~~ by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state ~~where~~ *in which* the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

THE STATE OF ....
COUNTY OF ....

We, ..., ..., and ...., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as ~~his last~~ *the testator's* will and that ~~he had~~ *the testator* signed willingly (or *willingly* directed another to sign for ~~him~~ *the testator*), ~~and~~ that ~~he~~ *the testator* executed it as ~~his~~ *the testator's* free and voluntary act for the purposes therein expressed, and that each of the witnesses, in the presence and hearing of the testator, signed the will as witness and that to the best of ~~his~~ *the witness's* knowledge the testator was at that time 18 ~~or more~~ years of age *or older*, of sound mind, and under no constraint or undue influence.

..................................Testator
..................................Witness
.... Witness

Subscribed, sworn to, and acknowledged before me by ...., the testator, and subscribed and sworn to before me by .... and ...., witnesses, this ...... day of ......, ...

(SEAL) (Signed).....................................
(Official capacity of officer)
....

(3) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution."

Section 25. Section 72-2-305, MCA, is amended to read:

"**72-2-305. Who may witness.** (1) ~~Any person~~ *An individual* generally competent to be a witness may act as a witness to a will.

(2) ~~A~~ *The signing of a* will ~~is not invalid because the will is signed~~ by an interested witness *does not invalidate the will or any provision of it."*

Section 26. Section 72-2-306, MCA, is amended to read:

"**72-2-306. Choice of law as to execution.** A written will is valid if executed in compliance with 72-2-302 or ~~72-2-303~~ *[section 34]* or if its execution complies with the law at the time of execution of the place where the will is executed or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national."

Section 27. Section 72-2-311, MCA, is amended to read:

"**72-2-311. Incorporation by reference.** ~~Any~~ *A* writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification."

Section 28. Section 72-2-312, MCA, is amended to read:

"**72-2-312. Separate writing identifying disposition of tangible personal property.** (1) Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money~~, evidences of indebtedness, documents of title, and securities and property used in trade or business~~.

(2) To be admissible under this section as evidence of the intended disposition, the writing must ~~either~~ be ~~in the handwriting of the testator or be~~ signed by ~~him~~ *the testator* and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the testator's death;

(b) prepared before or after the execution of the will;

(c) altered by the testator after its preparation; and

(d) a writing ~~which~~ *that* has no significance apart from its effect upon the dispositions made by the will."

Section 29. Section 72-2-313, MCA, is amended to read:

"**72-2-313. Events of independent significance.** A will may dispose of property by reference to acts and events ~~which~~ *that* have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event."

Section 30. Section 72-2-314, MCA, is amended to read:

"**72-2-314. Testamentary additions to trusts.** *(1) (a)* A *will may validly* devise ~~or bequest, the validity of which is determinable by the law of this state, may be made by a will~~ *property* to the trustee of a trust established or to be established*:*

(i) during the testator's lifetime by the testator, ~~or~~ by the testator and some other person, or by some other person, ~~(~~including a funded or unfunded life insurance trust, although the ~~truster~~ *settlor* has reserved any or all rights of ownership of the insurance contracts~~)~~*; or*

(ii) at the testator's death by the testator's devise to the trustee if the trust is identified in the testator's will and its terms are set forth in a written instrument, ~~(~~other than a will~~)~~, executed before, ~~or~~ concurrently with, *or after* the execution of the testator's will or in ~~the valid last~~ *another individual's* will ~~of a person who~~ *if that other individual* has predeceased the testator, ~~(~~regardless of the existence, size, or character of the corpus of the trust~~)~~.

(b) The devise is not invalid because the trust is amendable or revocable or because the trust was amended after the execution of the will or ~~after~~ the *testator's* death ~~of the testator~~.

(2) Unless the testator's will provides otherwise, ~~the~~ property ~~so~~ devised *to a trust described in subsection (1)* is not ~~deemed to be~~ held under a testamentary trust of the testator but *it* becomes a part of the trust to which it is ~~given~~ *devised* and ~~shall~~ *must* be administered and disposed of in accordance with the provisions of the *governing* instrument ~~or will~~ setting forth the terms of the trust, including any amendments thereto made before *or after* the *testator's* death ~~of the testator (regardless of whether made before or after the execution of the testator's will) and if the testator's will so provides, including any amendments to the trust made after the death of the testator~~.

(3) ~~A~~ *Unless the testator's will provides otherwise, a* revocation or termination of the trust before the *testator's* death ~~of the testator~~ causes the devise to lapse."

Section 31. Section 72-2-321, MCA, is amended to read:

"**72-2-321. Revocation by writing or act.** *(1)* A will or any part ~~thereof~~ *of a will* is revoked:

~~(1)~~*(a)* by *executing* a subsequent will ~~which~~ *that* revokes the ~~prior~~ *previous* will or part expressly or by inconsistency; or

~~(2)~~*(b)* by ~~being burned, torn, canceled, obliterated, or destroyed~~ *performing a revocatory act on the will if the testator performed the act* with the intent and for the purpose of revoking ~~it by the testator~~ *the will or part of the will* or ~~by~~ *if* another ~~person~~ *individual performed the act* in ~~his~~ *the testator's* conscious presence and by ~~his~~ *the testator's* direction. *For purposes of this subsection (b), "revocatory act on the will" includes burning, tearing, canceling, obliterating, or destroying the will or any part of it. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touched any of the words on the will.*

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator's death to the extent they are not inconsistent."

Section 32. Section 72-2-322, MCA, is amended to read:

"**72-2-322. Revocation by ~~divorce or annulment — no revocation by other~~ change ~~in~~ *of* circumstances.** ~~(1) If after executing a will the testator is divorced or his marriage annulled, the divorce or annulment revokes any disposition or appointment of property made by the will to the former spouse, any provision conferring a general or special power of appointment on the former spouse, and any nomination of the former spouse as executor, trustee, conservator, or guardian, unless the will expressly provides otherwise.~~

~~(2) Property prevented from passing to a former spouse because of revocation by divorce or annulment passes as if the former spouse failed to survive the decedent, and other provisions conferring some power or office on the former spouse are interpreted as if the spouse failed to survive the decedent.~~

~~(3) If provisions are revoked solely by this section, they are revived by testator's remarriage to the former spouse.~~

~~(4) For purposes of this section, divorce or annulment means any divorce or annulment which would exclude the spouse as a surviving spouse within the meaning of 72-2-103(2). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.~~

~~(5) No~~ *Except as provided in 72-2-104 and [section 71], a* change of circumstances ~~other than as described in this section revokes~~ *does not revoke* a will *or any part of it.*"

Section 33. Section 72-2-323, MCA, is amended to read:

"**72-2-323. Revival of revoked will.** (1) If a ~~second~~ *subsequent* will ~~which, had it remained effective at death, would have~~ *that wholly* revoked ~~the first~~ *a previous* will ~~in whole or in part~~ is thereafter revoked by ~~acts~~ *a revocatory act* under 72-2-321*(1)(b)*, the ~~first~~ *previous* will ~~is~~ *remains* revoked ~~in whole or in part~~ unless it is *revived. The previous will is revived if it is* evident from the circumstances of the revocation of the ~~second~~ *subsequent* will or from *the* testator's contemporary or subsequent declarations that ~~he~~ *the testator* intended the ~~first~~ *previous* will to take effect as executed.

(2) If a subsequent will that partly revoked a previous will is thereafter revoked by a revocatory act under 72-2-321(1)(b), a revoked part of the previous will is revived unless it is evident from the circumstances of the revocation of the subsequent will or from the testator's contemporary or subsequent declarations that the testator did not intend the revoked part to take effect as executed.

~~(2)~~*(3)* If a ~~second~~ *subsequent* will ~~which, had it remained effective at death, would have~~ *that* revoked ~~the first~~ *a previous* will in whole or in part is thereafter revoked by ~~a third~~ *another, later* will, the ~~first~~ *previous* will ~~is~~ *remains* revoked in whole or in part, ~~except~~ *unless it or its revoked part is revived. The previous will or its revoked part is revived* to the extent it appears from the terms of the ~~third~~ *later* will that the testator intended the ~~first~~ *previous* will to take effect."

Section 34. **Writings intended as wills.** Although a document or writing added upon a document was not executed in compliance with 72-2-302, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

(1) the decedent's will;

(2) a partial or complete revocation of the will;

(3) an addition to or an alteration of the will; or

(4) a partial or complete revival of the decedent's formerly revoked will or of a formerly revoked portion of the will.

Section 35. Section 72-2-401, MCA, is amended to read:

"**72-2-401. Duty of custodian ~~to deliver~~ *of* will — liability.** ~~(1)~~ After the death of a testator and on request of an interested person, ~~any~~ *a* person having custody of a will of the testator shall deliver it with reasonable promptness to a person able to secure its probate and, if none is known, to an appropriate court.

~~(2) Any~~ *A* person who willfully fails to deliver a will is liable to any person aggrieved for ~~the~~ *any* damages ~~which~~ *that* may be sustained by the failure. ~~Any~~ *A* person who willfully refuses or fails to deliver a will after being ordered by the court in a proceeding brought for the purpose of compelling delivery is subject to penalty for contempt of court."

Section 36. Section 72-2-402, MCA, is amended to read:

"**72-2-402. Deposit of will with court ~~— confidentiality — examination by conservator — delivery~~ *in testator's lifetime.*** ~~(1)~~ A will may be deposited by the testator or ~~his~~ *the testator's* agent with any court for safekeeping, under rules of the court. The will ~~shall~~ *must* be *sealed and* kept confidential.

~~(2)~~ During the testator's lifetime, a deposited will ~~shall~~ *may* be delivered only to ~~him~~ *the testator* or to a person authorized in writing signed by ~~him~~ *the testator* to receive the will.

~~(3)~~ A conservator may be allowed to examine a deposited will of a protected testator under procedures designed to maintain the confidential character of the document to the extent possible and to ~~assure~~ *ensure* that it will be resealed and ~~left~~ *kept* on deposit after the examination.

~~(4)~~ Upon being informed of the testator's death, the court shall notify any person designated to receive the will and deliver it to ~~him~~ *that person* on request~~,~~ or the court may deliver the will to the appropriate court."

Section 37. Section 72-2-502, MCA, is amended to read:

"**72-2-502. Will ~~construed to~~ *may* pass all property — *and* after-acquired property.** A will ~~is construed to pass~~ *may provide for the passage of* all property ~~which~~ the testator owns at ~~his~~ death~~, including~~ *and all* property acquired *by the estate* after the ~~execution of the will~~ *testator's death.*"

Section 38. Section 72-2-504, MCA, is amended to read:

"**72-2-504. Choice of law as to meaning and effect of ~~wills~~ *governing instrument.*** The meaning and legal effect of a ~~disposition in a will shall be~~ *governing instrument is* determined by the local law of ~~a particular~~ *the* state selected by the ~~testator~~ *transferor* in ~~his~~ *the governing* instrument unless the application of that law is contrary to the *provisions relating to the elective share described in part 7, the provisions relating to exempt property and allowances described in part 8, or any other* public policy of this state otherwise applicable to the disposition."

Section 39. Section 72-2-512, MCA, is amended to read:

"**72-2-512. Antilapse — *deceased devisee — class gifts.*** *(1) As used in this section, the following definitions apply:*

(a) "Alternative devise" means a devise that is expressly created by the will and that under the terms of the will may take effect instead of another devise on the happening of one or more events, including survival of the testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically

provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving, deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under [section 62].

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

~~(1)~~*(2)* If a devisee ~~who~~ *fails to survive the testator and* is a grandparent, ~~or~~ a ~~lineal~~ descendant of a grandparent, *or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply:* ~~of the testator is dead at the time of execution of the will, fails to survive the testator, or is treated as if he predeceased the testator, the issue of the deceased devisee who survive the testator by 120 hours take in place of the deceased devisee and if they are all of the same degree of kinship to the devisee, they take equally, but if of unequal degree then those of more remote degree take by representation.~~

~~(2) One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred before or after the execution of the will.~~

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the deceased devisee or devisee's surviving

descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of this subsection (b), "deceased devisee" means a class member who failed to survive the testator and left one or more surviving descendants.

(c) For purposes of [section 47], words of survivorship, such as in a devise to an individual "if the individual survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation devise."

Section 40. Section 72-2-513, MCA, is amended to read:

"**72-2-513. Failure of ~~devise~~ *testamentary provision.*** (1) Except as provided in 72-2-512, ~~if~~ a devise, other than a residuary devise, *that* fails for any reason~~, it~~ becomes a part of the residue.

(2) Except as provided in 72-2-512, if the residue is devised to two or more persons, ~~and~~ the share of ~~one of the~~ *a* residuary ~~devisees~~ *devisee that* fails for any reason~~, his share~~ passes to the other residuary devisee or to other residuary devisees in proportion to ~~their interests~~ *the interest of each* in the *remaining part of the* residue."

Section 41. Section 72-2-514, MCA, is amended to read:

"**72-2-514. Nonexoneration ~~— specific devise subject to security interest.~~** A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts."

Section 42. Section 72-2-515, MCA, is amended to read:

"**72-2-515. Ademption by satisfaction.** *(1)* Property ~~which~~ *that* a testator gave in ~~his~~ *the testator's* lifetime to a person is treated as a satisfaction of a devise ~~to that person,~~ in whole or in part~~,~~ only if*:*

(a) the will provides for deduction of the ~~lifetime~~ gift*;*

(b) ~~or~~ the testator ~~declares~~ *declared* in a contemporaneous writing that the gift ~~is to be deducted from the devise or~~ is in satisfaction of the devise or ~~the devisee acknowledges in writing that the gift is in satisfaction~~ *that its value is to be deducted from the value of the devise; or*

(c) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(2) For ~~purpose~~ *purposes* of partial satisfaction, property given during *the testator's* lifetime is valued as of the time the devisee came into possession or enjoyment of the property or ~~as of the time of~~ *at the testator's* death ~~of the testator~~, whichever occurs first.

(3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying 72-2-512 and 72-2-513, unless the testator's contemporaneous writing provides otherwise."

Section 43. Section 72-2-516, MCA, is amended to read:

"**72-2-516. Nonademption of specific devises ~~in certain cases~~ — *unpaid proceeds of sale, condemnation, or insurance — sale by conservator***

or agent. (1) A specific devisee has the right to the specifically devised property *in the testator's estate at death* and:

(a) any balance of the purchase price, ~~(~~together with any security interest~~)~~, owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on *or other recovery for injury to* the property; ~~and~~

(d) property owned by *the* testator at ~~his~~ death~~,~~ *and acquired* as a result of foreclosure or obtained in lieu of foreclosure of the security *interest* for a specifically devised obligation*;*

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subsections (1)(a) through (1)(e).

(2) If specifically devised property is sold *or mortgaged* by a conservator or an agent acting within the authority of a durable power of attorney for ~~a~~ *an incapacitated* principal ~~who is under a disability~~ or if a condemnation award, ~~or~~ insurance proceeds, *or recovery for an injury to property* ~~are~~ *is* paid to a conservator or an agent acting within the authority of a durable power of attorney for ~~a~~ *an incapacitated* principal, ~~who is under a disability, as a result of condemnation, fire, or casualty,~~ the specific devisee has the right to a general pecuniary devise equal to the net sale price, *the amount of the unpaid loan,* the condemnation award, ~~or~~ the insurance proceeds, *or the recovery.* ~~This subsection does not apply if after the sale, condemnation, or casualty it is adjudicated that the disability of the testator has ceased and the testator survives the adjudication by 1 year.~~

(3) The right of the specific devisee under ~~this~~ subsection *(2)* is reduced by any right ~~he~~ *the devisee* has under subsection (1).

(4) For the purposes of the references in subsection (2) to a conservator, subsection (2) does not apply if, after the sale, mortgage, condemnation, casualty, or recovery, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by 1 year.

(5) For the purposes of the references in subsection (2) to an agent acting within the authority of a durable power of attorney for an incapacitated principal:

(a) "incapacitated principal" means a principal who is an incapacitated person;

(b) no adjudication of incapacity before death is necessary; and

(c) the acts of an agent within the authority of a durable power of attorney are presumed to be for an incapacitated principal."

Section 44. Section 72-2-517, MCA, is amended to read:

"72-2-517. ~~Changes~~ *Increase* in ~~devised~~ securities — ~~distributions prior to death~~ *accessions*. (1) If ~~the~~ *a* testator ~~intended a specific devise of certain~~ *executes a will that devises* securities ~~rather than the equivalent value thereof, the specific devisee is entitled only to~~ *and the testator then owned securities that meet the description in the will, the devise includes additional securities owned by the testator at death to the extent the additional securities were acquired by the testator after the will was executed as a result of the testator's ownership of the described securities and if the securities are of any of the following types:*

(a) ~~as much of the devised~~ securities ~~as is a part of the estate at time of the testator's death;~~

~~(b) any additional or other securities~~ of the same ~~entity owned by the testator~~ *organization acquired* by reason of action initiated by the ~~entity~~ *organization or any successor, related, or acquiring organization*, excluding any ~~securities~~ acquired by exercise of purchase options;

~~(c)~~*(b)* securities of another ~~entity owned by the testator~~ *organization acquired* as a result of a merger, consolidation, reorganization, or other ~~similar action initiated~~ *distribution* by the ~~entity~~ *organization or any successor, related, or acquiring organization*; ~~and~~ *or*

~~(d)~~*(c)* ~~any additional~~ securities of the ~~entity owned by the testator~~ *same organization acquired* as a result of a plan of reinvestment.

(2) Distributions ~~prior to~~ *in cash before* death with respect to a ~~specifically devised~~ *described* security ~~not provided for in subsection (1)~~ are not part of the ~~specific~~ devise."

Section 45. Section 72-2-518, MCA, is amended to read:

"72-2-518. ~~No implied exercise~~ *Exercise* of power of appointment. ~~A~~ *In the absence of a requirement that a power of appointment be exercised by a reference to the power or by an express or specific reference to the power, a* general residuary clause in a will or a will making general disposition of all of the testator's property ~~does not~~ *expresses an intention to* exercise a power of appointment held by the testator ~~unless~~ *only if:*

(1) ~~specific reference is made to~~ the power ~~or there is some other indication of~~ *is a general power and the creating instrument does not contain a gift if the power is not exercised; or*

(2) the testator's will manifests an intention to include the property subject to the power."

Section 46. Section 72-2-519, MCA, is amended to read:

"72-2-519. Penalty clause for contest ~~unenforceable~~. A provision in a will purporting to penalize ~~any~~ *an* interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings."

Section 47. **Scope.** In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

Section 48. Section 72-2-601, MCA, is amended to read:

"**72-2-601. ~~Omitted~~ *Entitlement of* spouse — *premarital will.*** (1) If a ~~testator fails to provide by will for his~~ *testator's* surviving spouse ~~who~~ married the testator after the execution of the will, the ~~omitted~~ *surviving* spouse ~~shall~~ *is entitled to* receive, *as an intestate share, no less than the value of* the ~~same~~ share of the estate ~~he~~ *the spouse* would have received if the ~~decedent left no will~~ *testator had died intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse nor devised or passes under 72-2-512 or 72-2-513 to a descendant of such a child,* unless*:*

(a) it appears from the will ~~that the omission was intentional~~ or *other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;*

(b) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(c) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by *the testator's* statements ~~of the testator~~ or *is reasonably inferred* from the amount of the transfer or other evidence.

(2) In satisfying ~~a~~ *the* share provided by this section, ~~the~~ devises made by the will *to the testator's surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under 72-2-512 or 72-2-513 to a descendant of such a child,* abate as provided in 72-3-901."

Section 49. Section 72-2-602, MCA, is amended to read:

"**72-2-602. ~~Pretermitted child~~ *Omitted children.*** (1) ~~If~~ *Except as provided in subsection (2), if* a testator fails to provide in ~~his~~ *the testator's* will for any of ~~his~~ *the testator's* children born or adopted after the execution of ~~his~~ *the* will, the omitted *after-born or after-adopted* child receives a share in the estate *as follows:*

(a) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which ~~he~~ *the child* would have received ~~if~~ *had* the testator ~~had~~ died intestate unless~~:~~ *the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.*

(b) If the testator had one or more children living when the testator executed the will and the will devised property or an interest in property to one or more of

the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subsection (1)(b)(i), that the child would have received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subsection (1)(b), devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsections (1)(a), (1)(b), and (3) do not apply if:

(a) it appears from the will that the omission was intentional;

~~(b) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child;~~ or

~~(c)~~*(b)* the testator provided for the *omitted after-born or after-adopted* child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by *the testator's* statements ~~of the testator~~ or *is reasonably inferred* from the amount of the transfer or other evidence.

~~(2)~~*(3)* ~~If~~ *Except as provided in subsection (2), if* at the time of execution of the will the testator fails to provide in ~~his~~ *the testator's* will for a living child solely because ~~he~~ *the testator* believes the child to be dead, the child ~~receives a~~ *is entitled to* share in the estate ~~equal in value to that which he would have received if the testator had died intestate~~ *as if the child were an omitted after-born or after-adopted child.*

~~(3)~~*(4)* In satisfying a share provided by ~~this section~~ *subsection (1)(a),* ~~the~~ devises made by the will abate as provided in 72-3-901."

Section 50. Section 72-2-702, MCA, is amended to read:

"**72-2-702.** ~~**Right to elective**~~ ***Elective*** **share.** (1) ~~If a married person domiciled in this state dies, the~~ *The* surviving spouse *of a decedent who dies domiciled in this state* has a right of election, *under the limitations and conditions stated in this part,* to take an ~~elective share of one-third~~ *elective-share amount equal to the value of the elective-share percentage* of the augmented estate ~~under the limitations and conditions hereinafter stated.~~, *determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:*

If the decedent and the spouse were married to each other:	*The elective-share percentage is:*
Less than 1 year	*supplemental amount only*
1 year but less than 2 years	*3% of the augmented estate*
2 years but less than 3 years	*6% of the augmented estate*
3 years but less than 4 years	*9% of the augmented estate*
4 years but less than 5 years	*12% of the augmented estate*
5 years but less than 6 years	*15% of the augmented estate*
6 years but less than 7 years	*18% of the augmented estate*
7 years but less than 8 years	*21% of the augmented estate*
8 years but less than 9 years	*24% of the augmented estate*
9 years but less than 10 years	*27% of the augmented estate*
10 years but less than 11 years	*30% of the augmented estate*
11 years but less than 12 years	*34% of the augmented estate*
12 years but less than 13 years	*38% of the augmented estate*
13 years but less than 14 years	*42% of the augmented estate*
14 years but less than 15 years	*46% of the augmented estate*
15 years or more	*50% of the augmented estate*

(2) If the sum of the amounts described in 72-2-705(2)(c) and (2)(d) and 72-2-706(1)(a) and (1)(c) and that part of the elective-share amount payable from the decedent's probate and reclaimable estates under 72-2-706(2) and (3) is less than $50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to $50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's reclaimable estate in the order of priority set forth in 72-2-706(2) and (3).

~~(2)~~*(3)* ~~If a married person not domiciled in this state dies, the~~ *The* right, if any, of the surviving spouse *of a decedent who dies domiciled outside this state* to take an elective share in property in this state is governed by the law of the decedent's domicile at death."

Section 51. Section 72-2-703, MCA, is amended to read:

"**72-2-703. Right of election personal to surviving spouse.** *(1)* The right of election ~~of the surviving spouse~~ may be exercised only by ~~him~~ *a surviving spouse who is living when the petition for the elective share is filed in the court under 72-2-707(1). If the election is not exercised by the surviving spouse personally, it may be exercised on the surviving spouse's behalf by the surviving spouse's conservator, guardian, or agent under the authority of a power of attorney.*

(2) ~~In the case of a protected~~ *If the election is exercised on behalf of a surviving spouse who is an incapacitated* person, ~~the right of election may be exercised only by order of~~ the court ~~in which protective proceedings as to his property are pending after finding that exercise is necessary to provide adequate~~ *shall set aside that portion of the elective-share and supplemental elective-share amounts due from the decedent's probate estate and recipients of the decedent's reclaimable estate under 72-2-706(2) and (3) and shall appoint a trustee to administer that property for the* support ~~for the protected person during his probable life expectancy~~ *of the surviving spouse. For the purposes of this subsec-*

tion, an election on behalf of a surviving spouse by an agent under a durable power of attorney is presumed to be on behalf of a surviving spouse who is an incapacitated person. The trustee shall administer the trust in accordance with the following terms and such additional terms as the court determines appropriate:

(a) Expenditures of income and principal may be made in the manner, when, and to the extent that the trustee determines suitable and proper for the surviving spouse's support, without court order but with regard to other support, income, and property of the surviving spouse exclusive of benefits of medical or other forms of assistance from any state or federal government or governmental agency for which the surviving spouse qualifies on the basis of need.

(b) During the surviving spouse's incapacity, neither the surviving spouse nor anyone acting on behalf of the surviving spouse has a power to terminate the trust; but if the surviving spouse regains capacity, the surviving spouse then acquires the power to terminate the trust and acquire full ownership of the trust property free of trust by delivering to the trustee a writing signed by the surviving spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee shall transfer the unexpended trust property in the following order:

(i) under the residuary clause, if any, of the will of the predeceased spouse against whom the elective share was taken, as if that predeceased spouse died immediately after the surviving spouse; or

(ii) to that predeceased spouse's heirs under [section 70]."

Section 52. Section 72-2-704, MCA, is amended to read:

"**72-2-704.** ~~**Surviving spouse — allowance — exemptions**~~ ***Effect of election on statutory benefits.*** ~~A~~ *If the right of election is exercised by or on behalf of the* surviving spouse, ~~is entitled to~~ *the surviving spouse's* homestead allowance, exempt property, and family allowance, *if any, are not charged against but are in addition to the* ~~whether or not he elects to take an elective share~~ *elective-share and supplemental elective-share amounts."*

Section 53. Section 72-2-705, MCA, is amended to read:

"**72-2-705. Augmented estate.** *(1) (a) As used in this section, the following definitions apply:*

(i) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim.

(ii) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(iii) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of

the power could have created an interest, present or future, in the decedent or the decedent's creditors.

(iv) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(v) "Right to income" includes a right to payments under an annuity or similar contractual arrangement.

(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(b) As used in subsections (2)(b)(iii) and (2)(b)(iv), "transfer" includes an exercise or release of a power of appointment but does not include a lapse of a power of appointment.

(2) The augmented estate ~~means the~~ *consists of the sum of:*

(a) the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims~~, to which is added the sum of the following amounts:~~*;*

(b) the value of the decedent's reclaimable estate, which is composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) property, to the extent the passing of the principal thereof to or for the benefit of any person, other than the decedent's surviving spouse, was subject to a presently exercisable general power of appointment held by the decedent alone, if the decedent held that power immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, released that power or exercised that power in favor of any person other than the decedent or the decedent's estate, spouse, or surviving spouse;

(ii) property, to the extent of the decedent's unilaterally severable interest therein, held by the decedent and any other person, except the decedent's surviving spouse, with right of survivorship, if the decedent held that interest immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, transferred that interest to any person other than the decedent's surviving spouse;

(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent payable to any person other than the decedent's surviving spouse, if the decedent owned the insurance policy and had the power to change the beneficiary of the insurance policy or if the insurance policy was subject to a presently exercisable general power of appointment held by the decedent alone

immediately before death or if and to the extent the decedent, while married to the surviving spouse and during the 2-year period preceding the decedent's death, transferred that policy to any person other than the decedent's surviving spouse; and

~~(1)~~*(iv)* ~~the value of~~ property transferred *by the decedent* to ~~anyone~~ *any person* other than a bona fide purchaser ~~by the decedent~~ at any time during *the decedent's* marriage *to the surviving spouse,* to or for the benefit of any person other than the surviving spouse, ~~to the extent that the decedent did not receive adequate and full consideration in money or money's worth for the transfer,~~ if the transfer is of any of the following types:

~~(a)~~*(A)* any transfer ~~under which~~ *to the extent that* the decedent retained at the time of ~~his~~ *or during the 2-year period preceding* death the possession or enjoyment of or right to income from the property;

~~(b)~~*(B)* any transfer to the extent that ~~the decedent retained~~ at the time of ~~his~~ *or during the 2-year period preceding the decedent's* death, *the income or principal was subject to* a power, ~~either~~ *exercisable by the decedent* alone or in conjunction with any other person~~, to revoke or to consume, invade, or dispose of the principal~~ *or exercisable by a nonadverse party* for ~~his own~~ *the* benefit *of the decedent or the decedent's estate*;

~~(c)~~*(C)* any transfer ~~whereby~~ *of* property *to the extent the decedent's contribution to it, as a percentage of the whole, was made during the 2-year period preceding the decedent's death, by which the property* is held at the time of *or during the 2-year period preceding the* decedent's death by *the* decedent and another, *other than the decedent's surviving spouse,* with right of survivorship; *or*

~~(d)~~*(D)* any transfer made to a donee ~~within 2 years of~~ *during the 2-year period preceding the decedent's* death ~~of the decedent~~ to the extent that the aggregate transfers to any one donee in ~~any~~ *either* of the years exceed ~~$3,000~~ *$10,000*;

(c) the value of property to which the surviving spouse succeeds by reason of the decedent's death, other than by homestead allowance, exempt property, family allowance, testate succession, or intestate succession, including the proceeds of insurance, including accidental death benefits, on the life of the decedent and including benefits payable under a retirement plan in which the decedent was a participant, exclusive of the federal social security system; and

(d) the value of property owned by the surviving spouse at the decedent's death, reduced by enforceable claims against that property or that spouse, plus the value of amounts that would have been includable in the surviving spouse's reclaimable estate had the spouse predeceased the decedent. However, amounts that would have been includable in the surviving spouse's reclaimable estate under subsection (2)(b)(iii) are not valued as if the surviving spouse were deceased.

~~(2)~~*(3)* ~~any~~ *Any* transfer *or exercise or release of a power of appointment* is excluded *from the decedent's reclaimable estate:*

(a) to the extent the decedent received adequate and full consideration in money or money's worth for the transfer, exercise, or release; or

(b) if *irrevocably* made with the written consent or joinder of the surviving spouse.

(4) Property is valued as of the decedent's death, ~~except that~~ *but an irrevocable transfer of* property ~~given irrevocably to a donee during lifetime of the decedent~~ *during the 2-year period preceding the decedent's death that is included in the decedent's reclaimable estate under subsections (2)(b)(i), (2)(b)(ii), and (2)(b)(iv)* is valued as of the ~~date the donee came into possession or enjoyment if that occurs first~~ *time of the transfer. If the terms of more than one of the provisions of subsection (2)(b) apply, the property is included in the augmented estate under the provision that yields the highest value. For purposes of this subsection, an "irrevocable transfer of property" includes an irrevocable exercise or release of a power of appointment.* ~~Nothing herein shall cause to be included in the augmented estate any life insurance, accident insurance, joint annuity, or pension payable to a person other than the surviving spouse.~~

~~(3) the value of property owned by the surviving spouse at the decedent's death, plus the value of property transferred by the spouse at any time during marriage to any person other than the decedent which would have been includable in the spouse's augmented estate if the surviving spouse had predeceased the decedent, to the extent the owned or transferred property is derived from the decedent by any means other than testate or intestate succession without a full consideration in money or money's worth. For purposes of this subsection:~~

~~(a) property derived from the decedent includes but is not limited to any beneficial interest of the surviving spouse in a trust created by the decedent during his lifetime, any property appointed to the spouse by the decedent's exercise of a general or special power of appointment also exercisable in favor of others than the spouse, any proceeds of insurance (including accidental death benefits) on the life of the decedent attributable to premiums paid by him, any lump sum immediately payable and the commuted value of the proceeds of annuity contracts under which the decedent was the primary annuitant attributable to premiums paid by him, the commuted value of amounts payable after the decedent's death under any public or private pension, disability compensation, death benefit, or retirement plan, exclusive of the federal social security system, by reason of service performed or disabilities incurred by the decedent, any property held at the time of decedent's death by decedent and the surviving spouse with right of survivorship, any property held by decedent and transferred by contract to the surviving spouse by reason of the decedent's death, and the value of the share of the surviving spouse resulting from rights in community property in this or any other state formerly owned with the decedent. Premiums paid by the decedent's employer, his partner, a partnership of which he was a member, or his creditors are deemed to have been paid by the decedent.~~

~~(b) property owned by the spouse at the decedent's death is valued as of the date of death. Property transferred by the spouse is valued at the time the transfer became irrevocable or at the decedent's death, whichever occurred first. Income earned by included property prior to the decedent's death is not treated as property derived from the decedent.~~

~~(c) property owned by the surviving spouse as of the decedent's death or previously transferred by the surviving spouse is presumed to have been derived~~

~~from the decedent, except to the extent that the surviving spouse establishes that it was derived from another source.~~

~~(4) For the purposes of this section, a bona fide purchaser is a purchaser for value in good faith and without notice of any adverse claim. Any recorded instrument is prima facie evidence that the transfer described therein was made to a bona fide purchaser.~~

(5) (a) Although under this section a payment, item of property, or other benefit is included in the decedent's reclaimable estate, a payor or other third party is not liable for having made a payment or transferred an item of property or other benefit to a beneficiary designated in a governing instrument, or for having taken any other action in good faith reliance on the validity of a governing instrument, upon request and satisfactory proof of the decedent's death, before the payor or other third party received written notice from the surviving spouse or spouse's representative of an intention to file a petition for the elective share or that a petition for the elective share has been filed. A payor or other third party is liable for payments made or other actions taken after the payor or other third party received written notice of an intention to file a petition for the elective share or that a petition for the elective share has been filed.

(b) The written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of intention to file a petition for the elective share or that a petition for the elective share has been filed, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under 72-2-707(4), shall order disbursement in accordance with the determination. If no petition is filed in the court within the specified time under 72-2-707(1) or, if filed, the demand for an elective share is withdrawn under 72-2-707(3), the court shall order disbursement to the designated beneficiary. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(c) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

(6) (a) A person who purchases property from a recipient for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this part to return the payment, item of property, or benefit nor liable under this part for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit included in the decedent's reclaimable estate is obligated to return

the payment, item of property, or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in 72-2-706.

(b) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of that payment or the value of that item of property or benefit, as provided in 72-2-706, to the person who would have been entitled to it were that section or part of that section not preempted."

Section 54. Section 72-2-706, MCA, is amended to read:

"**72-2-706. Charging spouse with ~~property~~ *owned assets and gifts* received — liability of others for balance of elective share.** (1) In the proceeding for an elective share, ~~values included in the augmented estate which pass or have passed to the surviving spouse, or which would have passed to the spouse but were renounced,~~ *the following* are applied first to satisfy the ~~elective share~~ *elective-share amount* and to reduce *or eliminate* any contributions due from ~~other~~ *the decedent's probate estate and* recipients of ~~transfers included in~~ the ~~augmented~~ *decedent's reclaimable* estate~~. For purposes of this subsection, the electing spouse's beneficial interest in any life estate or in any trust shall be computed as if worth one-half of the total value of the property subject to the life estate, or of the trust estate, unless higher or lower values for these interests are established by proof.~~*:*

(a) amounts included in the augmented estate that pass or have passed to the surviving spouse by testate or intestate succession;

(b) amounts included in the augmented estate under 72-2-705(2)(c);

(c) amounts included in the augmented estate that would have passed to the spouse but were disclaimed; and

(d) amounts included in the augmented estate under 72-2-705(2)(d) up to the applicable percentage thereof. For purposes of this subsection (d), the "applicable percentage" is twice the elective-share percentage set forth in the schedule in 72-2-702(1) appropriate to the length of time the spouse and the decedent were married to each other.

(2) If, after the application of subsection (1), the elective-share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective-share amount, amounts included in the decedent's probate estate and that portion of the decedent's reclaimable estate, other than amounts irrevocably transferred within 2 years before the decedent's death, are applied first to satisfy the unsatisfied balance of the elective-share amount or the supplemental elective-share amount. The decedent's probate estate and that portion of the decedent's reclaimable estate are applied so that liability for the unsatisfied balance of the elective-share amount or for the supplemental elective-share amount is equitably apportioned among the recipients of the decedent's probate estate and that portion of the decedent's reclaimable estate in proportion to the value of their interests therein.

~~(2)~~*(3)* ~~Remaining property of the augmented~~ *If, after the application of subsections (1) and (2), the elective-share or supplemental elective-share amount is not fully satisfied, the remaining portion of the decedent's reclaimable* estate is ~~so~~ applied *so* that liability for the *unsatisfied* balance of the ~~elective share of the surviving spouse~~ *elective-share or supplemental elective-share amount* is equitably apportioned among the recipients of ~~the augmented~~ *that portion of the decedent's reclaimable* estate in proportion to the value of their interests therein.

~~(3)~~*(4)* Only original ~~transferees from or appointees of the decedent and their donees,~~ *recipients of the reclaimable estate described in 72-2-705(2)(b) and the donees of the recipients of the reclaimable estate* to the extent the donees have the property or its proceeds~~,~~ are ~~subject to the~~ *liable to make a proportional* contribution ~~to make up the~~ *toward satisfaction of the surviving spouse's* ~~elective share of the surviving spouse~~ *elective-share or supplemental elective-share amount.* A person liable to contribution may choose to give up the ~~property transferred to him~~ *proportional part of the reclaimable estate* or to pay ~~its~~ *the* value ~~as~~ of the ~~time it is considered in computing the augmented estate~~ *amount for which the person is liable.*"

Section 55. Section 72-2-707, MCA, is amended to read:

"**72-2-707.** ~~**Procedure**~~ ***Proceeding*** **for** ~~**making of election**~~ ***elective share — time limit.*** (1) ~~The surviving spouse may elect to take his elective share in the augmented estate~~ *Except as provided in subsection (2), the election must be made* by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within 9 months after the date of *the decedent's* death or within 6 months after the probate of the decedent's will, whichever limitation ~~last~~ *later* expires. *The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented estate whose interests will be adversely affected by the taking of the elective share.* ~~However, the nonprobate transfers~~ *Except as provided in subsection (2), the decedent's reclaimable estate,* described in 72-2-705~~(1)~~*(2)(b),* ~~shall~~ *is* not ~~be~~ included within the augmented estate for the purpose of computing the elective share if the petition is filed ~~later~~ *more* than 9 months after *the decedent's* death. ~~The court may extend the time for election as it sees fit for cause shown by the surviving spouse before the time for election has expired.~~

(2) ~~The surviving spouse shall give notice of the time and place set for hearing to persons interested in the estate and to the distributees and recipients of portions of the augmented net estate whose interests will be adversely affected by the taking of the elective share.~~ *Within 9 months after the decedent's death, the surviving spouse may petition the court for an extension of time for making an election. If, within 9 months after the decedent's death, the spouse gives notice of the petition to all persons interested in the decedent's reclaimable estate, the court for cause shown by the surviving spouse may extend the time for election. If the court grants the spouse's petition for an extension, the decedent's reclaimable estate, described in 72-2-705(2)(b), is not excluded from the augmented estate for the purpose of computing the elective-share and supplemental elective-share amounts if the spouse makes an election by filing in the court and mailing or delivering to the personal representative, if any, a petition for the elective share within the time allowed by the extension.*

(3) The surviving spouse may withdraw ~~his~~ *a* demand for an elective share at any time before entry of a final determination by the court.

(4) After notice and hearing, the court shall determine the ~~amount of the elective share~~ *elective-share and supplemental elective-share amounts* and shall order its payment from the assets of the augmented ~~net~~ estate or by contribution as appears appropriate under 72-2-706. If it appears that a fund or property included in the augmented ~~net~~ estate has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than ~~he~~ *the person* would have been *under 72-2-706* if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions."

Section 56. **Applicable law.** This part applies to the estate of a decedent who dies domiciled in this state. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

Section 57. Section 72-2-801, MCA, is amended to read:

"**72-2-801. Homestead allowance.** ~~(1)~~ A *decedent's* surviving spouse ~~of a decedent who was domiciled in this state~~ is entitled to a homestead allowance of $20,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance amounting to $20,000~~,~~ divided by the number of minor and dependent children of the decedent.

~~(2)~~ The homestead allowance is exempt from and has priority over all claims against the estate.

~~(3)~~ Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."

Section 58. Section 72-2-802, MCA, is amended to read:

"**72-2-802. Exempt property.** ~~(1)~~ In addition to the homestead allowance~~,~~ the *decedent's* surviving spouse ~~of a decedent who was domiciled in this state~~ is entitled from the estate to *a* value, not exceeding ~~$3,500~~ *$10,000* in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, *the decedent's* children ~~of the decedent~~ are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than ~~$3,500~~ *$10,000* or if there is not ~~$3,500~~ *$10,000* worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the ~~$3,500~~ *$10,000* value.

~~(2)~~ Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, ~~except that~~ *but* the right to any assets to make up a deficiency of exempt property ~~shall abate~~ *abates* as necessary to permit ~~prior~~ *earlier* payment of homestead allowance and family allowance.

~~(3)~~ These rights are in addition to any benefit or share passing to the surviving spouse or children by the *decedent's* will ~~of the decedent~~ unless otherwise provided, by intestate succession, or by way of elective share."

Section 59. Section 72-2-803, MCA, is amended to read:

"**72-2-803. Family allowance.** (1) In addition to the right to homestead allowance and exempt property, ~~if the decedent was domiciled in this state,~~ the *decedent's* surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by ~~him~~ *the decedent* are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

~~(2)~~ It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody~~;~~. ~~but in case any~~ *If a* minor child or dependent child is not living with the surviving spouse, the allowance may be made partially to the child or ~~his~~ *the child's* guardian or other person having ~~his~~ *the child's* care and custody and partially to the spouse, as their needs may appear.

~~(3)~~ The family allowance is exempt from and has priority over all claims ~~but not over~~ *except* the homestead allowance.

~~(4)~~*(2)* The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

~~(5)~~ The death of any person entitled to family allowance terminates ~~his~~ *the* right to allowances not yet paid."

Section 60. Section 72-2-804, MCA, is amended to read:

"**72-2-804. Source, determination, and documentation.** (1) If the estate is otherwise sufficient, property specifically devised ~~is~~ *may* not *be* used to satisfy rights to homestead ~~and~~ *allowance or* exempt property. Subject to this restriction, the surviving spouse, ~~the~~ guardians of ~~the~~ minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make ~~these~~ *those* selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there ~~are~~ *is* no ~~guardians~~ *guardian* of ~~the~~ *a* minor ~~children~~ *child*. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. ~~He~~ *The personal representative* may determine the family allowance in a lump sum not exceeding ~~$6,000~~ *$18,000* or periodic installments not exceeding ~~$500~~ *$1,500* per month for 1 year and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash.

~~(2)~~ The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which ~~relief~~ may ~~provide~~ *include* a family allowance ~~larger or smaller~~ *other* than that which the personal representative determined or could have determined.

(2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under 72-2-703(2)."

Section 61. **Scope.** In the absence of a finding of a contrary intention, the rules of construction in [sections 61 through 72] control the construction of a governing instrument. The rules of construction in [sections 61 through 72] apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

Section 62. **Requirement of survival by one hundred twenty hours.** (1) For the purposes of chapters 1 through 5, except for purposes of [sections 103 through 112] and except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in subsection (4) and except for a security registered in beneficiary form (TOD) under [sections 103 through 112], for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

(3) (a) Except as provided in subsection (4), if:

(i) it is not established by clear and convincing evidence that one of two co-owners with right of survivorship survived the other co-owner by 120 hours, one-half of the property passes as if one had survived by 120 hours and one-half as if the other had survived by 120 hours; and

(ii) there are more than two co-owners and it is not established by clear and convincing evidence that at least one of them survived the others by 120 hours, the property passes in the proportion that one bears to the whole number of co-owners.

(b) For the purposes of this subsection (3), "co-owners with right of survivorship" includes joint tenants, tenants by the entireties, and other co-owners of property or accounts held under circumstances that entitle one or more to the whole of the property or account on the death of the other or others.

(4) This section does not apply if:

(a) the governing instrument contains language dealing explicitly with simultaneous deaths or deaths in a common disaster and that language is operable under the facts of the case;

(b) the governing instrument expressly indicates that an individual is not required to survive an event, including the death of another individual, by any specified period or expressly requires the individual to survive the event by a specified period;

(c) the imposition of a 120-hour requirement of survival would cause a nonvested property interest or a power of appointment to fail to qualify for validity under 70-1-802(1)(a), (2)(a), or (3)(a) or to become invalid under 70-1-802(1)(b), (2)(b), or (3)(b); or

(d) the application of this section to multiple governing instruments would result in an unintended failure or duplication of a disposition.

(5) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument who, under this section, is not entitled to the payment or item of property, or for having taken any other action in good faith reliance on the beneficiary's apparent entitlement under the terms of the governing instrument, before the payor or other third party received written notice of a claimed lack of entitlement under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed lack of entitlement under this section.

(b) Written notice of a claimed lack of entitlement under subsection (5)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed lack of entitlement under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(6) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

Section 63. **Power of appointment — meaning of specific reference requirement.** If a governing instrument creating a power of appointment expressly requires that the power be exercised by a reference, an express reference, or a specific reference to the power or its source, it is presumed that the donor's intention, in requiring that the donee exercise the power by making reference to the particular power or to the creating instrument, was to prevent an inadvertent exercise of the power.

Section 64. **Class gifts construed to accord with intestate succession.** (1) Adopted individuals and individuals born out of wedlock and their respective descendants if appropriate to the class are included in class gifts and other terms of relationship in accordance with the rules for intestate succession. Terms of relationship that do not differentiate relationships by blood from those by affinity, such as "uncles", "aunts", "nieces", or "nephews", are construed to exclude relatives by affinity. Terms of relationship that do not differentiate relationships by the half blood from those by the whole blood, such as "brothers", "sisters", "nieces", or "nephews", are construed to include both types of relationships.

(2) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not the natural parent, an individual born to the natural parent is not considered the child of that parent unless the individual lived while a minor as a regular member of the household of that natural parent or of that parent's parent, brother, sister, spouse, or surviving spouse.

(3) In addition to the requirements of subsection (1), in construing a dispositive provision of a transferor who is not the adopting parent, an adopted individual is not considered the child of the adopting parent unless the adopted individual lived while a minor, either before or after the adoption, as a regular member of the household of the adopting parent.

Section 65. **Life insurance — retirement plan — account with POD designation — transfer-on-death registration — deceased beneficiary.** (1) As used in this section, the following definitions apply:

(a) "Alternative beneficiary designation" means a beneficiary designation that is expressly created by the governing instrument and that under the terms of the governing instrument may take effect instead of another beneficiary designation on the happening of one or more events, including survival of the decedent or failure to survive the decedent, whether an event is expressed in condition-precedent, condition-subsequent, or any other form.

(b) "Beneficiary" means the beneficiary of a beneficiary designation and includes:

(i) a class member if the beneficiary designation is in the form of a class gift; and

(ii) an individual or class member who was deceased at the time the beneficiary designation was executed as well as an individual or class member who was then living but who failed to survive the decedent.

(c) "Beneficiary designation" includes an alternative beneficiary designation and a beneficiary designation in the form of a class gift.

(d) "Class member" includes an individual who fails to survive the decedent but who would have taken under a beneficiary designation in the form of a class gift had the individual survived the decedent.

(e) "Stepchild" means a child of the decedent's surviving, deceased, or former spouse but not a child of the decedent.

(f) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under [section 62].

(2) If a beneficiary fails to survive the decedent and is a grandparent, a descendant of a grandparent, or a stepchild of the decedent, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the beneficiary designation is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the decedent.

(b) Except as provided in subsection (2)(d), if the beneficiary designation is in the form of a class gift, other than a beneficiary designation to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the deceased beneficiary or beneficiary's surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the decedent passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the decedent. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the decedent. For purposes of this subsection (b), "deceased beneficiary" means a class member who failed to survive the decedent and left one or more surviving descendants.

(c) For the purposes of [section 61], words of survivorship, such as in a beneficiary designation to an individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) is to a descendant of a beneficiary of the primary beneficiary designation;

(B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) is a beneficiary designation for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) (a) A payor is protected from liability in making payments under the terms of the beneficiary designation until the payor has received written notice of a claim to a substitute gift under this section. Payment made before the receipt of written notice of a claim to a substitute gift under this section discharges the payor, but not the recipient, from all claims for the amounts paid. A payor is liable for a payment made after the payor has received written notice of the claim. A recipient is liable for a payment received, whether or not written notice of the claim is given.

(b) The written notice of the claim must be mailed to the payor's main office or home by certified mail, return receipt requested, or served upon the payor in the same manner as a summons in a civil action. Upon receipt of written notice of the claim, a payor may pay any amount owed by it to the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds and, upon its determination under this section, shall order disbursement in accordance with the determination. Payment made to the court discharges the payor from all claims for the amounts paid.

(5) (a) A person who purchases property for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a person who, not for value, receives the payment, item of property, or other benefit to which the person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

Section 66. **Survivorship with respect to future interests under terms of trust — substitute takers.** (1) As used in this section, the following definitions apply:

(a) "Alternative future interest" means an expressly created future interest that may take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

(b) "Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

(c) "Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

(d) "Distribution date" with respect to a future interest means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but may occur at a time during the course of a day.

(e) "Future interest" includes an alternative future interest and a future interest in the form of a class gift.

(f) "Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust that directs the continuance of an existing trust, designates a beneficiary of an existing trust, or creates a trust.

(g) "Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under [section 62].

(2) A future interest under the terms of a trust is contingent on the beneficiary surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following provisions apply:

(a) Except as provided in subsection (2)(d), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date.

(b) Except as provided in subsection (2)(d), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the deceased beneficiary or beneficiary's surviving descendants. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For purposes of this subsection (2), "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants.

(c) For the purposes of [section 61], words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form.

(d) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary future interest.

(iii) "Younger-generation future interest" means a future interest that:

(A) is to a descendant of a beneficiary of the primary future interest;

(B) is an alternative future interest with respect to the primary future interest;

(C) is a future interest for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(4) If, after the application of subsections (2) and (3), there is no surviving taker, the property passes in the following order:

(a) if the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will. For purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust.

(b) if no taker is produced by the application of subsection (4)(a), the property passes to the transferor's heirs under [section 70].

Section 67. **Class gifts to "descendants", "issue", or "heirs of the body" — form of distribution if none specified.** If a class gift in favor of "descendants", "issue", or "heirs of the body" does not specify the manner in which the property is to be distributed among the class members, the property is distributed among the class members who are living when the interest is to take effect in possession or enjoyment in such shares as they would receive under the applicable law of intestate succession if the designated ancestor had then died intestate owning the subject matter of the class gift.

Section 68. **Representation — per capita at each generation — per stirpes.** (1) As used in this section, the following definitions apply:

(a) "Deceased child" or "deceased descendant" means a child or a descendant who either predeceased the distribution date or is considered to have predeceased the distribution date under [section 62].

(b) "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day but may occur at a time during the course of a day.

(c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under [section 62].

(2) (a) If a governing instrument calls for property to be distributed "per capita at each generation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(3) (a) If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per stirpes", the property is divided into as many equal shares as there are:

(i) surviving children of the designated ancestor; and

(ii) deceased children who left surviving descendants.

(b) Each surviving child is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) For the purposes of subsections (2) and (3), an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

Section 69. **Worthier title doctrine abolished.** The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", or "family" or language of similar import does not create or presumptively create a reversionary interest in the transferor.

Section 70. **Future interests in "heirs" and like.** If an applicable statute or a governing instrument calls for a future distribution to or creates a future interest in a designated individual's "heirs", "heirs at law", "next of kin", "relatives", or "family" or language of similar import, the property passes to those persons, including the state under 72-2-207, and in such shares as would succeed to the designated individual's intestate estate under the intestate succession law of the designated individual's domicile in effect at the time the disposition is to take effect in possession or enjoyment as if the designated individual died at that time. If the designated individual's surviving spouse is living but is remarried at the time the disposition is to take effect in possession or enjoyment, the surviving spouse is not an heir of the designated individual.

Section 71. **Revocation of probate and nonprobate transfers by divorce — no revocation by other changes of circumstances.** (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-103. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to the divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except as provided by the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by them at the time of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument that are not revoked by this section are given effect as if the former spouse and relatives of the former spouse disclaimed the revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-104 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriage, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(b) Written notice of the divorce, annulment, or remarriage under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement or transfer in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A person who purchases property from a former spouse, relative of a former spouse, or any other person for value and without notice or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted.

Section 72. **Honorary trusts — trusts for pets.** (1) A trust for a noncharitable corporation or unincorporated society or for a lawful noncharitable purpose may be performed by the trustee for 21 years but no longer, whether or not there is a beneficiary who can seek the trust's enforcement or termination and whether or not the terms of the trust contemplate a longer duration.

(2) Subject to the provisions of this subsection, a trust for the care of a designated domestic or pet animal and the animal's offspring is valid. Except as expressly provided otherwise in the trust instrument, the following provisions apply:

(a) No portion of the principal or income may be converted to the use of the trustee or to any use other than for the benefit of a covered animal.

(b) The trust terminates at the earlier of 21 years after the trust was created or when no living animal is covered by the trust.

(c) Upon termination, the trustee shall transfer the unexpended trust property in the following order:

(i) as directed in the trust instrument;

(ii) if the trust was created in a nonresiduary clause in the transferor's will or in a codicil to the transferor's will, under the residuary clause in the transferor's will; and

(iii) if no taker is produced by the application of subsection (2)(c)(i) or (2)(c)(ii), to the transferor's heirs under [section 70].

(d) For the purposes of [section 66], the residuary clause is treated as creating a future interest under the terms of a trust.

(e) The intended use of the principal or income may be enforced by an individual designated for that purpose in the trust instrument or, if none, by an individual appointed by a court upon application to it by an individual.

(f) Except as ordered by the court or required by the trust instrument, no filing, report, registration, periodic accounting, separate maintenance of funds, appointment, or fee is required by reason of the existence of the fiduciary relationship of the trustee.

(g) A governing instrument must be liberally construed to bring the transfer within the applicability of this section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(h) A court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (2)(c).

(i) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

Section 73. Section 72-3-212, MCA, is amended to read:

"**72-3-212. Informal probate — clerk to make findings.** In an informal proceeding for original probate of a will, the clerk shall determine whether:

(1) the application is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of ~~his~~ *the applicant's* knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103~~(21)~~;

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed, and apparently unrevoked will is in the clerk's possession;

(6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5); and

(7) it appears from the application that the time limit for original probate has not expired."

Section 74. Section 72-3-213, MCA, is amended to read:

"**72-3-213. Rules for grant or denial of informal probate.** (1) A will ~~which~~ *that* appears to have the required signatures and ~~which~~ *that* contains an attestation clause showing that requirements of execution under 72-2-302~~,~~ ~~72-2-303,~~ or 72-2-306 have been met ~~shall~~ *must* be probated without further proof. In other cases the clerk may assume execution if the will appears to be properly executed~~;~~ or ~~he~~ may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(2) The application ~~shall~~ *must* be denied if it indicates that a personal representative has been appointed in another county of this state or, except as provided in subsection (3) ~~below~~, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) Informal probate of a will ~~which~~ *that* has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(4) A will from a place ~~which~~ *that* does not provide for probate of a will after death and ~~which~~ *that* is not eligible for probate under 72-3-212 may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(5) Application for informal probate ~~which~~ *that* relates to one or more of a known series of testamentary instruments (other than a will and one or more codicils to the will), the latest of which does not expressly revoke the earlier, ~~shall~~ *must* be declined."

Section 75. Section 72-3-222, MCA, is amended to read:

"**72-3-222. Informal appointment — clerk to make findings.** In informal appointment proceedings, the clerk ~~must~~ *shall* determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of ~~his~~ *the applicant's* knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103~~(21)~~;

(4) on the basis of the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated, but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by 72-3-106 has been given;

(7) from the statements in the application, the person whose appointment is sought has priority entitling ~~him~~ *the person* to the appointment."

Section 76. Section 72-11-101, MCA, is amended to read:

"**72-11-101. Degrees of ~~kindred~~ *kinship* — how computed.** The degree of ~~kindred~~ *kinship* is established by the number of generations, and each generation is called a degree."

Section 77. Section 72-11-102, MCA, is amended to read:

"**72-11-102. ~~Degrees~~ *Types* of ~~kindred~~ *kinship* — lineal and collateral ~~consanguinity~~.** ~~The series of degrees forms the line; the series of degrees~~ *There are two types of kinship, lineal and collateral. Lineal kinship, or the direct line of consanguinity, is the relationship* between persons, ~~who descend from~~ one ~~another is called direct or lineal consanguinity;~~ *of whom is a descendant of the other.* ~~and the series of degrees~~ *Collateral kinship is the relationship* between ~~persons~~ *people* who ~~do not~~ descend ~~from one another but spring~~ from a common ancestor ~~is called the collateral~~ *but are not in a direct* line ~~or collateral consanguinity~~."

Section 78. Section 72-11-103, MCA, is amended to read:

"**72-11-103. ~~Degrees of kindred — ascending and descending direct line~~ *Computation of degrees in lineal kinship.*** The ~~direct line is divided into a direct line descending and a direct line ascending~~ *degree of lineal kinship of two persons is computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins.* The *child is, with regard to the parent, in the* first *degree; the grandchild is, with regard to the grandparent, in the* ~~is that which connects an ancestor with those who descend from him. The~~ second *degree;* ~~is that which connects a person with those from whom he descends~~ *and vice versa as to the parent and grandparent with regard to their respective children and grandchildren.*"

Section 79. Section 72-11-104, MCA, is amended to read:

"**72-11-104. ~~Degrees of kindred — computation~~ *Computation* of degrees in ~~direct line~~ *collateral kinship.*** ~~In the direct line there are as many degrees as there are generations. Thus, the son is with regard to the father in the first~~ *The* degree *of collateral kinship of two persons is computed by commencing with one of the persons, ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins.*~~; the grandson~~ *Siblings are related to each other* in the second *degree,*~~; and vice versa with regard to the father and grandfather toward the sons and grandsons~~ *uncle and niece are related to each other in the third degree, and first cousins are related to each other in the fourth degree.*"

Section 80. Section 72-12-206, MCA, is amended to read:

"**72-12-206. Fees and expenses — by whom paid.** When the validity or probate of a will is contested through court action, the *attorney* fees and ~~expenses~~ *costs, as provided in 25-10-201, incurred in defending the validity or probate of the will* must be paid by the party contesting the validity or probate of the will~~,~~ if the will in probate is confirmed. If the probate is revoked, ~~the~~ costs, *as provided in 25-10-201, but not attorney fees,* must be paid by the party who resisted the revocation or out of the property of the decedent, as the court directs."

Section 81. Section 72-16-313, MCA, is amended to read:

"**72-16-313. Exemptions of spouse and other relatives.** (1) The clear value of all property distributed or passing to *a* decedent's surviving spouse is exempt.

(2) The clear value of all property distributed or passing to the following is exempt:

(a) any child or lineal descendant of the decedent. A determination as to establishment of the parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 2.

(b) any ~~child to whom~~ *stepchild, as defined in 72-2-512, of* the decedent, ~~prior to the transfer, stood in the mutually acknowledged relationship of a parent or stepparent,~~ provided the relationship began on or before the ~~child's~~ *stepchild's* 18th birthday.

(3) The following amounts are exempt:

(a) property of the clear value of $7,000 transferred to each of the persons who have attained majority described in 72-16-321(1); and

(b) property of the clear value of $1,000 transferred to each of the persons described in 72-16-321(2)."

Section 82. Section 72-36-206, MCA, is amended to read:

"**72-36-206. Effects on real property transactions.** (1) This section relates only to conveyances of real property to or from a trust, and supplements, but does not modify other substantive provisions of chapters 33 through 36 relating to the creation or validity of trusts. ~~This section does not affect conveyances recorded prior to October 1, 1989.~~

(2) Except as otherwise provided in chapters 33 through 36, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in chapters 33 through 36.

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance ~~shall~~ *must* be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration, despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying ~~his~~ *the successor trustee's* name and address and the date and circumstances of ~~his~~ succession, and confirming that ~~he~~ *the successor trustee* is currently lawfully serving in ~~such~~ *that* capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest ~~therein~~ *in the trust*. A judgment is binding upon and conclusive against the trust and all persons interested ~~therein~~ *in the trust* as to all matters finally adjudicated in the judgment.

(8) The designation of the name of a trust in a recorded conveyance vests the estate in the trustee of the trust. A subsequent conveyance may be made by the trustee. The identity of a party serving as trustee may be established by a recorded affidavit of the party or by other recorded instrument, specifying the trustee's name and address and confirming that ~~he~~ *the party* is currently serving as the trustee."

Section 83. **Nonprobate transfers on death.** (1) A provision for a nonprobate transfer on death in an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state.

Section 84. **Definitions.** In [sections 84 through 102], the following definitions apply:

(1) "Account" means a contract of deposit between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party or a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) "POD designation" means the designation of:

(a) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

(b) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) "Receive", as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established or, if the terms of the account require notice at a particular place, in the place required.

(10) "Request" means a request for payment that complies with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; however, for purposes of [sections 84 through 102], if terms of the account condition payment on advance notice, a request for payment is treated as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

Section 85. **Limitation on scope of [sections 84 through 102].** [Sections 84 through 102] do not apply to:

(1) an account established for a partnership, joint venture, or other organization for a business purpose;

(2) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

(3) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

Section 86. **Types of account — existing accounts.** (1) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject to [section 91(3)], either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(2) An account established before, on, or after [the effective date of this act], whether in the form prescribed in [section 87] or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship and with or without a POD designation or an agency designation, within the meaning of [sections 84 through 102], and is governed by [sections 84 through 102].

Section 87. **Forms.** (1) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of [sections 84 through 102] applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

....

OWNERSHIP [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

..... MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent. However, any one party may withdraw the entire amount on deposit in the account. Further, any one party may change the type of account.

RIGHTS AT DEATH [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

..... SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

....

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP AND POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

....

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

..... MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION

Agents may make account transactions for parties but have no ownership or rights at death unless named as POD beneficiaries.

[To Add Agency Designation to Account, Name One or More Agents]:

....

[Select One And Initial]:

..... AGENCY DESIGNATION SURVIVES DISABILITY OR INCAPACITY OF PARTIES

..... AGENCY DESIGNATION TERMINATES ON DISABILITY OR INCAPACITY OF PARTIES

(2) A contract of deposit that does not contain provisions in substantially the form provided in subsection (1) is governed by the provisions of [sections 84 through 102] applicable to the type of account that most nearly conforms to the depositor's intent.

Section 88. **Designation of agent.** (1) By a writing signed by all parties, the parties may designate as agent of all parties on an account a person other than a party.

(2) Unless the terms of an agency designation provide that the authority of the agent terminates on disability or incapacity of a party, the agent's authority survives disability and incapacity. The agent may act for a disabled or incapacitated party until the authority of the agent is terminated.

(3) Death of the sole party or last-surviving party terminates the authority of an agent.

Section 89. **Applicability of [sections 90 through 102].** The provisions of [sections 90 through 95] concerning beneficial ownership as between parties or as between parties and beneficiaries apply only to controversies between those persons and their creditors and other successors and do not apply to the right of those persons to payment as determined by the terms of the account. [Sections 96 through 102] govern the liability and setoff rights of financial institutions that make payments pursuant to it.

Section 90. **Ownership during lifetime.** (1) In this section, "net contribution" of a party means the sum of all deposits to an account made by or for the party, less all payments from the account made to or for the party that have not been paid to or applied to the use of another party and a proportionate share of any charges deducted from the account, plus a proportionate share of any interest or dividends earned, whether or not included in the current balance. The term includes deposit life insurance proceeds added to the account by reason of death of the party whose net contribution is in question.

(2) During the lifetime of all parties, an account belongs to the parties in proportion to the net contribution of each to the sums on deposit unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(3) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(4) An agent in an account with an agency designation has no beneficial right to sums on deposit.

Section 91. **Rights at death.** (1) Except as otherwise provided in [sections 84 through 102], on the death of a party, sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under [section 90] belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under [section 90] belongs to the surviving parties in equal shares and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under [section 90] and the right of survivorship continues between the surviving parties.

(2) In an account with a POD designation:

(a) on the death of one of two or more parties, the rights in sums on deposit are governed by subsection (1);

(b) on the death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares and there is no right of survivorship in the event of the death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last-surviving party.

(3) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by the death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under [section 90] is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(4) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

Section 92. **Alteration of rights.** (1) Rights at death under [section 91] are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(2) A right of survivorship arising from the express terms of the account, from [section 91], or from a POD designation may not be altered by will.

Section 93. **Accounts and transfers nontestamentary.** Except as provided in Title 72, chapter 2, part 7, or as a consequence of and to the extent directed by [section 94], a transfer resulting from the application of [section 91] is effective by reason of the terms of the account involved and [sections 84 through 102] and is not testamentary or subject to Title 72, chapters 1 through 5.

Section 94. **Rights of creditors and others.** (1) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or POD designation under [sections 84 through 102] is not effective against the estate of a deceased party to the extent needed to pay claims against the estate and statutory allowances to the surviving spouse and children.

(2) A surviving party or beneficiary who receives payment from an account after the death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under [section 90], to the extent necessary to discharge the claims and allowances described in subsection (1) remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within 1 year after death of the decedent.

(3) A surviving party or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other account of the decedent.

(4) Sums recovered by the personal representative must be administered as part of the decedent's estate. This section does not affect the protection from claims of the personal representative or estate of a deceased party provided in [section 101] for a financial institution that makes payment in accordance with the terms of the account.

Section 95. **Community property and tenancy by entireties.** (1) A deposit of community property in an account does not alter the community character of the property or community rights in the property, but a right of survivorship between parties married to each other that arises from the express terms of the account or [section 91] may not be altered by will.

(2) [Sections 84 through 102] do not affect the law governing tenancy by the entireties.

Section 96. **Authority of financial institution.** A financial institution may enter into a contract of deposit for a multiple-party account to the same extent it may enter into a contract of deposit for a single-party account and may provide for a POD designation and an agency designation in either a single-party account or a multiple-party account. A financial institution need not inquire as to the source of a deposit to an account or as to the proposed application of a payment from an account.

Section 97. **Payment on multiple-party account.** A financial institution, on request, may pay sums on deposit in a multiple-party account to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when payment is requested and whether or not the party making the request survives another party; or

(2) the personal representative or a successor claiming under 72-3-1101 if proof of death is presented to the financial institution, showing that the deceased party was the survivor of all other persons named on the account as either a party or beneficiary, unless the account is without right of survivorship under [section 91].

Section 98. **Payment on POD designation.** A financial institution, on request, may pay sums on deposit in an account with a POD designation to:

(1) one or more of the parties, whether or not another party is disabled, incapacitated, or deceased when the payment is requested and whether or not a party survives another party;

(2) the beneficiary or beneficiaries, if proof of death is presented to the financial institution, showing that the beneficiary or beneficiaries survived all persons named as parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution, showing that the deceased party was the survivor of all other persons named on the account as either a party or beneficiary.

Section 99. **Payment to designated agent.** A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received and whether or not the authority of the agent terminates on the disability or incapacity of a party.

Section 100. **Payment to minor.** If a financial institution is required or permitted to make payment pursuant to [sections 84 through 102] to a minor designated as a beneficiary, payment may be made pursuant to the Montana Uniform Transfers to Minors Act, Title 72, chapter 26.

Section 101. **Discharge.** (1) Payment made pursuant to [sections 84 through 102] in accordance with the type of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors. Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(2) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted and after the financial institution has had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party shall concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(3) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(4) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

Section 102. **Setoff.** Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is either the proportion to which the party is, or immediately before death was, beneficially entitled under [section 90] or, in the absence of proof of that proportion, an equal share with all parties.

Section 103. **Definitions.** As used in [sections 103 through 112], the following definitions apply:

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

Section 104. **Registration in beneficiary form — sole or joint tenancy ownership.** Only individuals whose registration of a security shows sole ownership by one individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entireties, or as owners of community property held in survivorship form and not as tenants in common.

Section 105. **Registration in beneficiary form — applicable law.** (1) A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state:

(a) of organization of the issuer or registering entity;

(b) of the location of the registering entity's principal office;

(c) of the office of its transfer agent or its office making the registration; or

(d) listed as the owner's address at the time of registration.

(2) A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

Section 106. **Origination of registration in beneficiary form.** A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

Section 107. **Form of registration in beneficiary form.** Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name of the registered owner and before the name of a beneficiary.

Section 108. **Effect of registration in beneficiary form.** The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

Section 109. **Ownership on death of owner.** On the death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of the death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

Section 110. **Protection of registering entity.** (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by [sections 103 through 112].

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on the death of the deceased owner as provided in [sections 103 through 112].

(3) (a) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with [section 109] and does so in good faith reliance on:

(i) the registration;

(ii) [sections 103 through 112]; and

(iii) information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.

(b) The protections of [sections 103 through 112] do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under [sections 103 through 112].

(4) The protection provided by [sections 103 through 112] to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

Section 111. **Nontestamentary transfer on death.** (1) A transfer on death, resulting from a registration in beneficiary form, is effective by reason of the contract regarding the registration between the owner and the registering entity and [sections 103 through 112] and is not testamentary.

(2) [Sections 103 through 112] do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

Section 112. **Terms, conditions, and forms for registration.** (1) (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for:

(i) registrations in beneficiary form; and

(ii) implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary.

(b) The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death that governs inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.;

(b) multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.;

(c) multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TODD John S. Brown Jr. LDPS.

Section 113. Section 72-31-201, MCA, is amended to read:

"**72-31-201. Statutory ~~short~~ form of ~~general~~ power of attorney — ~~formal requirements — joint agents~~.** (1) The ~~use of the~~ following *statutory* form~~, or a form substantially similar to the following form, in the creation~~ of ~~a~~ power of attorney is ~~lawful, and when used, the form must be construed in accordance with the provisions of this part~~ *legally sufficient*:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE ~~DEFINED~~ *EXPLAINED* IN ~~72-31-202 THROUGH 72-31-216~~ *THIS PART*. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT *LEGAL* ADVICE. ~~THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES IS ALSO PERMITTED.~~ *THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE* THIS POWER OF ATTORNEY ~~MAY BE REVOKED BY YOU~~ IF YOU LATER WISH TO DO SO. ~~THIS POWER OF ATTORNEY AUTHORIZES BUT DOES NOT REQUIRE THE ATTORNEY-IN-FACT TO ACT FOR YOU.~~

~~Know all by these presents, which are intended to constitute a STATUTORY SHORT FORM POWER OF ATTORNEY pursuant to this section:~~

~~That~~ I .... (insert *your* name and address ~~of the principal~~) ~~do hereby~~ appoint .... (insert *the* name and address of the ~~attorney-in-fact or each attorney-in-fact if more than one is designated~~ *person appointed*) *as* my ~~attorney(s)-in-fact~~ *agent (attorney-in-fact)* to act ~~(jointly)~~ *for me in any lawful way with respect to the following initialed subjects*:

~~(NOTE: If more than one attorney-in-fact is designated and the principal wishes each attorney-in-fact alone to be able to exercise the power conferred,~~

~~delete the word "jointly". Failure to delete the word "jointly" will require the attorneys-in-fact to act unanimously.)~~

~~First: in my name, place, and stead in any way that I myself could do, if I were personally present, with respect to the following matters as each of them is defined in 72-31-202 through 72-31-216:~~

~~(To grant to the attorney-in-fact any of the following powers, make a check or "X" in the line in front of each power being granted. To delete any of the following powers, do not make a check or "X" in the line in front of the power. You may, but need not, cross out each power being deleted with a line drawn through it (or in similar fashion). Failure to make a check or "X" in the line in front of the power will have the effect of deleting the power unless the line in front of the power of (O) is checked or X-ed.)~~

~~Check or "X"~~

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

.... (A) real property transactions;

.... (B) tangible personal property transactions;

.... (C) *stock and* bond~~, share, and commodity~~ transactions;

.... *(D) commodity and option transactions;*

.... ~~(D)~~*(E)* banking *and other financial institution* transactions;

.... ~~(E)~~*(F)* business operating transactions;

.... ~~(F)~~*(G)* insurance *and annuity* transactions;

.... ~~(G)~~*(H)* *estate, trust, and other* beneficiary transactions;

~~....... (H) gift transactions;~~

~~....... (I) fiduciary transactions;~~

.... ~~(J)~~*(I)* claims and litigation;

.... ~~(K)~~*(J)* *personal and* family maintenance;

.... ~~(L)~~*(K)* benefits from *social security, medicare, medicaid, or other governmental programs or from* military service;

~~....... (M) records, reports, and statements;~~

.... *(L) retirement plan transactions;*

.... ~~(N)~~*(M)* ~~all other~~ *tax* matters;

.... ~~(O)~~*(N)* ~~all of the powers listed in (A) through~~ *ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE* (N).

~~Second: (You must indicate below whether or not this power of attorney will be effective if you become incompetent. Make a check or "X" in the line in front of the statement that expresses your intent.)~~

SPECIAL INSTRUCTIONS:
ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

. . . .
. . . .
. . . .
. . . .
. . . .
. . . .
. . . .

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney revokes all previous powers of attorney signed by me.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU.

IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ THOSE POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

..... This power of attorney ~~shall~~ *will* continue to be effective if I become *disabled, incapacitated, or* incompetent. ~~It shall not be affected by my later disability or incompetency.~~

~~..... This power of attorney shall not be effective if I become incompetent.~~

~~Third: (You must indicate below whether or not this power of attorney authorizes the attorney-in-fact to transfer your property directly to the attorney-in-fact. Make a check or "X" in the line in front of the statement that expresses your intent.)~~

~~..... This power of attorney authorizes the attorney-in-fact to receive the transfer directly.~~

~~..... This power of attorney does not authorize the attorney-in-fact to receive the transfer directly.~~

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

If it becomes necessary to appoint a conservator of my estate or guardian of my person, I nominate my agent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

If any agent named by me dies, becomes incompetent, resigns or refuses to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to the agent:

1. ....

2. ....

3. ....

For purposes of this subsection, a person is considered to be incompetent if and while: (1) the person is a minor; (2) the person is an adjudicated incompetent or disabled person; (3) a conservator has been appointed to act for the person; (4) a guardian has been appointed to act for the person; or (5) the person is unable to give prompt and intelligent consideration to business matters as certified by a licensed physician.

I agree that any third party who receives a copy of this document may act under it. I may revoke this power of attorney by a written document that expressly indicates my intent to revoke. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

~~In witness whereof I have hereunto signed my name this .... day of ...., 19...~~

~~..~~

~~(Signature of Principal)~~

~~(Acknowledgment)~~

~~Specimen Signature of Attorney(s)-in-Fact~~

~~..~~

~~..~~

Signed this .... day of ...., 19...

....

(Your Signature)

....

(Your Social Security Number)

State of ....

(County) of.........................

This document was acknowledged before me on

.... *by*...
(Date) *(Name of Principal)*

....
(Signature of Notarial Officer)

....
(Seal, if any) *(Title (and Rank))*

[My commission expires:.................]

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

(2) ~~Any of the powers of the form in subsection (1) that are not checked or X-ed are withheld by the principal from the attorney-in-fact unless the power of (O) on the form in subsection (1) is checked or X-ed. The withholding by the principal from the attorney-in-fact of any of the powers of (A) through (M), in addition to the withholding of the power of (O), on the form in subsection (1) automatically constitutes withholding of the powers of (N).~~

~~(3) To constitute a "~~*A* statutory ~~short form~~ power of attorney~~", as this phrase is used in~~ *is legally sufficient under* this part~~,~~ *if* the wording ~~and content~~ of the form ~~in subsection (1) must be duplicated on a form~~ substantially *complies with* ~~similar to the form provided in~~ subsection (1), the ~~notices must appear in a conspicuous place and manner, the second and third parts must be~~ *form is* properly completed, and the signature of the principal ~~must be~~ *is* acknowledged.

~~(4) All powers enumerated in 72-31-202 through 72-31-216 may be legally performed by an attorney-in-fact acting on behalf of a principal.~~

(3) If the line in front of (N) of the form under subsection (1) is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N)."

Section 114. **Durable power of attorney.** A power of attorney legally sufficient under this part is durable to the extent that durable powers are permitted by other law of this state and the power of attorney contains language, such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent." showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

Section 115. **Construction of powers generally.** By executing a statutory power of attorney with respect to a subject listed in 72-31-201(1), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent for that subject to:

(1) demand, receive, and obtain, by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(7) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(8) prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(9) reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and

(10) in general, do any other lawful act with respect to the subject.

Section 116. Section 72-31-202, MCA, is amended to read:

"**72-31-202. ~~Real~~ *Construction of power relating to real* property transactions.** ~~(1)~~ In a statutory ~~short-form~~ power of attorney, the language ~~conferring~~ *granting* ~~general authority~~ *power* with respect to real property transactions ~~means that the principal authorizes the attorney-in-fact~~ *empowers the agent to*:

~~(a)~~*(1)* ~~to~~ accept as a gift or as security for a loan, ~~or to~~ reject, demand, buy, lease, receive, or otherwise acquire ~~either ownership or possession of any estate or~~ *an* interest in real property *or a right incident to real property*;

~~(b)~~*(2)* ~~to~~ sell, exchange, *or* convey, ~~either~~ with or without covenants~~,~~*;* quitclaim~~,~~*;* release~~,~~*;* surrender~~,~~*;* mortgage~~,~~*;* encumber~~,~~*;* partition*;* ~~or~~ consent to ~~the~~ partitioning~~,~~*; subdivide; apply for zoning, rezoning, or other governmental permits;* plat or consent to platting~~,~~*; develop;* grant options concerning~~,~~*;* lease*;* ~~or~~ sublet~~,~~*;* or otherwise dispose of ~~any estate or~~ *an* interest in real property *or a right incident to real property*;

~~(c)~~*(3)* ~~to~~ release ~~in whole or in part~~, assign ~~the whole or a part of~~, satisfy ~~in whole or in part~~, and enforce, by ~~action, proceeding,~~ *litigation* or otherwise, ~~any~~

a mortgage, *deed of trust,* encumbrance, lien, or other claim to real property that exists or is ~~claimed to exist in favor of the principal~~ *asserted;*

~~(d)~~*(4)* ~~to~~ do any act of management or of conservation with respect to ~~any estate or~~ *an* interest in real property *or a right incident to real property,* owned or claimed to be owned by the principal, including~~, by way of illustration but not of restriction, power to~~*:*

(a) ~~insure~~ *insuring* against ~~any~~ *a* casualty, liability, or loss;

(b) ~~to obtain or regain~~ *obtaining or regaining* possession or ~~protect~~ *protecting* the ~~estate or~~ interest *or right,* by ~~action, proceeding,~~ *litigation* or otherwise;

(c) ~~to pay, compromise, or contest~~ *paying, compromising, or contesting* taxes or assessments~~; to apply,~~ *or applying* for and ~~receive~~ *receiving* refunds in connection with ~~taxes or assessments~~ *them*; and

(d) ~~to purchase~~ *purchasing* supplies, ~~hire~~ *hiring* assistance or labor, and ~~make~~ *making* repairs or alterations in the ~~structures or lands~~ *real property*;

~~(e)~~*(5)* ~~to~~ use ~~in any way~~, develop, ~~modify,~~ alter, replace, remove, erect, or install structures or other improvements upon ~~any~~ real property in *or incident to* which the principal has or claims to have ~~any estate or~~ *an* interest *or right*;

~~(f)~~*(6)* ~~to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of an interest in real property or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney in fact for any expenditures properly made by the attorney in fact in the execution of the powers conferred on the attorney in fact by the statutory short form power of attorney;~~

~~(g) to~~ participate in ~~any~~ *a* reorganization with respect to real property *or a legal entity that owns an interest in or right incident to real property* and receive and hold ~~any~~ shares of stock or ~~instrument of similar character~~ *obligations* received in ~~accordance with~~ a plan of reorganization and to act with respect to ~~the shares~~ *them*, including~~, by way of illustration but not of restriction, power~~*:*

(a) ~~to sell~~ *selling* or ~~to~~ otherwise ~~dispose~~ *disposing* of ~~the shares~~ *them*;

(b) ~~to exercise~~ *exercising* or ~~sell any~~ *selling an* option, conversion, or similar right with respect to ~~the shares,~~ *them;* and

(c) ~~to vote on the shares~~ *voting them* in person or by ~~the granting of a~~ proxy;

~~(h) to agree and contract, in any manner, with any person, and on any terms that the attorney in fact may select, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify an agreement, contract, or any other similar agreement or contract made by or on behalf of the principal;~~

~~(i) to execute, acknowledge, seal, and deliver any deed, revocation, mortgage, lease, notice, check, or other instrument that the attorney in fact considers useful for the accomplishment of any of the purposes enumerated in this section;~~

~~(j) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any real estate transaction or to intervene in any action or proceeding relating to the claim;~~

~~(k) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and~~

~~(l) in general and in addition to all the specific acts in this section, to do any other act with respect to any estate or~~

(7) change the form of title of an interest in *or right incident to* real property;

(8) dedicate to public use, with or without consideration, easements or other real property in which the principal has or claims to have an interest.

~~(2) All powers described in this section are exercisable equally with respect to any estate or interest in real property owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or elsewhere.~~"

Section 117. Section 72-31-203, MCA, is amended to read:

"**72-31-203.** ~~**Tangible**~~ ***Construction of power relating to tangible*** **personal property transactions.** ~~(1)~~ In a statutory ~~short form~~ power of attorney, the language ~~conferring general authority~~ *granting power* with respect to tangible personal property transactions ~~means that the principal authorizes the attorney-in-fact~~ *empowers the agent to*:

~~(a)~~*(1)* ~~to~~ accept as a gift or as security for a loan, ~~or to~~ reject, demand, buy, receive, or otherwise acquire ~~either~~ ownership or possession of ~~any~~ tangible personal property or ~~any~~ *an* interest in tangible personal property;

~~(b)~~*(2)* ~~to~~ sell, exchange, convey ~~either~~ with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, *create a security interest in*, pawn, grant options concerning, lease, ~~or sublet~~ *sublease* to others, or otherwise dispose of ~~any~~ tangible personal property or ~~any~~ *an* interest in ~~any~~ tangible personal property;

~~(c)~~*(3)* ~~to~~ release ~~in whole or in part~~, assign ~~the whole or a part of~~, satisfy ~~in whole or in part~~, ~~and~~ *or* enforce, by ~~action, proceeding,~~ *litigation* or otherwise, ~~any~~ *a* mortgage, *security interest,* encumbrance, lien, or other claim ~~that exists or is claimed to exist in favor~~ *on behalf* of the principal with respect to ~~any~~ tangible personal property or ~~any~~ *an* interest in tangible personal property; *and*

~~(d)~~*(4)* ~~to~~ do ~~any~~ *an* act of management or ~~of~~ conservation with respect to ~~any~~ tangible personal property or ~~to any~~ *an* interest in ~~any~~ tangible personal property ~~owned or claimed to be owned by~~ *on behalf of* the principal, including~~,~~ ~~by way of illustration but not of restriction, power~~*:*

(a) ~~to insure~~ *insuring* against ~~any~~ casualty, liability, or loss;

(b) ~~to obtain~~ *obtaining* or ~~regain~~ *regaining* possession or ~~protect~~ *protecting* the ~~tangible personal~~ property or interest, ~~in any tangible personal property~~ by ~~action, proceeding,~~ *litigation* or otherwise;

(c) ~~to pay, compromise,~~ *paying, compromising* or ~~contest~~ *contesting* taxes or assessments~~; and to apply~~ *or applying* for and ~~receive~~ *receiving* refunds in connection with taxes or assessments~~,~~*;*

(d) ~~move~~ *moving* from place to place~~,~~*;*

(e) ~~store~~ *storing* for hire or on ~~a~~ gratuitous bailment~~,~~*; and*

(f) ~~use, alter,~~ *using, altering,* and ~~make~~ *making* repairs or alterations ~~of any tangible personal property or interest in any tangible personal property;~~.

~~(e) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any tangible personal property or of any interest in any tangible personal property or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;~~

~~(f) to agree and contract, in any manner, with any person, and on any terms that the attorney-in-fact may select, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify any agreement or contract or any other similar agreement or contract made by or on behalf of the principal;~~

~~(g) to execute, acknowledge, seal, and deliver any conveyance, mortgage, lease, notice, check, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;~~

~~(h) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any tangible personal property transaction or to intervene in any action or proceeding relating to a claim;~~

~~(i) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and~~

~~(j) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to any tangible personal property or interest in any tangible personal property.~~

~~(2) All powers described in this section are exercisable equally with respect to any tangible personal property or interest in any tangible personal property owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or elsewhere.~~"

Section 118. Section 72-31-204, MCA, is amended to read:

"72-31-204. ~~Bond, share, and commodity~~ *Construction of power relating to stock and bond* transactions. ~~(1)~~ In a statutory ~~short-form~~ power of attorney, the language ~~conferring general authority~~ *granting power* with respect to *stock and* bond~~, share, and commodity~~ transactions ~~means that the principal authorizes the attorney-in-fact:~~

~~(a) to accept as a gift or as security for a loan or to reject, demand,~~ *empowers the agent to* buy, ~~receive, or otherwise acquire either ownership or possession of any bond, share, instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest, together with the interest, dividends, proceeds, or other distributions connected with any of those instruments;~~

~~(b) to~~ sell, ~~or sell short~~ and ~~to~~ exchange~~, transfer either with or without a guaranty, release, surrender, hypothecate, pledge, grant options concerning, loan, trade in, or otherwise to dispose of any bond, share, instrument of similar character,~~ *stocks, bonds, mutual funds, and all other types of securities and financial instruments except* commodity ~~interest, or any instrument with respect to the bond, share, or interest;~~ *futures contracts; call and put options on stocks and stock indexes; receive certificates and other evidences of ownership with respect to securities; exercise voting rights with respect to securities in person or by proxy; enter into voting trusts; and consent to limitations on the right to vote.*

~~(c) to release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce by action, proceeding, or otherwise any pledge, encumbrance, lien, or other claim as to any bond, share, instrument of similar character, commodity interest, or any interest with respect to the bond, share, or interest when the pledge, encumbrance, lien, or other claim is owned or claimed to be owned by the principal;~~

~~(d) to do any act of management or of conservation with respect to any bond, share, instrument of similar character, commodity interest, or any instrument with respect to the interest owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including, by way of illustration but not of restriction, power to insure against any casualty, liability, or loss; to obtain or regain possession or protect the principal's interest by action, proceeding, or otherwise; to pay, compromise, or contest taxes or assessments; to apply for and receive refunds in connection with taxes or assessments; to consent to and participate in any reorganization, recapitalization, liquidation, merger, consolidation, sale, lease, or other change in or revival of a corporation or other association, in the financial structure of any corporation or other association, or in the priorities, voting rights, or other special rights with respect to the corporation or association; to become a depositor with any protective, reorganization, or similar committee of the bond, share, other instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest belonging to the principal; to make any payments reasonably incident to the foregoing; to exercise or sell any option, conversion, or similar right; to vote in person or by the granting of a proxy with or without the power of substitution, either discretionary, general, or otherwise, for the accomplishment of any of the purposes enumerated in this section;~~

~~(e) to carry in the name of a nominee selected by the attorney-in-fact any evidence of the ownership of any bond, share, other instrument of similar~~

~~character, commodity interest, or instrument with respect to the bond, share, or interest, belonging to the principal;~~

~~(f) to employ, in any way believed to be desirable by the attorney in fact, any bond, share, other instrument of similar character, commodity interest, or any instrument with respect to the bond, share, or interest in which the principal has or claims to have any interest for the protection or continued operation of any speculative or margin transaction personally begun or personally guaranteed, in whole or in part, by the principal;~~

~~(g) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any interest in a bond, share, other instrument of similar character, commodity interest, or any instrument with respect to the bond, share, interest, or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney in fact for any expenditures properly made by the attorney in fact in the execution of the powers conferred on the attorney in fact by the statutory short form power of attorney;~~

~~(h) to agree and contract, in any manner, with any broker or other person, and on any terms that the attorney in fact selects, for the accomplishment of any of the purposes enumerated in this section and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement made by or on behalf of the principal;~~

~~(i) to execute, acknowledge, seal, and deliver any consent, agreement, authorization, assignment, revocation, notice, waiver of notice, check, or other instrument that the attorney in fact considers useful for the accomplishment of any of the purposes enumerated in this section;~~

~~(j) to execute, acknowledge, and file any report or certificate required by law or governmental regulation;~~

~~(k) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any bond, share, or commodity transaction or to intervene in any related action or proceeding;~~

~~(l) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney in fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and~~

~~(m) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to any interest in any bond, share, other instrument of similar character, commodity interest, or instrument with respect to a commodity.~~

~~(2) All powers described in this section are exercisable equally with respect to any interest in any bond, share, instrument of similar character, commodity interest, or instrument with respect to a commodity owned by the principal at the giving of the power of attorney or acquired after that time, whether located in Montana or elsewhere.~~"

Section 119. **Construction of power relating to commodity and option transactions.** In a statutory power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts; call and put options on stocks and stock indexes traded on a regulated option exchange; and establish, continue, modify, and terminate option accounts with a broker.

Section 120. Section 72-31-205, MCA, is amended to read:

"**72-31-205.** ~~**Banking**~~ ***Construction of power relating to banking and other financial institution*** **transactions.** ~~(1)~~ In a statutory ~~short-form~~ power of attorney, the language ~~conferring general authority~~ *granting power* with respect to banking *and other financial institution* transactions ~~means that the principal authorizes the attorney-in-fact~~ *empowers the agent to*:

~~(a)~~*(1)* ~~to~~ continue, modify, and terminate ~~any deposit~~ *an* account or other banking arrangement made by or on behalf of the principal ~~prior to the execution of the power of attorney~~;

~~(b)~~*(2)* ~~to open in the name of the principal alone or in a way that clearly evidences the principal and attorney-in-fact relationship a deposit~~ *establish, modify, and terminate an* account ~~of any type~~ *or other banking arrangement* with ~~any~~ *a* bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other *financial* institution ~~that serves as a depository for funds~~ selected by the ~~attorney-in-fact~~ *agent*;

(3) ~~to~~ hire *a* safe deposit box or *space in a* vault ~~space~~;

(4) ~~and to make other contracts for the procuring of~~ *contract to procure* other services ~~made~~ available ~~by the banking~~ *from a financial* institution as the ~~attorney-in-fact~~ *agent* considers desirable;

~~(c)~~*(5)* ~~to make, sign, and deliver checks or drafts for any purpose and to~~ withdraw by check, order, or otherwise ~~any funds~~ *money* or property of the principal deposited with or left in the custody of ~~any banking~~ *a financial* institution~~, wherever located, either before or after the execution of the power of attorney~~;

~~(d)~~*(6)* ~~to prepare any necessary financial statements of the assets and liabilities or income and expenses of the principal for submission to any banking institution;~~

~~(e) to~~ receive *bank* statements, vouchers, notices, ~~or other~~ *and similar* documents from ~~any banking~~ *a financial* institution and to act with respect to them;

~~(f)~~*(7)* ~~to~~ enter ~~at any time any~~ *a* safe deposit box or vault ~~that the principal could enter if personally present~~ *and withdraw or add to the contents*;

~~(g)~~*(8)* ~~to~~ borrow money at ~~any~~ *an* interest rate ~~the attorney-in-fact selects~~ *agreeable to the agent and*~~; to~~ pledge as security ~~any assets~~ *personal property* of the principal ~~the attorney-in-fact considers desirable or~~ necessary ~~for borrowing; and to~~ *in order to borrow,* pay, renew, or extend the time of payment of ~~any~~ *a* debt of the principal;

~~(h)~~*(9)* ~~to~~ make, assign, draw, endorse, discount, guarantee, and negotiate ~~all~~ promissory notes, ~~bills of exchange,~~ checks, drafts, ~~or~~ *and* other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order; ~~to~~ receive the cash or other proceeds of ~~any of~~ those transactions; and ~~to~~ accept ~~any bill of exchange or~~ *a* draft drawn by ~~any~~ *a* person upon the principal and pay it when due;

~~(i)~~*(10)* ~~to~~ receive for the principal and ~~to deal in and to deal with any~~ *act upon a* sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument ~~in which the principal has or claims to have an interest~~;

~~(j)~~*(11)* ~~to~~ apply for and ~~to~~ receive letters of credit, *credit cards, and traveler's checks* from ~~any banking~~ *a financial* institution ~~selected by the attorney-in-fact, giving~~ *and give an* indemnity or other agreement in connection with ~~the~~ letters of credit ~~that the attorney-in-fact considers desirable or necessary~~; *and*

~~(k)~~*(12)* ~~to~~ consent to an extension ~~in~~ *of* the time of payment with respect to ~~any~~ commercial paper or ~~any banking~~ *a financial* transaction ~~in which the principal has an interest or by which the principal is or might be affected in any way;~~ *with a financial institution.*

~~(l) to demand, receive, obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any banking transaction and to reimburse the attorney-in-fact for any expenditures properly made in the execution of the powers conferred upon the attorney-in-fact by the statutory short form power of attorney;~~

~~(m) to execute, acknowledge, and deliver any instrument of any kind, in the name of the principal or otherwise, that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;~~

~~(n) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any banking transaction or to intervene in any related action or proceeding;~~

~~(o) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and~~

~~(p) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with any banking transaction that does or may in any way affect the financial or other interests of the principal.~~

~~(2) All powers described in this section are exercisable equally with respect to any banking transaction engaged in by the principal at the giving of the power of attorney or engaged in after that time, whether conducted in Montana or elsewhere.~~"

Section 121. Section 72-31-206, MCA, is amended to read:

"**72-31-206. ~~Business~~ *Construction of power relating to business* operating transactions.** ~~(1)~~ In a statutory ~~short form~~ power of attorney, the language ~~conferring general authority~~ *granting power* with respect to business operating transactions ~~means that the principal authorizes the attorney-in-fact~~ *empowers the agent*:

~~(a)~~*(1)* to *operate, buy, sell, enlarge, reduce, and terminate a business interest;*

(2) to the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement, to:

(a) ~~discharge and~~ perform ~~any~~ *a* duty or *discharge a* liability and ~~also to~~ exercise ~~any~~ *a* right, power, privilege, or option that the principal has, *may have,* or claims to have under ~~any~~ *a* partnership agreement, whether *or not* the principal is a ~~general or limited~~ partner;

(b) ~~to~~ enforce the terms of a partnership agreement ~~for the protection of the principal,~~ by ~~action, proceeding,~~ *litigation* or otherwise~~, as the attorney-in-fact considers desirable or necessary~~; and

(c) ~~to~~ defend, submit to arbitration, settle, or compromise ~~any action or other legal proceeding~~ *litigation* to which the principal is a party because of membership in the partnership;

~~(b)~~*(3)* to exercise in person or by proxy or ~~to~~ enforce, by ~~action, proceeding,~~ *litigation* or otherwise, ~~any~~ *a* right, power, privilege, or option ~~that~~ the principal has *or claims to have* as the holder of ~~any~~ *a* bond, share, or other instrument of similar character and to defend, submit to arbitration, settle, or compromise ~~any action or other legal proceeding~~ *litigation* to which the principal is a party because of a bond, share, or ~~other~~ *similar* instrument ~~of similar character~~;

~~(c)~~*(4)* with respect to ~~any~~ *a* business ~~enterprise that is~~ owned solely by the principal, *to*:

~~(i)~~*(a)* ~~to~~ continue, modify, renegotiate, extend, and terminate ~~any contractual arrangements~~ *a contract* made with ~~any person,~~ *an individual or a legal* entity, firm, association, or corporation by or on behalf of the principal with respect to the business ~~enterprise prior to the granting~~ *before execution* of the power of attorney;

~~(ii)~~*(b)* ~~to~~ determine*:*

(i) ~~the policy of the business enterprise as to~~ the location of ~~the site or sites to be used for~~ its operation;

(ii) the nature and extent of ~~the~~ *its* business ~~to be undertaken by it~~;

(iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising ~~to be~~ employed in its operation;

(iv) the amount and types of insurance ~~to be~~ carried;

(v) the mode of ~~securing~~ *engaging,* compensating, and dealing with *its* accountants, attorneys, ~~servants,~~ and other agents and employees ~~required for its operation~~; ~~and to agree and to contract in any manner, with any person, and on any terms that the attorney-in-fact considers desirable or necessary for effectuating any or all of the decisions of the attorney-in-fact as to policy and to~~

~~perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement or contract made by or on behalf of the principal;~~

~~(iii)~~*(c)* ~~to~~ change the name or form of organization under which the business ~~enterprise~~ is operated and ~~to~~ enter into a partnership agreement with other persons or ~~to~~ organize a corporation to take over *all or part of* the operation of the business ~~or any part of the business, as the attorney-in-fact considers desirable or necessary~~; and

~~(iv)~~*(d)* ~~to~~ demand and receive ~~all~~ money ~~that is or may become~~ due ~~to the principal~~ or ~~that may be~~ claimed by ~~or for~~ the principal *or on the principal's behalf* in the operation of the business ~~enterprise; to~~ *and* control and disburse the ~~funds~~ *money* in the operation of the ~~enterprise in any way that the attorney-in-fact considers desirable or necessary, and to engage in any banking transactions that the attorney-in-fact considers desirable or necessary for effectuating the execution of any of the powers of the attorney-in-fact described in this subsection (1)(e)~~ *business*;

(5) to put additional capital into a business in which the principal has an interest;

(6) to join in a plan of reorganization, consolidation, or merger of the business;

(7) to sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable;

(8) to establish the value of a business under a buyout agreement to which the principal is a party;

~~(d)~~*(9)* to prepare, sign, file, and deliver ~~all~~ reports, compilations of information, returns, or other papers with respect to ~~any~~ *a* business ~~operating transaction of the principal~~ that are required by ~~any~~ *a* governmental agency~~, department,~~ or instrumentality or that the ~~attorney-in-fact~~ *agent* considers desirable ~~or necessary for any purpose~~ and to make ~~any~~ related payments; *and*

~~(e)~~*(10)* to pay, compromise, or contest taxes or assessments and to do any *other* act ~~or acts~~ that the ~~attorney-in-fact~~ *agent* considers desirable ~~or necessary~~ to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments ~~in connection~~ with ~~the principal's~~ *respect to a* business ~~operations~~, including ~~power to attempt~~ *attempts* to recover, in any manner permitted by law, ~~sums~~ *money* paid before or after the execution of the power of attorney ~~as taxes, fines, penalties, or assessments;~~.

~~(f) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any business operation of the principal; to conserve, invest, disburse, or use anything so received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred upon the attorney-in-fact by the statutory short form power of attorney;~~

~~(g) to execute, acknowledge, seal, and deliver any deed, assignment, mortgage, lease, notice, consent, agreement, authorization, check, or other~~

~~instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;~~

~~(h) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any business operating transaction or to intervene in any related action or proceeding;~~

~~(i) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and~~

~~(j) in general and in addition to all the specific acts listed in this section, to do any other act that the attorney-in-fact considers desirable or necessary for the furtherance or protection of the interests of the principal in any business.~~

~~(2) All powers described in this section are exercisable equally with respect to any business in which the principal is interested at the time of giving of the power of attorney or in which the principal becomes interested after that time, whether operated in Montana or elsewhere.~~"

Section 122. Section 72-31-207, MCA, is amended to read:

"**72-31-207.** ~~**Insurance**~~ ***Construction of power relating to insurance*** **transactions.** ~~(1)~~ In a statutory ~~short-form~~ power of attorney, the language ~~conferring general authority~~ *granting power* with respect to insurance *and annuity* transactions ~~means that the principal authorizes the attorney-in-fact~~ *empowers the agent to*:

~~(a)~~*(1)* ~~to~~ continue, pay the premium or assessment on, modify, rescind, release, or terminate ~~any~~ *a* contract ~~of life, accident, health, or disability insurance or any contract for the provision of health care services or any combination of these contracts~~ procured by or on behalf of the principal ~~prior to the granting of the power of attorney~~ that insures *or provides an annuity to* either the principal or ~~any other~~ *another* person, ~~without regard to~~ whether *or not* the principal is ~~or is not~~ a beneficiary under the contract;

~~(b)~~*(2)* ~~to~~ procure new, different, ~~or~~ *and* additional contracts of ~~life, accident, health, or disability~~ insurance *and annuities* for the principal ~~or contracts for provision of health care services for the principal; to~~ *and the principal's spouse, children, and other dependents and to* select the amount, ~~the~~ type of insurance *or annuity*, and ~~the~~ mode of payment ~~under each contract~~;

(3) ~~to~~ pay the premium or assessment on, modify, rescind, release, or terminate ~~any~~ *a* contract *of insurance or annuity* procured by the ~~attorney-in-fact~~ *agent*;

(4) ~~and to~~ designate the beneficiary of the contract~~,~~; ~~provided,~~ however, ~~that the attorney-in-fact~~ *an agent* may ~~not~~ be named a beneficiary~~, except if permitted under 72-31-208, the attorney-in-fact may be named the beneficiary of death benefit proceeds under an insurance contract or if the attorney-in-fact~~ *of the contract or of an extension, renewal, or substitute for the contract only to the extent that the agent* was named as a beneficiary under ~~the~~ *a* contract ~~that was~~ procured by the principal ~~prior to the granting~~ *before executing* ~~of~~ the power of

attorney~~, the attorney-in-fact may continue to be named as the beneficiary under the contract or under any extension or renewal of or substitute for the contract~~;

~~(c)~~*(5)* ~~with respect to any contract of life, accident, health, disability, or liability insurance as to which the principal has or claims to have any one or more of the powers described in this section, to~~ apply for and receive ~~any available~~ *a* loan on the security of the contract of insurance~~, whether for the payment of a premium or for the procuring of cash,~~ *or annuity;*

(6) ~~to~~ surrender and ~~then to~~ receive the cash surrender value~~,~~*;*

(7) ~~to~~ exercise ~~any~~ *an* election ~~as to beneficiary or mode of payment,~~*;*

(8) ~~to~~ change the manner of paying premiums~~,~~*;*

(9) ~~to~~ change or convert the type of insurance contract~~, and~~ *or annuity, with respect to which the principal has or claims to have a power described in this section;*

(10) ~~to~~ change the beneficiary of ~~the~~ *a* contract of insurance~~,~~ *or annuity;* ~~provided,~~ however, ~~that the attorney-in-fact~~ *the agent* may not be *designated* a ~~new~~ beneficiary~~,~~ except ~~if~~ *to the extent* permitted ~~under 72-31-208, the attorney-in-fact may be the beneficiary of death benefit proceeds under an insurance contract or if the attorney-in-fact was named as a beneficiary under the contract that was procured by the principal prior to the granting of the power of attorney, the attorney-in-fact may continue to be named as the beneficiary under the contract or under any extension or renewal of or substitute for the contract~~ *by subsection (4)*;

~~(d) to demand, receive, or obtain by action, proceeding, or otherwise any money, dividend, or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any contract of insurance or of one or more of the transactions enumerated in this section; to conserve, invest, disburse, or utilize anything received for purposes enumerated in this section; and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;~~

~~(e)~~*(11)* ~~to~~ apply for and procure ~~any available governmental~~ *government* aid ~~in the guaranteeing or paying of~~ *to guarantee or pay* premiums of ~~any~~ *a* contract of insurance on the life of the principal;

~~(f)~~*(12)* ~~to~~ *collect,* sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in ~~any~~ *a* contract of insurance *or annuity*; *and*

~~(g)~~*(13)* ~~to~~ pay from ~~any~~ proceeds or otherwise, compromise~~,~~ *or* contest, ~~or to~~ *and* apply for refunds in connection with ~~any~~ *a* tax or assessment levied by a taxing authority with respect to ~~any~~ *a* contract of insurance *or annuity* or ~~the~~ *its* proceeds ~~of the refunds~~ or liability accruing by reason of the tax or assessment~~;~~.

~~(h) to agree and contract, in any manner, with any person, and on any terms that the attorney-in-fact selects, for the accomplishment of any of the purposes~~

~~enumerated in this section and to perform, rescind, reform, release, or modify the agreement or contract;~~

~~(i) to execute, acknowledge, seal, and deliver any consent, demand, request, application, agreement, indemnity, authorization, assignment, pledge, notice, check, receipt, waiver, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;~~

~~(j) to continue, procure, pay the premium or assessment on, modify, rescind, release, terminate, or otherwise deal with any contract of insurance, other than those enumerated in subsection (1)(a) or (1)(b), whether fire, marine, burglary, compensation, liability, hurricane, casualty, or other type, or any combination of insurance or to do any act or acts with respect to the contract or with respect to its proceeds or enforcement that the attorney-in-fact considers desirable or necessary for the promotion or protection of the interests of the principal;~~

~~(k) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any insurance transaction or to intervene in any related action or proceeding;~~

~~(l) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers the action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records; and~~

~~(m) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with procuring, supervising, managing, modifying, enforcing, and terminating contracts of insurance or for the provisions of health care services in which the principal is the insured or is otherwise in any way interested.~~

~~(2) All powers described in this section are exercisable with respect to any contract of insurance or for the provision of health care service in which the principal is in any way interested, whether made in Montana or elsewhere.~~"

Section 123. Section 72-31-208, MCA, is amended to read:

"**72-31-208.** ~~Beneficiary~~ ***Construction of power relating to estate, trust, and other beneficiary*** **transactions.** ~~(1)~~ In ~~the~~ *a* statutory ~~short form~~ power of attorney, the language ~~conferring general authority~~ *granting power* with respect to *estate, trust, and other* beneficiary transactions, ~~means that the principal authorizes the attorney-in-fact:~~

~~(a) to represent and~~ *empowers the agent to* act for the principal ~~in all ways and~~ in all matters ~~affecting any~~ *that affect a* trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund ~~out of~~ *from* which the principal is, *may become,* ~~entitled~~ or claims to be entitled as a beneficiary to ~~some~~ *a* share or payment, including ~~but not limited~~ to ~~the following~~:

~~(i)~~*(1)* ~~to~~ accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of ~~any~~ *a* share in or payment from the fund;

~~(ii)~~*(2)* ~~to~~ demand or obtain, by ~~action, proceeding,~~ *litigation* or otherwise, ~~any~~ money or other thing of value to which the principal is, may become, or ~~may claim~~ *claims* to be entitled by reason of the fund;

(3) ~~to~~ initiate, participate in, and oppose ~~any proceeding, judicial, or otherwise, for the ascertainment of~~ *litigation to ascertain* the meaning, validity, or effect of ~~any~~ *a* deed, *will,* declaration of trust, or other *instrument or* transaction affecting ~~in any way~~ the interest of the principal;

(4) ~~to~~ initiate, participate in, and oppose ~~any proceeding, judicial or otherwise, for the removal, substitution,~~ *litigation to remove, substitute,* or surcharge ~~of~~ a fiduciary;

(5) ~~to~~ conserve, invest, disburse, ~~or~~ *and* use anything received for ~~purposes listed in this section~~ *an authorized purpose*; and ~~to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory short form power of attorney;~~

~~(iii) to prepare, sign, file, and deliver all reports, compilations of information, returns, or papers with respect to any interest had or claimed by or on behalf of the principal in the fund; to pay, compromise, contest, or apply for and receive refunds in connection with any tax or assessment, with respect to any interest had or claimed by or on behalf of the principal in the fund or with respect to any property in which an interest is had or claimed;~~

~~(iv) to agree and contract in any manner, with any person, and on any terms the attorney-in-fact selects, for the accomplishment of the purposes listed in this section and to perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement or contract made by or on behalf of the principal;~~

~~(v) to execute, acknowledge, verify, seal, file, and deliver any deed, assignment, mortgage, lease, consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance, or other instrument that the attorney-in-fact considers useful for the accomplishment of any of the purposes enumerated in this section;~~

~~(vi) to submit to arbitration, settle, and propose or accept a compromise with respect to any controversy or claim that affects the administration of the fund, in any one of which the principal has or claims to have an interest and to do any and all acts that the attorney-in-fact considers to be desirable or necessary in effectuating the compromise;~~

~~(vii) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this section and for the keeping of needed records;~~

~~(viii)~~*(6)* ~~to~~ transfer ~~any part or all of any~~ *an* interest ~~that~~ *of* the principal ~~may have~~ in ~~any interests in~~ real ~~estate~~ *property,* stocks, bonds, ~~bank~~ accounts *with financial institutions,* insurance, and ~~any~~ other ~~assets of any kind and nature~~ *property* to the trustee of ~~any~~ *a* revocable trust created by the principal as ~~grantor~~ *settlor.*

~~(b) in general and in addition to all the specific acts listed in this section, to do any other acts with respect to the administration of a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund in which the principal has or claims to have an interest as a beneficiary.~~

~~(2) For the purposes of subsection (1), "fund" means any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or any other fund in which the principal has or claims to have an interest.~~

~~(3) All powers described in this section are exercisable equally with respect to the administration or disposition of any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund in which the principal is interested at the giving of the power of attorney or becomes interested after that time as a beneficiary, whether located in Montana or elsewhere.~~"

Section 124. Section 72-31-211, MCA, is amended to read:

"**72-31-211.** ~~**Claims**~~ ***Construction of power relating to claims*** **and litigation.** ~~(1)~~ In a statutory ~~short-form~~ power of attorney, the language ~~conferring general authority~~ with respect to claims and litigation ~~means that the principal authorizes the attorney-in-fact~~ *empowers the agent to*:

~~(a)~~*(1)* ~~to~~ assert and prosecute before ~~any~~ *a* court~~,~~ *or* administrative ~~board, department, commissioner, or other tribunal any cause of action,~~ *agency a* claim, counterclaim, *or* offset, ~~or defense, that the principal has or claims to have~~ *and defend* against ~~any~~ *an* individual, ~~partnership, association, corporation~~ *a legal entity, or* government, ~~or other person or instrumentality,~~ including~~, by way of illustration and not of restriction, power to sue for the recovery of land or of any~~ *suits to recover property or* other thing of value, ~~for the recovery of~~ *to recover* damages sustained by the principal ~~in any manner,~~ ~~for the elimination or modification of~~ *to eliminate or modify* tax liability, ~~for~~ *or to seek* an injunction, ~~for~~ specific performance, or ~~for any~~ other relief;

~~(b)~~*(2)* ~~to~~ bring an action ~~of interpleader or other action~~ to determine adverse claims, ~~to~~ intervene ~~or interplead~~ in ~~any action or proceeding~~ *litigation*, and ~~to~~ act ~~in any litigation~~ as amicus curiae;

~~(c)~~*(3)* in connection with ~~any action or proceeding or controversy at law or otherwise, to apply for and, if possible~~ *litigation*, procure ~~a libel judgment,~~ an attachment, ~~a~~ garnishment, *libel*, ~~an~~ order of arrest, or other preliminary, provisional, or intermediate relief and ~~to resort to and to utilize in all ways permitted by law any~~ *use an* available procedure ~~for the effectuation or satisfaction of the~~ *to effect or satisfy a* judgment, order, or decree ~~obtained~~;

~~(d)~~*(4)* in connection with ~~any action or proceeding, at law or otherwise~~ *litigation*, ~~to~~ perform any *lawful* act ~~that the principal might perform~~, including~~, by way of illustration and not of restriction,~~ acceptance of tender, offer of judgment, admission of ~~any~~ facts, submission of ~~any~~ *a* controversy on an agreed statement of facts, ~~and~~ consent to examination before trial, and ~~generally to bind~~ *binding* the principal in ~~the conduct of any~~ litigation ~~or controversy as seems desirable to the attorney-in-fact~~;

~~(e)~~*(5)* ~~to~~ submit to arbitration, settle, and propose or accept a compromise with respect to ~~any~~ *a* claim ~~existing in favor of or against the principal~~ or ~~any~~ litigation ~~to which the principal is, may become, or may be designated a party~~;

~~(f)~~*(6)* ~~to~~ waive the issuance and service of ~~a summons, citation, or other~~ process upon the principal~~,~~*;* ~~to~~ accept service of process~~,~~*;* ~~to~~ appear for the principal~~,~~*;* ~~to~~ designate persons upon whom process directed to the principal may be served~~,~~*;* ~~to~~ execute and file or deliver stipulations on the principal's behalf~~,~~*;* ~~to~~ verify pleadings~~,~~*;* ~~to appeal to~~ *seek* appellate ~~tribunals~~ *review*~~,~~*;* ~~to~~ procure and give surety and indemnity bonds ~~at the times and to the extent the attorney-in-fact considers desirable or necessary~~;~~, to~~ contract and pay for the preparation and printing of records and briefs~~,~~*;* ~~or to~~ *and* receive, ~~and~~ execute, and file or deliver ~~any~~ *a* consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument ~~that the attorney-in-fact considers desirable or necessary~~ in connection with the prosecution, settlement, or defense of ~~any~~ *a* claim ~~by~~ or ~~against the principal or of any~~ litigation ~~to which the principal is, may become, or may be designated a party~~;

~~(g)~~*(7)* ~~to appear for, represent, and~~ act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, ~~whether of~~ *concerning* the principal or ~~of~~ some other person, with respect to ~~any~~ *a* reorganization proceeding or ~~with respect to any~~ *a* receivership or application for the appointment of a receiver or trustee that ~~in any way~~ affects ~~any~~ *an* interest of the principal in ~~any real~~ property~~, bond, share, commodity interest, tangible personal property,~~ or other thing of value; *and*

~~(h) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact considers that action to be desirable for the proper execution of any of the powers described in this section;~~

~~(i)~~*(8)* ~~to~~ pay~~, from funds in the control of the attorney-in-fact or for the account of the principal, any~~ *a* judgment against the principal or ~~any~~ *a* settlement ~~that may be~~ made in connection with ~~any transaction enumerated in this section, to~~ *litigation and* receive and conserve ~~any~~ money or other ~~things~~ *thing* of value paid in settlement of or as proceeds of ~~one or more of the transactions enumerated in this section, and to receive, endorse, and deposit checks; and~~

~~(j) in general and in addition to all the specific acts listed in this section, to do any other acts in connection with any claim by or against the principal or with litigation to which the principal is, may become, or may be designated a party.~~

~~(2) All powers described in this section are exercisable equally with respect to any~~ *a* claim or litigation ~~existing at the giving of the power of attorney or arising after that time, whether arising in Montana or elsewhere.~~"

Section 125. Section 72-31-212, MCA, is amended to read:

"**72-31-212.** ~~**Family**~~ ***Construction of power relating to personal and family*** **maintenance.** ~~(1)~~ In a statutory ~~short-form~~ power of attorney, the language ~~conferring general authority~~ *granting power* with respect to *personal and* family maintenance ~~means that the principal authorizes the attorney-in-fact~~ *empowers the agent to*:

~~(a)~~*(1)* ~~to~~ do ~~all~~ *the* acts necessary ~~for maintaining~~ *to maintain* the customary standard of living of the *principal and the principal's* spouse, children, and other ~~dependents~~ *individuals customarily or legally entitled to be supported by the principal,* including~~, by way of illustration and not of restriction, power to~~

~~provide~~ *providing* living quarters by purchase, lease, or other contract or ~~by payment of~~ *paying* the operating costs, including interest, amortization payments, repairs, and taxes, ~~of~~ *on* premises owned by the principal and occupied by ~~the principal's family or dependents~~ *those individuals*;

(2) ~~to~~ provide *for the individuals described in subsection (1)* normal domestic help ~~for the operation of the household~~; ~~to provide~~ usual vacations and usual travel expenses; ~~to provide usual educational facilities;~~ and ~~to provide~~ funds for ~~all the current living costs of the spouse, children, and other dependents, including, among other things,~~ shelter, clothing, food, *appropriate education,* and ~~incidentals~~ *other current living costs*;

~~(b)~~*(3)* ~~to~~ pay for *the individuals described in subsection (1)* necessary medical, dental, and surgical care, hospitalization, and custodial care ~~for the spouse, children, and other dependents of the principal~~;

~~(c)~~*(4)* ~~to~~ continue ~~whatever~~ *any* provision ~~has been~~ made by the principal~~, either prior to or after the execution of the power of attorney,~~ for the ~~principal's spouse, children, and other dependents with respect to~~ *individuals described in subsection (1) for* automobiles or other means of transportation, including~~, by way of illustration but not of restriction, power to license, insure, and replace any automobiles owned by the principal and customarily used by the spouse, children, or other dependents~~ *registering, licensing, insuring, and replacing them*;

~~(d)~~*(5)* ~~to continue whatever~~ *maintain or open* charge accounts ~~have been operated by the principal prior to the execution of the power of attorney or after execution of the power of attorney~~ for the convenience of the ~~principal's spouse, children, or other dependents; to~~ *individuals described in subsection (1) and* open new accounts the ~~attorney-in-fact~~ *agent* considers ~~to be~~ desirable ~~for the accomplishment of any of the purposes enumerated in this section~~ *to accomplish a lawful purpose*; and ~~to pay the items charged on those accounts by any person authorized or permitted by the principal to make charges prior to the execution of the power of attorney;~~

~~(e)~~*(6)* ~~to~~ continue payments incidental to the membership or affiliation of the principal in ~~any~~ *a* church, club, society, order, or other organization or ~~to~~ continue contributions to those organizations~~;~~.

~~(f) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled to as salary, wages, commission, or other remuneration for services performed, as a dividend or distribution upon any stock, or as interest or principal upon any indebtedness or any periodic distribution of profits from any partnership or business in which the principal has or claims an interest and to endorse, collect, or otherwise realize upon any instrument for the payment received;~~

~~(g) to use any asset of the principal for the performance of the powers enumerated in this section, including, by way of illustration and not of restriction, power to draw money by check or otherwise from any bank deposit of the principal; to sell any interest in real property, bonds, shares, commodity interests, tangible personal property, or other assets of the principal; and to borrow~~

~~money and pledge as security for a loan, any asset, including insurance, that belongs to the principal;~~

~~(h) to execute, acknowledge, verify, seal, file, and deliver any application, consent, petition, notice, release, waiver, agreement, or other instrument that the attorney in fact considers useful for the accomplishment of any of the purposes enumerated in this section;~~

~~(i) to hire, discharge, and compensate any attorney, accountant, or other assistant when the attorney in fact considers that action to be desirable for the proper execution by any of the powers described in this section and for the keeping of needed records; and~~

~~(j) in general and in addition to all the specific acts listed in this section, to do any other acts for the welfare of the spouse, children, or other dependents or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends, and organizations as are appropriate.~~

~~(2) All powers described in this section are exercisable equally whether the acts required for their execution relate to real or personal property owned by the principal at the giving of the power of attorney or acquired after that time, whether those acts are performable in Montana or elsewhere.~~"

Section 126. **Construction of power relating to benefits from social security, medicare, medicaid, or other governmental programs or from military service.** In a statutory power of attorney, the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs or from civil or military service empowers the agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in 72-31-212(1), and for shipment of their household effects;

(2) take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described in this section and conserve, invest, disburse, or use anything received for a lawful purpose.

Section 127. **Construction of power relating to retirement plan transactions.** In a statutory power of attorney, the language granting power with respect to retirement plan transactions empowers the agent to:

(1) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(2) designate beneficiaries under those plans and change existing designations;

(3) make voluntary contributions to those plans;

(4) exercise the investment powers available under any self-directed retirement plan;

(5) make "rollovers" of plan benefits into other retirement plans;

(6) if authorized by the plan, borrow from, sell assets to, and purchase assets from the plan; and

(7) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

Section 128. **Construction of power relating to tax matters.** In a statutory power of attorney, the language granting power with respect to tax matters empowers the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns; claims for refunds; requests for extension of time; petitions regarding tax matters; and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code section 2032A or any successor section), closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the internal revenue service and any other taxing authority.

Section 129. **Existing interests — foreign interests.** The powers described in this part are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the powers are exercised or the power of attorney is executed in this state.

Section 130. **Uniformity of application and construction.** This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

Section 131. **Application of [sections 103 through 112].** [Sections 103 through 112] apply to registrations of securities in beneficiary form made before or after [the effective date of this act], by decedents dying on or after [the effective date of this act].

Section 132. Section 32-3-501, MCA, is amended to read:

"**32-3-501. Shares.** (1) The capital of a credit union consists of the payments by the members on shares.

(2) Shares may be subscribed to, paid for, and transferred in ~~such~~ *a* manner as the bylaws prescribe.

(3) A certificate need not be issued to denote ownership of a share in a credit union.

(4) This chapter does not restrict or prohibit the issuance of shares in any type of account described in [sections 84 through 102]. However, the party, the beneficiary, or the agent of an account may not vote, obtain loans, hold office, or be required to pay an entrance or membership fee unless the party, beneficiary, or agent is a member of the credit union."

Section 133. **Codification instruction.** (1) [Section 21] is intended to be codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2, apply to [section 21].

(2) [Section 34] is intended to be codified as an integral part of Title 72, chapter 2, part 3, and the provisions of Title 72, chapter 2, part 3, apply to [section 34].

(3) [Section 47] is intended to be codified as an integral part of Title 72, chapter 2, part 5, and the provisions of Title 72, chapter 2, part 5, apply to [section 47].

(4) [Section 56] is intended to be codified as an integral part of Title 72, chapter 2, part 8, and the provisions of Title 72, chapter 2, part 8, apply to [section 56].

(5) [Sections 61 through 72 and 83 through 112] are intended to be codified as an integral part of Title 72, chapter 1, and chapter 2, parts 1 through 8, and the provisions of Title 72, chapter 1, and chapter 2, parts 1 through 8, apply to [sections 61 through 72 and 83 through 112].

(6) [Sections 114, 115, 119, and 126 through 130] are intended to be codified as an integral part of Title 72, chapter 31, part 2, and the provisions of Title 72, chapter 31, part 2, apply to [sections 114, 115, 119, and 126 through 130].

Section 134. **Repealer.** Sections 32-1-442, 32-1-443, 33-20-151, 70-1-309, 72-1-102, 72-1-110, 72-2-303, 72-2-501, 72-2-503, 72-2-511, 72-10-101, 72-10-102, 72-10-103, 72-10-104, 72-10-105, 72-10-106, 72-10-107, 72-10-108, 72-10-109, 72-10-110, 72-10-111, 72-10-112, 72-10-113, 72-10-201, 72-10-202, 72-10-203, 72-10-204, 72-11-105, 72-11-201, 72-11-202, 72-11-203, 72-11-204, 72-11-205, 72-11-301, 72-11-302, 72-11-303, 72-11-304, 72-11-305, 72-11-306, 72-11-307, 72-11-308, 72-11-309, 72-11-310, 72-11-311, 72-11-312, 72-11-313, 72-11-314, 72-11-315, 72-11-316, 72-11-317, 72-11-318, 72-11-319, 72-11-320, 72-11-321, 72-11-322, 72-11-331, 72-11-332, 72-11-333, 72-12-104, 72-12-201, 72-12-202, 72-12-203, 72-12-204, 72-12-205, 72-12-301, 72-12-302, 72-12-501, 72-12-502, 72-12-503, 72-12-601, 72-12-602, 72-12-603, 72-12-604, 72-12-605, 72-12-701, 72-12-702, 72-12-703, 72-12-704, 72-12-801, 72-12-802, 72-12-803, 72-12-901, 72-12-1001, 72-12-1002, 72-12-1003, 72-12-1004, 72-13-101, 72-13-102, 72-13-103, 72-13-201, 72-13-202, 72-13-203, 72-13-301, 72-31-209, 72-31-210, 72-31-213, 72-31-214, 72-31-215, and 72-31-216, MCA, are repealed.

Section 135. **Retroactive applicability.** The amendment to 72-36-206(1) applies retroactively, within the meaning of 1-2-109, to conveyances recorded on or before October 1, 1989. The amendment also applies to conveyances recorded after October 1, 1989.

Section 136. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 23, 1993.

CHAPTER NO. 495

[HB 655]

AN ACT APPROPRIATING $200,000 OF FEDERAL DINGELL-JOHNSON MONEY FOR THE RIVER RESTORATION PROGRAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from federal Dingell-Johnson money to the department of fish, wildlife, and parks the amount of $200,000 for the biennium ending June 30, 1995, to be used in the river restoration program provided for in 87-1-257.

Approved April 23, 1993.

CHAPTER NO. 496

[HB 10]

AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Policy.** [Sections 1 through 14] implement the policy stated in 90-4-210.

Section 2. **Definitions.** As used in [sections 1 through 14], the following definitions apply:

(1) "Carryover" means unspent oil overcharge funds previously appropriated and incorporated into an approved program plan for one of the federal energy conservation programs, but not included in unspent project funds as defined in subsection (8).

(2) "Cities service payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the

consent agreement between cities service oil and gas and the U.S. department of energy, as affirmed by the federal energy regulatory commission, and includes any interest accrued on the payments.

(3) "Diamond shamrock payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the southern district of Ohio eastern division in Civil Action No. C2-84-1432 and includes any interest accrued on the payments.

(4) "Exxon payments" means the oil overcharge payments made by the exxon corporation to the U.S. treasury for distribution to the state of Montana pursuant to the order of the U.S. district court for the District of Columbia in Civil Action No. 78-1035 and includes any interest accrued on the payments.

(5) "Getty oil payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the order of disbursement issued in Civil Action No. 77-347 (MMS) in the U.S. district court for the district of Delaware and includes any interest accrued on the payments.

(6) "Stripper well payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the district of Kansas, Cause No. M.D.L. 378, and includes any interest accrued on the payments. The term also includes but is not limited to cities service payments, as defined in subsection (2), getty oil payments, as defined in subsection (5), texaco payments, as defined in subsection (7), and unspent project funds, as defined in subsection (8).

(7) "Texaco payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the texaco final consent order, 53 Fed. Reg. 32929, August 29, 1988, and includes any interest accrued on the payments.

(8) "Unspent project funds" means stripper well payments that were not expended or otherwise legally obligated during the 1993 biennium but that were appropriated for the 1993 biennium in Chapter 553, Laws of 1991, in:

(a) section 5(1);

(b) section 6;

(c) section 7;

(d) section 9; and

(e) section 10(1).

Section 3. **Deposit of oil overcharge revenue.** All funds from stripper well and exxon payments must be deposited by the state treasurer in the federal special revenue fund. All interest earned on any of these funds or payments must also be deposited in the federal special revenue fund.

Section 4. **Low-income home weatherization — appropriation.** There is appropriated $275,000 from the stripper well payments contained in the federal special revenue fund to the department of social and rehabilitation services for use in the home weatherization program created in 90-4-201.

Section 5. **Matching funds for low-income energy assistance — appropriation.** (1) There is appropriated $100,000 from the stripper well payments contained in the federal special revenue fund to the department of social and rehabilitation services for the purpose described in subsection (2).

(2) The department of social and rehabilitation services shall match private contributions to energy share, inc., to be used to assist persons not eligible for federal low-income energy assistance whose income is less than 150% of the federal poverty threshold published by the U. S. bureau of the census in the most recent edition of its publication, Poverty in the United States. All of the funds appropriated to the department for this purpose under subsection (1) must be used for clients' fuel bills or other energy needs.

Section 6. **Promotion of transportation energy conservation and alternative fuels — appropriation.** There is appropriated from the stripper well payments contained in the federal special revenue fund $260,000 to the department of natural resources and conservation and $80,000 to the department of transportation for a cooperative program between the departments to promote transportation demand management and to foster expanded use of alternative fuels.

Section 7. **Petroleum substitutes from agricultural and timber products — appropriation.** There is appropriated $150,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation to continue development and demonstration of safflower oil as a fuel additive or substitute that may reduce petroleum consumption and result in a new potential cash crop for Montana farmers and to develop and demonstrate technologies and processes using waste from the pulp and paper industry and agricultural commodities to reduce the cost of ethanol production. Money expended under this appropriation must be matched at least dollar for dollar with private or federal revenue, or both.

Section 8. **Technical assistance to local governments — appropriation.** There is appropriated $235,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation to contract with a public or private entity to provide technical assistance outreach to local government entities for the purpose of identifying energy conservation measures. Approximately $215,000 of the appropriation must be administered through the board of investments as an energy conservation loan and bridge financing program for energy improvements to local government buildings. A loan contract to a local government under this section must include provisions designed to use local government energy savings to generate local funds to pay back loans for future projects.

Section 9. **Agricultural energy conservation program — appropriation.** There is appropriated $100,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation for use by the conservation districts in funding local energy efficiency or renewable energy projects, such as solar livestock watering systems, stockwater tank insulation and solar heating, and farming techniques to more efficiently use irrigation water, pesticides, and fertilizers.

Section 10. **Energy-efficient home mortgage reserve account — appropriation.** There is appropriated $300,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation to establish an energy-efficient home mortgage reserve account that would enable the board of housing to sell bonds and offer loans for energy-efficient new homes costing more than the FHA limit. These funds must be matched at least dollar for dollar from utility or other contributions. If the board of housing does not issue bonds to establish the energy-efficient home mortgage program by July 1, 1994, then the funds appropriated in this section may be used in the institutional conservation program for schools and hospitals administered by the department pursuant to 10 CFR 455.

Section 11. **Northern Montana college tractor resource center — appropriation.** There is appropriated $125,000 from the stripper well payments contained in the federal special revenue fund to northern Montana college to support the implementation phase of northern Montana college's tractor resource center.

Section 12. **Carryover — reappropriations.** (1) There is appropriated $20,000 of carryover funds from the stripper well payments, $35,000 of carryover funds from the exxon payments, and $75,000 of carryover funds from the diamond shamrock payments contained in the federal special revenue fund to the department of natural resources and conservation for use in the state energy conservation program administered by the department pursuant to 10 CFR 420.

(2) There is appropriated $80,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation for technical assistance to local governments through the energy extension service program administered by the department pursuant to 10 CFR 465 to augment the funds provided in [section 8].

(3) There is appropriated $200,000 from the stripper well payments contained in the federal special revenue fund to the department of natural resources and conservation for use in the institutional conservation program for schools and hospitals administered by the department pursuant to 10 CFR 455.

Section 13. **Conditions applied to appropriations.** The appropriations made in [sections 4 through 12] are biennial appropriations.

(1) One-half of the total amount appropriated to each program in [sections 4 through 9 and 11] is appropriated in fiscal year 1994 and the remainder is appropriated in fiscal year 1995. As biennial appropriations, the unexpended funds appropriated in fiscal year 1994 may be carried forward within each program to fiscal year 1995.

(2) The total amount appropriated in [section 10] is appropriated in fiscal year 1994. As a biennial appropriation, any unexpended funds in fiscal year 1994 may be carried forward to fiscal year 1995.

(3) The appropriations in [section 12] are limited to available funds. Expenditures of carryover funds may not exceed the actual amount of unspent funds available.

Section 14. **Appropriations prioritized.** (1) The appropriations in [sections 4 through 11] are approved in order of priority as they appear in [sections

4 through 11], with the appropriation in [section 4] having the highest priority and the appropriation in [section 11] having the lowest priority. If the U. S. department of energy does not approve one or more of the programs that are funded by [sections 4 through 11], any stripper well payments that are not used to fund higher-priority programs must be provided to lower-ranked programs up to the amounts appropriated in [sections 4 through 11].

(2) If stripper well payments are insufficient to fully fund the appropriations made in [sections 4 through 11], allocations to the lowest-ranking program must be reduced until the deficiency is eliminated. If the deficiency is in excess of the appropriation to the lowest-ranking program, allocation to the next lowest-ranking program must be reduced until the deficiency is eliminated and so forth as the programs are prioritized. These priorities must be applied to one-half of the total amount appropriated in [sections 4 through 9 and 11] and to the total amount appropriated in [section 10] for fiscal year 1994 and to the remaining appropriation for fiscal year 1995.

(3) In order to provide continuity for the programs when allocating the appropriations for each fiscal year of the 1995 biennium, anticipated stripper well payments that will be received under terms of the agreements during the biennium may be considered as available to fund the activities.

(4) The expenditure of money appropriated by [sections 4 through 11] may not exceed the amount of the stripper well payments available in the biennium.

Section 15. **Coordination instruction.** If House Bill No. 97 is passed and approved, the stripper well payments appropriated in House Bill No. 97 have a higher priority than any appropriation of stripper well payments in [sections 4 through 11 of this act].

Section 16. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 497

[HB 12]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE WATER DEVELOPMENT PROGRAM; APPROVING THE ISSUANCE OF COAL SEVERANCE TAX BONDS TO PROVIDE FUNDS FOR LOANS TO POLITICAL SUBDIVISIONS AND LOCAL GOVERNMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS AND TO PROVIDE FUNDS TO PAY A PORTION OF THE STATE'S SHARE OF THE COSTS OF THE TONGUE RIVER DAM REHABILITATION PROJECT; REAUTHORIZING COAL SEVERANCE TAX BONDS FOR CERTAIN PROJECTS APPROVED BY THE 52ND LEGISLATURE; APPROPRIATING COAL SEVERANCE TAX INCOME FOR DEBT SERVICE; AUTHORIZING THE CREATION OF A STATE DEBT; AUTHORIZING THE ISSUANCE OF REVENUE BONDS TO REFUND EXISTING BONDS; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Coal severance tax bonds authorized.** (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved water resource development projects and activities as part of the state water development program. Available funds from previous sales of coal severance tax bonds may also be used for the projects approved in this section. The legislature finds that the water development projects in this section meet the provisions of 17-5-702. The board of examiners may issue coal severance tax bonds in an amount not to exceed $9,320,423 for the purpose of making loans and financing state projects in the amount of $8,473,111, including the costs of issuance, and establishing a reserve for the bonds in the amount of $847,312. Funds are appropriated for the costs of issuance, to a maximum of 4% of the amount of each bond sale.

(2) The board of examiners may issue coal severance tax bonds for loans to political subdivisions and local government entities, not to exceed the loan amount listed for the following projects:

(a) GROUP A: The interest rate for the project in this group may be 1% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
ENNIS, TOWN OF	
Water Storage and Distribution System Improvements	$1,100,000

(b) GROUP B: The interest rate for the project in this group may be 2% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
WEST SHORE SEWER DISTRICT OR FLATHEAD COUNTY RSID	
Sewer System	$800,000

This loan is contingent on the creation of a sewer district or a rural improvement district.

(c) GROUP C: The interest rate for the projects in this group is 3.5% for 20 years.

	Loan Amount
HUNTLEY PROJECT IRRIGATION DISTRICT	
Diversion and Main Canal Rehabilitation and Reconstruction	$4,875,440

(d) GROUP D: The interest rate for the projects in this group is 4.5% for 20 years.

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
North Fork of the Smith River — Dam	1,393,467

TIN CUP WATER COMPANY

Tin Cup Lake Dam Restoration	304,204

Section 2. **Authorization of coal severance tax bonds for Tongue River dam rehabilitation project.** The board of examiners is authorized to issue coal severance tax bonds in a principal amount not to exceed $11,500,000 to pay a portion of the state of Montana's share of the costs of the Tongue River dam rehabilitation project, which project is approved. The bonds must be issued to the Northern Cheyenne tribe in evidence of a loan to be made to the state pursuant to Public Law 102-374. The principal of the bonds is payable over a term not to exceed 39 years, estimated to commence in 1998. The bonds bear no interest. The state of Montana's share of revenue from the rehabilitated Tongue River dam is pledged first for the state of Montana's share of the operation and maintenance costs of the rehabilitated Tongue River dam. The excess revenue over the operation and maintenance costs is pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of the bonds authorized by [section 3] and this section. The proceeds of the bonds are appropriated to the department of natural resources and conservation to pay a portion of the state's share of the costs of the Tongue River dam rehabilitation project. The enactment of this section supersedes House Bill No. 846, enacted by the 47th legislature, authorizing the issuance of up to $10 million of coal severance tax bonds for the Tongue River dam rehabilitation project.

Section 3. **Appropriation — creation of debt for coal severance tax bonds.** (1) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [sections 1 through 3] to be issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 3] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

(2) The legislature, through the enactment of this section, in accordance with Article VIII, section 8, of the Montana constitution, authorizes the creation of a state debt:

(a) in an amount not to exceed $9,320,423 for loans to political subdivisions and local government entities for water development projects approved in [section 1] and for funding a reserve for the coal severance tax bonds authorized to fund those projects; and

(b) in an amount not to exceed $11,500,000 to pay a portion of the state's costs of the Tongue River dam rehabilitation project.

(3) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(4) Earnings on bonds proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the water development state special revenue account and may be used for the purposes allowed under 85-1-604(3)(b).

(5) Loan repayments from loans financed with coal severance tax bonds, loan principal, interest, and bond issuance fees borrowed from bond proceeds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. **Projects not completing requirements — loans reauthorized.** The legislature finds that the following water development projects for which coal severance tax bonds were authorized to be issued by the 52nd legislature in Chapter 775, Laws of 1991, may not complete the requirements necessary for the loan transaction prior to June 30, 1993. Coal severance tax bonds for the projects described in this section are reauthorized in the amounts listed, at the interest rates authorized by the 52nd legislature in Chapter 775, Laws of 1991, and described in this section to enable financing during the 1995 biennium, if necessary.

(1) GROUP A: The interest rate for projects in this group may be 2% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
FORSYTH, CITY OF	
Water Treatment Plant Improvements	$1,948,916
GLENDIVE, CITY OF	
Water Treatment Plant	2,240,762
PONDERA CONSERVATION DISTRICT	
Irrigation System Rehabilitation	400,000
SEELEY LAKE-MISSOULA COUNTY WATER DISTRICT	
Water Treatment Plant	922,150
WHITEFISH, CITY OF	
Water Treatment and Distribution	6,035,800

(2) GROUP B: The interest rate for the project in this group may be 1% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the bond is sold for the remaining 15 years.

	Loan Amount
COLUMBIA FALLS, CITY OF	
Water Improvements	$1,163,720

(3) GROUP C: The interest rate for the projects in this group is 6% or the rate at which the state bond is sold, whichever is lower, for up to 30 years.

	Loan Amount
MILL CREEK WATER AND SEWER DISTRICT	
Mill Creek Gravity Sprinkler Irrigation Project	$ 151,000
LAKESIDE WATER AND SEWER DISTRICT	
Lakeside Wastewater Facility	251,700

Section 5. **Conditions of loans.** (1) Disbursement of funds for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource and water development program project evaluations and recommendations report for the 1995 biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 6. **Interest rates on loans.** Loans made from proceeds of coal severance tax bonds must be at interest rates specified in the authorizing section, except that when loan requests are reduced, interest rates must be recalculated based on the methodology described in the renewable resource and water development program project evaluations and recommendations report submitted to the 53rd legislature for the 1995 biennium. If the bonds or notes bear interest at an adjustable rate, the department of natural resources and conservation shall establish, at the time of the sale of each bond, an assured rate of interest thereon as if the bond bore interest at a fixed rate. The assured rate of interest established must be the rate of interest on the bonds for the purpose of calculating the interest rates on the loans pursuant to the authorizing section.

Section 7. **Private and discount purchase of loans.** Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made and purchased by and sold to the department of natural resources and conservation at a discount and at a private negotiated sale.

Section 8. **Other appropriations.** For any entity of state government that receives a loan under [sections 1 and 4], there is appropriated the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 9. **Authorization to issue revenue bonds.** (1) In addition to the authority contained in 17-5-716, the board of examiners may issue revenue bonds of the state to refund, in whole or in part, bonds issued to finance water development projects approved by the legislature pursuant to Title 17, chapter 5, part 7, and Title 85, chapter 1, part 6. The principal and interest on refunding bonds issued pursuant to this section are payable solely from the project or projects for which the refunded bonds were issued.

(2) The revenue bonds may be issued in an amount sufficient to refund all or a portion of the outstanding bonds, to pay costs incident to the issuance and sale of the refunding bonds, and to fund the establishment of necessary reserves. The refunding bonds must be designated as "State of Montana Water Development Revenue Bonds". All the power and authority granted to the board of examiners and provisions with respect to the issuance of bonds under Title 17, chapter 5, part 7, except for the provision pledging the coal severance tax to the payment of the bonds, apply to the issuance of the revenue bonds. In authorizing the issuance of the revenue bonds, the board of examiners shall determine that the refunding of the outstanding bonds and the issuance of the revenue bonds are in the best interests of the state.

(3) Revenue bonds may not be issued under this section to refund bonds issued to fund a loan to a political subdivision or local government body unless the political subdivision or local government body whose loan repayments would be pledged to the payment of the refunding bonds has consented to the refunding.

(4) Revenue bonds issued pursuant to this section without the pledge of the coal severance tax to the payment of the bonds are not coal severance tax bonds or a state debt.

Section 10. **Codification instruction.** [Section 9] is intended to be codified as an integral part of Title 17, chapter 5, part 7, and the provisions of Title 17, chapter 5, part 7, apply to [section 9].

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Requirements for approval of state debt.** Because [section 3] authorizes the creation of a state debt and appropriation of coal severance tax bond fund deposits and appropriates money that would otherwise be deposited in the coal severance tax permanent fund, a vote of three-fourths of the members of each house is required for enactment of [section 3].

Section 13. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 498

[HB 17]

AN ACT AUTHORIZING THE DEPARTMENT OF COMMERCE TO ESTABLISH PETROLEUM DEALER AND LIQUEFIED PETROLEUM DEALER LICENSE FEES BY RULE; REQUIRING DEPOSIT OF THE FEES IN A STATE SPECIAL REVENUE FUND; AMENDING SECTION 82-15-105, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide the department of commerce the authority to establish by rule license fees for petroleum dealers and liquefied petroleum dealers. The fees must be set in an amount necessary to cover costs of the department to administer and enforce the provisions of Title 82, chapter 15, part 1.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-15-105, MCA, is amended to read:

"**82-15-105. Licenses and fees — status of license on transfer of ownership.** (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until ~~a license has been issued to him~~ *licensed* by the department. The license must be obtained by the dealer by making application to the department upon blank forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall upon conviction be punished as provided by this part.

~~(2) The fee for this license is determined as follows and depends upon the number of devices utilized by the dealer:~~

~~(a) each gasoline pump, diesel pump, or fuel oil pump measuring device — $7;~~

~~(b) each petroleum vehicle tank meter or bulk petroleum meter of 2 inches (5.08 centimeters) and under — $20;~~

~~(c) each bulk petroleum meter over 2 inches (5.08 centimeters) — $25;~~

~~(d) each liquefied petroleum liquid meter — $30;~~

~~(e) each vapor meter — $4;~~

~~(f) each petroleum and liquefied petroleum vehicle tank up to and including 2,000 gallons (7,570 liters) — $25;~~

~~(g) each petroleum and liquefied petroleum vehicle tank over 2,000 gallons (7,570 liters) — $25 plus $5 for each additional 1,000 gallons (3,785 liters).~~

(2) The department shall adopt rules establishing license fees based upon the measuring devices used by the dealer. The fees must be deposited in the state special revenue fund of the department for use in administrating and enforcing this part.

(3) All licenses are annual and expire on December 31 of each year. There is an additional charge of 50% on all license fees that are not paid before March 1 of each year in which the vehicle tank, meter, or measuring device is in use. If the fee is not paid, the equipment must be sealed and removed from service by the department. It is unlawful for anyone to use a device ~~so~~ removed from service or to break the seal until all fees have been paid.

(4) If ownership of a measuring device changes and the device:

(a) remains at the same location, the license transfers to the new owner and remains in effect until December 31 of that year;

(b) is moved to a new location, the license is void, and the new owner shall:

(i) apply for a new license that will expire on December 31 of that year; and

(ii) pay the applicable fees ~~prescribed in subsection (2)~~."

Section 2. **Implementation.** The department of commerce may adopt rules implementing [this act] to be in place on January 1, 1994.

Section 3. **Effective dates — applicability.** (1) [Section 1] is effective January 1, 1994, and applies to license fees beginning after December 31, 1993.

(2) [Section 2 and this section] are effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 499

[HB 196]

AN ACT CAPPING THE AMOUNT OF REIMBURSEMENT PAID TO ELIGIBLE TAXING JURISDICTIONS FOR TAXABLE YEARS 1993 AND THEREAFTER TO THE SAME AMOUNT PAID IN FISCAL YEAR 1991, BUT ALLOWING CERTAIN ADJUSTMENTS BECAUSE OF DISSOLVED AND COMBINED TAXING JURISDICTIONS; REVISING THE DEFINITION OF "TAXING JURISDICTION"; PROVIDING A PROCEDURE FOR THE TREATMENT OF DISSOLVED AND COMBINED TAXING JURISDICTIONS; AMENDING SECTION 15-1-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-111, MCA, is amended to read:

"**15-1-111. Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation.** ~~(1) (a) On or before May 1, 1990, the department of revenue shall remit to the county treasurer of each county 30% of the reimbursement amount specified in subsection (1)(b), as computed by the department. The department shall base the reimbursement on the reduction in personal property tax revenues due to the reduction in personal property tax rates for class eight property, as provided for in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145. The reimbursement basis must also include loss of personal property tax revenue due to the reclassification of new~~

~~industrial property from class five to class eight with the reduced tax rate. The determination of the reimbursement basis must be made in the year in which the reclassification is made.~~

~~(b) The reimbursement revenue must be based on the county's taxable value and mill levies for tax year 1989.~~

~~(2)~~*(1)* Prior to September 1, 1990, the department's agent in the county shall supply the following information to the department for each taxing jurisdiction within the county:

(a) the number of mills levied in the jurisdiction for taxable year 1989;

(b) the number of mills levied in the jurisdiction for taxable year 1990;

(c) the total taxable valuation for taxable years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and

(d) the total taxable valuation for taxable years 1989 and 1990, reported separately for each year, of all personal property secured by real property.

~~(3)~~*(2)* After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145. The department shall total the amounts for all taxing jurisdictions within the county.

~~(4)~~*(3) (a)* ~~For taxable year 1990 and for each year thereafter, the~~ *The* department shall remit to the county treasurer *50% of* the ~~base~~ amount of revenue reimbursable, determined pursuant to subsection ~~(3)~~ *(1)*, ~~as follows:~~

~~(a)~~ on or before November 30~~, 1990,~~ and ~~on or before each November 30 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county; and~~

~~(b)~~ *the remaining 50%* on or before May 31~~, 1991, and on or before each May 31 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county~~.

(b) For taxable year 1993 and for each taxable year thereafter, the department shall remit to the county treasurer of each county the same amount remitted to the county treasurer for the fiscal year 1991, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (7). Fifty percent of the amount must be remitted on or before November 30 and the remaining 50% on or before May 31.

~~(5)~~*(4)* Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction ~~in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as current year mill levies on personal property taxes are distributed~~ *as calculated by the department.*

~~(6)~~*(5)* For the purposes of this section *and subject to subsection (7)*, "taxing jurisdiction" means ~~local governments~~ *a jurisdiction levying mills against per-*

sonal property and includes *but is not limited to a county, city,* school ~~districts~~ *district,* ~~each municipality with~~ tax increment financing *district, miscellaneous taxing district,* and the state of Montana.

~~(7)~~*(6)* The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse ~~school districts and local governments~~ *eligible taxing jurisdictions* for reductions in tax rates on personal property.

(7) The following apply to taxing jurisdictions that were altered after tax year 1989:

(a) A taxing jurisdiction that existed in tax year 1989 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1989 and that is split into two or more taxing jurisdictions is entitled to reimbursement based on the portion of 1989 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1989 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 1989 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (7)(b)."

Section 2. **Applicability.** [This act] applies to all reimbursements beginning with tax year 1993. [This act] does not affect the reimbursement payment due May 31, 1993, or any previous reimbursement. The first reimbursement payment under [this act] is payable on or before November 30, 1993.

Approved April 24, 1993.

CHAPTER NO. 500

[HB 303]

AN ACT EXPANDING URBAN RENEWAL AND INDUSTRIAL INFRASTRUCTURE DEVELOPMENT PROJECTS TO INCLUDE THE COST OF FACILITIES OR EQUIPMENT FOR POLLUTION CONTROL; AND AMENDING SECTION 7-15-4288, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4288, MCA, is amended to read:

"**7-15-4288. Costs ~~which~~ *that* may be paid by tax increment financing.** The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project or industrial infrastructure development project:

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of infrastructure or industrial infrastructure, which includes streets, roads, curbs, gutters,

sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, publicly owned buildings, and any public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;

(6) acquisition of infrastructure-deficient areas or portions ~~thereof~~ *of areas*;

(7) administrative costs associated with the management of the industrial district;

(8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;

(9) the compilation and analysis of pertinent information required to adequately determine the infrastructure needs of secondary, value-adding industries in the industrial district;

(10) the connection of the industrial district to existing infrastructure outside the industrial district; ~~and~~

(11) the provision of direct assistance, through industrial infrastructure development projects, to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the industrial district~~.~~*; and*

(12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution."

Approved April 24, 1993.

CHAPTER NO. 501

[HB 314]

AN ACT DESIGNATING AND ESTABLISHING CERTAIN MONTANA STATE PARKS AS PRIMITIVE PARKS; LIMITING DEVELOPMENT IN PRIMITIVE PARKS; AND ELIMINATING USER FEES FOR MONTANA RESIDENTS WHO VISIT PRIMITIVE PARKS.

WHEREAS, certain Montana state parks still retain the unique, primarily undeveloped character for which they were originally acquired; and

WHEREAS, there is an abundance of other state and federal land that has been developed beyond its primitive condition and that is readily available to the recreating public; and

WHEREAS, there are also numerous well-developed private sector recreational opportunities in Montana; and

WHEREAS, Montana should provide a variety of recreational opportunities for its residents; and

WHEREAS, Montana residents have the right to use primarily undeveloped state parks without regard to their ability to pay; and

WHEREAS, budget constraints militate against further improvement of Montana's primarily undeveloped state parks.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 4] may be cited as the "Montana Primitive Parks Act".

Section 2. **Primitive parks established.** Because of their unique and primarily undeveloped character, the following state parks and management areas are designated as primitive parks and are subject to the provisions of [sections 1 through 4]:

(1) Lambeth (Lake Mary Ronan) state park;

(2) Thompson Falls state park;

(3) Wild Horse Island state park;

(4) Lost Creek state park;

(5) Painted Rocks state park;

(6) Ackley Lake state park;

(7) sluice boxes state park;

(8) Deadman's basin state park;

(9) Pirogue Island state park;

(10) Medicine Rocks state park;

(11) Headwaters state park;

(12) Council Grove state park;

(13) Beaverhead Rock state park;

(14) Natural Bridge state park; and

(15) Madison Buffalo Jump state park.

Section 3. **Limit on development of primitive parks.** (1) As of [the effective date of this act], the only development allowed in primitive parks designated in [section 2] is:

(a) necessary improvements required to meet minimum public health standards regarding sanitation, which may include necessary access to outhouses, vaults, and water;

(b) improvements necessary to ensure the safe public use of existing boat ramps;

(c) addition of gravel to existing unpaved roads and the resurfacing of paved roads when necessary to ensure safe public access;

(d) establishment of new hiking trails or improvement of existing hiking trails; and

(e) installation of minimal signage indicating that the park is a designated primitive park in which development has been limited and encouraging the public to help in maintaining the park's primitive character by packing out trash.

(2) The following development of designated primitive parks is prohibited:

(a) installation of electric lines or facilities, except when necessary to comply with subsection (1)(a);

(b) installation of recreational vehicle sanitary dumpsites where they do not presently exist; and

(c) creation of new roads and paving of existing but previously unpaved roads.

Section 4. **Elimination of resident user fee — fee for nonresident use — penalty.** (1) In recognition of the right of Montana residents to use primitive parks without regard to their ability to pay, a Montana resident is not required to pay a user fee for the use of any primitive park designated in [section 2], except that the department may charge camping fees at Thompson Falls state park and Headwaters state park.

(2) A nonresident who wishes to use a primitive park is required to pay the state park user fees chargeable under 23-1-105.

Section 5. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [sections 1 through 4].

Approved April 24, 1993.

CHAPTER NO. 502

[HB 318]

AN ACT GENERALLY REVISING THE LAWS RELATING TO AIR QUALITY; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM FOR THE ISSUANCE AND RENEWAL OF AIR QUALITY OPERATING PERMITS; AMENDING THE CONFIDENTIALITY PROVISIONS RELATING TO AIR QUALITY; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER A PROGRAM FOR THE ISSUANCE OF AIR QUALITY PERMITS FOR CONSTRUCTION, INSTALLATION, ALTERATION, OPERATION, OR USE; CLARIFYING THE AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT FEES FOR OPERATING AND CONSTRUCTION PERMITS; DESIGNATING FEES TO AN ACCOUNT IN THE SPECIAL REVENUE FUND; PROVIDING FOR AN ADMINISTRATIVE CIVIL PENAL-

TY IN THE CLEAN AIR ACT OF MONTANA; CLARIFYING AND AMENDING THE CRIMINAL PUNISHMENT APPLICABLE TO VIOLATIONS OF AIR QUALITY STATUTES, RULES, ORDERS, AND PERMITS; CLARIFYING AND AMENDING THE CIVIL PUNISHMENT APPLICABLE TO VIOLATIONS OF AIR QUALITY STATUTES, RULES, ORDERS, AND PERMITS; AMENDING THE PROVISIONS RELATING TO THE ASSESSMENT OF NONCOMPLIANCE PENALTIES; CREATING THE SMALL BUSINESS COMPLIANCE ASSISTANCE ADVISORY COUNCIL; CREATING THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM WITHIN THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; PROVIDING FOR A SMALL BUSINESS STATIONARY SOURCE REPRESENTATIVE; AMENDING PROVISIONS RELATED TO LOCAL AIR POLLUTION CONTROL PROGRAMS; AMENDING SECTIONS 75-2-103, 75-2-105, 75-2-204, 75-2-211, 75-2-301, 75-2-401, 75-2-412, 75-2-413, AND 75-2-421, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq., the State of Montana may be authorized by the U.S. Environmental Protection Agency to administer an operating permit program applicable to certain sources of air pollutants; and

WHEREAS, if the state fails to obtain authorization for an operating permit program from the federal government under the federal Clean Air Act, the program will be administered within the state by the U.S. Environmental Protection Agency and the state will be subjected to sanctions, including the loss of federal air program funding or highway funding; and

WHEREAS, the Legislature believes that it is in the best interests of both the citizens and businesses of this state for the Department of Health and Environmental Sciences to seek and obtain authorization from the federal government to administer an operating permit program pursuant to Subchapter V of the federal Clean Air Act; and

WHEREAS, to provide the Department of Health and Environmental Sciences with the statutory authority necessary to obtain authorization under Subchapter V, numerous amendments and additions to the Clean Air Act of Montana are necessary and appropriate, including significant amendments to existing permitting, fee, and enforcement authority and the adoption of new provisions governing the operating permit program and relating to assistance for small businesses.

STATEMENT OF INTENT

A statement of intent is provided for this bill because it extends current rulemaking authority of the board of health and environmental sciences to adopt rules implementing a program for the issuance and renewal of air quality operating permits by the department of health and environmental sciences and amends several sections of the Clean Air Act of Montana for which the board currently has rulemaking authority, including the authority to adopt air quality permit fees to be collected by the department of health and environmental sciences.

Section 75-2-204 and [section 9] provide the authority to the board and department to create and administer an operating permit program for those sources subject to Subchapter V of the federal Clean Air Act. It is the desire of the legislature that the program be applied only to those sources covered by the statutory requirements of Subchapter V and that the department allow for operational flexibility at those sources, including provisions for minor permit modifications and off-permit changes. The legislature does not intend the operating permit program administered by the department to serve as a basis for imposition of any additional emission limitations, monitoring or reporting requirements, or other substantive requirements upon sources within the state, except as required by Subchapter V and implementing regulations. It is also the intent of the legislature that the operating permit program administered by the department for those sources subject to Subchapter V of the federal Clean Air Act be consistent with the operating permit framework and guidelines outlined in Subchapter V and implementing federal regulations. The legislature further intends that the operating permit program authorized by this bill, when viewed as a whole, should not invariably be limited to the minimum federal requirements but also should not invariably impose the strictest optional alternatives allowable under Subchapter V and implementing federal regulations. These sections and the amendments contained in 75-2-103(2) are also intended to clarify the department's existing authority to implement the provisions of the federal Clean Air Act relating to hazardous air pollutants, 42 U.S.C. 7412, as those provisions relate to the requirements of Subchapter V.

Section 75-2-211 contains amendments that clarify the authority of the department to continue to administer the air quality permitting program relating to the construction, installation, alteration, or use of air pollutant sources. It is the desire of the legislature that the department continue this permitting program in conjunction with the operating permit program under [sections 9 through 11]. The clarifying amendments contained in this bill are not intended to expand the current authority of the department to administer an air quality permitting program relating to construction, installation, alteration, or use. This authority is currently used for conducting various state air quality permitting programs, as well as for operating federal permitting programs relating to prevention of significant deterioration and nonattainment, all of which are part of the state implementation plan for protecting air quality. In addition to these programs, the legislature intends that 75-2-211 serve as the authority needed to meet the requirements of the federal Clean Air Act relating to the construction, reconstruction, and modification of sources of hazardous air pollutants, 42 U.S.C. 7412.

[Section 12] contains the department's existing authority to assess application and annual fees for permits issued under the Clean Air Act of Montana, Title 75, chapter 2. The placement of this authority in a separate section of the code emphasizes its general applicability to all permitting activities under that chapter. [Section 12(1), (2), and (3)] contain amendments to the existing fee authority to ensure that the department will be able to collect fees sufficient to meet the requirements of Subchapter V of the federal Clean Air Act. [Section 12(5)] is intended to provide the department with an alternative to civil enforcement in addressing the delinquent payment of fees.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-103, MCA, is amended to read:

"**75-2-103. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollutants" means one or more air contaminants that are present in the outdoor atmosphere, including those pollutants regulated pursuant to section 7412 and Subchapter V of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

~~(3)~~*(4)* "Air pollution" means the presence ~~in the outdoor atmosphere of one or more air contaminants~~ *of air pollutants* in a quantity and for a duration ~~which~~ *that* are or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

~~(4)~~*(5)* "Board" means the board of health and environmental sciences provided for in 2-15-2104.

~~(5)~~*(6)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(6)~~*(7)* "Emission" means a release into the outdoor atmosphere of air contaminants.

~~(7)~~*(8)* "Person" means an individual, *a* partnership, *a* firm, *an* association, *a* municipality, *a* public or private corporation, *the state or a* subdivision or agency of the state, *a* trust, *an* estate, *an interstate body, the federal government or an agency of the federal government,* or any other legal entity and includes persons resident in Canada.

(9) "Small business stationary source" means a stationary source that:

(a) is owned or operated by a person who employs 100 or fewer individuals;

(b) is a small business concern as defined in the Small Business Act, 15 U.S.C. 631, et seq.;

(c) is not a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(d) emits less than 50 tons per year of an air pollutant;

(e) emits less than a total of 75 tons per year of all air pollutants combined; and

(f) is not excluded from this definition under [section 17(3)]."

Section 2. Section 75-2-105, MCA, is amended to read:

"**75-2-105. Confidentiality of records.** (1) Records or other information concerning air ~~contaminant~~ *pollutant* sources ~~which~~ *that* are furnished to or obtained by the board or department are a matter of public record and open to public use. However, any information unique to the owner or operator of an air

~~contaminant~~ *pollutant* source ~~which~~ *that* would, if disclosed, reveal methods or processes entitled to protection as trade secrets ~~shall~~ *must* be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if ~~he~~ *the owner or operator* wishes ~~such~~ *the* information to enjoy confidential status. The department ~~shall~~ *must* be served in ~~any such~~ *the* action and may intervene as a party ~~therein~~ *in the action.* ~~Any~~ *A* trade ~~secrets~~ *secret* not intended to be public when submitted to the board or department ~~shall~~ *must* be submitted in writing and clearly marked as confidential. However, emission data *and operating permits issued by the department pursuant to [sections 9 through 11]* ~~shall never~~ *may not* be considered confidential for the purposes of this section.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere if the analyses or summaries do not identify an owner or operator or reveal information otherwise made confidential by this section."

Section 3. Section 75-2-204, MCA, is amended to read:

"75-2-204. **Rules relating to construction, installation, alteration, *operation,* or use.** The board may by rule prohibit the construction, installation, alteration, *operation,* or use of a machine, equipment, device, or facility ~~which~~ *that* it finds may directly or indirectly cause or contribute to air pollution or ~~which~~ *that* is intended primarily to prevent or control the emission of air pollutants, unless a permit ~~therefor~~ has been obtained *under this part.*"

Section 4. Section 75-2-211, MCA, is amended to read:

"75-2-211. **Permits for construction, installation, alteration, or use.** (1) ~~The department~~ *The board* shall *by rule* provide for the issuance, *modification,* suspension, revocation, and renewal of a permit issued under this part.

~~(2) For all sources of air contaminants that are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, the provisions of this section apply in addition to the other applicable provisions of this chapter.~~

~~(a) The board shall by rule require that permits issued to sources described in subsection (2) be of limited duration, but it may not limit the duration of the permits beyond that required by the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended.~~

~~(b) The board shall by rule provide for the renewal of permits issued to the sources.~~

~~(c) The board shall by rule establish a transition schedule for air quality permits held by sources of air contaminants subject to the provisions of subsection (2). The transition schedule must specify dates for the expiration of the permits, absent an application for renewal by the source. The transition schedule may not specify expiration dates that are earlier in time than those required by Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended. The transition schedule established by the board also applies to existing sources of air contaminants that are subject to the provisions of Title~~

~~V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that do not hold an air quality permit from the department as of November 2, 1992.~~

~~(3)~~*(2)* Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility ~~which~~ *that* the board finds may directly or indirectly cause or contribute to air pollution or ~~which~~ *that* is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

~~(4) Concurrent with the submittal of a permit application required by subsection (3) and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements in this chapter, including the reasonable costs of:~~

~~(a) reviewing and acting upon the application;~~

~~(b) implementing and enforcing the terms and conditions of the permit if the permit is issued. However, this amount does not include any court costs or other costs associated with any enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.~~

~~(c) emissions and ambient monitoring;~~

~~(d) preparing generally applicable regulations or guidance;~~

~~(e) modeling, analysis, and demonstrations; and~~

~~(f) preparing inventories and tracking emissions.~~

~~(5) In addition to the fee required under subsection (4), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates the funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the assessments, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the assessments apportion the required funding in an equitable manner, and that the department has obtained legislative authorization for the expenditure and the necessary appropriation.~~

~~(6) As a condition of the continuing validity of permits issued by the department under this part prior to October 1, 1991, the department may require the permitholder to pay an annual fee sufficient to cover the costs identified in subsection (4).~~

~~(7) For any existing source of air contaminants that is subject to Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that is not required to hold an air quality permit from the department as of October 1, 1991, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the annual fee provided for in subsection~~

~~(4). Nothing in this subsection may be construed as allowing the department to charge any source of air contaminants more than one annual fee that is designed to cover the costs identified in subsection (4).~~

~~(8) The fees collected by the department pursuant to this section must be deposited in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements in this chapter.~~

~~(9) (a) The department shall give written notice of the amount of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air contaminant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.~~

~~(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based only on the amount of the fee schedule adopted by the board.~~

~~(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice in subsection (9)(a).~~

~~(d) The contested case provisions of the Montana Administrative Procedure Act provided for in Title 2, chapter 4, apply to any hearing before the board under this subsection (9).~~

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit

may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

~~(10)~~*(4)* ~~Nothing in this~~ *This* section ~~shall~~ *does not* restrict the board's authority to adopt regulations providing for a single air quality permit system.

~~(11)~~*(5)* The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

~~(12)~~*(6)* The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

~~(13)~~*(7)* An application is not considered filed until the applicant has submitted all fees *required under [section 12]* and *all* information and completed ~~all~~ application forms required ~~by~~ *pursuant to* subsections *(2),* (3), *and (6)* ~~through (7) and (12)~~. ~~However, if~~ *If* the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

~~(14)~~*(8)* (a) ~~Where~~ *If* an application for a permit requires the ~~compilation~~ *preparation* of an environmental impact statement under the Montana Environmental Policy Act, *Title 75, chapter 1, parts 1 through 3,* the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days ~~of~~ *after* the *department's* receipt of a filed application, as ~~defined~~ *provided* in subsection ~~(13)~~ *(7),* if the department prepares the environmental impact statement; or

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement.

(b) ~~However, where~~ *If* an application does not require the ~~compilation~~ *preparation* of an environmental impact statement, the department shall notify the applicant in writing within 60 days ~~of the~~ *after its* receipt of a filed application, as ~~defined~~ *provided* in subsection ~~(13)~~ *(7),* of ~~the~~ *its* approval or denial of the application. Notification of approval or denial may be served personally or by ~~registered or~~ certified mail on the applicant or ~~his~~ *the applicant's* agent.

(c) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

~~(15)~~*(9)* When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request~~,~~ *a hearing before the board. The request for hearing must be filed* within 15 days after the department renders its decision~~, upon~~ *and must include an* affidavit setting forth the grounds

~~therefor, a hearing before the board.~~ *for the request.* ~~A hearing shall be held under the provisions of the Montana Administrative Procedure Act.~~ *The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.*

~~(16)~~*(10)* The department's decision on the application is not final unless 15 days have elapsed *from the date of the decision* and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 5. Section 75-2-401, MCA, is amended to read:

"**75-2-401. Enforcement — *notice — order for corrective action — administrative penalty.*** (1) When the department believes that a violation of this chapter, a rule ~~made~~ *adopted* under this chapter, or a condition or limitation imposed by a permit issued pursuant to this chapter has occurred, it may cause written notice to be served personally or by ~~registered or~~ certified mail on the alleged violator or ~~his~~ *the violator's* agent. The notice ~~shall~~ *must* specify the provision of this chapter, ~~or~~ the rule, or *the* permit condition or limitation alleged to be violated and the facts alleged to constitute a violation. *The notice* ~~and~~ may include an order to take necessary corrective action within a reasonable period of time stated in the order *or an order to pay an administrative penalty, or both.* The order becomes final unless, within 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing.

(2) If, after a hearing held under subsection (1) ~~of this section~~, the board finds that violations have occurred, it shall ~~either affirm or modify an order previously issued or~~ issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action ~~it considers appropriate~~ *or assess an administrative penalty, or both.* ~~An~~ *As appropriate, an* order issued as part of a notice or after a hearing may prescribe the date by which the violation ~~shall~~ *must* cease*;* ~~and may prescribe~~ time limits for particular action in preventing, abating, or controlling the emissions*; or the date by which the administrative penalty must be paid.* If, after *a* hearing on an order contained in a notice, the board finds that ~~no~~ *a* violation *has not occurred or* is *not* occurring, it shall rescind the order.

(3) (a) An action initiated under this section may include an administrative civil penalty of not more than $10,000 for each day of each violation, not to exceed a total of $80,000. If an order issued by the board under this section requires the payment of an administrative civil penalty, the board shall state findings and conclusions describing the basis for its penalty assessment.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(c) Penalties imposed by an administrative order under this section may not be assessed for any day of violation that occurred more than 12 months prior to the issuance of the initial notice and order by the department under subsection (1).

(d) In determining the amount of penalty to be assessed for an alleged violation under this section, the department or board, as appropriate, shall consider:

(i) the alleged violator's ability to pay and the economic impact of the penalty on the alleged violator;

(ii) the alleged violator's full compliance history and good faith efforts to comply;

(iii) the duration of the violation as established by any credible evidence, including evidence other than the applicable test method;

(iv) payment by the violator of penalties previously assessed for the same violation;

(v) the economic benefit of noncompliance;

(vi) the seriousness of the violation; and

(vii) other matters as justice may require.

(4) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing conducted under this section.

~~(3)~~*(5)* Instead of issuing the order provided for in subsection (1), the department may either:

(a) require that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) initiate action under 75-2-412 or 75-2-413.

~~(4)~~*(6)* This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

~~(5)~~*(7)* In connection with a hearing held under this section, the board may and on application by a party shall compel the attendance of witnesses and the production of evidence on behalf of the parties."

Section 6. Section 75-2-412, MCA, is amended to read:

"**75-2-412. Criminal penalties — injunction preserved.** ~~(1) A person who violates this chapter or a rule, order, or permit made or issued under it, other than 75-2-105, is guilty of an offense and subject to a fine not to exceed $1,000. Each day of violation constitutes a separate offense.~~

~~(2) A person who willfully violates 75-2-105 is guilty of an offense and subject to a fine not to exceed $1,000.~~ *(1) A person is guilty of an offense under this section if that person knowingly:*

(a) violates a provision of this chapter or a rule, order, or permit made or issued under this chapter;

(b) makes a false material statement, representation, or certification on a form required under this chapter or in a notice or report required by a permit under this chapter; or

(c) renders inaccurate a monitoring device or method required under this chapter.

(2) A person guilty of an offense under subsection (1) is subject to a fine of not more than $10,000 per violation or imprisonment for a period not to exceed 2 years, or both. This offense must be classified as a misdemeanor. Each day of each violation constitutes a separate violation.

(3) Fines collected *under this section,* except ~~those~~ *fines* collected ~~in a justice's court,~~ *by an approved local air pollution control program,* ~~shall~~ *must* be deposited ~~to~~ *in* the state general fund.

(4) Action under this section is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate *civil or administrative* remedy. The department may institute and maintain in the name of the state any enforcement proceedings."

Section 7. Section 75-2-413, MCA, is amended to read:

"**75-2-413. Civil penalties — out-of-state litigants — effect of action.** (1) ~~Any~~ *A* person who violates any provision of this chapter, *a* ~~or any~~ rule ~~enforced thereunder~~ *adopted under this chapter,* or any order or permit made or issued ~~pursuant thereto and after notice thereof has been given by the department shall be~~ *under this chapter is* subject to a civil penalty not to exceed $10,000 *per violation.* Each day of *each* violation ~~shall constitute~~ *constitutes* a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings ~~hereunder~~ *under this section.* Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess, and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in 75-2-412.

(2) (a) Action under subsection (1) ~~of this section~~ is not a bar to enforcement of this chapter or of a rule, order, or permit made or issued under it by injunction or other appropriate civil remedies.

(b) An action under subsection (1) or to enforce this chapter or a rule, order, or permit made or issued under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) ~~Moneys~~ *Money* collected ~~hereunder shall~~ *under this section must* be deposited in the state general fund. *This subsection does not apply to money collected by an approved local air pollution control program."*

Section 8. Section 75-2-421, MCA, is amended to read:

"**75-2-421. Persons subject to noncompliance penalties — exemptions.** (1) Except as provided in subsection (2), the department ~~shall~~ *may* assess and collect a noncompliance penalty from any person who owns or operates:

(a) a stationary source (other than a primary nonferrous smelter ~~which~~ *that* has received a nonferrous smelter order under 42 U.S.C. 7419) ~~which~~ *that* is not in compliance with any emission limitation specified in an order of the board, emission standard, or compliance schedule under the state implementation plan approved by the federal environmental protection agency;

(b) a stationary source ~~which~~ *that* is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement under *this chapter or* 42 U.S.C. 7411, ~~or 42 U.S.C.~~ 7412, *7477, or 7603*; ~~or~~

(c) a stationary source that is not in compliance with any other requirement under this chapter or any requirement of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.; or

~~(c)~~*(d)* any source referred to in subsections (1)(a), ~~or~~ (1)(b), *or (1)(c)* ~~which~~ *that* has been granted an exemption, extension, or suspension under subsection (2) or ~~which~~ *that* is covered by a compliance order, or a primary nonferrous smelter ~~which~~ *that* has received a primary nonferrous smelter order under 42 U.S.C. 7419, if ~~such~~ *that* source is not in compliance with any interim emission control requirement or schedule of compliance under ~~such~~ *the* extension, order, or suspension.

(2) Notwithstanding the requirements of subsection (1), the department may, after notice and opportunity for a public hearing, exempt any source from the requirements of 75-2-421 through 75-2-429 with respect to a particular instance of noncompliance ~~which~~ *that*:

(a) the department finds is de minimus in nature and in duration;

(b) is caused by conditions beyond the reasonable control of the source and is of no demonstrable advantage to the source; or

(c) is exempt under 42 U.S.C. 7420(a)(2)(B) of the federal Clean Air Act.

(3) Any person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds ~~therefor~~ *for it*, a hearing before the board. A hearing ~~shall~~ *must* be held under the provisions of the Montana Administrative Procedure Act, *Title 2, chapter 4, part 6.*"

Section 9. **Operating permit program — exemptions — general requirements — duration.** (1) The board shall provide by rule for the issuance, expiration, modification, amendment, suspension, revocation, and renewal of operating permits as part of an operating permit program to be administered by the department under this chapter. The board shall promulgate rules that are consistent with the operating permit framework and guidelines outlined in Subchapter V of the federal Clean Air Act and implementing regulations.

(2) This section applies to all sources of air pollutants that are subject to the provisions of Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(3) A person may not violate any requirement of an operating permit issued under [section 10] and this section or operate any source required to have a permit under this section without having complied with the requirements of the

operating permit program administered by the department pursuant to [sections 10 and 11] and this section.

(4) The board may by rule provide for the exemption of one or more source categories, in whole or in part, from all or part of the requirements of this section if the board determines that compliance with the requirements of this section is impracticable, infeasible, or unnecessarily burdensome for the sources. The board may premise this determination upon a similar determination by the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(5) The board may by rule provide for general operating permits covering numerous similar sources.

(6) An operating permit issued by the department under [section 10] and this section is effective for a period not to exceed 5 years and may be renewed.

(7) The operating permit program administered by the department pursuant to this section must include the following:

(a) adequate procedures that are streamlined and reasonable for:

(i) expeditiously determining when applications are complete;

(ii) processing applications; and

(iii) expeditiously reviewing permit actions, including application renewals or revisions;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, compliance certification, and reporting;

(f) deadlines for submitting permit applications and compliance plans that are not later than 12 months after the source becomes subject to the operating permit requirement;

(g) deadlines for submitting permit renewal applications that are not later than 6 months before expiration of the existing operating permit;

(h) requirements for compliance plans that must be submitted with permit and renewal applications, including schedules of compliance and progress reports;

(i) requirements and procedures for periodic certification of source compliance with permit requirements, including the prompt reporting of any deviations from permit requirements;

(j) requirements for submission of any plans, specifications, or other information that the department considers necessary under this section;

(k) conditions and procedures for the transfer of operating permits;

(l) requirements and procedures for suspension, modification, amendment, and revocation of permits by the department for cause, including the modification or amendment of permits before renewal or termination to incorporate applicable limitations or requirements effective after permit issuance;

(m) requirements and procedures for incorporating into permits and permit renewals all applicable emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(n) requirements and procedures for permit modification and amendment;

(o) procedures for tracking activities conducted under general permits;

(p) requirements and procedures for issuing a single operating permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location;

(q) requirements and procedures for allowing changes within a permitted facility without requiring a permit amendment if the changes are not prohibited under this chapter and do not exceed the emissions allowable under the permit; and

(r) other requirements necessary for the department to obtain the authorization to administer an operating permit program under the provisions of Subchapter V of the federal Clean Air Act.

Section 10. **Permits for operation — application completeness — action by department — application shield — review by board.** (1) An application for an operating permit or renewal is not considered filed until the department has determined that it is complete. An application is complete if all fees required under [section 12] and all information and completed application forms required under [section 9] have been submitted. A complete application must contain all of the information required for the department to begin processing the application. If the department fails to notify the applicant in writing within 60 days after submittal of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed on the date of the department's receipt of the application. The department may request additional information after a completeness determination has been made. The department shall adopt rules that contain criteria for use in determining both when an application is complete and when additional information is required after a completeness determination has been made.

(2) Except as provided in subsection (3), the department shall, consistent with the procedures established under [section 9], approve or disapprove a complete application for an operating permit or renewal and shall issue or deny

the permit or renewal within 18 months after the date of filing. Failure of the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

(3) The board may by rule provide for a transition schedule for both the submittal to the department of initial applications for operating permits by existing sources and action by the department on these initial permit applications. The board may require that one-third of all operating permit applications required for existing sources be submitted within the first calendar year after the adoption of rules implementing an operating permit program under [section 9]. Any transition schedule for action by the department must ensure that all permit applications required under [section 9] and this subsection for existing sources will be acted upon by the department before November 15, 1997.

(4) If an applicant submits a timely and complete application for an operating permit, the applicant's failure to hold a valid operating permit is not a violation of [section 9]. If an applicant submits a timely and complete application for an operating permit renewal, the expiration of the applicant's existing operating permit is not a violation of [section 9]. The applicant shall continue to be subject to the terms and conditions of the expired operating permit until the operating permit is renewed and is subject to the application of [section 9]. The applicant is not entitled to the protection of this subsection if the delay in final action by the department on the application results from the applicant's failure to submit in a timely manner information requested by the department to process the application.

(5) Except as provided in subsection (8), if the department approves or denies an application for an operating permit or the renewal, modification, or amendment of a permit under [section 9] and this section, any person that participated in the public comment process required under [section 9 (7)] may request a hearing before the board. The request for hearing must be filed within 30 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(6) Except as provided in subsection (8), the department's decision on any application is not final until 30 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board.

(7) The requirements of subsections (5) and (6) apply to any action initiated by the department to suspend, revoke, modify, or amend an operating permit issued under this section.

(8) The denial by the department of an application under [section 9] and this section is not subject to review by the board or judicial review if the basis for denial is the written objection of the appropriate federal agency acting pursuant to the federal Clean Air Act, 42 U.S.C. 7401, et seq.

(9) Compliance with an operating permit granted or renewed under [section 9] and this section is considered to be in compliance with the requirements of

this chapter only if the permit expressly includes those requirements or an express determination that those requirements are not applicable. This subsection does not apply to general permits provided for under [section 9].

Section 11. **Permits for operation — limitations.** [Sections 9 and 10] may not be construed to:

(1) affect the department's issuance of a permit for the construction, installation, alteration, or use of a source of air pollutants pursuant to 75-2-211 or 75-2-215;

(2) restrict the board's authority to adopt regulations providing for a single air quality permit system; or

(3) affect permits, allowances, phase II compliance schedules, or other acid rain provisions under Subchapter IV of the federal Clean Air Act, 42 U.S.C. 7651, et seq.

Section 12. **Fees — special assessments — late payment assessments.** (1) Concurrent with the submittal of a permit application required under this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements in this chapter, including:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit. This amount does not include any court costs or other costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations;

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source technical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) In recovering the costs described in subsection (1), the department may assess an application fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The board shall by rule provide for the annual adjustment of all fees assessed for operating permit applications under [sections 9 and 10] to account

for changes to the consumer price index, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fee required under subsection (1), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

(5) (a) If the applicant or permitholder fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed at the rate contained in 15-31-510(3); or

(ii) revoke the permit consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant or permitholder has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The board shall by rule provide for the implementation of this subsection (5), including criteria for imposition of the sanctions described in this subsection (5).

(6) The board may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued by the department under this chapter prior to October 1, 1993, the board may by rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants that is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to be assessed and the basis for the department's fee assessment under this section to the

owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on the amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice required in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The department may not charge more than one fee annually to a source of air pollutants for the costs identified in subsection (1).

Section 13. **Deposit of air quality permitting fees.** (1) All money collected by the department pursuant to [section 12] must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements of this chapter.

(2) The operating permit fees and the construction permit fees must be maintained in separate accounts within the state special revenue fund.

(3) Upon request, the expenditure by the department of funds in these accounts may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be borne by the person requesting the audit.

Section 14. **Small business compliance assistance advisory council.** (1) There is a small business compliance assistance advisory council.

(2) The council consists of seven members, as follows:

(a) two members that are not owners or representatives of owners of small business stationary sources, appointed by the governor to represent the general public;

(b) four members that are owners or representatives of owners of small business stationary sources and who are not legislators, one to be appointed by the majority and minority leadership of the house of representatives and one to be appointed by the majority and minority leadership of the senate; and

(c) one member that is a representative of the department of health and environmental sciences, appointed by the director of that department.

(3) Appointed members shall serve for terms of 3 years.

(4) The provisions of 2-15-122(5) through (8) apply to the council and its members.

Section 15. **Small business compliance assistance advisory council — duties — secretary — meetings.** (1) The small business compliance assistance advisory council, established in [section 14], shall:

(a) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program administered by the department;

(b) make periodic reports to the appropriate federal agency concerning the compliance of the small business stationary source technical and environmental compliance assistance program with the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.;

(c) review information for small business stationary sources to ensure that the information is understandable by the lay person and recommend changes to make the information understandable;

(d) consult with the small business stationary source representative provided for in [section 18] regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(e) perform other duties necessary to meet the requirements of the federal Clean Air Act.

(2) The council shall elect a presiding officer from among its membership.

(3) The secretary of the council must be an employee of the department assigned to the small business stationary source technical and environmental compliance assistance program. The secretary shall keep all records of meetings and actions taken by the council and is responsible for the development and dissemination of any reports and advisory opinions of the council.

(4) The council shall hold at least one regular meeting each calendar year and keep a summary record of its proceedings that is open to the public for inspection. Special meetings may be called by the presiding officer or a majority of the council members. The secretary shall provide advance notice of the time and place for meetings to each member of the council.

Section 16. **Small business stationary source technical and environmental compliance assistance program — duties.** (1) The department shall establish a small business stationary source technical and environmental compliance assistance program.

(2) The program shall:

(a) provide information to small business stationary sources on compliance methods and technologies, pollution prevention, and accidental release detection and prevention;

(b) assist small business stationary sources in determining applicable requirements under this chapter and in receiving permits in a timely and efficient manner;

(c) provide small business stationary sources timely notice of their rights and obligations under this chapter;

(d) provide information to small business stationary sources regarding the availability of audit services that are useful for determining compliance status with the requirements of this chapter; and

(e) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

Section 17. **Small business stationary sources — exceptions — waivers.** (1) Upon petition, the department may designate a source to be a small business stationary source for purposes of receiving assistance from the small business stationary source technical and environmental compliance assistance program if the stationary source does not emit more than 100 tons per year of all air pollutants and:

(a) is a major stationary source as defined in Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.;

(b) emits 50 tons or more per year of an air pollutant; or

(c) emits more than 75 tons per year of all air pollutants.

(2) After notice and an opportunity for public comment, the department may grant a petition submitted under subsection (1) upon finding that the source of air pollutants does not have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program.

(3) After notice and opportunity for public comment, the department may exclude from the definition of small business stationary source in 75-2-103 a category or subcategory of sources that the department determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the assistance of the small business stationary source technical and environmental compliance assistance program. The department may make this determination only after consulting with the appropriate federal agencies under Subchapter V of the federal Clean Air Act.

Section 18. **Small business stationary source representative — duties.** (1) The department shall establish a small business stationary source representative position that is not located in the department or subject to the direct supervision of the department.

(2) The small business stationary source representative shall represent the interests of small business stationary sources before the department and other appropriate local, state, and federal agencies concerning the implementation and application of the requirements of this chapter. In addition, the representative shall provide assistance to small business stationary sources in meeting the requirements of this chapter. In carrying out these activities, the representative shall:

(a) monitor the activities of the small business stationary source technical and environmental compliance assistance program;

(b) review and provide comments and recommendations to the department, local air pollution control programs, and the appropriate federal agencies regarding the development and implementation of regulations pertaining to air quality that impact small business stationary sources;

(c) facilitate and promote the participation of small business stationary sources in the development of new regulations pertaining to air quality that impact small business stationary sources;

(d) assist in the preparation and dissemination of reports and other information regarding the applicability of the requirements of this chapter to small business stationary sources;

(e) assist in the preparation of guideline documents by the small business stationary source technical and environmental compliance assistance program to ensure that these documents are readily understandable by the lay person;

(f) assist small business stationary sources and their trade associations to encourage voluntary compliance with the requirements of this chapter;

(g) cooperate with appropriate local, state, and federal agencies and private sector financial institutions to assist small business stationary sources in locating financial assistance necessary for compliance with the requirements of this chapter;

(h) consult with the small business compliance assistance advisory council regarding problems faced by small business stationary sources concerning the implementation and application of the requirements of this chapter; and

(i) perform other duties as may be necessary to meet the requirements of the federal Clean Air Act, 42 U.S.C. 7401, et seq.

Section 19. Section 75-2-301, MCA, is amended to read:

"**75-2-301. Local air pollution control programs.** (1) After public hearing, a municipality or county may establish and administer a local air pollution control program if the program is consistent with this chapter and is approved by the board.

(2) If a local air pollution control program established by a county encompasses all or part of a municipality, the county and each municipality shall approve the program in accordance with subsection (1).

(3) Except as provided in subsection (4), the board by order may approve a local air pollution control program that:

(a) provides by ordinance or local law for requirements compatible with, more stringent than, or more extensive than those imposed by 75-2-203, 75-2-204, 75-2-211, 75-2-212, 75-2-215, *[sections 9 through 11]*, and 75-2-402, and rules adopted under these sections;

(b) provides for the enforcement of requirements established under subsection (3)(a) by appropriate administrative and judicial processes; and

(c) provides for administrative organization, staff, financial resources, and other resources necessary to effectively and efficiently carry out the program. As part of meeting these requirements, a local air pollution control program may administer the permit fee provisions of ~~75-2-211~~ *[section 12]*. The permit fees collected by a local air pollution control program must be deposited in a county special revenue fund to be used by the local air pollution control program for administration of permitting activities.

(4) Except for those emergency powers provided for in 75-2-402, the board may not delegate to a local air pollution control program the authority to control any air ~~contaminant~~ *pollutant* source that:

(a) requires the preparation of an environmental impact statement in accordance with Title 75, chapter 1, part 2;

(b) is subject to regulation under the Montana Major Facility Siting Act, as provided in Title 75, chapter 20; or

(c) has the potential to emit 250 tons per year or more of any pollutant subject to regulation under this chapter, including fugitive emissions, unless the authority to control the source was delegated to a local air pollution control program prior to January 1, 1991.

(5) If the board finds that the location, character, or extent of particular concentrations of population, air ~~contaminant~~ *pollutant* sources, or geographic, topographic, or meteorological considerations or any combination of these are such as to make impracticable the maintenance of appropriate levels of air quality without an areawide air pollution control program, the board may determine the boundaries within which the program is necessary and require it as the only acceptable alternative to direct state administration.

(6) If the board has reason to believe that any part of an air pollution control program in force under this section is either inadequate to prevent and control air pollution in the jurisdiction to which the program relates or is being administered in a manner inconsistent with this chapter, the board shall, on notice, conduct a hearing on the matter.

(7) If, after the hearing, the board determines that any part of the program is inadequate to prevent and control air pollution in the jurisdiction to which it relates or that it is not accomplishing the purposes of this chapter, it shall require that necessary corrective measures be taken within a reasonable time, not to exceed 60 days.

(8) If the jurisdiction fails to take these measures within the time required, the department shall administer within that jurisdiction all of the provisions of this chapter, including the terms contained in any applicable board order, that are necessary to correct the deficiencies found by the board. The department's control program supersedes all municipal or county air pollution laws, rules, ordinances, and requirements in the affected jurisdiction. The cost of the department's action is a charge on the jurisdiction.

(9) If the board finds that the control of a particular air ~~contaminant~~ *pollutant* source because of its complexity or magnitude is beyond the reasonable capability of the local jurisdiction or may be more efficiently and economically performed at the state level, it may direct the department to assume and retain control over that air ~~contaminant~~ *pollutant* source. ~~No~~ *A* charge may *not* be assessed against the jurisdiction ~~therefor~~. Findings made under this subsection may be either on the basis of the nature of the sources involved or on the basis of their relationship to the size of the communities in which they are located.

(10) A jurisdiction in which the department administers all or part of its air pollution control program under subsection (8) may, with the approval of the

board, establish or resume an air pollution control program that meets the requirements of subsection (3).

(11) A municipality or county may administer all or part of its air pollution control program in cooperation with one or more municipalities or counties of this state or of other states."

Section 20. **Codification instruction.** (1) [Sections 9 through 13] are intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [sections 9 through 13].

(2) [Section 14] is intended to be codified as an integral part of Title 2, chapter 15, part 21, and the provisions of Title 2, chapter 15, part 21, apply to [section 14].

(3) [Sections 15 through 18] are intended to be codified as an integral part of Title 75, chapter 2, part 1, and the provisions of Title 75, chapter 2, part 1, apply to [sections 15 through 18].

Section 21. **Saving clause.** [Sections 5 through 8] do not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of sections 5 through 8].

Section 22. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 23. **Retroactive applicability.** (1) [Section 12(7)] applies retroactively, within the meaning of 1-2-109, to all permits issued by the department of health and environmental sciences pursuant to Title 75, chapter 2, prior to [the effective date of section 12].

(2) [Sections 4(2), 9(2) and (3), and 12(8)] apply retroactively, within the meaning of 1-2-109, to all activities identified in those subsections that are not subject to a permit issued by the department of health and environmental sciences pursuant to Title 75, chapter 2, as of [the effective date of sections 4, 9, and 12].

Section 24. **Effective dates.** (1) [Sections 1, 14 through 18, 20 through 23, and this section] are effective on passage and approval.

(2) [Sections 2 through 12, 13(1) and (3), and 19] are effective October 1, 1993, but the board and department may proceed with the rulemaking authorized under [sections 2 through 12, 13(1) and (3), and 19] upon passage and approval. The effective date of any rules adopted to implement [sections 2 through 12, 13(1) and (3), and 19] may not be effective before October 1, 1993.

(3) [Section 13(2)] is effective July 1, 1994.

Approved April 24, 1993.

CHAPTER NO. 503

[HB 350]

AN ACT REVISING THE DESIGNATION OF LOCAL GOVERNMENTS ELIGIBLE FOR COAL IMPACT GRANTS AND LOANS; INCLUDING CERTAIN NEWLY CONSTRUCTED RAILROADS IN THE DESIGNATION FOR COAL IMPACT GRANTS; LIMITING THE AMOUNT OF GRANTS AND LOANS THAT MAY BE MADE TO NONDESIGNATED LOCAL GOVERNMENTS; TRANSFERRING THE UNEXPENDED BALANCE IN THE LOCAL IMPACT ACCOUNT TO SCHOOL EQUALIZATION AID AT THE END OF EACH FISCAL YEAR; AMENDING SECTIONS 90-6-207 AND 90-6-212, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-207, MCA, is amended to read:

"**90-6-207. Priorities for impact grants.** (1) The department of commerce shall annually designate:

(a) each county, incorporated city and town, school district, and other governmental unit ~~which~~ *that* has had or expects to have as a result of the impact of coal development a net increase in estimated population of at least 10% over one of the 3-year periods specified in subsection (4);

(b) each county and all local governmental units within each county in which:

(i) a mining permit in accordance with the Montana Strip and Underground Mine Reclamation Act has been granted by the department of state lands for a project within the county that will establish a new coal mine to produce at least ~~1 million~~ *300,000* tons a year *and that the department of commerce determines will commence production within 2 years;*

(ii) ~~or that will increase~~ *the department of commerce has determined that* the production of an existing mine *will increase* by at least 1 million tons a year and ~~for which the department of commerce determines~~ that the new or expanded production ~~authorized by the permit~~ will commence within ~~3~~ *2* years of the designation; ~~or~~

(iii) a newly constructed railroad serves a new, existing, or expanding coal mine; or

~~(ii)~~*(iv)* a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act has been granted by the board of natural resources and conservation for a *new* steam-generating or other *new* coal-burning facility that will consume at least 1 million tons a year of Montana-mined coal and for which the department of commerce determines the construction or operation will commence within ~~3~~ *2* years of the designation;

(c) each local governmental unit located within ~~50~~ *100* miles, measured over the shortest all-weather public road, of a mine or facility qualifying under subsection (1)(b)(i), ~~or~~ (1)(b)(ii), *or (1)(b)(iv)*; and

(d) each local governmental unit in which:

(i) a mine that has produced ~~1 million~~ *300,000* tons or more of coal a year and has ceased all significant mining or is scheduled to cease within 1 year; or

(ii) a steam-generating or other coal-burning facility that has operated under a certificate of environmental compatibility and public need in accordance with the Montana Major Facility Siting Act and that has consumed at least 1 million tons of Montana-mined coal a year has closed or is scheduled to close within 1 year.

(2) Designation under subsection (1) of:

(a) any local governmental unit extends to and includes as a designated unit the county in which it is located; and

(b) a county extends to and includes as a designated unit any local governmental unit in the county that contains at least 10% of the total population of the county.

~~(3) Except as provided in 90-6-205(5)(b), the coal board shall, subject to the appropriations of the legislature, award at least 50% of all grants awarded to governmental units and state agencies for meeting the needs caused by coal development each year to these designated governmental units.~~

(3) (a) Except as provided in 90-6-205(5)(b), beginning July 1, 1993, and ending June 30, 1995, the coal board may not award more than 20% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1).

(b) Except as provided in 90-6-205(5)(b), beginning July 1, 1995, and thereafter, the coal board may not award more than 10% of the funds appropriated to it each year for grants and loans to governmental units and state agencies for meeting the needs caused by coal development to local governmental units other than those governmental units designated under subsection (1).

(4) For the purposes of subsection (1), the department of commerce shall use five 3-year periods as follows:

(a) one consecutive 3-year period ending 2 calendar years prior to the current calendar year;

(b) one consecutive 3-year period ending 1 calendar year prior to the current calendar year;

(c) one consecutive 3-year period ending with the current calendar year;

(d) one consecutive 3-year period ending 1 calendar year after the current calendar year; and

(e) one consecutive 3-year period ending 2 calendar years after the current calendar year.

(5) Attention should be given by the coal board to the need for community planning before the full impact is realized. Applicants should be able to show how their request reasonably fits into an overall plan for the orderly management of the existing or contemplated growth problems.

(6) All funds placed in the local impact account established under this part ~~shall be~~ *are* subject to appropriations by the legislature for use related to local impact.

(7) All designations made under this section must be for 1 year. A designation may not continue after the department of commerce determines that the mine, railroad, or facility that provided the basis for a designation is contributing sufficient tax revenue to the designated government unit to meet the increased costs of providing the services necessitated by the development of the mine, railroad, or facility. However, nondesignated local governmental units continue to be eligible for coal impact grants and loans of not more than 20% and beginning July 1, 1995, not more than 10% of the funds appropriated to the coal board for grants and loans in circumstances in which:

(a) an impact exists in a community or area directly affected by the operation of a coal mine or mines; or

(b) tax revenue is not available to mitigate the impact due to the closure of a mine or facility."

Section 2. Section 90-6-212, MCA, is amended to read:

"**90-6-212. Local impact account — disposition of loan repayments, interest, and unexpended balances.** (1) The money derived from loans made pursuant to this part, including interest thereon, must be deposited to the credit of the local impact account created in 90-6-202.

(2) The unexpended money in the local impact account must be invested by the board of investments as provided by statute. Interest and earnings must be deposited to the credit of the state special revenue fund for state equalization aid to public schools of the state.

(3) The unexpended balance in the local impact account at the end of each ~~biennium~~ *fiscal year* must be deposited to the credit of the state special revenue fund for state equalization aid to public schools of the state."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 504

[HB 374]

AN ACT PROVIDING AN ADMINISTRATIVE PENALTY IN THE MONTANA WATER QUALITY LAWS; AMENDING SECTIONS 75-5-201 AND 75-5-611, MCA.

WHEREAS, it is necessary and reasonable for the Department of Health and Environmental Sciences to actively enforce the provisions of Montana's water quality laws; and

WHEREAS, the use of the District Courts to achieve civil penalty assessments consumes significant financial resources from both the regulated public and the State of Montana; and

WHEREAS, many parties may wish to resolve violations of Montana's water quality laws in an administrative proceeding that authorizes direct payments to the State of Montana without the large expenses inherent with the filing of a judicial lawsuit; and

WHEREAS, the Board of Health and Environmental Sciences may specify situations in which the Department of Health and Environmental Sciences should pursue an action administratively; and

WHEREAS, in several situations, the administrative assessment of civil penalties under Montana's water quality laws would be a more effective deterrent than resolution of cases through the District Courts; and

WHEREAS, the Department of Health and Environmental Sciences would be able to apply its limited enforcement resources to a broader array of violations; and

WHEREAS, the Federal Water Pollution Control Act provides for a similar administrative penalty, which could ultimately become a condition of primacy for state administration of water quality programs in Montana; and

WHEREAS, the citizens and businesses of the State of Montana, as well as the Department of Health and Environmental Sciences, would benefit from the availability of an administrative penalty in Montana's water quality laws.

THEREFORE, the Legislature of the State of Montana finds it appropriate to authorize an administrative penalty within Montana's water quality laws.

STATEMENT OF INTENT

A statement of intent is provided for this bill in order to assist the board of health and environmental sciences in promulgating rules. The legislature intends that the administrative penalty provided by this bill be used to encourage compliance with Montana's water quality laws by allowing more timely and efficient processing of certain enforcement actions without the need for a higher penalty sought through a district court. To promote these goals, the board should develop rules that prescribe penalties for specific types of violations. In doing so, the board shall ensure that its rules are consistent with the criteria set forth in 75-5-631(4). Further, the board and department shall take measures to ensure that the rules are disseminated to the regulated community.

The legislature also intends that the board's rules be no less stringent than the federal rules and guidance implementing the Federal Water Pollution Control Act.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-201, MCA, is amended to read:

"**75-5-201. Board rules authorized.** *(1)* The board shall adopt rules for the administration of this chapter.

(2) The board's rules may include a fee schedule or system for assessment of administrative penalties as provided under 75-5-611."

Section 2. Section 75-5-611, MCA, is amended to read:

"**75-5-611. Violation of chapter — *administrative actions and penalties* — notice and hearing.** (1) When the department has reason to believe that a violation of this chapter, ~~or~~ a rule ~~made~~ *adopted* under ~~it~~ *this chapter, or a condition of a permit or authorization required by a rule adopted under this chapter* has occurred, it may have *a* written notice *letter* served personally or by *certified* mail on the alleged violator or ~~his~~ *the violator's* agent. The notice ~~shall~~ *letter must* state*:*

(a) the provision *of statute, rule, permit, or approval* alleged to be violated~~,~~*;*

(b) the facts alleged to constitute the violation~~,~~*;*

(c) the *specific* nature of corrective action ~~which~~ *that* the department requires~~,~~*;*

(d) as applicable, the amount of the administrative penalty that will be assessed by order under subsection (2) if the corrective action is not taken within the time provided under subsection (1)(e); and

(e) as applicable, the time within which the *corrective* action is to be taken *or the administrative penalty will be assessed.* For the purposes of this chapter, service by *certified* mail is complete on the date of ~~mailing~~ *receipt. Except as provided in subsection (2)(a)(ii), an administrative penalty may not be assessed until the provisions of subsection (1) have been complied with.*

(2) (a) The department may issue an administrative notice and order in lieu of the notice letter provided under subsection (1) if the department's action:

(i) does not involve assessment of an administrative penalty; or

(ii) seeks an administrative penalty only for an activity that it believes and alleges has violated or is violating 75-5-605.

(b) A notice and order issued under this section must meet all of the requirements specified in subsection (1).

~~(2)~~*(3)* In a notice *and order* given under subsection (1) ~~of this section~~, the department may require the alleged violator to appear before the board for a public hearing and to answer the charges ~~made against him~~. The hearing ~~shall~~ *must* be held no sooner than 15 days after service of the notice *and order*, except that the board may set an earlier date for hearing if it is requested to do so by the alleged violator. The board may set a later date for hearing at the request of the alleged violator if the alleged violator shows good cause for delay.

~~(3)~~*(4)* If the department does not require an alleged violator to appear before the board for a public hearing, ~~he~~ *the alleged violator* may request the board to conduct the hearing. The request ~~shall~~ *must* be in writing and ~~shall~~ *must* be filed with the department no later than 30 days after service of a notice *and order* under subsection ~~(1)~~ *(2)* ~~of this section~~. If a request is filed, a hearing ~~shall~~ *must* be held within a reasonable time. *If a hearing is not requested within 30 days after service upon the alleged violator, the opportunity for a contested case appeal to the board under Title 2, chapter 4, part 6, is waived.*

~~(4)~~*(5)* If a *contested case* hearing is held under this section, it ~~shall~~ *must* be public and ~~shall~~ *must*~~, if the board considers it practicable,~~ be held in ~~a~~ *the* county in which the violation is alleged to have occurred *or in Lewis and Clark County.*

~~(5)~~*(6)* *(a)* After a hearing ~~or on failure of an alleged violator to make a timely request for a hearing~~, the board ~~may~~ *shall make findings and conclusions that explain its decision.*

(b) If the board determines that a violation has occurred, it shall also issue an appropriate order for the prevention, abatement, or control of pollution, *the assessment of administrative penalties, or both.*

(c) ~~It~~ *If the order requires abatement or control of pollution, the board* shall state the date or dates by which a violation ~~shall~~ *must* cease and may prescribe timetables for necessary action in preventing, abating, or controlling the pollution.

(d) If the order requires payment of an administrative penalty, the board shall explain how it determined the amount of the administrative penalty.

(e) If the board determines that a violation has not occurred, it shall declare the department's notice void.

~~(6)~~*(7)* The alleged violator may petition the board for a rehearing on the basis of new evidence, which petition the board may grant for good cause shown.

~~(7)~~*(8)* ~~In addition to or instead~~ *Instead* of issuing an order, the board may direct the department to initiate appropriate action for recovery of a penalty under 75-5-631, 75-5-632, 75-5-633, or 75-5-635.

(9) (a) An action initiated under this section may include an administrative penalty of not more than $10,000 for each day of each violation; however, the maximum penalty may not exceed $100,000 for any related series of violations.

(b) Administrative penalties collected under this section must be deposited in the general fund.

(c) In determining the amount of penalty to be assessed to a person, the department and board shall consider the criteria stated in 75-5-631(4) and rules promulgated under 75-5-201.

(d) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing conducted under this section."

Approved April 24, 1993.

CHAPTER NO. 505

[HB 375]

AN ACT CREATING A PRESUMPTION WITH RESPECT TO ZONING REGULATIONS THAT DISCRIMINATE BETWEEN CERTAIN MANUFACTURED AND SITE-BUILT HOUSING; AND AMENDING SECTIONS 76-2-202 AND 76-2-302, MCA.

WHEREAS, certain zoning codes in Montana prohibit the placement of manufactured housing within districts where the construction of comparable site-built housing is permitted; and

WHEREAS, the reasons for treating manufactured housing differently from site-built housing have, because of significant improvements in the quality and regulation of manufactured housing, lost whatever historical justification they may once have had.

THEREFORE, the Legislature of the State of Montana finds it desirable and appropriate to discourage discrimination within zoning districts between manufactured and site-built housing.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-2-202, MCA, is amended to read:

"**76-2-202. Establishment of zoning districts — regulations.** (1) (a) Within the unincorporated portions of a jurisdictional area which has been established under provisions of 76-1-501 through 76-1-503 or 76-1-504 through 76-1-507, the board of county commissioners may by resolution establish zoning districts and zoning regulations for all or part of the jurisdictional area.

(b) An action challenging the creation of a zoning district must be commenced by October 1, 1994, or within 5 years after the date of the order by the board of county commissioners creating the district, if the district was created after October 1, 1989.

(2) Within some ~~such~~ zoning districts, it ~~shall be~~ *is* lawful and within others it ~~shall be~~ *is* unlawful to erect, construct, alter, or maintain certain buildings or to carry on certain trades, industries, or callings.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

~~(3)~~*(4)* Within each district the height and bulk of future buildings and the area of the yards, courts, and other open spaces and the future uses of the land or buildings ~~shall~~ *must* be limited and future building setback lines ~~shall~~ *must* be established.

~~(4)~~*(5)* All ~~such~~ regulations ~~shall~~ *must* be uniform for each class or kind of buildings throughout a district, but the regulations in one district may differ from those in other districts.

(6) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home, as defined in 61-4-309, or a housetrailer, as defined in 61-1-501.

(7) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Section 2. Section 76-2-302, MCA, is amended to read:

"**76-2-302. Zoning districts.** (1) For ~~any or all of~~ the purposes of 76-2-301, the local city or town council or other legislative body may divide the municipality into districts of ~~such~~ *the* number, shape, and area as ~~may be deemed~~ *are considered* best suited to carry out the purposes of this part. Within ~~such~~ *the* districts, it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land.

(2) All ~~such~~ regulations ~~shall~~ *must* be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts.

(3) In a proceeding for a permit or variance to place manufactured housing within a residential zoning district, there is a rebuttable presumption that placement of a manufactured home will not adversely affect property values of conventional housing.

(4) As used in this section, "manufactured housing" means a single-family dwelling, built offsite in a factory on or after January 1, 1990, that is placed on a permanent foundation, is at least 1,000 square feet in size, has a pitched roof and siding and roofing materials that are customarily, as defined by local regulations, used on site-built homes, and is in compliance with the applicable prevailing standards of the United States department of housing and urban development at the time of its production. A manufactured home does not include a mobile home, as defined in 61-4-309, or a housetrailer, as defined in 61-1-501.

(5) Nothing contained in this section may be construed to limit conditions imposed in historic districts, local design review standards, existing covenants, or the ability to enter into covenants pursuant to Title 70, chapter 17, part 2."

Approved April 24, 1993.

CHAPTER NO. 506

[HB 382]

AN ACT ESTABLISHING THE VALUE OF LIMESTONE MINED FOR THE PRODUCTION OF QUICKLIME FOR NET PROCEEDS PROPERTY TAX PURPOSES AND FOR RESOURCE INDEMNITY TRUST TAX PURPOSES; ESTABLISHING A SPECIFIC RESOURCE INDEMNITY TRUST TAX RATE FOR LIMESTONE; AMENDING SECTIONS 15-6-131, 15-8-111, 15-23-103, 15-23-106, 15-23-115, 15-23-502, 15-23-503, 15-23-521, 15-38-103, AND 15-38-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Net proceeds for limestone — statement — value.** (1) A statement of gross yield and value, required in 15-23-502, that is filed by a producer of limestone extracted for the production of quicklime must contain the following:

(a) the name and address of the owner, lessee, or operator of the mine, together with the name and address of any person owning or claiming a royalty interest in the mineral product of the mine or the proceeds derived from the sale of the mineral product, and the amount or amounts paid or yielded as royalty to each person during the period covered by the statement;

(b) the description and location of the mine;

(c) the number of tons of limestone extracted and sold either as limestone or quicklime from the mine during the period covered by the statement;

(d) the amount and character of the limestone and the yield of the limestone from the mine, measured in tons, yielded to the person engaged in mining and to each royalty holder, if any, during the period covered by the statement; and

(e) the gross yield or value in dollars and cents.

(2) (a) For purposes of this section, the gross yield or value of limestone is determined by multiplying the number of tons of limestone reported under subsection (1)(c) by:

(i) for the tax year beginning January 1, 1993, 34 cents; and

(ii) for the taxable years beginning January 1, 1994, and thereafter, the product obtained by multiplying 34 cents by the quotient of the PCE for the first quarter of the year previous to the taxable year for which the net proceeds value is being calculated, divided by the PCE for the first quarter of the 1992 taxable year.

(b) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

Section 2. **Gross value of product for limestone.** As used in this part, when referring to limestone, "gross value of product" is the gross yield or value as determined in [section 1(2)].

Section 3. Section 15-6-131, MCA, is amended to read:

"**15-6-131.** *(Temporary)* **Class one property — description — taxable percentage.** (1) Class one property includes the annual net proceeds of all mines and mining claims except coal, travertine, building stone, and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, for talc, as provided in 15-23-515 or, for vermiculite, as provided in 15-23-516 *or, for limestone, as provided in [section 1]*. *(Terminates December 31, 1993—sec. 4, Ch. 700, L. 1991.)*

15-6-131. *(Effective January 1, 1994)* **Class one property — description — taxable percentage.** (1) Class one property includes the annual net proceeds of all mines and mining claims except coal and metal mines.

(2) Class one property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, for talc, as provided in 15-23-515 or, for vermiculite, as provided in 15-23-516 *or, for limestone, as provided in [section 1]*."

Section 4. Section 15-8-111, MCA, is amended to read:

"**15-8-111. Assessment — market value standard — exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of all motor trucks; agricultural tools, implements, and machinery; and vehicles of all kinds, including but not limited to boats and all watercraft, is the average wholesale value shown in national appraisal guides and manuals or the value of the vehicle before reconditioning and profit margin. The department of revenue shall prepare valuation schedules showing the average wholesale value when ~~no~~ *a* national appraisal guide ~~exists~~ *does not exist.*

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the loan value as shown in the Official Guide, Tractor and Farm Equipment, published by the national farm and power equipment dealers association, St. Louis, Missouri;

(b) for agricultural implements and machinery not listed in the official guide, the department shall prepare a supplemental manual where the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Title 15 and Title 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, ~~or~~ 15-23-516, *or [section 1].*

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Beginning January 1, 1990, and ending December 31, 1993, properties in 15-6-143, under class ten, are assessed at 100% of the combined appraised value of the standing timber and grazing productivity of the land when valued as timberland.

(e) Beginning January 1, 1994, properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements ~~thereon~~ *on the land* are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town. *(Subsection (6)(d) terminates January 1, 1994—sec. 19, Ch. 783, L. 1991.)* "

Section 5. Section 15-23-103, MCA, is amended to read:

"**15-23-103. Due date of reports and returns — extensions.** (1) Except as provided in subsection (2) and 15-23-602, each report or return described in 15-23-301, 15-23-402, 15-23-502, ~~or~~ 15-23-701, *[section 1]* ~~shall~~ *must* be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-201, 15-23-212, 15-23-515, or 15-23-516 must be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days."

Section 6. Section 15-23-106, MCA, is amended to read:

"**15-23-106. Transmission to the counties.** (1) On or before July 1, the department shall transmit to its agent in each county a statement listing:

(a) the assessed value of railroad property, as determined under 15-23-202, apportioned to the county, including the length or other description of ~~such~~ *the* property;

(b) the assessed value of utility property, as determined under 15-23-303, apportioned to the county, including the length or other description of ~~such~~ *the* property;

(c) the assessed value of property of airline companies, as determined under 15-23-403, apportioned to the county; 90% of the value of the property of airline companies apportioned to any county by reason of a state airport being located in the county ~~shall~~ *must* be stated separately from the remaining assessed value of the property of airline companies apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 15-23-503, 15-23-505, 15-23-515, 15-23-516, *[section 1]*, 15-23-603, and 15-23-605; and

(e) the assessed value of the gross proceeds from coal mines, as described in 15-23-701.

(2) The agent of the department shall enter the assessed values ~~so~~ transmitted in the assessment book in a manner prescribed by the department."

Section 7. Section 15-23-115, MCA, is amended to read:

"**15-23-115. Interest.** If the department determines that a taxpayer has incorrectly reported a value under 15-23-502, 15-23-515, 15-23-516, *[section 1]*, 15-23-602, 15-23-701, or 15-23-802, the department shall inform its agents at the county level of ~~such~~ *the* determination, and if any additional tax is due, there must be added ~~thereto~~ *to the tax* until paid in full interest at the rate of 1% a month or fraction ~~thereof~~ *of a month* from the date the original tax was due and payable. ~~In no instance will a~~ *A* taxpayer subject to imposition of interest pursuant to this section ~~be also~~ *is not* subject to the penalty and interest provisions contained in 15-16-102."

Section 8. Section 15-23-502, MCA, is amended to read:

"**15-23-502.** *(Temporary)* **Net proceeds tax — statement of yield.** Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal, travertine, building stone, and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by ~~such~~ *the* person during the year preceding January 1 of the year in which ~~such~~ *the* statement is made. ~~Such~~ *The* statement ~~shall~~ *must* be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Except as provided in 15-23-515, ~~and~~ 15-23-516, *and [section 1]*, the statement ~~shall~~ *must* show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of ~~such~~ *the* mine or the proceeds derived from the sale ~~thereof~~ *of products*, and the amount or amounts paid or yielded as royalty to each of ~~such~~ *the* persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of ~~such~~ *the* ores, mineral products, or deposits and the yield of ~~such~~ *the* ores, mineral products, or deposits from ~~such~~ *the* mine in constituents of commercial value; that is, commercially valuable constituents

of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to ~~such~~ *the* person ~~so~~ engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of ~~same~~ *the product* into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which ~~such~~ *the* return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts;

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any ~~such~~ services beyond the stage of reduction and beneficiation of the minerals; and

(15) cost of mine reclamation. *(Terminates December 31, 1993—sec. 4, Ch. 700, L. 1991.)*

15-23-502. *(Effective January 1, 1994)* **Net proceeds tax — statement of yield.** Every person engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or source whatever precious stones or gems, vermiculite, bentonite, or other valuable mineral, except coal and metals, must on or before March 31 each year make out a statement of the gross yield and value of the above-named metals or minerals from each mine owned or worked by ~~such~~ *the* person during the year preceding January 1 of the year in which ~~such~~ *the* statement is made. ~~Such~~ *The* statement ~~shall~~ *must* be in the form prescribed by the department of revenue and must be verified by the oath of the person completing the statement or the manager, superintendent, agent, president, or vice-president, if a corporation, association, or partnership, and must be delivered to the department on or before March 31. Except as provided in 15-23-515, ~~and~~ 15-23-516, *and [section 1],* the statement ~~shall~~ *must* show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of ~~such~~ *the* mine or the

proceeds derived from the sale ~~thereof~~ *of products*, and the amount or amounts paid or yielded as royalty to each of ~~such~~ *the* persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of ~~such~~ *the* ores, mineral products, or deposits and the yield of ~~such~~ *the* ores, mineral products, or deposits from ~~such~~ *the* mine in constituents of commercial value; that is, commercially valuable constituents of the ores, mineral products, or deposits, measured by standard units of measurement, yielded to ~~such~~ *the* person ~~so~~ engaged in mining and to each royalty holder, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting from the mine;

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of ~~same~~ *the product* into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which ~~such~~ *the* return is made;

(12) cost of fire insurance, workers' compensation insurance, boiler and machinery insurance, and public liability insurance paid for the mine, reduction works, or beneficiation process;

(13) cost of welfare and retirement fund payments provided for in wage contracts;

(14) cost of testing extracted minerals for the purpose of satisfying federal or state health and safety laws or regulations, the cost of plant security in Montana, the cost of assaying and sampling the extracted minerals, and the costs incurred in Montana for engineering and geological services for existing mining operations but not including any ~~such~~ services beyond the stage of reduction and beneficiation of the minerals; and

(15) cost of mine reclamation."

Section 9. Section 15-23-503, MCA, is amended to read:

"**15-23-503. Net proceeds — how computed.** (1) The department of revenue shall calculate from the returns the gross product yielded from a mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of the mine yielded to the person engaged in mining. Except as provided in 15-23-515, ~~and~~ 15-23-516, *and [section 1]*, net proceeds

~~shall~~ *must* be determined by subtracting from the value of the gross product of the mine the following:

(a) all royalty paid or apportioned in cash or in kind by the person engaged in mining;

(b) all money expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) all money expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as provided in this section;

(d) all money expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) depreciation in the sum of 6% of the assessed valuation of the milling and reduction works for the calendar year for which the return is made;

(f) all money actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals and for marketing the product and the conversion of the product into money;

(g) all money expended for insurance and welfare and retirement costs reported in the statement required in 15-23-502;

(h) all money expended for necessary labor, equipment, and supplies for testing minerals extracted to satisfy federal or state health and safety laws or regulations, for plant security in Montana, for assaying and sampling the extracted minerals, for the cost of reclamation at the site of the mine, and for engineering and geological services conducted in Montana for existing mining operations but not including services beyond the stage of reduction and beneficiation of the minerals.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow 10% of the cost each year for a period of 10 years.

(3) Money invested in mines or improvements may not be allowed as a deduction unless all machinery, equipment, and buildings represented by the money are returned to the county in which the mine is located for assessment purposes at the level of assessment of all other property in the county.

(4) Money invested in the mines and improvements during any year except the year for which ~~such~~ *the* statement is made and except as provided in this section may not be included in the expenditures, and the expenditures may not include the salary or any portion of the salary of any person or officer not actually engaged in the working of the mine or superintending the management of the mine."

Section 10. Section 15-23-521, MCA, is amended to read:

"**15-23-521. Examination of records by department.** The department of revenue may at any time examine the records of any person specified in this part as the records may pertain to the yield of ore or mineral products or deposit in order to verify the statements made by the person. If from the examination or from other information, the department finds any statement or any material part of a statement willfully false or fraudulent, the department must assess in the same manner as provided for in 15-23-503, 15-23-515, ~~or~~ 15-23-516, *or [section 1]*."

Section 11. Section 15-38-103, MCA, is amended to read:

"**15-38-103. Definitions.** As used in this chapter, the following definitions apply:

(1) "Department" means department of revenue.

(2) "Gross value of product" means, except as provided in 15-38-125 through 15-38-127 *and [section 2]*, the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(4) "Total environment" means air, water, soil, flora, and fauna and the social, economic, and cultural conditions that influence communities and individual citizens."

Section 12. Section 15-38-104, MCA, is amended to read:

"**15-38-104. Tax on mineral production.** (1) Except as provided in subsections (2), ~~and~~ (3), *and (4)*, the annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing a mineral is $25, plus an additional amount computed on the gross value of product that was derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 1/2 of 1% of the amount of gross value of product at the time of extraction from the ground, if in excess of $5,000. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.

(2) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing:

(a) talc is $25 plus an additional amount computed on the gross value of product for talc derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 4%; and

(b) coal is $25 plus an additional amount computed on the gross value of product for coal produced in Montana during the calendar year immediately preceding at the rate of 0.4%.

(3) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing vermiculite is $25 plus an additional amount computed on the gross value of product for vermiculite derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 2%.

(4) The annual tax to be paid by a person engaged in or carrying on the business of mining, extracting, or producing limestone for the production of

quicklime is $25 plus an additional amount computed on the gross value of product for limestone derived from the business work or operation within this state during the calendar year immediately preceding at the rate of 10%."

Section 13. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 23, part 5, and the provisions of Title 15, chapter 23, part 5, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 38, part 1, and the provisions of Title 15, chapter 38, part 1, apply to [section 2].

Section 14. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to production years beginning after December 31, 1991.

Approved April 24, 1993.

CHAPTER NO. 507

[HB 388]

AN ACT AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO COLLECT FEES TO OFFSET WATER QUALITY PROGRAM COSTS FOR ISSUING PERMITS AND MONITORING ACTIVITY; REQUIRING THE DEPARTMENT TO PROVIDE NOTICE OF THE FEE ASSESSMENT; PROVIDING AN APPEAL PROCEDURE FOR RESOLUTION OF FEE DISPUTES; PROVIDING FOR THE DISPOSITION OF FEES; AMENDING SECTION 69-7-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

WHEREAS, section 402 of the Federal Water Pollution Control Act provides that states may be authorized by the U.S. Environmental Protection Agency to administer the national pollutant discharge elimination system wastewater discharge permit program; and

WHEREAS, the Montana Department of Health and Environmental Sciences administers all water quality permit programs in Montana through an agreement with the U.S. Environmental Protection Agency under section 402 of the Federal Water Pollution Control Act; and

WHEREAS, the Department of Health and Environmental Sciences' water quality permit programs are inextricably linked to its other water pollution control and ambient water quality monitoring programs; and

WHEREAS, both the citizens and businesses of the State of Montana benefit from implementation of these programs by the Department of Health and Environmental Sciences; and

WHEREAS, federal grants for Montana's water quality programs are currently inadequate and are being further reduced, and Montana's general fund is stressed by competing government programs; and

WHEREAS, if the Department of Health and Environmental Sciences fails to obtain authorization, the national pollutant discharge elimination system program will be administered within Montana by the U.S. Environmental Protection Agency; and

WHEREAS, the persons who discharge or may discharge wastes to Montana's water resources and who are required to obtain a water quality permit should pay a fair share to ensure protection of Montana's water resources; and

WHEREAS, the annual fee system may be an incentive to the regulated community to design activities that reduce the amount of pollutants discharged to state waters or otherwise lower the potential for harm to state waters.

THEREFORE, the Legislature of the State of Montana finds that it is appropriate to authorize the development of permit fee systems to support Montana's comprehensive water pollution control program.

STATEMENT OF INTENT

A statement of intent is required for this bill because it authorizes the board of health and environmental sciences to adopt rules regarding fees to be assessed to applicants for or holders of certain permits or licenses. The intent of this bill is to allow the department of health and environmental sciences to charge for its services in administering its comprehensive water permitting program. These services include both the permitting function and followup monitoring and enforcement programs to ensure that activities are complying with the terms and conditions of the permit. In addition, the legislature anticipates that fees will be assessed to applicants or permittees under other statutory authorities for which an exclusion from a water quality permit requirement is provided by rule.

The board shall attempt to develop a structured fee system that can be clearly applied to all activities addressed under this bill and that results in revenue that approximates the department's documented cost of implementing its comprehensive water quality permit program. The permit review fee system must be based on an average assessment of the department's direct and indirect cost of reviewing permit applications, including the cost of support services, inservice training, and correspondence. The annual fee system may involve fees that are prescribed by category according to the criteria in [section 1(2)(b)].

The board shall consider the following fee structures as prima facie indicators of appropriate fee assessments.

	Application fee	Annual fee
Publicly owned treatment works	$250 — $1,000	$250 — $2,500
Industrial storm and ground water systems	$1,000	$1,000 — $2,500
Industrial cooling water systems	$500	$200 — $500
Industrial systems with toxic substances	$2,500 — $5,000	$2,500
General permits	$200 — $500	$250 — $2,500

Nondegradation review:

(1) Domestic sewage treatment	$2,500
(2) Industrial	$2,500 — $5,000
(3) Subdivision	$120 — $200 per lot

The annual fee is to be assessed for each million gallons of waste discharged per day on a yearly average and is specific to each discharge at a facility. The lower values are minimum fees, regardless of the amount of waste discharged. For either the application fee or annual fee for storm water discharges, a facility may not be charged for more than the five storm water discharge points that yield the highest fees.

The legislature also intends that a facility that consistently discharges effluent at less than or equal to one-half of its permit limit concentration, using the previous year's discharge data, is entitled to a 25% fee reduction in its annual fee. Further, any facility that consistently discharges effluent at levels between 50% and 100% of its permit limit concentration is entitled to a proportionate fee reduction of up to 25%. For a permit with multiple parameter limits, the annual average of the percentage of use of each parameter limit should be used to determine an overall percentage. A new permittee is not eligible for fee reduction in its first year of operation, and dilution is not intended as a means to justify lower annual fees.

Further, the board's rules should provide a mechanism for coordinating collection of fees for the review and monitoring of projects and activities authorized by [section 1] with any other fees that are collected by other state agencies for the review and monitoring of those projects and activities. The fees collected by the department may not duplicate the fees collected by another state agency for services in reviewing permit, certificate, and license applications and in conducting monitoring.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Fees authorized for recovery — process — rulemaking.** (1) The board shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board's and department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or other authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

(2) The rules promulgated by the board under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be less than $250 or more than $5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple storm water discharge points may be assessed a lower fee for those points according to board rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be less than $250 and may not be more than $3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that a permit or authorization with multiple storm water discharge points may be assessed a lower fee for those points according to board rule. To the extent permitted under this limitation, the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(i) the fees collected under subsection (2)(a);

(ii) state general fund appropriations for functions administered under this chapter; and

(iii) federal grants for functions administered under this chapter.

(3) For purposes of subsection (2), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(4) If the applicant or holder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed at the rate established under 15-31-510(3); or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (4)(a).

(5) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to [section 2].

(6) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the

department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(7) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (6). The appeal to the board must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(8) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (7), the undisputed portion of the fee must be paid to the department upon written request of the department.

(9) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(10) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111.

Section 2. **Deposition of water quality permit fees.** (1) All fees collected under [section 1] must be credited to an account in the state special revenue fund.

(2) Money in the account may be used only to pay the department's cost in implementing the functions described in [section 1(1)].

Section 3. Section 69-7-111, MCA, is amended to read:

"**69-7-111. Municipal rate hearing required — notice.** (1) Except as provided in *[section 1] and* 75-6-108, if the governing body of a municipality considers it advisable to regulate, establish, or change rates, charges, or classifications imposed on its customers, it shall order a hearing to be held before it at a time and place specified.

(2) Notice of the hearing shall be published in a newspaper as provided in 7-1-4127.

(3) (a) The notice shall be published three times with at least 6 days separating each publication. The first publication may be no more than 28 days prior to the hearing, and the last publication may be no less than 3 days prior to the hearing.

(b) The notice must also be mailed at least 7 days and not more than 30 days prior to the hearing to persons served by the utility. The notice must be mailed within the prescribed time period. This notice must contain an estimate of the amount the customer's average bill will increase.

(4) The published notice must contain:

(a) the date, time, and place of the hearing;

(b) a brief statement of the proposed action; and

(c) the address and telephone number of a person who may be contacted for further information regarding the hearing.

(5) Notice of all hearings shall be mailed first class, postage prepaid, to the Montana consumer counsel."

Section 4. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 5, part 5, and the provisions of Title 75, chapter 5, part 5, apply to [sections 1 and 2].

Section 5. **Applicability.** (1) [Section 1(1)] applies to all applications or petitions filed on or after October 1, 1993, and to all current and future holders of permits, licenses, or other authorizations described in [section 1(1)].

(2) The board of health and environmental sciences may commence rulemaking prior to October 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 508

[HB 413]

AN ACT CLARIFYING THE METHOD FOR DETERMINING THE PUBLIC SERVICE COMMISSION FEE AND CONSUMER COUNSEL FEE BY THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 69-1-223, 69-1-224, 69-1-402, AND 69-1-403, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1-223, MCA, is amended to read:

"**69-1-223. Funding of office of consumer counsel.** (1) There is an account in the state special revenue fund to which all fees collected ~~hereunder shall~~ *under this section must* be deposited and from which all appropriations to the office of the consumer counsel ~~shall~~ *must* be paid. An appropriation to the office of the consumer counsel may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall:

(a) within ~~90~~ *30* days after the close of each calendar quarter, file with the department of public service regulation and the department of revenue a statement, in ~~such~~ *a* form ~~as~~ *that* the commission *and department* may determine, showing the gross operating revenue from all activities regulated by the commission within the state for that calendar quarter of operation or portion ~~thereof~~ *of a quarter*, separately stating gross ~~revenues~~ *revenue* from sales to other regulated companies for resale; and

(b) at that time pay to the department of revenue a fee based on a percentage of the gross operating revenue reported, as determined by the department of revenue under 69-1-224.

(3) The amount of money which may be raised by the fee on the regulated companies during a fiscal year may not be increased, *except as provided in 69-1-224(1)(c),* from the amount appropriated, including both base and contingency appropriations, by the legislature for that fiscal year. Any additional money required for operation of the office of the consumer counsel must be obtained from other sources in a manner authorized by the legislature."

Section 2. Section 69-1-224, MCA, is amended to read:

"**69-1-224. Determination of fee.** (1) ~~Within 30 days following enactment of the legislative appropriation for the office of the consumer counsel~~ *On or before August 31 of each year,* the department of revenue shall:

(a) determine the total gross operating revenue generated by all regulated activities within this state for all regulated companies for the previous fiscal year;

(b) compute the percentage, subject to revision as provided in subsection ~~(3)~~ *(2),* of the amount determined in subsection (1)(a) ~~which~~ *that* will produce an amount equal to the ~~base~~ *current* appropriation to the office of the consumer counsel ~~for the first year of the appropriation~~, except that ~~no~~ *a* regulated company owned and operated by any municipal corporation within this state ~~shall~~ *may not* be required to pay a sum in excess of .06 of 1% of its gross operating revenue;

(c) adjust the percentage multiplier computed in subsection (1)(b) to ensure that sufficient funds are generated to meet the appropriation and that excess funds are not generated or retained by:

(i) determining the appropriation to the office of the consumer counsel for the previous fiscal year and comparing it to the fees collected from the previous fiscal year;

(ii) reducing or increasing the percentage determined in (1)(b) for the current year in order to account for any difference determined in subsection (1)(c)(i); and

(iii) if necessary, reducing the revenue to be collected for the current year by any funds remaining unspent at the close of the prior fiscal year; and

~~(c)~~*(d)* give notice by mail to each regulated company of the percentage ~~determined in subsections (1)(a) and (b)~~ to be applied to the gross operating revenue reported under 69-1-223(2) to determine the amount of the fee to be paid ~~in the first year of the appropriation~~.

~~(2) On or before May 30 of the first year of the biennium, the department of revenue shall repeat the steps required by subsection (1) and compute the percentage multiplier for the second year, giving notice to the regulated companies.~~

~~(3)~~*(2)* (a) The department of revenue shall adjust the percentage multiplier ~~quarterly~~ if the department considers a change necessary to meet or to not exceed the amount to be raised by the fee because of:

(i) fluctuations in the actual gross operating revenue subject to the fee; or

(ii) submission and approval of a budget amendment authorizing the spending of money from a contingency appropriation included in the appropriation measure for the office of the consumer counsel and authorized to be raised by means of the fee.

(b) Adjustments of the percentage multiplier are subject to the exception provided in subsection (1)(b) for municipally owned and operated regulated companies.

(c) Regulated companies must be given at least 30 days' notice of any change in the percentage multiplier.

(d) Any change in the percentage multiplier is effective at the beginning of the next calendar quarter.

~~(4)~~*(3)* In the event the fee charged in one year is in excess of the amount actually expended in that year, the excess shall be deducted from the amount required to be raised by the fee for the next year before the determination required by subsection (1) is made. Money remaining unspent at the close of ~~a~~ *the* fiscal year shall be used to reduce the percentage calculated in 69-1-224 in the subsequent fiscal year."

Section 3. Section 69-1-402, MCA, is amended to read:

"**69-1-402. Funding of the department of public service regulation.** (1) All fees collected under this section must be deposited in ~~the general fund~~ *an account in the state special revenue fund to the credit of the department.* ~~All appropriations to the department must be paid from the general fund.~~ An appropriation to the department may consist of a base appropriation for regular operating expenses and a contingency appropriation for expenses due to an unanticipated caseload.

(2) In addition to all other licenses, fees, and taxes imposed by law, all regulated companies shall, within ~~90~~ *30* days after the close of each calendar quarter, pay to the department of revenue a fee based on a percentage of gross operating revenue reported pursuant to 69-1-223(2)(a), as determined by the department of revenue under 69-1-403.

(3) The amount of money that may be raised by the fee on the regulated companies during a fiscal year may not be increased, *except as provided in 69-1-224(1)(c),* from the amount appropriated to the department by the legislature for that fiscal year, including both base and contingency appropriations. Any additional money required for operation of the department must be obtained from other sources in a manner authorized by the legislature."

Section 4. Section 69-1-403, MCA, is amended to read:

"**69-1-403. Determination and collection of fee.** (1) The fee provided for in 69-1-402 to be paid by regulated companies must be determined in the manner set forth in 69-1-224 for determining the consumer counsel fee, except that gross revenues from sales to other regulated companies for resale, as calculated by the public service commission, must be excluded from the determination of the total gross operating revenue pursuant to 69-1-224.

(2) The department of revenue shall give notice by mail to each regulated company of the percentage determined pursuant to 69-1-224 and this section to be applied to gross operating revenues reported under 69-1-223, excluding gross revenues from sales to other regulated companies for resale~~, to determine the amount of the fee to be paid in the first year of the appropriation~~.

(3) The fee provided for in 69-1-402 may be computed and collected in the manner provided in 69-1-225 through 69-1-227.

(4) All fees paid by a regulated company pursuant to this section are immediately recoverable by the regulated company in its rates and charges. Within 30 days after the issuance by the department of revenue of ~~notices~~ *the notice* required by 69-1-224(1) ~~and (2)~~, the public service commission shall by separate order authorize each regulated company to fully recover in its rates and charges, on an annual basis, the fees levied by this part."

Section 5. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to revenue generated by regulated activity beginning after April 1, 1993.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 509

[HB 419]

AN ACT PROVIDING AN ADMINISTRATIVE PENALTY IN THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT; AND AMENDING SECTION 75-10-405, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill in order to provide guidance to the department of health and environmental sciences in promulgating rules. The legislature intends that the administrative penalty provided in this bill encourage compliance with the hazardous waste sections of the Montana Hazardous Waste and Underground Storage Tank Act and rules adopted pursuant to the hazardous waste sections of that Act by allowing more timely and efficient processing of enforcement actions without the need to seek penalties through the district court. To promote this goal, the department may adopt rules that prescribe procedures for assessing administrative penalties for violations of Title 75, chapter 10, part 4, and of rules adopted pursuant to Title 75, chapter 10, part 4. In doing so, the department shall ensure that its rules are consistent with the criteria set forth in [section 2].

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-405, MCA, is amended to read:

"**75-10-405. Administrative rules.** (1) The department may adopt, amend, or repeal rules governing hazardous waste, including but not limited to the following:

(a) identification and classification of those hazardous wastes subject to regulation and those that are not;

(b) requirements for the proper treatment, storage, transportation, and disposal of hazardous waste;

(c) requirements for siting, design, operation, maintenance, monitoring, inspection, closure, postclosure, and reclamation of hazardous waste management facilities;

(d) requirements for the issuance, denial, renewal, modification, and revocation of permits for hazardous waste management facilities;

(e) requirements for corrective action within and outside of facility boundaries and for financial assurance of that corrective action;

(f) requirements for manifests and the manifest system for tracking hazardous waste and for reporting and recordkeeping by generators, transporters, and owners and operators of hazardous waste management facilities;

(g) requirements for training of facility personnel and for financial assurance of facility owners and operators and for liability of guarantors providing financial assurance;

(h) requirements for registration of generators and transporters;

(i) a schedule of fees for hazardous waste management facility permits and registration of hazardous waste generators;

(j) a schedule of fees to defray a portion of the costs of establishing, operating, and maintaining any state hazardous waste management facility authorized by 75-10-412;

(k) requirements for availability to the public of information obtained by the department regarding facilities and sites used for the treatment, storage, and disposal of hazardous wastes; ~~and~~

(l) procedures for the assessment of administrative penalties as authorized by [section 2]; and

~~(l)~~*(m)* other rules which are necessary to obtain and maintain authorization under the federal program.

(2) The department may not adopt rules under this part that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended, except that the department:

(a) may require the registration of transporters not otherwise required to register with the state of Montana pursuant to the federal Resource Conservation and Recovery Act of 1976, as amended;

(b) may require generators and facilities to report on an annual rather than on a biennial basis;

(c) may adopt requirements for the prevention and correction of leakage from underground storage tanks, including:

(i) reporting by owners and operators;

(ii) financial responsibility;

(iii) release detection, prevention, and corrective action;

(iv) standards for design, construction, installation, and closure;

(v) development of a schedule of fees, not to exceed $50 for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank notification and permits to defray state and local costs of implementing an underground storage tank program; and

(vi) delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks.

(d) may adopt regulatory requirements for hazardous waste transfer facilities;

(e) shall require the owner or manager of any proposed commercial facility for the storage, collection, or transfer of hazardous waste to conduct a public hearing, as provided for in 75-10-441; and

(f) may adopt rules and performance standards for industrial furnaces and boilers that burn hazardous wastes. The rules and performance standards:

(i) may be adopted if there are no federal regulations; or

(ii) may be more restrictive than federal regulations."

Section 2. **Administrative penalty.** (1) The department may assess a person who violates a hazardous waste provision of this part or a hazardous waste rule adopted under this part an administrative penalty, not to exceed $10,000 per violation. Each day of violation constitutes a separate violation, but the maximum penalty may not exceed $100,000 for any related series of violations. Assessment of an administrative penalty under this section must be made in conjunction with an order or administrative action authorized by this chapter.

(2) An administrative penalty may not be assessed under this section unless the alleged violator is given notice and opportunity for a hearing before the board pursuant to Title 2, chapter 4, part 6.

(3) In determining the appropriate amount of an administrative penalty, the department shall consider:

(a) the gravity and the number of violations;

(b) the degree of care exercised by the alleged violator;

(c) whether significant harm resulted to public health or the environment; and

(d) the degree of potential significant harm to public health or the environment.

(4) If the department is unable to collect the administrative penalty or if a person fails to pay all or any portion of the administrative penalty as determined by the department, the department may seek to recover the amount in an appropriate district court.

(5) Action under this section does not bar action under 75-10-413 through 75-10-418 or any other appropriate remedy.

(6) Administrative penalties collected under this section must be deposited in the state general fund.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [section 2].

Approved April 24, 1993.

CHAPTER NO. 510

[HB 436]

AN ACT CLARIFYING THE DEFINITION OF AIR AND WATER POLLUTION EQUIPMENT FOR PROPERTY TAX PURPOSES; PROVIDING REQUIREMENTS FOR RULES GOVERNING THE CERTIFICATION OF THE EQUIPMENT; SPECIFYING THE ROLES OF THE DEPARTMENT OF REVENUE AND OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES IN CLASSIFYING AND VALUING AIR AND WATER POLLUTION EQUIPMENT; AMENDING SECTION 15-6-135, MCA; AND PROVIDING AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is necessary for this bill because the amendment to 15-6-135 grants rulemaking authority to the department of revenue and the department of health and environmental sciences.

It is intended that the rules promulgated by the departments clarify the definition, application for certification, and use of air and water pollution equipment eligible for special property tax treatment. It is further intended that the rules clarifying the definition and use of air and water pollution control equipment establish a procedure to apportion the value of multipurpose equipment into that used for production and other purposes and that used for pollution control. The rules should provide certainty regarding the special tax treatment for air and water pollution equipment purchasers, affected local governments, and state departments, thus increasing the use of air and water pollution equipment.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-135, MCA, is amended to read:

"**15-6-135. Class five property — description — taxable percentage.** (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in subsection (1)(b) of 15-6-137;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution equipment" means *that portion of identifiable property,* facilities, machinery, *devices,* or equipment ~~used~~ *designed, constructed, under construction, or operated* ~~to reduce or control water or atmospheric pollution or contamination by~~ *for* removing, ~~reducing, altering,~~ disposing, *abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert,* ~~or~~ storing, *or preventing the creation of air or water pollutants, which, except for the use of the item, would be released to the environment* ~~pollutants, contaminants, wastes, or heat.~~ *Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.* ~~The department of health and environmental sciences shall determine if such utilization is being made.~~

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only for as long as substantial compliance continues.

(c) The department of health and environmental sciences shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution equipment. The department of health and environmental sciences shall identify and track compliance in the use of certified air and water pollution equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

~~(b)~~*(d)* ~~The department of health and environmental sciences' determination as to air and water pollution equipment may be appealed to the board of health and environmental sciences and may not be appealed to either a county tax appeal board or~~ *A person may appeal the certification, classification, and valuation of the property to* the state tax appeal board. ~~However, the appraised~~ *Appeals on the property certification must name the department of health and environmental sciences as the respondent, and appeals on the* ~~value~~ *classification or valuation* of the equipment ~~as determined by the~~ *must name the* department of revenue ~~may be appealed to the county tax appeal board and the state tax appeal board~~ *as the respondent.*

(3) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget;

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) New industrial property does not include:

(a) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(b) a plant that will create adverse impact on existing state, county, or municipal services; or

(c) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(6) Class five property is taxed at 3% of its market value."

Section 2. **Applicability — rulemaking.** (1) [This act] applies to tax years beginning after December 31, 1993.

(2) The department of revenue and the department of health and environmental sciences may institute rulemaking under Title 2, chapter 4, prior to October 1, 1993, to implement [this act], but the rules may not be effective prior to October 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 511

[HB 463]

AN ACT ALLOCATING A PERCENTAGE OF THE BOAT FEE IN LIEU OF TAX TO THE MOTORBOAT ACCOUNT IN THE STATE SPECIAL REVENUE FUND; REQUIRING USE OF THE FEES BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR BOATING FACILITIES UNDER THE CONTROL OF THE DEPARTMENT; ALLOWING USE OF THE FEES FOR MATCHING AVAILABLE FEDERAL FUNDS; CREATING THE BOATING ADVISORY COUNCIL AND PROVIDING THAT COSTS ASSOCIATED WITH THE COUNCIL BE PAID FROM THE FEES; PROVIDING THAT THE MEMBERS OF THE COUNCIL ARE NOT ENTITLED TO COMPENSATION OR TRAVEL EXPENSES; AMENDING SECTION 23-2-518, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-518, MCA, is amended to read:

"**23-2-518. Disposition of fees in lieu of tax.** ~~The~~ *(1) Except for fees allocated under subsection (2), the* county treasurer shall distribute all fees in lieu of tax collected on motorboats 10 feet in length or longer, sailboats 12 feet in length or longer, personal watercraft, motorized canoes, motorized rubber rafts, and motorized pontoons pursuant to 23-2-516 and 23-2-517 in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall allocate 25% of all fees in lieu of tax collected under this section to the motorboat account in the state special revenue fund for use by the department as provided in [section 2]."

Section 2. **Use of percentage of boat fees for boat facilities — designation of fees for regional use.** (1) At the time the fee in lieu of tax imposed under 23-2-516 is collected, the payor shall designate the fish, wildlife, and parks administrative region in which the majority of the payor's boating activities take place. Upon receipt of the fee in the motorboat account in the state special revenue fund, the department shall earmark the fee for use in the designated region.

(2) All fees designated to the motorboat account by 23-2-518(2) must be used by the department to improve regional boating facilities under the control of the department and to cover costs associated with the boating advisory council created in [section 3]. The department may use the fees to match available federal funds to the extent possible. Expenditure of fees must be made after consideration of recommendations by the boating advisory council.

Section 3. **Creation of boating advisory council — appointment of members — duties.** (1) The department director appointed under 2-15-3401 shall appoint a boating advisory council to advise the department on the expenditure of funds made available under 23-2-518(2).

(2) The boating advisory council must be composed of five members of the public, each of whom must be interested in boating activities and the use of public boating facilities.

(3) The boating advisory council is attached to the department in an advisory capacity only, as defined in 2-15-102(8).

(4) All costs associated with the boating advisory council must be paid from the fees collected under 23-2-518(2). Council members are not entitled to compensation or travel expenses as provided in 2-15-122.

Section 4. **Codification instruction.** [Sections 2 and 3] are intended to be codified as an integral part of Title 23, chapter 2, part 5, and the provisions of Title 23, chapter 2, part 5, apply to [sections 2 and 3].

Section 5. **Effective date.** [This act] is effective July 1, 1993.

Section 6. **Termination.** [This act] terminates June 30, 1995.

Approved April 24, 1993.

CHAPTER NO. 512

[HB 511]

AN ACT DIRECTING THE DEPARTMENT OF LABOR AND INDUSTRY TO DEVELOP A WORKERS' COMPENSATION DATA BASE SYSTEM TO GENERATE MANAGEMENT INFORMATION ON MONTANA'S WORKERS' COMPENSATION SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Workers' compensation data base system.** (1) The department shall develop a workers' compensation data base system to generate management information about Montana's workers' compensation system. The data base system must be used to collect and compile information from insurers, employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession. Data collected must be used to provide management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(a) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(b) information on medical, indemnity, and rehabilitation costs, utilization, and trends; and

(c) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement.

(2) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation data base system.

(3) The workers' compensation data base system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (3)(a) through (3)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(4) (a) The department shall take all steps necessary to have the workers' compensation data base system fully operational by July 1, 1995.

(b) After the workers' compensation data base system is operational, the department shall publish an annual report and may publish quarterly reports on the information compiled.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 39, chapter 71, part 2, and the provisions of Title 39, chapter 71, part 2, apply to [section 1].

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 513

[HB 537]

AN ACT REVISING MONTANA DEVELOPMENTAL CENTER LOAN PROVISIONS; APPROPRIATING STATE SPECIAL REVENUE FUNDS TO THE DEPARTMENT OF ADMINISTRATION; AND AMENDING SECTION 2, CHAPTER 819, LAWS OF 1991, AND SECTIONS 90-7-220 AND 90-7-317, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-7-220, MCA, is amended to read:

"**90-7-220. Montana developmental center loan.** (1) The department of corrections and human services may enter into a loan agreement with the Montana health facility authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for the developmentally disabled at the Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed ~~$8,665,000~~ *$10.5 million* for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and the loan must be payable over a term of not to exceed 30 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the department approves. *Investment earnings on the authority's bonds or on funds held for the bonds must be used to pay the principal and interest on the loan as provided in the loan agreement.*

(2) The loan may be secured by a mortgage on the Montana developmental center facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable solely from the facility revenues obtained by the department from the ownership and operation of and the provision of services at the Montana developmental center, including payments or reimbursements from private users, insurers, and the federal government. All facility revenues obtained from services provided by the Montana developmental center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments as due under the loan agreement. Principal and interest payments constitute a statutory appropriation within the meaning of 17-7-502. Whenever the foregoing facility revenues exceed the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited to the general fund. As long as the loan remains outstanding and the department provides services for the developmentally disabled, the department shall use the Montana developmental center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of Title 90, chapter 7.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility revenues and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or revenues of the state, except the facility revenues as provided in this section."

Section 2. Section 90-7-317, MCA, is amended to read:

"**90-7-317. Capital reserve account.** (1) There is a capital reserve account in the enterprise fund provided for in 90-7-202(17).

(2) The authority shall deposit into the capital reserve account:

(a) funds from state appropriations received for deposit into the account, as provided in 90-7-319, for bonds issued to finance capital projects for community health facilities that contract with the state to provide health care services *or bonds issued to finance the facility described in 90-7-220*;

(b) proceeds from the sale of bonds or notes to the extent provided in the resolutions or indentures of the authority authorizing their issuance;

(c) revenues from fees and charges imposed by the authority;

(d) income from the investment of funds belonging to the authority; and

(e) any other funds that may be available to the authority for the purpose of the account from any other source, including loans authorized under 90-7-320."

Section 3. Section 2, Chapter 819, Laws of 1991, is amended to read:

"Section 2. **Appropriation of bond *and loan* proceeds.** The proceeds of the bonds authorized in [section 1] *and the loan authorized in 90-7-220* are appropriated to the department of administration to be used for the construction of new facilities at the Montana developmental center."

Section 4. **Appropriation.** There is appropriated $5,000 from state special revenue funds to the department of administration from donations for the project described in [section 1].

Approved April 24, 1993.

CHAPTER NO. 514

[HB 563]

AN ACT ESTABLISHING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND INTO WHICH SUBDIVISION REVIEW FEES MUST BE DEPOSITED; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO SPEND MONEY FROM THE ACCOUNT TO PAY COSTS OF IMPLEMENTING THE SUBDIVISION REVIEW PROGRAM; AMENDING SECTION 76-4-105, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-4-105, MCA, is amended to read:

"**76-4-105. Lot fees — ~~general fund support~~ *subdivision program funding.*** (1) The department shall adopt rules setting forth fees that do not exceed actual costs to the department in reviewing plats and subdivisions. The rules ~~shall~~ *must* provide for a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the state ~~general~~ *special revenue* fund or, if applicable, to another reviewing authority for deposit in the general fund of the reviewing authority's jurisdiction. The fees ~~shall~~ *must* be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(a) number of lots in the subdivision;

(b) the type of water system to serve the development;

(c) the type of sewage disposal to serve the development; and

(d) the degree of environmental research necessary to supplement the review procedure.

(2) The department shall adopt rules to determine the distribution of fees ~~between~~ *to* the local governing body ~~and the state general fund~~, as provided in 76-4-128. ~~When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving preliminary plat approval under the Montana Subdivision and Platting Act, distribute the lot fees according to the fee schedule adopted under this section.~~

(3) ~~When a local department or board of health conducts a review under the provisions of 76-4-104, it shall submit to the department, along with its approval statement, a fee of $5 per reviewed lot, for purposes of offsetting costs incurred in providing certification to a local reviewing authority and other administrative costs.~~

~~(4)~~ A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

(4) Fees collected by the department under this section must be deposited in the account in the state special revenue fund provided for in [section 2].

~~(5) Costs of implementing this part must be paid from the state general fund as provided by legislative appropriation.~~"

Section 2. **Special revenue account — deposit and disbursement of lot fees.** (1) All lot fees collected under 76-4-105 must be deposited in an account in the state special revenue fund for implementation of the subdivision review program as provided in this part.

(2) Funds in the account established in subsection (1) may be used only to pay department costs of implementation of the subdivision review program as provided in this part.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 76, chapter 4, part 1, and the provisions of Title 76, chapter 4, part 1, apply to [section 2].

Section 4. **Applicability.** [This act] applies to all lot fees received by the department of health and environmental sciences on or after July 1, 1993.

Section 5. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 515

[HB 616]

AN ACT PROVIDING A CLEAN COAL TECHNOLOGY DEMONSTRATION LOAN TO THE MHD DEVELOPMENT CORPORATION; ESTABLISHING TERMS AND CONDITIONS AROUND WHICH A LOAN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES AND CONSER-

VATION AND THE MHD DEVELOPMENT CORPORATION WILL BE ESTABLISHED; CONTINUING THE APPROPRIATION FOR THE CLEAN FUELS INFORMATION DEPOSITORY, DISTRIBUTION, AND MARKET DEVELOPMENT CENTER; AMENDING SECTION 17-5-703, MCA, SECTION 11, CHAPTER 722, LAWS OF 1991, AND SECTION 1, CHAPTER 793, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the 52nd Legislature established and provided funds for a clean coal technology demonstration fund within the coal severance tax trust fund; and

WHEREAS, the Billings MHD demonstration project was designated by the 52nd Legislature as a clean coal technology demonstration project eligible to receive a clean coal technology demonstration loan in the amount of $25 million.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 3], the following definitions apply:

(1) "Billings MHD demonstration project" means the project to be developed by the MHD development corporation to commercially demonstrate the magnetohydrodynamics (MHD) technology and to produce electric power as described in the application for federal clean coal V funding submitted to the U.S. department of energy by the MHD development corporation. The methods described in the clean coal V application for production of electric power provide for a process that will operate with or without the successful demonstration of the MHD technology.

(2) "Budget period" means a segment of time in which the Billings MHD demonstration project is expected to reach certain engineering, procurement, or construction milestones through the use of a designated amount of funds.

(3) "Department" means the department of natural resources and conservation provided for in 2-15-3301.

(4) "Loan proceeds" means clean coal technology development project loan funds received by the MHD development corporation from the department as a result of passage and approval of [sections 1 through 3] and the execution of a loan agreement described in [sections 1 through 3].

(5) "MHD development corporation" means a consortium of private companies that has applied to the U.S. department of energy for funding through the clean coal V funding program to commercially demonstrate the MHD technology through the development, engineering, construction, and operation of the Billings MHD demonstration project.

(6) "MHD technology" means the intellectual property used to construct the physical components, or processes that utilize those physical components, to produce electricity through the technology known as magnetohydrodynamics as described in the application for federal clean coal V funding.

(7) "Participating companies" means those corporate entities that have provided the technical expertise, component equipment, capital, or other assets or resources in the development of the MHD technology, that hold positions of equity ownership in the MHD development corporation, and that have trans-

ferred proprietary interests in the MHD technology to the MHD development corporation to enable the MHD development corporation to commercially demonstrate the MHD technology through the development, engineering, construction, and operation of the Billings MHD demonstration project and to enable the MHD development corporation to engage in subsequent commercial applications of the MHD technology.

(8) "Senior debt creditor" means a lender or consortium of lenders that has provided a larger share of debt financing to the Billings MHD demonstration project than any other lender or consortium of lenders and that has properly secured its loan against the assets of the Billings MHD demonstration project or the MHD development corporation.

Section 2. **Approval of loan.** A clean coal technology demonstration loan in the amount of $25 million is approved for the MHD development corporation to pay a portion of the costs involved in development, engineering, procurement, and construction related to the Billings MHD demonstration project if the loan agreement described in [section 3] is entered into by the department and the MHD development corporation.

Section 3. **Loan agreement.** The department shall enter into a loan agreement with the MHD development corporation that includes the following provisions:

(1) The amount of the loan is $25 million.

(2) The loan agreement must be for a term of 25 years from the date it is signed by the parties or until all principal and interest have been retired, whichever occurs first.

(3) Loan proceeds may be applied to the costs of developing engineering specifications, procuring equipment, or constructing physical facilities or to other costs directly related to negotiating for the final commitment of the U.S. department of energy funding and for the development and construction of the Billings MHD demonstration project for the commercial demonstration of the MHD technology.

(4) Loan proceeds must be disbursed according to a series of scheduled budget periods. A disbursement may not be made prior to May 1, 1993. The total amount of the loan may not be released in less than five disbursements. A disbursement may not exceed $10 million and may not be less than $400,000.

(5) The following matching funds requirements apply to the disbursement of loan proceeds:

(a) Loan proceeds may not be disbursed unless the MHD development corporation has received a notice of selection from the U.S. department of energy stating that it has been selected to receive an award through the federal clean coal V funding program.

(b) Loan proceeds may not be disbursed for expenditure in any budget period unless the department has received satisfactory evidence that federal or private funds will be expended in that budget period in an amount that is at least four times greater than the amount of loan proceeds to be expended in that budget period.

(c) No more than $8 million in loan proceeds may be disbursed unless the U.S. department of energy has issued a final authorization to proceed after project definition activities, as described in the federal clean coal V program offering notice, have been concluded and the department of energy has committed to spend the entire federal clean coal V award amount allocated for the Billings MHD demonstration project.

(d) Before disbursing loan proceeds in any budget period, the department must be satisfied that the matching funds requirement for the previous budget periods has been met.

(6) (a) Subject to subsection (6)(b), interest must accrue and be capitalized at the same rate as the rate applicable to taxable 20-year general obligation bonds issued by the state on the date nearest in time to the date that the loan agreement is signed by the parties.

(b) (i) The interest rate must be established by taking into account the credit provided for in subsection (6)(b)(ii), the direct income to the state from coal severance taxes from coal used by the project, corporate income taxes related to project construction, and corporate and individual income taxes related to the operation of the project. The interest rate may not be less than the rate stated in subsection (6)(a) as adjusted by the total amount of the credit available pursuant to subsection (6)(b)(ii).

(ii) The MHD development corporation must receive a credit against the interest rate in subsection (6)(a) at a rate of 0.05% for each job certified by the MHD corporation to be created by the Billings MHD demonstration project up to a total credit of 2.5%.

(7) (a) Subject to subsections (7)(b) and (7)(c), the following sources must be used to pay the principal and interest payments on the loan:

(i) up to 5% of gross fees or royalties derived from the sale, lease, or licensing of the MHD technology; and

(ii) up to 0.5% of all revenue derived from the sale of component equipment that embodies the MHD technology.

(b) The MHD development corporation shall, when there is sufficient cash flow after the appropriate allowance for the payment of taxes, make payments to the department using revenue derived from the sale of electric power upon the occurrence of any of the following:

(i) the beginning of the 17th year after the loan agreement is signed by the parties;

(ii) repayment obligations to senior debt creditors have been satisfied;

(iii) changes in the price of electricity sold as a result of project operations, changes in expenses paid as a result of project operations, or changes in other financial factors cause net cash flow to be greater than that projected to be available after making periodic payments to senior debt creditors and the appropriate allowance for taxes; or

(iv) the successful completion of the MHD technology demonstration.

(c) The payments must be made in amounts and according to a schedule to be agreed upon by the parties that is sufficient to ensure that the entire amount of principal and interest owed on the loan is fully retired by the 25th year after the loan agreement is signed.

(d) If the department and the U.S. department of energy both receive repayment from a source listed in subsection (7)(a)(i) or (7)(a)(ii), the department shall receive payment on a pro rata basis taking into account its financial contribution to the Billings MHD demonstration project compared to the contribution of the department of energy contribution. The percentage limit contained in subsection (7)(a)(i) or (7)(a)(ii) may not be exceeded.

(e) A payment made upon completion of the MHD technology demonstration must be a minimum of $250,000 per year, is owed only for a year in which the MHD technology operates at least 50% of the year, and must be paid in full by March 31 of the following year.

(8) Except as provided in subsection (10), if at any time the principal and prorated interest amounts owing on the loan are retired, the loan is considered retired and further payments are not required to be made. There may not be a penalty associated with early repayment.

(9) The payment of the principal and interest on the loan is governed by the following provisions:

(a) Payments made from the sources listed in subsection (7)(a)(i) or (7)(a)(ii) before the time provided for in subsection (7)(b) must be first applied to the principal of the loan, then to any interest accumulated on the principal.

(b) Payments made after the beginning of the time period provided for in subsection (7)(b) must be first applied to interest accumulated on the principal amount of the loan and any payments greater than the accumulated interest must be applied to the principal.

(10) Notwithstanding the provisions of subsections (2), (6), and (8) and in addition to the requirement for the payment of principal and interest contained in this section, the MHD development corporation shall pay to the department from the sources described in subsections (7)(a)(i) and (7)(a)(ii) one-half of the amount of the loan proceeds disbursed as described in subsection (5)(c). This additional payment requirement must begin immediately after all principal and interest have been paid and continues until the appropriate amount has been paid, even if the loan agreement has expired.

(11) Notwithstanding the provisions of subsections (3), (6), (7), and (9), the MHD development corporation shall make a payment to the department no later than June 30, 1994, and a second payment no later than June 30, 1995, from loan proceeds in an amount equal to the interest that would have been earned for the general fund from the investment of the amount of the clean coal technology demonstration funds disbursed to the MHD development corporation. The payments must be deposited in the general fund. The payment periods begin on the date of the first disbursement under the loan agreement, the first period ends June 30, 1994, and the second period ends on the date the U.S. department of energy issues a final authorization to proceed as described in subsection (5)(c) or on June 30, 1995, whichever occurs first. The amount must

be calculated by the department with the assistance of the office of budget and program planning, based on:

(a) the interest rate applicable to the investment of the coal severance tax permanent fund for the dates on which the loan proceeds were disbursed;

(b) the amount of disbursement; and

(c) the actual impact on the general fund.

(12) The MHD development corporation shall pay all principal and interest owed to the state on the loan made to the MHD-Corette project pursuant to Chapter 793, Laws of 1991. This repayment requirement is effective at the time the MHD development corporation has secured the total amount of financing necessary to initially capitalize the Billings MHD development project. Notwithstanding section 1(3), Chapter 793, Laws of 1991, $50,000 of the amount repaid under this subsection must be deposited in the state special revenue account created by 90-2-1104 for use by the department in administering the clean coal technology demonstration program.

(13) The department may hold the following security positions if the positions do not impair the security positions of senior debt creditors to the Billings MHD demonstration project:

(a) a security position associated with any of the repayment sources listed in subsection (7); and

(b) a security position in the sale of the assets of the Billings MHD demonstration project.

(14) (a) The department must be satisfied, before the loan agreement is entered into, that:

(i) the MHD development corporation has acquired from the participating companies and other relevant parties ownership of rights and other positions of ownership related to the MHD technology that are sufficient to meet its repayment obligations under the loan agreement; and

(ii) the projected level of initial capitalization, operating income, expenses, and other factors affecting the financial viability of the Billings MHD demonstration project is sufficient for the MHD development corporation, through its ownership and operation of the Billings MHD demonstration project, to operate the project and to meet its repayment obligations to creditors.

(b) The following protective positions must be contained in the loan agreement:

(i) the provisions contained in subsection (14)(a) must be included;

(ii) the requirements for repayment, reporting, and other obligations of the MHD development corporation under the loan agreement must be assigned to any party that may purchase the assets or otherwise receive ownership of the MHD technology or the Billings MHD demonstration project; and

(iii) the obligations extend beyond the loan agreement.

(15) The following reports must be required by the loan agreement:

(a) During the time before the Billings MHD demonstration project begins operation, the MHD development corporation shall deliver to the department, within 30 days after the end of each semiannual period, a progress report briefly describing the status of the project, any significant events that occurred in the previous period, and a summary of the project's financial position.

(b) After the project begins operation, the MHD development corporation shall deliver to the department reports of activities, financial statements, and other reports according to requirements established by the department. The requirements may not be less than those imposed upon any other senior debt creditor to the project. The reports must detail the amount of principal and interest owed to the department, any payments made to the department, any events that trigger a payment requirement related to the loan, and any other factor of significance related to the loan agreement.

(c) The MHD development corporation shall provide to the department an annual statement of any transaction or the absence of any transaction related to the sale, lease, or licensing of the MHD technology and to the sale of component equipment manufactured for use in the MHD technology and an annual statement of any amount owed to the department as a result of those activities.

(d) The department shall prepare and deliver a biennial report to the legislature describing the status of the loan agreement and the status of the project.

(16) The terms of a repayment agreement established in relation to funds provided to the MHD development corporation for the Billings MHD demonstration project by the U.S. department of energy through the federal clean coal V funding program may not include an interest rate, security provision, or other term that increases the likelihood of repayment that is greater than that afforded to the department under the loan agreement. If the department considers that the terms related to the U.S. department of energy are more favorable than those established in the loan agreement, the department and the MHD development corporation shall amend the loan agreement to strengthen its provisions accordingly.

(17) The terms and conditions described in subsections (1) through (16) may not be construed as inclusive of all terms and conditions that may constitute the loan agreement. The department may include other terms and conditions it considers necessary if the other terms and conditions do not substantially alter the provisions described in this section.

(18) The department shall report to the first scheduled meeting of the legislative finance committee if:

(a) the MHD development corporation chooses not to pursue the loan agreement;

(b) the department and the MHD development corporation, after reasonable efforts, fail to agree on final terms and conditions of the loan agreement; or

(c) other events reasonably preclude the ability of the parties to establish an agreement.

Section 4. Section 17-5-703, MCA, is amended to read:

"**17-5-703. Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;

(b) a treasure state endowment fund;

(c) a clean coal technology demonstration fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund; and

(f) a coal severance tax school bond contingency loan fund.

(2) The state treasurer shall determine the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next two ensuing semiannual payment dates and retain that amount in the coal severance tax bond fund.

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) Beginning July 1, 1991, and ending June 30, 1997, from any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of any amount that is required to be transferred by subsection (3), the ~~state treasurer~~ *department of revenue* shall, *upon request from the department of natural resources and conservation,* ~~from time to time~~ transfer an amount ~~not exceeding~~ *up to* $5 million per fiscal year to the clean coal technology demonstration fund.

(5) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall transfer to the treasure state endowment fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsections (3) and (4).

(6) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall from time to time transfer to the coal severance tax permanent

fund 50% of the principal transferred from the coal severance tax bond fund to the treasure state endowment fund in the preceding year.

(b) The state treasurer shall annually transfer to the treasure state endowment special revenue account the amount of interest earnings required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Interest earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund."

Section 5. Section 11, Chapter 722, Laws of 1991, is amended to read:

"Section 11. **Transfer of funds.** There is transferred from the coal severance tax permanent fund *up to* $25 million, *upon request of the department of natural resources and conservation,* to the clean coal technology demonstration fund *for projects approved pursuant to the provisions of [sections 4 through 10].*"

Section 6. Section 1, Chapter 793, Laws of 1991, is amended to read:

"Section 1. **Appropriation.** (1) There is appropriated $750,000 from the local impact account, to be used ~~by June 30, 1993,~~ as provided in subsection (2).

(2) (a) There is appropriated $500,000 from the local impact account to eastern Montana college to be used by June 30, ~~1993~~ *1995,* to provide funding for a clean fuels information depository, distribution, and market development center at eastern Montana college. The center shall focus on all available clean coal technology information worldwide in order to allow Montana to become a leader in the field of clean fuels technology information and marketing. The clean fuels information center shall enhance the current technology research and development being conducted in the Montana university system.

(b) There is appropriated $250,000 from the local impact account to the department of natural resources and conservation to be used by June 30, 1993, for the loan described in subsection ~~(2)~~ *(3).*

(3) A loan of $250,000 to the MHD-Corette project is approved at an interest rate of 12% compounded annually. The loan must be matched on a 1-to-1 basis from nonstate appropriated sources, used for developing the project's application to receive clean coal technology program funding from the U.S. department of energy, and repaid to the state special revenue fund for state equalization aid to public schools from revenue the project's owner derives from the sale or licensing of the MHD technology or from the sale, lease, or licensing of the project. The total debt of the project related to this loan may not exceed 2 ½ times the loan amount."

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 516

[HB 654]

AN ACT REMOVING THE REQUIREMENT THAT THE DEPARTMENT OF STATE LANDS PROVIDE A YOUTH FOREST CAMP WORK PROGRAM; REPEALING SECTION 52-5-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 52-5-104, MCA, is repealed.

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 517

[HB 663]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE AND THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS AND LOANS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS AND LOANS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS AND LOANS; AUTHORIZING THE ISSUANCE OF TREASURE STATE ENDOWMENT BONDS TO FUND GRANTS; AUTHORIZING THE CREATION OF A STATE DEBT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations from treasure state endowment account.** (1) There is appropriated to the department of commerce a portion of the interest earnings from the proceeds of the treasure state endowment special revenue account to finance grants authorized by this section.

(2) There is appropriated to the department of natural resources and conservation a portion of the interest earnings from the proceeds of the treasure state endowment special revenue account to finance loans authorized by this section. Loan repayments from loans made from the treasure state endowment special revenue account must be deposited in the treasure state endowment special revenue account.

(3) The funds appropriated in this section must be used by the departments to make loans or grants to the local government entities listed in subsection (4) for the described purposes and in amounts not to exceed the described grant and loan amounts set out in subsection (4), subject to the conditions set forth in [sections 1 through 7] and the contingencies described in the treasure state endowment program January 1993 report to the 53rd legislature. The legislature, pursuant to 90-6-710, approves the grants and loans listed in subsection (4), in the order indicated in the list of projects. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher-ranked

projects must be provided for projects in lower positions on the priority list that would not otherwise receive funding.

(4) The following are the grant and loan projects in the order of their priority:

	Recommended Funding	
Applicant/Project	Matching Grant	Deferred Engineering Loan
Butte-Silver Bow (water)	$300,000	
Anaconda/Deer Lodge (water)	350,000	
Carbon Co. (bridge)	25,000	
Neihart (water)	544,673	
Missoula Co./Sunset West (water)	154,107	
Yellowstone Co. (bridge)	95,500	
Circle (water)	370,000	
Stillwater Co./Reedpoint (sewer)	200,000	
Beaverhead Co. (solid waste)	160,000	
Ronan (sewer)	100,000	
Shelby (SD/sewer)	366,000	
Wheatland Co. (solid waste)		$33,000
Harlem (water)	217,300	
Richland Co. (solid waste)	285,000	
Lewistown (storm drainage)	60,000	
Helena (water)	338,633	
Livingston (storm drainage)	100,000	
Toole Co./Sweetgrass (water)		25,000
Froid (water)	117,000	
Ennis (water)	100,000	
Gallatin Co./RAE subdivision (water)	33,245	
Yellowstone Co./Shepherd (water)		85,000
Dutton (water)	50,000	
Toole Co./Sweetgrass (sewer)		25,000

(5) To the local government entities listed in subsection (4), the appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds during the 1995 biennium under 17-7-302.

Section 2. **Authorization of treasure state endowment bonds — appropriation of proceeds of bonds.** (1) The board of examiners may issue treasure state endowment bonds in an amount not to exceed $4,462,900 for the purpose of funding the grants authorized and approved in [section 1]. The bond proceeds must be used to fund grants that cannot be funded with the interest earnings from the treasure state endowment special revenue account appropriated in [section 1(1)]. The bond proceeds may be used to pay the costs of issuing the bonds and establishing a reserve for the bonds.

(2) The proceeds of the bonds are appropriated to the department of commerce to finance grants authorized by [section 1] and to pay the costs of issuing the bonds.

Section 3. **Approval of grants from bond proceeds — completion of appropriation.** The legislature, pursuant to 90-6-701, approves the grants to local government entities for projects identified and described in [section 1] from the proceeds of treasure state endowment bonds issued under Senate Bill No. 402.

Section 4. **Conditions of grants and loans.** Disbursement of funds under [sections 1 through 7] for both grants and loans is subject to the following conditions, which must be met by grantees and borrowers:

(1) approval of a scope of work and budget for the project by the department of commerce and the department of natural resources and conservation, provided that a reduction in a scope of work or budget may not affect the priority of activities or improvements;

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the treasure state endowment program project evaluations and recommendations report submitted to the 53rd legislature for the 1995 biennium or of conditions specified at the time of written notification of grant approval;

(4) execution of a grant or loan agreement with either department; and

(5) satisfaction of other specific requirements considered necessary by either department to accomplish the purpose of the grant or loan as evidenced by the application to the department of commerce or the proposal to the legislature.

Section 5. **Conditions for grants.** (1) Grant funds must be disbursed in the order of priority listed in [section 1] as treasure state endowment special revenue account interest income is received. A project approved in [section 1] may not receive grant funds until sufficient revenue has been deposited in the treasure state endowment special revenue account and is available for that purpose.

(2) In the event that construction bids received for a project are less than the projected costs, the department of commerce shall establish a final project budget at the bid price, plus a 10% contingency. The department may, at its discretion, reduce the amount of funding to be provided in proportion to all other project funding sources. In the alternative, the department may authorize the construction of additional, directly related project components to enhance the overall project, in amounts not to exceed the originally approved project budget.

(3) The department shall disburse grant funds on a reimbursement basis as grantees incur project costs. With respect to any individual claim, the department shall reimburse the grantee in an amount that bears the same relationship to the amount expended as the treasure state endowment program's maximum contribution to the project bears to the total project cost.

Section 6. **Conditions for loans.** Each local government entity authorized to receive a loan from the treasure state endowment special revenue account proceeds or bond proceeds may be required to pay to the department of natural resources and conservation a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 7. **Private and discount purchase of loans.** A loan to a local government entity and a bond, warrant, or note issued in evidence of a loan may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to the local government entity.

Section 8. **Creation of debt for treasure state endowment bonds.** (1) The legislature, through the enactment of this section by a vote of two-thirds of the members of each house of the legislature, in accordance with Article VIII, section 8, of the Montana constitution, authorizes the creation of a state debt in an amount not to exceed $4,462,900 to fund grants to local government projects approved in [section 1], to pay the costs of issuance, and to establish a reserve for the bonds.

(2) In connection with the issuance of treasure state endowment bonds, the board of examiners may pay the principal of and the interest on the bonds, when due, from a debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to funding the grants must be allocated to the debt service account to pay the debt service on the bonds. Earnings in excess of debt service, if any, must be allocated to the treasure state endowment special revenue account and may be used for the purpose provided in 90-6-703.

Section 9. **Requirement for approval of state debt.** Because [section 8] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for the enactment of [section 8].

Section 10. **Coordination.** If Senate Bill No. 402 is not passed and approved, then [sections 2 and 8] are void.

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 518

[HB 674]

AN ACT GENERALLY REVISING THE LAWS RELATING TO STATE CONSTRUCTION PROJECTS; INCREASING TO $50,000 THE COST FOR A BUILDING THAT MAY BE CONSTRUCTED WITHOUT LEGISLATIVE CONSENT; AUTHORIZING THE GOVERNOR TO TRANSFER FUNDS AND AUTHORITY FOR THE EMERGENCY REPAIR OF BUILDINGS; REMOVING THE BOARD OF EXAMINERS FROM CERTAIN BUILDING FUNCTIONS; ALLOWING THE DEPARTMENT OF ADMINISTRATION TO CONTRACT FOR WORK IF RESPONSIBLE BIDS ARE NOT RECEIVED; INCREASING TO $10,000 THE AMOUNT OF ARCHITECTURAL, ENGINEERING, AND LAND SURVEYING SERVICES THAT MAY BE CONTRACTED FOR BY DIRECT NEGOTIATION; AMENDING SECTIONS 18-2-102, 18-2-103, 18-2-105, 18-2-111, 18-2-112, 18-2-301, AND 18-8-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-102, MCA, is amended to read:

"**18-2-102. Authority to construct buildings.** (1) Except as provided in subsection (2) ~~of this section~~, a building costing more than ~~$25,000~~ *$50,000* may not be constructed without the consent of the legislature. When a building costing more than ~~$25,000~~ *$50,000* is to be financed in ~~such~~ a manner ~~as~~ *that does* not ~~to~~ require legislative appropriation of ~~moneys~~ *money,* ~~such~~ *the* consent may be in the form of a joint resolution.

(2) (a) The governor may authorize the emergency repair or alteration of a building *and is authorized to transfer funds and authority as necessary to accomplish the project. Transfers may not be made from the funds for an uncompleted capital project unless the project is under the supervision of the same agency.*

(b) The regents of the Montana university system may authorize the construction of revenue-producing facilities referred to in 20-25-302 if they are to be financed wholly from the ~~revenues therein described~~ *revenue from the facility.*

(c) The regents of the Montana university system, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private ~~moneys~~ *money* if the construction of the building will not result in any new programs.

(d) The department of military affairs, with the consent of the governor, may authorize the construction of a building that is financed wholly with federal or private ~~moneys~~ *money* on federal land for the use or benefit of the state."

Section 2. Section 18-2-103, MCA, is amended to read:

"**18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing more than ~~$25,000~~ *$50,000,* the department of administration shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of *the* bid amount~~.~~*;* ~~However, any contract award that is protested or any contract that is awarded to a bidder other than the lowest bidder is subject to approval by the board of examiners.~~

(d) review and approve all change orders*; and* ~~up to $25,000. Any change order over $25,000 must be with the consent of the board of examiners. The department may refer change orders under $25,000 that affect the project scope or other unusual change orders to the board of examiners for consideration. The board of examiners shall act within 14 working days after processing completion by the department.~~

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department. ~~However, any powers and duties subject to the approval of the board of examiners may not be delegated.~~

(3) ~~For repair and maintenance projects, the supervision, approval, and consent of the board of examiners are not required.~~

~~(4)~~ Before ~~any~~ *a* contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

~~(5)~~*(4)* The department need not require the provisions of Montana law relating to advertising, bidding, or supervision ~~where~~ *when* proposed construction costs are $25,000 or less. However, with respect to a project having a proposed cost of $25,000 or less but more than $5,000, the agency awarding the contract ~~must~~ *shall* procure at least three informal bids from contractors licensed in Montana, if reasonably available.

~~(6)~~*(5)* For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to ~~insure~~ *ensure* compliance with the plans and specifications for the construction of ~~such~~ *the* buildings. "Construction" ~~shall include~~ *includes* construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services ~~shall~~ *must* be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction regulation account in a state special revenue fund.

~~(7)~~*(6)* It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through ~~(4)~~*(3)* ~~of this section~~.

~~(8)~~*(7)* The department of military affairs may act as *the* contracting agency for buildings constructed under the authority of 18-2-102(2)(d); however, the department of administration may agree to act as *the* contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving ~~such~~ a contract."

Section 3. Section 18-2-105, MCA, is amended to read:

"**18-2-105. General powers and duties of department of administration.** In carrying out powers relating to the construction of buildings, the department of administration may:

(1) inspect buildings not under construction;

(2) contract with the federal government for advance planning funds;

(3) transfer funds and authority to agencies and accept funds and authority from agencies;

~~(3)~~*(4)* purchase, lease, and acquire by exchange or otherwise, land and buildings in Lewis and Clark County and equipment and furnishings for ~~such~~ *the* buildings;

~~(4)~~*(5)* issue and sell bonds and other securities;

~~(5)~~*(6)* maintain an inventory of all buildings;

~~(6)~~*(7)* appoint a project representative to supervise architects' and consulting engineers' inspection of construction of buildings to ~~assure~~ *ensure* that all construction is in accordance with the contracts, plans, and specifications. The cost of supervision may be charged against ~~moneys~~ *money* available for construction.

~~(7)~~*(8)* negotiate deductive changes, not to exceed 7% of the total cost of a project, with the lowest responsible bidder when the lowest responsible bid causes the project cost to exceed the appropriation or with the lowest responsible bidders, if multiple contracts will be awarded on the project, when the total of the lowest responsible bids causes the project cost to exceed the appropriation. A bidder is not required to negotiate ~~his~~ *a* bid but is required to honor ~~his~~ *the* bid for the time specified in the bidding documents. The department may terminate negotiations at any time. Any contract award resulting from negotiation is subject to the approval of the board of examiners."

Section 4. Section 18-2-111, MCA, is amended to read:

"**18-2-111. Policy regarding practice of architecture — preparation of working drawings by department limited.** (1) It is the policy of the state not to engage in the practice of architecture; however, this policy ~~shall~~ *may* not be construed as prohibiting the department of administration from:

(a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;

(b) supervising construction as provided in 18-2-105~~(6)~~*(7)*; or

(c) preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed $25,000."

Section 5. Section 18-2-112, MCA, is amended to read:

"**18-2-112. Appointment of architects and consulting engineers.** The department of administration shall appoint any architect or consulting engineer retained for work on any building to be constructed, remodeled, or renovated by the state of Montana, its boards, institutions, and agencies from a list of three architects or consulting engineers proposed by the state board, institution, or agency ~~where~~ *for which* the work is to be done. ~~Such appointment shall be subject to the approval of the state board of examiners.~~ The department need not appoint an architect or consulting engineer for repair or maintenance projects."

Section 6. Section 18-2-301, MCA, is amended to read:

"**18-2-301. Bids required — advertising.** (1) It is unlawful for ~~the board of examiners or~~ any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is $25,000 or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform ~~such~~ *the* work and stating the time and place bids will be considered.

(2) All ~~such~~ work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If ~~no bid for such work is accepted, the work may not be done or accomplished. The work may be readvertised from time to time until awarded to a qualified competitive bidder.~~ *responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.*

(4) This section does not apply to work done by inmates at an institution in the department of corrections and human services."

Section 7. Section 18-8-212, MCA, is amended to read:

"**18-8-212. Exception.** (1) All agencies securing architectural, engineering, and land surveying services for projects for which the fees are estimated not to exceed ~~$5,000~~ *$10,000* may contract for those professional services by direct negotiation.

(2) ~~No~~ *An* agency may *not* separate service contracts or split or break projects for the purpose of circumventing the provisions of this part."

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 519

[HB 216]

AN ACT REVISING THE MOTOR FUEL MARKETING UNFAIR PRACTICES LAW; PROVIDING THAT AN ADVERTISEMENT, OFFERING TO SELL, OR SALE OF MOTOR FUEL AT LESS THAN COST IS PRIMA FACIE EVIDENCE OF INTENT TO INJURE OR DESTROY COMPETITORS, INJURE OR DESTROY COMPETITION, OR SUBSTANTIALLY LESSEN COMPETITION; REMOVING THE TERMINATION OF THE REGULATION OF RETAIL MOTOR FUEL PRICING; AMENDING SECTION 30-14-804, MCA, AND SECTION 9, CHAPTER 499, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-804, MCA, is amended to read:

"**30-14-804.** ~~(Temporary)~~ **Below-cost sale prohibited.** (1) A wholesaler may not sell motor fuel to a retail motor fuel outlet at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy *competitors or to injure or destroy* competition or substantially lessen competition.

(2) A retailer may not sell motor fuel at less than the delivered cost of the motor fuel plus the cost of doing business if the effect is to injure or destroy *competitors or to injure or destroy* competition or substantially lessen competition.

(3) A wholesaler may not sell or transfer motor fuel to itself or an affiliate for resale at a retail outlet at a transfer price lower than the price the wholesaler charges another retail motor fuel outlet that purchases a like quantity within the same competitive area if the effect is to injure or destroy *competitors or to injure or destroy* competition or substantially lessen competition.

(4) The provisions of this part do not apply to a sale at wholesale or a sale at retail made:

(a) in an isolated transaction not in the usual course of business;

(b) if motor fuels are advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in the motor fuel and the advertising, offer to sell, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or to be sold;

(c) if the motor fuel is advertised, offered for sale, or sold as imperfect or damaged and the advertising, offer of sale, or sale states the reason for the sale and the quantity of the motor fuel advertised, offered for sale, or sold;

(d) if motor fuel is sold upon the final liquidation of a business; or

(e) if motor fuel is advertised, offered for sale, or sold by a fiduciary or other officer under the order or direction of a court.

(5) Notice required under this section is not sufficient unless the subject of the sale is kept separate from other stocks and is clearly and legibly marked with the reason for the sale and any advertisement of the goods indicates the same facts and the quantity to be sold.

(6) A wholesaler or retailer may advertise, offer to sell, or sell motor fuel at a price made in good faith to meet the price of a competitor who is selling the same or a similar product of like grade and quality. The price of motor fuel advertised, offered for sale, or sold under the exceptions in subsection (4) may not be considered the price of a competitor and may not be used as a basis for establishing prices below cost, and the price established at a bankruptcy sale may not be considered the price of a competitor under the provisions of this section.

(7) If a wholesaler sells motor fuel to another wholesaler, the former is not required to include in his selling price to the latter the cost of doing business as defined in 30-14-803, but the latter wholesaler, upon resale to a retailer, is subject to the provisions of this section.

(8) Evidence of advertisement, offering to sell, or sale of motor fuel at less than cost is prima facie evidence of intent to injure competitors or destroy or substantially lessen competition. ~~(Terminates July 1, 1993—sec. 9, Ch. 499, L. 1991.)~~"

Section 2. Section 9, Chapter 499, Laws of 1991, is amended to read:

"Section 9. **Effective date ~~— termination~~.** [This act] is effective on passage and approval ~~and terminates July 1, 1993~~."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 520

[HB 330]

AN ACT CLARIFYING THE STATUTE OF LIMITATIONS FOR INDIVIDUAL INCOME TAX ASSESSMENTS AND REFUND CLAIMS; AMENDING SECTIONS 15-30-145, 15-30-147, 15-30-149, AND 15-30-303, MCA; REPEALING SECTION 15-30-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-145, MCA, is amended to read:

"**15-30-145. Revision of return by department — *statute of limitations* — examination of records and persons.** (1) If, in the opinion of the department, any return of a taxpayer is in any essential respect incorrect, it may revise ~~such~~ *the* return.

(2) If ~~any~~ *a* taxpayer ~~fails to make~~ *does not file a* return as ~~herein~~ required *under this chapter*, the department ~~is authorized to make an~~ *may, at any time, audit the taxpayer or* estimate ~~of~~ the taxable income of ~~such~~ *the* taxpayer from any information in its possession and, ~~to audit and state an account according to such return or the estimate so made by it~~ *based upon the audit or estimate, assess the taxpayer* for the taxes, penalties, and interest due the state ~~from such taxpayer~~.

(3) Except ~~in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this chapter~~ *as provided in subsections (2) and (4)*, the amount of tax due under any return ~~shall~~ *may* be determined by the department within 5 years after the return was ~~made and the department thereafter shall be barred from revising any such returns or recomputing the tax due thereon, and no proceeding in court for the collection of such tax shall be instituted after the expiration of said period, notwithstanding the provisions of 15-30-322~~ *filed, regardless of whether the return was filed on or after the last day prescribed for filing. For the purposes of 15-30-147 and this section, a tax return due under this chapter and filed before the last day prescribed by law or rule is considered to be filed on the last day prescribed for filing.*

(4) ~~In the case of a person who~~ *If a taxpayer*, with intent to evade the tax, purposely or knowingly files a false or fraudulent return ~~violating the provisions~~ *that violates a provision* of this chapter, the amount of tax due may be determined at any time after the return is filed and the tax may be collected at any time after it becomes due ~~and, where no return has been filed, the tax may be assessed at any time~~.

~~(2)~~*(5)* The department, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined by any agent or representative designated by it for that purpose any books, papers, or records of memoranda bearing upon the matters required to be included in the return and may require the attendance of the person rendering the return or any officer or employee of ~~such~~ *the* person or the attendance of any person having knowledge in the premises and may take testimony and require proof material for its information, with power to administer oaths to ~~such~~ *the* person or persons."

Section 2. Section 15-30-147, MCA, is amended to read:

"**15-30-147. Application for revision — appeal.** An application for revision may be filed with the department by a taxpayer within 5 years from the ~~original due date of the return~~ *last day prescribed for filing the return as provided in 15-30-145(3), regardless of whether the return was filed on or after the last day prescribed for filing. If the department has revised a return pursuant to 15-30-145(3), the taxpayer may revise the same return until the liability for that tax year is finally determined.* If the taxpayer is not satisfied with the action taken by the department, ~~he~~ *the taxpayer* may appeal to the state tax appeal board ~~as provided therein, which shall have authority to grant the claim or any part thereof~~."

Section 3. Section 15-30-149, MCA, is amended to read:

"**15-30-149. Credits and refunds — period of limitations.** (1) If the department discovers from the examination of a return or upon claim duly filed by a taxpayer or upon final judgment of a court that the amount of income tax collected is in excess of the amount due or that any penalty or interest was erroneously or illegally collected, the amount of the overpayment ~~shall~~ *must* be credited against any income tax, penalty, or interest then due from the taxpayer and the balance of ~~such~~ *the* excess ~~shall~~ *must* be refunded to the taxpayer.

(2) (a) A credit or refund under the provisions of this section may be allowed only if, prior to the expiration of the period provided by ~~15-30-145 and by~~ 15-30-146 *and 15-30-147* ~~during which the department may determine tax liability~~, the taxpayer files a claim or the department determines there has been an overpayment.

(b) If an overpayment of tax results from a net operating loss carryback, the overpayment may be refunded or credited within the period that expires on the 15th day of the 40th month following the close of the taxable year of the net operating loss if that period expires later than 5 years from the due date of the return for the year to which the net operating loss is carried back.

(3) Within 6 months after a claim for refund is filed, the department shall examine the claim and either approve or disapprove it. If the claim is approved, the credit or refund must be made to the taxpayer within 60 days after the claim is approved. If the claim is disallowed, the department shall ~~so~~ notify the taxpayer and *a* review of the determination of the department may be pursued as provided in 15-1-211.

(4) Interest is allowed on overpayments at the same rate as charged on delinquent taxes. Interest is payable from the due date of the return or from the date of the overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. With respect to tax paid by withholding or by estimate, the date of overpayment is the date on which the return for the taxable year was due. Interest does not accrue on an overpayment if the taxpayer elects to have it applied to ~~his~~ *the taxpayer's* estimated tax for the succeeding taxable year. Interest does not accrue during any period the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment. Interest is not allowed if:

(a) the overpayment is refunded within 6 months from the date the return is due or the date the return is filed, whichever date is later;

(b) the overpayment results from the carryback of a net operating loss; or

(c) the amount of interest is less than $1.

(5) An overpayment not made incident to a bona fide and orderly discharge of an actual income tax liability or one reasonably assumed to be imposed by this law is not considered an overpayment with respect to which interest is allowable."

Section 4. Section 15-30-303, MCA, is amended to read:

"**15-30-303. Confidentiality of tax records.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this chapter or any other information secured in the administration of this chapter. It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding to which the department is a party under the provisions of this chapter or any other taxing act or on behalf of any party to any action or proceedings under the provisions of this chapter or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events the court may require the production of and may admit in evidence so much of said reports or of the facts shown thereby as are pertinent to the action or proceedings and no more.

(3) Nothing herein shall be construed to prohibit:

(a) the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax;

(b) the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311 ~~and 15-30-322~~.

(4) Reports and returns shall be preserved for 3 years and thereafter until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) of this section shall be punished by a fine not exceeding $1,000 or by imprisonment in the county jail not exceeding 1 year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of 1 year thereafter.

(6) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either such officer to inspect the return of income of any individual or may furnish to such officer or his authorized representative an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return or disclosed by the report of any investigation of the income or return of income of any

individual, but such permission shall be granted or such information furnished to such officer or his representative only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(7) Further, notwithstanding any of the provisions of this section, the department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of social and rehabilitation services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses; and

(d) to the board of regents information required under 20-26-1111."

Section 5. **Repealer.** Section 15-30-322, MCA, is repealed.

Section 6. **Effective date — applicability.** [This act] is effective on passage and approval and applies to all tax years.

Approved April 24, 1993.

CHAPTER NO. 521

[HB 402]

AN ACT CHANGING FROM 10 YEARS TO 5 YEARS THE TIME WHEN PERSONAL PROPERTY TAXES MAY BE CANCELED IF THE COUNTY HAS EXHAUSTED ALL EFFORTS TO SEIZE AND SELL THE PROPERTY; CLARIFYING THAT PERSONAL PROPERTY TAXES UNPAID BECAUSE OF BANKRUPTCY OR OTHER LITIGATION NEED NOT BE LISTED AS UNCOLLECTED; AND AMENDING SECTION 15-16-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-701, MCA, is amended to read:

"**15-16-701. Personal property taxes ~~ten~~ *five* years delinquent — list.** (1) It ~~shall be~~ *is* the duty of each county treasurer to prepare in triplicate and submit to the board of county commissioners of ~~his~~ *the* county, on or before the first Monday of June in each year, a list of personal property taxes that are not a lien on real estate and that have been delinquent for ~~10~~ *5* years or more. The list ~~shall~~ *must* show the following:

(a) *the* name and address of the delinquent taxpayer;

(b) *the* amount of the delinquent taxes, plus interest, penalties, and costs, if any; and

(c) the date the taxes became delinquent.

(2) The list prepared pursuant to subsection (1) may not include personal property taxes that remain uncollected because of bankruptcy or other litigation.

~~(2)~~*(3)* Every county treasurer shall, within the same time, prepare in triplicate and submit to the board of county commissioners of ~~his~~ *the* county a list of all contractual obligations owed to or held by ~~his~~ *the* county for seed grain, feed, or other relief, the collection of which is barred by the statute of limitations provided in 27-2-202(1). The list must show the following:

(a) the name and address of the person or persons who entered into the contractual obligation;

(b) the name of the contractual obligation, as "seed loan", "feed loan", "promissory note", as applicable; and

(c) the date of obligation, date when *the* last payment became due, date of *the* last payment ~~thereon~~ *on the obligation*, and the date when the collection of the obligation became barred by the statute of limitations provided in 27-2-202(1)."

Approved April 24, 1993.

CHAPTER NO. 522

[HB 430]

AN ACT INCREASING THE RETIREMENT BENEFITS OF A MEMBER OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM WHO WORKS MORE THAN 20 YEARS; REMOVING THE MAXIMUM RETIREMENT BENEFIT THAT MAY BE EARNED FOR MORE THAN 20 YEARS OF SERVICE; INCREASING EMPLOYEE CONTRIBUTIONS TO PAY FOR THE BENEFIT INCREASE; AMENDING SECTIONS 19-9-601 AND 19-9-804, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-601, MCA, is amended to read:

"**19-9-601. Member contributions.** (1) The normal contribution of each active member is ~~6%~~ *7.36%* of ~~his~~ *the member's* monthly compensation. In the case of a member first employed by an employer as a police officer after June 30, 1975, the contribution is ~~7.2%~~ *8.56%* of ~~his~~ *the member's* monthly compensation. In the case of a member first employed by an employer as a police officer after June 30, 1979, the contribution is ~~8.7%~~ *10.06%* of ~~his~~ *the member's* monthly compensation. Compensation excludes overtime payments, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for ~~his~~ services as a police officer.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and ~~his~~ *in the member's* monthly compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 2. Section 19-9-804, MCA, is amended to read:

"**19-9-804. Amount of service retirement allowance — continuation of allowance after death of member.** (1) ~~A police officer with 20 years of qualified service who is eligible under 19-9-801 and does not elect to serve any additional years as an active police officer shall receive a service retirement allowance equal to one-half his final average salary.~~

~~(2) A police officer who is eligible for service retirement under 19-9-801 after 20 years of qualified service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of his final average salary for each year of additional qualified service, up to a maximum of 60% of his final average salary.~~

~~(3)~~ A member who is eligible for service retirement under 19-9-801 ~~with less than 20 years of qualified service shall~~ *must* receive a retirement allowance equal to 2.5% of ~~his~~ *the member's* final average salary for each year of qualified service.

~~(4)~~*(2)* (a) Upon the death of a police officer receiving a service retirement allowance ~~under subsection (1) or (2)~~ *based on at least 20 years of service,* ~~his~~ *the officer's* surviving spouse, if there is one, ~~shall~~ *must* receive ~~from the fund~~ a ~~sum~~ *benefit* equal to one-half of the officer's final average salary.

(b) Upon the death of a member receiving a service retirement allowance ~~under subsection (3)~~ *based on less than 20 years of service,* ~~his~~ *the member's* surviving spouse, if there is one, ~~shall~~ *must* receive ~~from the fund~~ a ~~sum~~ *benefit* equal to the amount of the officer's allowance at the time of ~~his~~ death.

(c) If the officer leaves one or more dependent children, then upon ~~his~~ *the officer's* death, if ~~he leaves~~ *there is* no surviving spouse or upon the death of the surviving spouse, the officer's surviving dependent child~~,~~ or children collectively if there are more than one~~, shall~~ *must* receive the same monthly payments a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 523

[HB 482]

AN ACT PROVIDING FOR CIVIL CONTEMPT FOR FAILURE TO PAY SUPPORT; PROVIDING A PATERNITY ACKNOWLEDGMENT PROCESS; AND PROVIDING FOR THE SUSPENSION OF STATE-ISSUED LICENSES FOR FAILURE TO PAY SUPPORT.

STATEMENT OF INTENT

A statement of intent is required for this bill because [sections 2 and 11] require the department of social and rehabilitation services to adopt rules necessary for the implementation and administration of [sections 2 through 10] and [section 11] requires the licensing authority to adopt rules necessary for the implementation and administration of [sections 3 through 10].

The rules may include provisions regarding:

(1) the provision of reimbursements to hospitals, institutions, and midwives for paternity acknowledgment costs;

(2) the notice of intent to suspend licenses;

(3) the hearing procedure used to review the cause for suspension of a license;

(4) the approval of payment plans agreed to by obligors for payment of support debts;

(5) the determination of circumstances creating a hardship that warrant a stay of action for suspension of a license; and

(6) the procedures for implementing and enforcing an order suspending a license.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Failure to pay support — civil contempt.** (1) For purposes of this section, "support" means child support; spousal support; health insurance, medical, dental, and optical payments; day care expenses; and any other payments due as support under a court or administrative order. Submission of health insurance claims is a support obligation if health insurance coverage is ordered.

(2) If a person obligated to provide support fails to pay as ordered, the payee or assignee of the payee of the support order may petition a district court to find the obligated person in contempt.

(3) The petition may be filed in the district court:

(a) that issued the support order;

(b) of the judicial district in which the obligated person resides; or

(c) of the judicial district in which the payee or assignee of the payee resides or has an office.

(4) Upon filing of a verified petition alleging facts constituting contempt of the support order, the district court shall issue an order requiring the obligated person to appear and show cause why the obligated person should not be held in contempt and punished under this section.

(5) The obligated person is presumed to be in contempt upon a showing that:

(a) there is a support order issued by a court or administrative agency of this or another state with jurisdiction to enter the order;

(b) the obligated person had actual or constructive knowledge of the order; and

(c) the obligated person failed to pay support as ordered.

(6) Certified payment records maintained by a clerk of court or administrative agency authorized by law or by the support order to collect support are admissible in a proceeding under this section and are prima facie evidence of the amount of support paid and any arrearages under the support order.

(7) Following a showing under subsection (5), the obligated person may move to be excused from the contempt by showing clear and convincing evidence that the obligated person:

(a) has insufficient income to pay the arrearages;

(b) lacks personal or real property that can be sold, mortgaged, or pledged to raise the needed sum;

(c) has unsuccessfully attempted to borrow the sum from a financial institution;

(d) has no other source, including relatives, from which the sum can be borrowed or secured;

(e) does not have a valid out-of-court agreement with the payee waiving, deferring, or otherwise compromising the support obligation; or

(f) cannot, for some other reason, reasonably comply with the order.

(8) In addition to the requirement of subsection (7), the obligated person shall also show by clear and convincing evidence that factors constituting the excuse were not occasioned or caused by the obligated person voluntarily:

(a) remaining unemployed or underemployed when there is employment suitable to the obligated person's skills and abilities available within a reasonable distance from the obligated person's residence;

(b) selling, transferring, or encumbering real or personal property for fictitious or inadequate consideration within 6 months prior to a failure to pay support when due;

(c) selling or transferring real property without delivery of possession within 6 months prior to a failure to pay support when due or, if the sale or transfer includes a reservation of a trust for the use of the obligated person, purchasing real or personal property in the name of another person or entity;

(d) continuing to engage in an unprofitable business or contract unless the obligated person cannot reasonably be removed from the unprofitable situation; or

(e) incurring debts subsequent to entry of the support order that impair the obligated person's ability to pay support.

(9) If the obligated person is not excused under subsections (7) and (8), the district court shall find the obligated person in contempt of the support order. For each failure to pay support under the order, the district court shall order punishment as follows:

(a) not more than 5 days incarceration in the county jail;

(b) not more than 120 hours of community service work;

(c) not more than a $500 fine; or

(d) any combination of the penalties in subsections (9)(a) through (9)(c).

(10) An order under subsection (9) must include a provision allowing the obligated person to purge the contempt. The obligated person may purge the contempt by complying with an order requiring the obligated person to:

(a) seek employment and periodically report to the district court all efforts to find employment;

(b) meet a repayment schedule;

(c) compensate the payee for the payee's attorney fees, costs, and expenses for a proceeding under this section;

(d) sell or transfer real or personal property or transfer real or personal property to the payee, even if the property is exempt from execution;

(e) borrow the arrearage amount or report to the district court all efforts to borrow the sum;

(f) meet any combination of the conditions in subsections (10)(a) through (10)(e); or

(g) meet any other conditions that the district court in its discretion finds reasonable.

(11) If the obligated person fails to comply with conditions for purging contempt, the district court shall immediately find the obligated person in contempt under this section and impose punishment.

(12) A proceeding under this section must be brought within 3 years of the date of the last failure to comply with the support order.

Section 2. **Paternity acknowledgment.** (1) Upon the birth of a child to a woman unmarried at the time of birth, the administrator or person in charge of a hospital or other institution in which the birth occurs or the midwife who attends the birth shall:

(a) provide an opportunity for the child's mother and alleged father to complete an acknowledgment of parentage pursuant to 40-6-105;

(b) provide written information, furnished by the department, describing the rights and responsibilities of parentage, the benefits of having a child's paternity established, and the child's right to receive support; and

(c) forward a copy of an acknowledgment signed by the mother and the father to the department.

(2) The hospital, institution, or midwife is entitled to reimbursement for reasonable costs of obtaining an acknowledgment. The department shall establish by rule the amount of reasonable costs, not to exceed the amount for which federal financial participation is available, and the procedures for claiming reimbursement.

(3) Hospitals, institutions, and midwives shall use forms prescribed by the department for the acknowledgment of paternity.

Section 3. **Definitions.** As used in [sections 3 through 11], the following definitions apply:

(1) (a) "Child" means:

(i) a person under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or physically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of social and rehabilitation services.

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(5) "License" means a license, certificate, registration, or authorization issued by an agency of the state of Montana granting a person a right or privilege to engage in a business, occupation, or profession or any other privilege that is subject to suspension, revocation, forfeiture, or termination by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obligor.

(10) "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(11) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child for whom the person awarded maintenance is the custodial parent.

(12) "Support enforcement entity" means:

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(13) "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

(c) an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

(d) an administrative agency of another state with a hearing function and process similar to those of the department.

Section 4. **Notice of intent to suspend license.** (1) Upon the petition of an obligee alleging the existence of a delinquency, a support enforcement entity may issue a notice of intent to suspend a license.

(2) The notice must be served upon the obligor personally or by certified mail and may:

(a) in a IV-D case, be incorporated into any notice served under Title 17, chapter 4, part 1, or Title 40, chapter 5, part 2 or 4;

(b) in all other cases, be combined with any other enforcement proceeding.

(3) The notice must state that the obligor's license will be suspended 60 days after service unless within that time the obligor:

(a) pays the entire support debt stated in the notice;

(b) enters into a payment plan approved by the support enforcement entity; or

(c) appears and shows cause in a hearing before the support enforcement entity under [section 5] that suspension of a license is not appropriate.

(4) In a IV-D case, the notice must advise the obligor that hearings conducted under [section 5] are subject to the contested case provisions of the Montana Administrative Procedure Act.

Section 5. **Hearing — order suspending license.** (1) To show cause why suspension of a license would not be appropriate, the obligor shall request a hearing from the support enforcement entity that issued the notice of intent to suspend the license. The request must be made within 60 days of the date of service of the notice.

(2) Upon receipt of a request for hearing from an obligor, the support enforcement entity shall schedule a hearing for the purpose of determining if

suspension of the obligor's license is appropriate. The support enforcement entity shall stay suspension of the license pending the outcome of the hearing.

(3) The only issues that may be determined in a hearing under this section are the amount of the support debt or support obligation, if any, whether or not a delinquency exists, and whether or not the obligor has entered into a payment plan.

(4) If an obligor fails to respond to a notice of intent to suspend a license, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request for a payment plan must be considered to be without merit and the support enforcement entity shall enter a final decision and order accordingly.

(5) If the support enforcement entity determines that the obligor owes a delinquency and that the obligor has not entered into a payment plan, the support enforcement entity shall issue an order suspending the obligor's license and ordering the obligor to refrain from engaging in the licensed activity. The support enforcement entity shall send a copy of the order suspending a license to the licensing authority and the obligor.

(6) The determinations of the department under this section are a final agency decision and are subject to judicial review under 40-5-253 and the Montana Administrative Procedure Act.

(7) A determination made by the support enforcement entity under [sections 3 through 11] is independent of any proceeding of the licensing authority to suspend, revoke, deny, terminate, or renew a license.

Section 6. **Suspension, denial, and nonrenewal of licenses.** (1) Upon receipt of an order suspending a license, a licensing authority shall implement the suspension of the license by:

(a) determining if it has issued a license to the obligor whose name appears on the order;

(b) entering the suspension on the appropriate records;

(c) reporting the suspension as appropriate; and

(d) if required by law, demanding surrender of the suspended license.

(2) An order issued by a support enforcement entity under [section 5] suspending a license must be processed by the licensing authority without an additional review or hearing involving the licensing authority concerning suspension of the license.

(3) Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal of a license, an order issued by a support enforcement entity suspending a license must be implemented by the licensing authority and continues until the support enforcement entity advises the licensing authority that the suspension has been stayed or terminated.

(4) In the event that a license is suspended, any funds paid by the obligor to the licensing authority for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

(5) Unless an order staying suspension of a license is in effect, an obligor who continues to engage in the business, occupation, profession, or other licensed activity while the license is suspended under this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $250 or more than $500 or by imprisonment in the county jail for a term not to exceed 6 months, or both. Upon conviction of a second or subsequent violation, the obligor shall be punished by a fine of not less than $500 or more than $2,000 or by imprisonment in the county jail for a term not to exceed 1 year, or both. The support enforcement entity or the licensing authority may elect the remedy under this section or any other remedy provided for engaging in a licensed activity without a license or while the license is suspended.

(6) The licensing authority is exempt from liability to the licensee for activities conducted in compliance with [sections 3 through 11].

(7) The licensing authority has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the support enforcement entity suspending a license.

(8) To the extent that inconsistencies exist between [sections 3 through 11] and the procedural requirements for suspension of a license issued by the department of health and environmental sciences, [sections 3 through 11] supersede those requirements.

Section 7. **Nondisciplinary suspension for failure to pay child support.** Notwithstanding any other provision of this title, the department has the authority to suspend a license under [sections 3 through 11] without any action by the licensing authority. The licensing authority shall, upon receipt of an order issued by the support enforcement entity, suspend the license of the named individual. The suspension must be nondisciplinary for professional or occupational licenses, and the provisions of 2-4-631 do not apply.

Section 8. **Stay of suspension of license — payment plan — hardship.** (1) An obligor may at the time of the hearing conducted under [section 5] or at any time after the hearing petition the support enforcement entity for an order staying suspension of the license.

(2) The support enforcement entity shall consider the obligor's petition for a stay separately from any determination on whether suspension of a license is appropriate.

(3) The support enforcement entity may stay suspension of a license upon a showing that suspension or continued suspension of a license would create a significant hardship to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor.

(4) A stay terminates upon:

(a) termination of the circumstances upon which a hardship is based;

(b) failure by the obligor to abide by the terms and conditions of a payment plan; or

(c) the date of termination, if any, provided in the order staying suspension of the license.

(5) If the licensing authority has been notified of an order suspending a license, the support enforcement entity shall send a copy of any order staying or reinstating suspension of the license to the licensing authority and the obligor.

(6) (a) Upon receipt of an order staying or reinstating suspension of the license, the licensing authority shall:

(i) enter the information on appropriate records;

(ii) report the action as appropriate; and

(iii) demand surrender of the suspended license or return the reinstated license.

(b) Further action by the licensing authority is not necessary to implement the stay or reinstatement of suspension of the license.

Section 9. **Termination of order to suspend license.** (1) When the support enforcement entity determines that the support debt or support obligation is paid in full, it shall terminate the order suspending the license. The support enforcement entity shall send a copy of the order terminating the suspension of the license to the licensing authority and the obligor.

(2) Entry of an order terminating suspension of a license does not limit the ability of a support enforcement entity to issue a new order suspending the license of the same obligor in the event of another delinquency.

Section 10. **Fees.** A licensing authority subject to [sections 3 through 11] may charge the obligor a fee to cover the administrative costs incurred by the licensing authority under [sections 3 through 11]. Fees collected pursuant to this section by a licensing authority with a state special revenue fund must be deposited in the state special revenue fund for the use of the licensing authority to pay the costs of administering [sections 3 through 11].

Section 11. **Rulemaking authority.** The department shall adopt rules necessary for the implementation and administration of [sections 3 through 10]. The licensing authority shall adopt rules necessary for the implementation and administration of [sections 3 through 10].

Section 12. **Codification instruction.** (1) [Section 2] is intended to be codified as an integral part of Title 50, chapter 15, part 2, and the provisions of Title 50, chapter 15, apply to [section 2].

(2) [Sections 3 through 11] are intended to be codified as an integral part of Title 40, chapter 5, and the provisions of Title 40, chapter 5, apply to [sections 3 through 11].

Section 13. **Coordination instruction.** If both Senate Bill No. 217 and [this act], containing [sections 3 through 11], are passed and approved, Senate Bill No. 217 is void.

Section 14. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 24, 1993.

CHAPTER NO. 524

[HB 532]

AN ACT PROVIDING EXCEPTIONS TO THE MORATORIUM ON IMPORTATION OF SOLID WASTE; AMENDING SECTION 75-10-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-209, MCA, is amended to read:

"**75-10-209. Moratorium on certain interstate transport of solid waste.** (1) The state of Montana recognizes the importance of providing for disposal or incineration of solid waste in a manner that protects Montana's public health, safety, welfare, and environment. Although the state of Montana also recognizes that, under appropriate conditions, the transportation of out-of-state solid waste into Montana may not conflict with this goal, it is imperative that the state further develop regional and statewide solid waste management goals, plans, and regulations and revise its rules governing landfill siting and operation criteria before allowing solid waste importation beyond current levels.

(2) Except as provided in ~~subsection~~ *subsections* (3) *through (5)*, a person may not transport solid waste into Montana for disposal or incineration until October 1, 1993.

(3) A person who transported solid waste into Montana before May 22, 1989, may continue to transport solid waste into Montana subject to the limitation that the amount ~~he~~ *that person* transports into Montana during any calendar year of the moratorium does not significantly exceed the amount ~~he~~ *that person* transported into Montana during calendar year 1988.

(4) Notwithstanding the provisions of subsection (3), a person may transport into Montana solid waste generated in Idaho, North Dakota, South Dakota, or Wyoming for disposal in a solid waste management facility that receives 25,000 tons or less of solid waste annually.

(5) A person may transport solid waste to a research and development facility in Montana that receives federal or state research funds in order to test and evaluate waste treatment remediation technologies."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 525

[HB 539]

AN ACT IMPOSING THE COLLECTION OF SPECIAL FUEL TAXATION AT THE DISTRIBUTOR LEVEL RATHER THAN THE RETAIL LEVEL; AMENDING SECTIONS 15-70-301, 15-70-302, 15-70-303, 15-70-304, 15-70-305, 15-70-306, 15-70-307, 15-70-309, 15-70-311, 15-70-312, 15-70-315, 15-70-321, 15-70-323, 15-70-324, 15-70-325, 15-70-326, 15-70-327, 15-70-328, 15-70-329, 15-70-330, 15-70-331, 15-70-332, 15-70-333, AND 20-15-403, MCA; REPEALING SECTIONS 15-70-316 AND 15-70-322, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-301, MCA, is amended to read:

"**15-70-301. Definitions.** As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person whose major endeavor is and primary source of earned income is from the business of farming or ranching.

~~(1)~~*(2)* "Authorization" means an uncanceled special fuel tax prepaid authorization issued by the department.

~~(2)~~*(3)* "Bond" means:

(a) a bond ~~duly~~ executed by a ~~special fuel dealer or~~ special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the ~~special fuel dealer or~~ special fuel user arising out of this part; or

(b) a deposit with the department by the ~~special fuel dealer or~~ special fuel user, under terms and conditions the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(4) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

~~(3)~~*(5)* "Cardtrol" or "keylock" means any unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

~~(4)~~*(6)* "Department" means the department of transportation.

(7) (a) "Distributed" means, at the time special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(8) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter as defined in this section.

(9) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(10) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(11) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(12) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

~~(5)~~*(13)* "Motor vehicle" means ~~any vehicle which is self-propelled upon the highways~~ *all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.*

~~(6)~~*(14)* "Person" ~~means and~~ includes any person, firm, association, joint-stock company, syndicate, partnership, or corporation~~; whenever~~. *Whenever the term is* used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, ~~means and~~ *it* includes the partners or members ~~thereof~~ and, as applied to joint-stock companies and corporations, the officers ~~thereof~~.

~~(7)~~*(15)* "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

~~(8)~~*(16)* "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles ~~propelled~~ *operating* upon the public roads and highways within the state of Montana. ~~The term includes compressed natural gas.~~

~~(9)~~*(17)* ~~(a)~~ "Special fuel dealer" means:

~~(i)~~*(a)* any person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by ~~him~~ *the person*;

~~(ii)~~*(b)* any person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

~~(iii)~~*(c)* any person who provides any facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

~~(b) For purposes of subsection (9)(a), the term "fuel supply tank or tanks" does not include cargo tanks, even though fuel is withdrawn directly from cargo tanks for propulsion of the vehicle.~~

~~(10)~~*(18)* "Special fuel user" means any person other than a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the ~~propulsion~~ *operation* of motor vehicles owned or controlled by ~~him~~ *the person* upon the highways of this state.

~~(11)~~*(19)* "Use", *when the term relates to a special fuel user,* means~~:~~

~~(a) the receipt, delivery, or placing of special fuels by a special fuel dealer into the fuel supply tank or tanks of any motor vehicle not owned or controlled by him while the vehicle is within this state; or~~

~~(b)~~ the consumption by a special fuel user of special fuels in ~~propulsion~~ *the operation* of a motor vehicle on the highways of this state."

Section 2. Section 15-70-302, MCA, is amended to read:

"15-70-302. Special ~~fuel dealer's licenses and special~~ fuel user's permits required — exceptions. ~~(1) A person may not act as a special fuel dealer in this state unless the person is the holder of an uncanceled fuel dealer's license issued to him by the department.~~

~~(2)~~*(1)* A special fuel user shall obtain annually from the department, prior to the use of special fuel for the ~~propulsion~~ *operation* of a motor vehicle or vehicles in this state, a special fuel user's permit. Except as provided in subsection ~~(5)~~*(3)*, a special fuel user shall at all times display the original or a reproduced copy of the permit in each special fuel vehicle operated by ~~him~~ *the special fuel user* upon the public roads and highways. The permit or copy must be exhibited for inspection on request of any ~~checking station officer~~ *motor carrier services division employee,* Montana highway patrol officer, authorized employee of the department, or any other law enforcement officer. The special fuel user is responsible for reproducing clear and legible copies of the permit.

~~(3) A special fuel user's permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile or of a truck with a single drive axle under 26,000 pounds gross vehicle weight that the user has rented for 30 days or less for the primary purpose of moving his household goods, provided the person purchases special fuel, tax paid, except special fuel brought into this state in the fuel supply tank of the vehicle, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.~~

~~(4)~~*(2)* Any out-of-state user who operates a special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes shall secure a special fuel user's courtesy vehicle permit. The permit is not transferable and is valid for 90 days. Permits ~~will~~ *must* be issued at no cost to the user by the department, scale house personnel, and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of 30 gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

~~(5)~~*(3)* A special fuel user need not display the original or reproduced copy of the special fuel user's permit as required by subsection ~~(2)~~*(1)* if~~:~~

~~(a)~~ ~~he is~~ *the special fuel user is* registered and licensed pursuant to the International Fuel Tax Agreement as authorized by 15-70-121 and the vehicle displays a license or decal issued pursuant to the agreement~~; or~~.

~~(b) the motor vehicle operated by him is a vehicle that is part of a motor vehicle fleet based in Montana that is proportionally registered under the provisions of 61-3-711 through 61-3-733;~~

~~(c) he obtains a registration card issued by the department indicating the special fuel user's permit number; and~~

~~(d) the registration card indicating the special fuel user's permit number is carried in the vehicle and is available for inspection.~~

~~(6)~~*(4)* A person whose use of special fuel is ~~predominantly for agricultural and nonhighway use but who owns or operates one or more passenger cars or~~

~~light trucks may~~ *in special fuel vehicles up to 26,000 pounds gross vehicle weight or registered gross vehicle weight shall* obtain annually from the department an authorization, as provided in 15-70-309, *if the special fuel is not subject to taxation under [section 26].*"

Section 3. Section 15-70-303, MCA, is amended to read:

"**15-70-303. Application for ~~license,~~ permit~~,~~ or authorization.** (1) Application for a ~~special fuel dealer's license,~~ special fuel user's permit~~,~~ or authorization ~~shall~~ *must* be made to the department unless otherwise provided in this part.

(2) The application ~~shall~~ *must* be filed upon a form prepared and furnished by the department. The application must contain information the department considers necessary."

Section 4. Section 15-70-304, MCA, is amended to read:

"**15-70-304. Bonding, release of surety, and additional bond.** (1) Except as provided in this section, a ~~special fuel dealer's license or~~ special fuel user's permit may not be issued to a person or continued in force unless the person has furnished bond, as defined in 15-70-301 and in a form as the department may require, to secure its compliance with this part and the payment of any taxes, interest, and penalties due and to become due under this part. The department shall waive the bond requirement of a special fuel user not subject to subsection (2)(a) or (2)(b). ~~Upon application, the department shall waive the bond requirement of a public contractor licensed under Title 15, chapter 50, who has posted a performance bond conditioned on payment of all lawful taxes with the contracting entity.~~

(2) The total amount of the bond or bonds required of a ~~special fuel dealer must be equivalent to twice his estimated monthly tax payments, and the total amount of the bond or bonds required of a~~ special fuel user must be equivalent to twice ~~his~~ *the special fuel user's* estimated quarterly tax payments as provided in this part, determined as the department considers proper; however, the total amount of the bond or bonds may not be less than:

(a) $5,000 for a special fuel user awarded a contract in accordance with 15-70-321; *and*

(b) $500 for any other special fuel user who:

(i) requests a special fuel user's permit to be reissued after being canceled for cause; or

(ii) fails to file timely reports and pay tax due as required by 15-70-325 and 15-70-327~~; and~~

~~(c) $1,000 for a special fuel dealer~~.

(3) A surety on a bond furnished by a ~~special fuel dealer or~~ special fuel user, as provided in this section, must be released and discharged from any liability to the state accruing on the bond after the expiration of 30 days from the date when the surety has lodged with the department a written request to be released and discharged, but this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before

the expiration of the 30-day period. The department shall, promptly upon receiving a release request, notify the ~~special fuel dealer or~~ special fuel user who furnished the bond, and unless the ~~special fuel dealer or~~ special fuel user, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as provided in 15-70-301~~(2)~~*(3)*, the department shall cancel the ~~special fuel dealer's license or~~ special fuel user's permit.

(4) The department may require a ~~special fuel dealer or~~ special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in 15-70-301~~(2)~~*(3)* if, in its opinion, the security of the surety bond previously filed by the ~~special fuel dealer or~~ special fuel user or the market value of the properties deposited as security by the ~~special fuel dealer or~~ special fuel user becomes impaired or inadequate. Upon failure of the ~~special fuel dealer or~~ special fuel user to give a new additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel ~~his license~~ *the permit*."

Section 5. Section 15-70-305, MCA, is amended to read:

"**15-70-305. Issuance of ~~license,~~ permit~~,~~ or authorization — grounds for refusal — hearing.** (1) Except as provided in subsection ~~(3)~~*(4)*, upon receipt of the application and bond in proper form, the department shall issue to the applicant a ~~license or~~ permit to ~~act~~ *operate* as a ~~special fuel dealer or~~ special fuel user. Each ~~special fuel dealer's license or~~ special fuel user's permit is valid until suspended or revoked for cause or otherwise canceled.

(2) Except as provided in subsection ~~(3)~~*(4)*, upon receipt of the application in proper form, the department shall issue to the applicant an authorization. A holder of an authorization is not required to furnish bond as provided under 15-70-304. The authorization must be issued annually and is valid from the date of its issuance through December 31 of the calendar year, unless a motor vehicle for which the tax is prepaid is sold, or until suspended or revoked for cause or otherwise canceled.

(3) If the special fuel user's permit is surrendered or revoked, the special fuel user shall pay a reissuance fee of $100.

~~(3)~~*(4)* The department may refuse to issue a ~~special fuel dealer's license,~~ special fuel user's permit~~,~~ or authorization to any person:

(a) who formerly held a ~~license,~~ permit~~,~~ or authorization that, prior to the time of filing application, has been revoked for cause;

(b) who is not the real party in interest and the ~~license,~~ permit~~,~~ or authorization of the real party in interest has been revoked for cause prior to the time of filing the application; or

(c) upon other sufficient cause being shown.

~~(4)~~*(5)* Before refusal to issue a ~~license,~~ permit~~,~~ or authorization, the department shall grant the applicant a hearing and shall grant ~~him~~ *the applicant* at least 10 days' written notice of the time and place of hearing.

~~(5)~~*(6)* A ~~special fuel dealer's license,~~ special fuel user's permit~~,~~ or authorization is not transferable."

Section 6. Section 15-70-306, MCA, is amended to read:

"**15-70-306. Revocation, suspension, and cancellation.** (1) The department may revoke the ~~license,~~ permit~~,~~ or authorization of any ~~special fuel dealer or~~ special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking a ~~license,~~ permit~~,~~ or authorization, the department shall notify the ~~licensee or~~ permittee of its intention, by certified mail addressed to ~~his~~ *the permittee's* last-known address shown in the files of the department, requiring ~~him~~ *the permittee* to appear before the department on a day and hour specified in the notice, not more than 30 days or less than 10 days from date of notice, and show cause, if any, why the ~~license,~~ permit~~,~~ or authorization should not be revoked; provided, however, that at any time prior to and pending the hearing, the department may in the exercise of reasonable discretion suspend the ~~license,~~ permit~~,~~ or authorization.

(2) Upon revocation by the department of any ~~license,~~ permit~~,~~ or authorization, the holder shall immediately surrender the ~~license,~~ permit~~,~~ or authorization to the department for cancellation."

Section 7. Section 15-70-307, MCA, is amended to read:

"**15-70-307. Surrender of permit upon use discontinuance.** The department shall cancel any ~~license to act as a special fuel dealer or any~~ special fuel user permit immediately upon surrender ~~thereof~~ by the holder."

Section 8. Section 15-70-309, MCA, is amended to read:

"**15-70-309. Authorization for certain uses — disposition of proceeds — penalties.** (1) (a) A person who purchases, tax-free, special fuel in bulk and ~~whose use of special fuel is predominantly for agricultural and nonhighway use but~~ who owns or operates ~~one or more passenger cars or pickups, each having a licensed gross vehicle weight of 10,000 pounds or less and powered by special fuel, may elect to apply to the department, as provided in 15-70-303, for an authorization. The authorization requires the holder to prepay an annual tax on the special fuel placed in bulk storage and used, in part, in the holder's special fuel-powered vehicles, rather than apply for a special fuel user's permit~~ *special fuel vehicles 26,000 pounds or less gross vehicle weight or registered gross vehicle weight shall pay an authorization fee as follows:*

(i) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is 10,000 pounds or less, $150;

(ii) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, $225;

(iii) a special fuel vehicle whose gross vehicle weight or registered gross vehicle weight is 18,000 pounds or more and up to 26,000 pounds, $500.

~~(b) If a holder elects to obtain an authorization, he shall prepay the tax at the rate of $120 for each passenger car or pickup within the weight limit specified in subsection (1)(a). The tax must be paid on a calendar-year basis and must be prorated from the date of authorization for each vehicle. A person whose~~

~~purchases of special fuel are predominantly for highway or nonagricultural use does not qualify for the special fuel tax.~~

(b) The authorization fee for vehicles under 10,000 pounds gross vehicle weight or registered gross vehicle weight purchased during the calendar year must be computed at one-twelfth of the applicable fee for each month or fraction of a month. The authorization fee for vehicles 10,000 pounds or more and up to 26,000 pounds gross vehicle weight or registered gross vehicle weight must be prorated on a quarterly basis and may be paid quarterly, semiannually, or annually.

(c) Whenever the holder of an authorization ceases to ~~farm~~ *operate* within this state, ~~he~~ *the holder* shall notify the department within 15 days after discontinuance. The holder shall surrender to the department the authorization issued to ~~him~~ *the holder* by the department. The department shall refund the portion of the ~~prepaid tax~~ *authorization fee* attributable to the remaining portion of the ~~calendar year~~ *applicable period.*

(2) All taxes collected must be remitted to the department or deposited directly in the state special revenue fund for use by the department.

(3) A person violating any provision of subsection (1) is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $2,000 or by imprisonment for not less than 30 days or more than 6 months or by both fine and imprisonment. The fine and imprisonment provided in this subsection are in addition to any other penalty imposed by any other provision in this chapter."

Section 9. Section 15-70-311, MCA, is amended to read:

"**15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit.** (1) Any person operating a special fuel-powered vehicle *over 26,000 pounds gross vehicle weight or registered gross vehicle weight* upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit ~~or registration card indicating the special fuel use permit number~~, as provided by 15-70-302, ~~shall be~~ *is* required to purchase a special fuel user's temporary trip permit. The permits ~~will~~ *must* be issued by ~~scale house personnel, gross vehicle weight patrol crews~~ *motor carrier services division employees,* Montana highway patrol officers, and ~~such~~ other enforcing agents ~~as~~ *that* the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment *that is over 26,000 pounds gross vehicle weight or registered gross vehicle weight and that is* powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, ~~shall be~~ *is* required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit ~~will~~ *must* be issued by ~~scale house personnel, gross vehicle weight patrol crews~~ *motor carrier services division employees,* Montana highway patrol officers, and ~~such~~ other enforcing agents ~~as~~ *that* the department may prescribe by order or rule.

(3) A resident or nonresident operating a special fuel-powered vehicle up to 26,000 pounds gross vehicle weight or registered gross vehicle weight in this state is exempt from obtaining an authorization under 15-70-309 if the special fuel tax is paid at the time of purchase."

Section 10. Section 15-70-312, MCA, is amended to read:

"**15-70-312. Fees for temporary permits — duration of temporary permits.** (1) ~~The temporary~~ *Temporary* special fuel permits ~~shall~~ cost ~~the special fuel vehicle user a fee of~~ $30. The permit ~~shall be~~ *is* valid for a period of time not to exceed 72 hours and ~~will be~~ *is* automatically void ~~should~~ *if* the vehicle ~~leave~~ *leaves* the state of Montana during the 72-hour period.

(2) A temporary special fuel permit for a nonresident operating agricultural harvesting equipment ~~shall cost~~ *costs* $30 per unit for the calendar year in which the fee is collected. The permit ~~shall~~ *is* not ~~be~~ transferable. A unit ~~shall be~~ *is* defined as:

(a) one truck suitable for hauling ~~produce~~ *commodities*;

(b) one harvesting machine; and

(c) pickup trucks and any other accessory vehicles.

(3) All fees collected ~~shall~~ *must* be remitted to the department or deposited directly in the state special revenue fund for the department."

Section 11. Section 15-70-315, MCA, is amended to read:

"**15-70-315. Affidavit required of cardtrol or keylock purchaser — inspection by department.** ~~(1)~~ A person who uses a cardtrol, keylock, or similar device to obtain delivery of special fuel tax-free from an unattended pump or dispensing unit shall sign and furnish to the special fuel dealer an ~~affidavit~~ *exemption certificate*, on a form prescribed and furnished by the department, stating the ~~type of equipment in which the special fuel will be placed and stating that no special fuel will be placed into the supply tank of a motor vehicle to be operated on the public roads and highways of this state.~~

~~(2) The special fuel dealer shall keep all such affidavits and make them available for inspection by the department~~ *sale of special fuel that is not subject to taxation under [section 26]."*

Section 12. Section 15-70-321, MCA, is amended to read:

"**15-70-321. Tax on diesel fuel and volatile liquids.** The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to 20 cents for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to ~~propel~~ *operate* motor vehicles upon the public highways or streets within the state or used in motor vehicles, motorized equipment, and the internal combustion of any and all engines, including stationary engines, used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipal, or other political subdivisions."

Section 13. Section 15-70-323, MCA, is amended to read:

"**15-70-323. Special ~~fuel dealer's and special~~ fuel user's records.** (1) Every ~~special fuel dealer,~~ special fuel user~~,~~ and every person importing, manufacturing, refining, dealing in, transporting, or storing special fuel in this state shall keep ~~such~~ records, receipts, and invoices and other pertinent papers ~~with respect thereto as~~ *that* the department may require and shall produce them for the inspection of the department at any time during the business hours of the day.

(2) ~~Said~~ *The* records, receipts, invoices, and other pertinent papers ~~shall be required to~~ *must* be kept for a period of at least 3 years from the date on which the return to which they relate was required to have been made."

Section 14. Section 15-70-324, MCA, is amended to read:

"**15-70-324. Examination of records — enforcement of part.** (1) The department shall enforce the provisions of this part.

(2) The department or its authorized representative ~~is hereby empowered to~~ *may* examine the books, papers, records, and equipment of any ~~special fuel dealer or~~ special fuel user or any person dealing in, transporting, or storing special fuel as defined in this part and to investigate the character of the disposition which any person makes of ~~such~~ special fuel in order to ascertain and determine whether all excise taxes due ~~hereunder~~ are being properly reported and paid. If ~~such~~ *the* books, papers, records, and equipment are not maintained in this state at the time of demand, they ~~shall~~ *must* be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer and ~~shall~~ *must* be, if requested by the department, accompanied by the ~~special fuel dealer or~~ special fuel user.

(3) For the purpose of enforcing the provisions of this part, the fact that ~~a special fuel dealer or~~ a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles ~~shall be~~ *is* prima facie evidence that all of ~~such~~ *the* special fuel has been delivered by the ~~special fuel dealer or~~ special fuel user into the fuel supply tanks of motor vehicles and consumed in the ~~propulsion~~ *operation* of motor vehicles upon the highways ~~as herein defined~~ unless the contrary ~~shall be~~ *is* established by satisfactory evidence.

(4) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, or the provinces of ~~the Dominion of~~ Canada, forward to ~~such~~ *the* officials any information which it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any ~~special fuel dealer or~~ special fuel user, provided ~~such~~ *the* other state or states furnish like information to this state."

Section 15. Section 15-70-325, MCA, is amended to read:

"**15-70-325. Returns.** (1) For the purpose of determining the amount of ~~his~~ liability for ~~the~~ *special fuel* tax ~~herein imposed~~, ~~each special fuel dealer shall~~

~~file with the department a monthly tax return and~~ each special fuel user shall file with the department, on forms prescribed by ~~said~~ *the* department, a quarterly tax return.

(2) Upon annual application, the department shall waive the filing of a quarterly tax return of any special fuel user who establishes that ~~such~~ *the* user's annual tax liability is or will be $200 or less.

(3) ~~Such~~ *The* user shall make an annual report and return to the department on forms prescribed by ~~said~~ *the* department, on or before January 31 of each year. ~~Should~~ *If* the department ~~determine~~ *determines* that a user filing annual returns ~~as herein provided~~ is delinquent in making reports and payments, it shall require ~~such~~ *the* person to file quarterly returns ~~as herein provided~~. ~~Such~~ *A* return, annual or quarterly, ~~shall~~ *must* contain a declaration by the person making the ~~same~~ *return* to the effect that the statements contained *in the return* are true and are made under penalties of perjury~~, which~~. *The* declarations ~~shall~~ have the same force and effect as a verification. The return ~~shall~~ *must* show ~~such~~ *the* information ~~as~~ *that* the department may reasonably require for the proper administration and enforcement of this part.

~~(4) If a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the return to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made.~~

~~(5)~~*(4)* The ~~special fuel dealer or~~ special fuel user shall file the return on or before the last day of the next ~~succeeding~~ calendar month following the period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed 30 days."

Section 16. Section 15-70-326, MCA, is amended to read:

"**15-70-326. Computation.** The tax imposed by this part ~~shall~~ *must* be computed, ~~as follows:~~

~~(1) with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle;~~

~~(2)~~ with respect to special fuel ~~as to~~ *for* which the tax has not been paid ~~to a special fuel dealer~~ in this state and ~~which~~ *that* has been consumed by the purchaser ~~thereof~~ as a special fuel user, by multiplying the tax rate per gallon provided in this part by the number of gallons of special fuel consumed by ~~him~~ *the special fuel user* in the ~~propulsion~~ *operation* of motor vehicles on the highways of this state."

Section 17. Section 15-70-327, MCA, is amended to read:

"**15-70-327. Payment — deductions.** The tax return ~~shall~~ *must* be accompanied by remittance covering the tax due ~~hereunder~~ *under this part for* ~~on account of~~ the use, as defined in 15-70-301, of special fuels during the preceding period. ~~A licensed special fuel dealer is allowed a deduction equal to 1% of the first 6 cents per gallon of the taxes paid by the dealer under 15-70-321 as an allowance for shrinkage, spillage, and evaporation of special fuels and other losses beyond the dealer's control.~~"

Section 18. Section 15-70-328, MCA, is amended to read:

"**15-70-328. Credits.** ~~(1)~~ Any licensed special fuel user ~~or licensed special fuel dealer~~ who has paid a special fuel tax either directly or to the vendor from whom it was purchased ~~shall~~ *must* receive credit in the amount of any tax paid on special fuel exported for use outside of this state or for any use off the public roads and highways of this state or for any overpayment of special fuel taxes not due to the state. ~~Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state.~~

~~(2) Any licensed special fuel user who purchases a temporary special fuel permit and thereafter applies for a special fuel vehicle permit for the same vehicle in less than 11 days after the temporary permit is issued shall receive credit in the amount of the temporary permit fee.~~

~~(3) (a) A special fuel dealer who has paid a special fuel tax is entitled to a credit of the tax paid to the department on those sales of special fuels for which the dealer has received no consideration from or on behalf of the purchaser. The dealer shall have declared the accounts of the purchaser worthless and claimed those accounts as bad debts for federal income tax purposes.~~

~~(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due on the collected amount must be paid to the department.~~

~~(c) The department may require a dealer to submit periodic reports listing accounts that are delinquent for 90 days or more.~~"

Section 19. Section 15-70-329, MCA, is amended to read:

"**15-70-329. Procedures for credits — *deadline.*** (1) ~~Should~~ *If* a licensed special fuel user ~~or licensed special fuel dealer desire~~ *wants* to receive *a* refund of special fuel taxes or of the temporary permit fee, the user ~~or dealer~~ shall make a signed and written request to the department requesting those amounts then due. Any amount determined to be creditable by the department under 15-70-328 ~~shall~~ *must* first be credited on any amounts then due and payable from the ~~special fuel dealer or~~ special fuel user to whom the refund is due, and the department shall then certify the balance to the credit of the ~~dealer or~~ user. A warrant ~~shall~~ *must* be drawn upon the state treasurer for the amount of ~~such~~ *the* claim, and ~~same shall~~ *the claim must* be paid in the same manner as other claims against the state are paid.

(2) In case ~~any~~ *a* special fuel user ~~or special fuel dealer~~ fails or neglects to file a request for refund of special fuel taxes within 12 months from the date ~~his~~ *the user's* special fuel license became canceled, the department ~~shall be~~ *is* under no obligation to make a refund.

(3) A request for refund or credit under this section must be made within 3 years from the date of the payment for which a refund or credit is claimed."

Section 20. Section 15-70-330, MCA, is amended to read:

"**15-70-330. Penalties for refusal or failure to file return or pay tax when due.** (1) In case of any ~~special fuel dealer or~~ special fuel user who refuses or fails to file a return required by this part within the time prescribed by 15-70-103 and 15-70-325, there is ~~hereby~~ imposed a penalty of $25 or a sum equal to 10% of the tax due, whichever is greater, together with interest at the rate of 1% on the tax due for each calendar month or fraction ~~thereof~~ *of a month* during which ~~such~~ *the* refusal or failure continues; provided, however, that if any ~~such special fuel dealer or~~ special fuel user ~~shall establish~~ *establishes* to the satisfaction of the department that ~~his~~ *the* failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this section.

(2) ~~Where a special fuel dealer or~~ *Whenever* a special fuel user files a return but fails to pay in whole or in part the tax due ~~hereunder~~ *under this part*, there ~~shall~~ *must* be added to the amount due and unpaid interest at the rate of 1% per month or fraction ~~thereof~~ *of a month* from the date ~~such~~ *the* tax was due to the date of payment in full ~~thereof~~."

Section 21. Section 15-70-331, MCA, is amended to read:

"**15-70-331. Deficiency.** If it be determined by the department that the tax reported by any ~~special fuel dealer or~~ special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of 1% per month or fraction ~~thereof~~ *of a month* from the date the return was due."

Section 22. Section 15-70-332, MCA, is amended to read:

"**15-70-332. Determination if no return made.** (1) If any ~~special fuel dealer or~~ special fuel user, whether or not ~~he~~ *the user* is licensed as ~~such~~ *a special fuel user*, fails, neglects, or refuses to file a special fuel tax return when due, the department shall on the basis of information available to it determine the tax liability of the ~~special fuel dealer or~~ special fuel user for the period during which ~~no~~ *a* return was *not* filed, and to the tax as ~~thus~~ determined, the department shall add the penalty and interest provided in 15-70-330(1).

(2) An assessment made by the department pursuant to this section or to 15-70-331 ~~shall be~~ *is* presumed to be correct, and in any case ~~where~~ *in which* the validity of the assessment is ~~drawn~~ in question, the burden ~~shall be~~ *is* on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be."

Section 23. Section 15-70-333, MCA, is amended to read:

"**15-70-333. Fraudulent return** — ***penalty.*** If ~~any special fuel dealer or~~ *a* special fuel user ~~shall file~~ *files* a false or fraudulent return with intent to evade the tax imposed by this part~~,~~*:*

(1) there ~~shall~~ *must* be added to the amount of deficiency determined by the department a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction ~~thereof~~ *of a month* on ~~such~~ *the* deficiency from the date ~~such~~ *the* tax was due to the date of payment, in addition to all other penalties prescribed by law~~.~~*; and*

(2) the person is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $2,000 or by imprisonment of not less than 30 days or more than 6 months, or by both fine and imprisonment."

Section 24. **License, fee, and security of special fuel distributors.** (1) All special fuel distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of doing business, shall file an application for a license with the department of transportation, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department. Each distributor shall at the same time file security with the department in an amount to be determined by the department. However, the required amount of security may not exceed twice the estimated amount of special fuel taxes the distributor will pay to this state each month. Upon approval of the application, the department shall issue to the distributor a nonassignable license that continues in force until surrendered or revoked.

(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301(8)(c) and not already licensed under 15-70-202 shall pay an annual license fee of $200.

(3) If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

(4) As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

Section 25. **License to sell special fuel on which refund may be claimed.** (1) A person other than a licensed distributor shall obtain a license from the department of transportation prior to selling special fuel on which a refund may be claimed. The application for a license must contain the applicant's name, address, place or places of business in the state of Montana, and other information that may be required by the department. Licenses issued must bear a license number and the date of issuance. The department shall keep a record of all licenses issued, canceled, or suspended. A nontransferable license must be issued and is effective until canceled or suspended by the department.

(2) Any person failing to comply with this section is subject to a fine of not less than $50 or more than $200 or imprisonment in the county jail for a period not less than 10 days or more than 60 days, or both the fine and imprisonment.

Section 26. **Special fuel license tax — rate.** (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount of 20 cents for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor.

(2) Special fuel may not be included in the measure of the distributor's license tax if sold:

(a) to the United States government, state of Montana, any other state, and any county, incorporated city, town, and school district of this state;

(b) in bulk delivery quantities of 200 gallons or more; or

(c) for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined.

Section 27. **Distributor's statement and payment — confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, render to the department of transportation a signed statement that specifies all special fuel distributed and received by the distributor in this state during the preceding calendar month and that contains other information the department may reasonably require in order to administer the special fuel license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by [section 26], less any refund credit issued under [section 36] and less 1% of the total tax that may be deducted by the distributor as an allowance for collection.

(2) A distributor engaged in or carrying on a business at more than one location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section may not be construed to prohibit:

(a) the delivery to a distributor or a distributor's authorized representative of a certified copy of any return or report filed in connection with the distributor's tax;

(b) the inspection by the attorney general or by another legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on special fuel or by any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

Section 28. **Recordkeeping requirements.** Each distributor or any other person dealing in, transporting, receiving, or storing special fuel shall keep for a period not to exceed 3 years the records, receipts, and invoices and any other pertinent papers and information that the department of transportation may require.

Section 29. **Invoice of distributors.** Each distributor in this state shall at the time of delivery, except when authorized by the department of transportation, issue to the purchaser an invoice that states the number of gallons of special fuel covered by the invoice and other information the department may require.

Section 30. **Examination of records.** (1) The department of transportation or its authorized representative may examine the books, papers, records, and equipment of any special fuel distributor or any person dealing in, transporting, or storing special fuel, as defined in this part, and may investigate the character of the disposition that any person makes of the special fuel in order to ascertain and determine whether all license taxes due are being properly reported and paid. If the books, papers, records, and equipment are not maintained in this state at the time of demand, they must be furnished at the direction of the department for review either in the offices of the department or at the business location of the taxpayer.

(2) The records, receipts, and invoices and any other pertinent papers supporting sales of each distributor or any person dealing in, transporting, or storing special fuel must be open and subject to inspection by the department or its authorized representative during business hours in order to ascertain the amount of license tax due.

Section 31. **Information reports — penalty — confidentiality.** (1) A person receiving special fuel, including an importer, exporter, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships special fuel from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of special fuel contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor, importer, or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of $100 for each failure or refusal.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section may not be construed to prohibit:

(a) the delivery to a person or the person's authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on special fuel or by the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction.

Section 32. **Penalties for delinquency.** (1) Any license tax not paid within the time provided in [section 27] is delinquent, a penalty of 10% is added to the tax, and the tax bears interest at the rate of 1% on the tax due for each calendar month or fraction of a month. Upon a showing of good cause by the distributor, the department of transportation may waive penalty.

(2) If any distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information it requires in the statement and determine the amount of the license tax due from the distributor and shall add a penalty of $25 or 10% of the amount due, whichever is greater, together with an interest rate of 1% per month or fraction of a month from the date the statements should have been made and the license tax should have been paid.

(4) The department shall proceed to collect the license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax.

Section 33. **Fraudulent returns — penalty.** If a special fuel distributor files a false or fraudulent return with intent to evade the tax imposed by this part, there is added to the amount of deficiency determined by the department of transportation a penalty equal to 25% of the deficiency, together with interest at 1% per month or fraction of a month on the deficiency from the date the tax was due to the date of payment, in addition to all other penalties prescribed by law.

Section 34. **Warrant for distraint.** If all or part of the tax imposed by this part is not paid when due, the department of transportation may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded thereafter. An action may not be maintained to enjoin the collection of all or any part of the license tax.

Section 35. **Statute of limitations.** Except in the case of a fraudulent return or of neglect or refusal to make a return, every deficiency must be assessed within 3 years from the due date of the return or the date of filing the return, whichever period expires later.

Section 36. **Refund or credit authorized.** (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines, tractors used off the public highways and streets, or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel so used. The refund may not exceed the tax paid or to be paid to the state.

(2) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(3) A distributor who sells special fuel that is not subject to taxation under [section 26] shall complete an exemption certificate for each sale and submit the certificate with the distributor's monthly report.

(4) (a) A distributor is entitled to a credit for the tax paid to the department of transportation on those sales of special fuel with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under [section 31], the department shall authorize the credit or refund.

Section 37. **Required records.** (1) Special fuel purchased and delivered into bulk storage for use in motor vehicles on public roads and nonhighway use must be fully accounted for by detailed withdrawal records to accurately show the manner in which it was used. Special fuel on hand, determined by actual measurement, must be deducted from a claim and must be reported as an opening inventory on the next claim.

(2) Service stations, bulk dealers, and marinas shall prepare a separate and complete invoice for each withdrawal of special fuel for own use upon which a refund is to be claimed.

(3) When a highway use of special fuel is not deducted from the claim, the applicant shall substantiate purchases of special fuel and miles traveled for licensed motor vehicles upon request of the department of transportation.

(4) Any person who operates a licensed motor vehicle on and off the public roads for commercial purposes may claim refund of the state license tax on the special fuel used to operate the vehicle on roads or property in private ownership if the person has maintained the following records:

(a) the total number of miles traveled on and off public roads by each licensed vehicle;

(b) the total number of gallons of special fuel used in each vehicle; and

(c) purchase invoices supporting all special fuel handled through bulk storage.

(5) An exporter or any other person who transports special fuel out of Montana for sale, use, or consumption outside Montana shall maintain detailed and current records of withdrawal, transportation, ownership, and delivery of the special fuel to destinations outside Montana as required by the department.

Section 38. **Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases.** (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of special fuel as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use.

(2) If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the circumstances of the loss or destruction and by producing other evidence as may be required by the department of transportation.

(3) An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by [section 37].

Section 39. **Determination of highway use.** Highway use for each vehicle is determined by dividing the rate of the average miles per gallon into the number of miles traveled on public roads.

Section 40. **Application for refund or credit — filing — correction by department.** (1) The application for a refund must be a signed statement on a form furnished by the department of transportation. Except for a claim for a credit for taxes paid on unpaid accounts, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of special fuel purchased, the total amount of special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within 14 months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement.

Section 41. **Approval or rejection of claim.** (1) The department of transportation has 120 working days after receiving the claim to approve or reject it. If approved, the department shall issue a credit in lieu of refund for the amount of the claim if the claimant is a distributor; for all other persons, a warrant must be drawn upon the state treasurer for the amount of the claim.

(2) If the department determines that any claim has been fraudulently presented or is supported by invoice or invoices fraudulently made or altered or that any statement in the claim or affidavit is willfully false and made for the purpose of misleading, the department shall reject the claim in full. If a claim is rejected, the department may suspend the claimant's right to refund for a period not to exceed 1 year.

Section 42. **Penalties.** A distributor or other person who fails, neglects, or refuses to make and file the statements required by this part in the manner or within the time provided, who is delinquent in the payment of any license tax imposed by this part, who makes any false statement with reference to the distributor's business, who makes any false statement on any claim for refund, or who violates any provision of this part shall, in addition to any other penalties imposed, be guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed $1,000 or be imprisoned in the county jail for not to exceed 6 months, or both.

Section 43. Section 20-15-403, MCA, is amended to read:

"**20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-70-301, ~~15-70-322,~~ 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 44. **Repealer.** Sections 15-70-316 and 15-70-322, MCA, are repealed.

Section 45. **Codification instruction.** [Sections 24 through 42] are intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [sections 24 through 42].

Section 46. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 47. **Effective date.** [This act] is effective January 1, 1994.

Approved April 24, 1993.

CHAPTER NO. 526

[HB 579]

AN ACT CREATING A MONTANA STUDENT VOLUNTEER PROGRAM; ESTABLISHING A SPECIAL REVENUE FUND IN WHICH TO DEPOSIT FUNDS FROM PRIVATE AND CORPORATE DONORS AND FOUNDATIONS AND FROM FEDERAL GRANT PROGRAMS; USING THE FUND TO PROVIDE LIVING ALLOWANCES AND TO PROVIDE TUITION VOUCHERS OR PARTIAL STUDENT LOAN REPAYMENTS FOR INDIVIDUALS PERFORMING FULL-TIME VOLUNTEER WORK FOR PRIVATE NONPROFIT HUMAN AND SOCIAL SERVICE ORGANIZATIONS; STATUTORILY APPROPRIATING THE FUND; CREATING A MONTANA STUDENT VOLUNTEER PROGRAM COMMITTEE TO IMPLEMENT THE PROGRAM; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 9] grants rulemaking authority to the department of commerce.

It is the intent of the legislature that the department of commerce have authority to adopt rules to implement [sections 7 and 8], including specific authority to adopt rules regarding:

(1) determination of funding sources;

(2) policies and procedures for solicitation of funds;

(3) application of the criteria set forth in [sections 1 through 9] to the process of determining worksite eligibility;

(4) application of the criteria set forth in [sections 1 through 9] to the process of determining eligibility of applicants for selection as volunteers;

(5) criteria and procedures for determination of the types (i.e., student loan repayment, tuition voucher, living allowance, etc.) and amounts of awards to be disbursed to program participants; and

(6) policies and procedures for making the public aware of the program's existence, its components, its policies, and its purpose.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 9] may be cited as the "Heritage of Montana Enterprise Act".

Section 2. **Purposes — program.** (1) The purposes of [sections 1 through 9] are to facilitate public service and to encourage Montana's college students to remain in Montana to pursue their education. These purposes are addressed by establishing a fund to solicit, collect, and administer money gathered from private and corporate donors, foundations, and the federal government to be used to provide tuition vouchers or partial student loan repayments and to provide living expense allowances to individuals who perform full-time volunteer work for private nonprofit human and social service organizations in Montana's communities.

(2) To carry out the purposes provided in subsection (1), there is created a Montana student volunteer program. The program must commence in the summer of 1994.

Section 3. **Montana student volunteer program fund.** There is a Montana student volunteer program trust fund account in the state special revenue fund. Funds deposited in the account must be used solely for the purposes of the Montana student volunteer program. The funds in the account are statutorily appropriated, as provided in 17-7-502, to the Montana student volunteer program committee.

Section 4. **Gifts and grants to program.** The Montana student volunteer program committee may accept contributions, gifts, and grants, in money or otherwise, on behalf of the Montana student volunteer program. Upon receipt, contributions, monetary gifts, and grants must be deposited into the Montana student volunteer program trust fund account established by [section 3].

Section 5. **Montana student volunteer program committee — terms of office.** (1) There is a Montana student volunteer program committee.

(2) The committee consists of seven members, appointed as follows:

(a) a representative of the department of commerce, appointed by the director;

(b) a representative of the department of family services, appointed by the director;

(c) a member of the board of regents, appointed by majority vote of the board;

(d) a representative from either a participating or an eligible worksite, appointed by the governor;

(e) a full-time student enrolled in any unit of the Montana university system, appointed by the university system student body governments; and

(f) two representatives of the private sector, appointed by the governor.

(3) At least one member of the committee must be a Native American.

(4) A vacancy on the committee is for the unexpired term and must be filled in the same manner as the original appointment.

(5) The committee shall elect a presiding officer and a vice presiding officer.

(6) The committee shall meet at least twice yearly, once in July and once in January, beginning in July 1993. Additional meetings may be called by the presiding officer or the vice presiding officer.

(7) Members of the board serve without pay but are entitled to reimbursement for travel, meals, and lodging pursuant to 2-18-501 through 2-18-503.

Section 6. **Term of office.** Committee members serve staggered 2-year terms beginning on January 1 of the year following their appointment.

Section 7. **Powers and duties of committee.** (1) The Montana student volunteer program committee shall solicit donations from private and corporate donors, foundations, the federal government, and any other funding sources it considers appropriate to fund the program's initial planning and organization, as well as its operation. Donations must be deposited in the Montana student volunteer program trust fund account.

(2) The committee shall review applications for prospective worksites. Worksite applicants must be designated as eligible or ineligible. Eligible worksites must, at minimum, be private, nonprofit, nongovernmental, and nonsectarian human or social service agencies whose principal mission is to provide free or at-cost services to underprivileged individuals and families in Montana's communities. In determining the eligibility of worksites, the committee shall consider each worksite's potential for:

(a) enabling volunteers to perform meaningful and worthwhile work of value to the community and the state; and

(b) providing a meaningful and worthwhile experience to the volunteers, including evidence of the worksite's ability and willingness to provide supervision, support, guidance, and evaluation to volunteers. The committee shall maintain and publish a record of all eligible worksites.

(3) The committee shall review and accept or reject applications for participation in the program. To be eligible a candidate shall, at minimum:

(a) be a Montana resident;

(b) have completed at least 2 years of postsecondary education;

(c) be 18 years of age or older prior to commencement of actual volunteer service;

(d) be selected by an eligible worksite; and

(e) demonstrate the interest, willingness, and ability necessary to perform the services required by the prospective worksite.

(4) Eligible worksites may conduct interviews of potential volunteers and, in accordance with criteria submitted to the committee, select volunteers that will, in their estimation, best suit their needs.

Section 8. **Determination of awards.** (1) Each volunteer must receive a periodic allowance to help defray living expenses incurred during the volunteer assignment. The amounts to which volunteers are entitled under this section must be determined and adjusted periodically by the committee.

(2) In addition, each volunteer may choose:

(a) to receive a tuition voucher; or

(b) to have a portion of outstanding student loans repaid by the program in an amount equal to the value of the tuition voucher to which the volunteer would be entitled.

Section 9. **Rulemaking authority.** The department of commerce, in consultation with the Montana student volunteer program committee, shall adopt rules to implement [sections 7 and 8].

Section 10. **Transition.** In order to provide for staggered terms, members initially appointed to the Montana student volunteer program committee pursuant to [section 5(2)(a) through (2)(c)] shall hold office for a period of 3 years.

Section 11. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501;

39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; *[section 3];* and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 12. **Coordination instruction.** If House Bill No. 660 is passed and approved and if it creates an office of community service, then all references to the department of commerce in [this act] are changed to references to the office of community service.

Section 13. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 527

[HB 585]

AN ACT PROVIDING FOR RECOGNITION OF A UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PROFICIENCY LISTING FOR PERSONS WHO PROVIDE RADON TESTING AND MITIGATION SERVICES; PROVIDING FOR VOLUNTARY DISCLOSURE OF RADON INFORMATION TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR CONDUCTING LEGITIMATE SCIENTIFIC STUDIES; ESTABLISHING A PUBLIC EDUCATION AND OUTREACH PROGRAM; REQUIRING NOTIFICATION OF RADON HAZARDS ON REAL ESTATE TRANSACTIONS; PROVIDING AN APPROPRIATION; ESTABLISHING A RADON CONTROL ACCOUNT IN THE SPECIAL REVENUE FUND; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, radon is an odorless, colorless, tasteless, radioactive gas that occurs naturally in soil gas, underground water, and outdoor air;

WHEREAS, radon gas enters homes and buildings through exposures in foundations, decays to form radon progeny, and, unless exposed to the atmosphere, accumulates in structures and becomes hazardous to human health;

WHEREAS, prolonged exposure to elevated concentrations of radon decay products has been associated with increases in the risk of lung cancer;

WHEREAS, only four states in the country rank higher than Montana in the percentage of homes that exceed the United States Environmental Protection Agency action guidance of 4 picocuries per liter;

WHEREAS, property owners in affected areas should have their residences and other buildings tested to determine radon levels;

WHEREAS, property owners do contract for services to measure and reduce radon levels in specific buildings;

WHEREAS, other states' experiences with radon testing and with mitigation companies have proved that the possibility exists for fraudulent operations;

WHEREAS, public education and access to information concerning radon will protect the public health; and

WHEREAS, notification of the presence of radon to persons acquiring or selling real estate will protect the public health.

THEREFORE, the Legislature of the State of Montana finds it essential to protect the public health, safety, and welfare through public education concerning radon and through real estate transaction notification and to provide for recognition of a United States Environmental Protection Agency proficiency listing for persons who provide radon testing and mitigation services.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 7] may be cited as the "Montana Radon Control Act".

Section 2. **Definitions.** As used in [sections 1 through 7], the following definitions apply:

(1) "Department" means the department of health and environmental sciences.

(2) "Inhabitable real property" means any real property that includes a building affixed to land.

(3) "Mitigation project" means to repair or alter a building or design for the purpose, in whole or in part, of reducing the concentration of radon in the indoor atmosphere.

(4) "Person" means an individual, partnership, corporation, sole proprietorship, firm, enterprise, franchise, association, consultant, state or municipal agency, political subdivision of the state, or any other entity.

(5) "Radon" means any of the gaseous radioactive decay products of uranium or thorium.

(6) "Radon progeny" means any of the radioactive decay products of radon.

(7) "Radon-related occupation" means the occupation of any person who performs radon gas or radon progeny measurements, including sample collection, analysis, or interpretation of those measurements, or who performs radon gas or radon progeny mitigation.

Section 3. **Radon testing and mitigation proficiency listing requirements.** In order to be publicly listed as proficient by the department in a radon-related occupation, a person shall pass a United States environmental protection agency proficiency examination approved by the department.

Section 4. **Voluntary disclosure of information to department.** (1) The results of measurements of radon gas or radon progeny performed by a person may be reported to the department. The report may include the radon levels detected and the location and description of the building.

(2) Except for use in conducting legitimate scientific studies, as determined by the department, data and information relating to radon gas and radon progeny contamination at nonpublic properties, including residential dwellings, gathered under [sections 1 through 7] must be considered confidential by the department. The department shall provide the bureau of mines and geology with all information received by the department under subsection (1) for conducting legitimate scientific studies. The department may not release the data or information in its possession to anyone other than the owner or occupant of the property.

Section 5. **Public information and education.** The department shall initiate and administer a program designed to educate and inform the public concerning radon gas and radon progeny. The program must include but is not limited to:

(1) public presentations to interested parties;

(2) developing, reproducing, and distributing printed materials to homeowners and other interested groups;

(3) responding to telephone inquiries on a maintained toll-free telephone number;

(4) providing technical and training information for radon measurement and mitigation;

(5) maintaining and distributing lists of qualified persons who perform measurement and mitigation services;

(6) developing and implementing an effective communication strategy to encourage all homeowners to test for radon; and

(7) encouraging cooperative partnerships to promote radon testing of buildings and homes.

Section 6. **Radon disclosure statement on real estate documents — disclosure of prior radon testing — immunity from liability.** (1) After January 1, 1994, a radon disclosure statement must be provided on at least one document, form, or application executed prior to the execution of any contract for the purchase and sale of inhabitable real property. The seller or seller's agent shall provide the following disclosure statement to the buyer, and the buyer shall acknowledge receipt of this disclosure statement by signing a copy of the disclosure statement:

"RADON GAS: RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFI-

CIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN MONTANA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY OR STATE PUBLIC HEALTH UNIT."

(2) Whenever a seller knows that a building has been tested for radon gas and radon progeny, the seller shall provide to the buyer, with the contract of sale, a copy of the results of that test and evidence of any subsequent mitigation or treatment. A prospective buyer who contracts for the testing may receive the results of that testing. The furnishing of test results and evidence of mitigation or treatment is not to be construed as a promise, warranty, or representation of any sort by the seller or the seller's agent that the test results are accurate or that the mitigation or treatment is effective.

(3) A seller or seller's agent who complies with subsections (1) and (2) is not liable in any action based on the presence of radon gas or radon progeny in the building.

Section 7. **Radon control account.** (1) There is a radon control account in the state special revenue fund. There must be deposited in the account all money received from any loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of [sections 1 through 7] that are received from the federal government and from other sources, public or private.

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the program established under [sections 1 through 7].

Section 8. **Appropriation.** There is appropriated from the reclamation and development grants state special revenue fund $50,000 for the biennium ending June 30, 1995, to the department of health and environmental sciences for the purpose of administering and contracting with the bureau of mines and geology for the implementation of [sections 1 through 7]. The department shall contract with the bureau of mines and geology for purposes of implementing the provisions of [sections 1 through 7].

Section 9. **Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 75, chapter 3, and the provisions of Title 75, chapter 3, apply to [sections 1 through 7].

Section 10. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 11. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 528

[HB 587]

AN ACT CHANGING THE MEMBERSHIP OF THE CLASSIFICATION AND RATING COMMITTEE FOR WORKERS' COMPENSATION INSURANCE COVERAGE; GRANTING RULEMAKING AUTHORITY TO THE COMMITTEE; ESTABLISHING INFORMAL HEARING PROCEDURES OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 33-16-1011 AND 33-16-1012, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required because this bill clarifies that the classification and rating committee has the power to promulgate rules as may be necessary for the conduct of the business of the committee. The classification and rating committee is statutorily created, and as the district court held in Cause No. BDV-91-1585, state of Montana, first judicial district, entitled State Compensation Mutual Insurance Fund v. R/E Developers, Inc., decided August 14, 1992, the classification and rating committee is a state agency as defined by 2-3-102. In that decision, the court held that the committee shall promulgate and publish its procedural rules pursuant to the Montana Administrative Procedure Act (MAPA). The committee, however, has never been given either express rulemaking authority by the legislature, nor has it promulgated any procedural rules pursuant to MAPA.

In providing express rulemaking authority to the classification and rating committee, it is the legislature's intent that the business of the committee be conducted pursuant to the requirements of the open meeting laws of the state and that the public be given the opportunity to participate as provided in Title 2, chapter 3, parts 1 and 2. At the same time, as a committee statutorily charged with reviewing classifications and with hearing appeals of classifications of affected insurers and insured employers, the classification and rating committee has historically held informal hearings of classification appeals. This has resulted in an inexpensive and relatively expeditious process for the presentation of grievances. It is the intent of the legislature that this informal process be continued and thus the hearings process itself is exempt from the requirements of MAPA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-16-1011, MCA, is amended to read:

"**33-16-1011. Classification and rating committee — membership — term.** (1) There is a classification and rating committee.

(2) The committee is composed of five voting members, consisting of:

(a) ~~three~~ *two* representatives of private insurance carriers writing workers' compensation insurance in Montana. The members must ~~reside in Montana and shall~~ be appointed by the Montana commissioner of insurance.

(b) one licensed independent insurance producer who resides in Montana, appointed by the ~~Montana~~ commissioner of insurance; ~~and~~

(c) one representative of the state compensation mutual insurance fund who is an employee of the state fund and who is appointed by the executive director of the state fund*; and*

(d) one representative of an employer who is insured by either a private insurance carrier or the state compensation mutual insurance fund, appointed by the commissioner of insurance.

(3) Each member shall hold office for a period of 3 years. ~~Any~~ *An* appointee who fills the vacancy of a member whose term has not expired shall fill only the remaining term and may be reappointed for a full term.

(4) Before appointments are to be made by the commissioner of insurance under subsections (2)(a), ~~and~~ (2)(b), *and (2)(d)* ~~above~~, established private organizations representing insurance carriers, ~~and~~ independent insurance producers, *and employers* may submit names of individuals they recommend for appointments. The commissioner of insurance shall give consideration to ~~such~~ *the* names submitted before appointments are made. However, the commissioner of insurance is not required to appoint any person from the names submitted.

(5) The committee ~~shall~~ *must be staffed by the rating organization and* be funded from the operations budget of the rating organization. Committee members may, if they request, be paid their actual and necessary travel expenses.

(6) Documents and other information concerning the committee's actions must be made available for public review in the office of the commissioner of insurance."

Section 2. Section 33-16-1012, MCA, is amended to read:

"**33-16-1012. Functions and powers of classification and rating committee — *hearings — rulemaking.*** *(1)* The classification and rating committee shall:

~~(1)~~*(a)* meet not less than semiannually to conduct its business;

~~(2) make the final determination regarding the establishment of all manual rules and classification;~~

(b) make the final determination regarding the establishment of all classifications;

~~(3)~~*(c)* establish the advisory premium rates as provided for in 33-16-1005;

~~(4)~~*(d)* publish ~~such~~ material and pamphlets as it considers appropriate; ~~and~~

~~(5)~~*(e)* act as a review committee concerning objections filed by employers in relation to classifications assigned to the employer by an insurer~~. The committee may hire hearings officers to conduct hearings regarding such objections and adopt or modify the findings and conclusions of the hearings officers. The committee shall establish procedures for hearing such objections.~~*; and*

(f) make rules as may be necessary for the conduct of any business that is subject to notice and hearings. The rules must be published and adopted as

provided in Title 2, chapter 4, part 3, and must be published in the Administrative Rules of Montana as part of the rules promulgated by the commissioner of insurance.

(2) (a) A hearing conducted by the committee pursuant to subsection (1)(e) must be an informal proceeding as provided in 2-4-604.

(b) A party aggrieved by a decision of the committee rendered after a hearing conducted pursuant to subsection (2)(a) may petition for judicial review of the decision pursuant to Title 2, chapter 4, part 7.

(3) The committee is subject to the provisions of Title 2, chapter 3, parts 1 and 2."

Section 3. **Effective date.** [This act] is effective upon passage and approval.

Approved April 24, 1993.

CHAPTER NO. 529

[HB 593]

AN ACT ESTABLISHING A SEASONAL BEER AND WINE LICENSE FOR THE YELLOWSTONE AIRPORT; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Seasonal beer and wine license for Yellowstone airport.** (1) Upon application, the department of revenue shall issue a retail beer and wine license to the Yellowstone airport, which is an airport near West Yellowstone, Montana, owned by the state of Montana and operated by the department of transportation.

(2) The application must be made by the department of transportation. The department of transportation may lease the license of use at the airport to an individual or entity approved by the department of revenue.

(3) The license is valid for the retail sale of beer and wine from June 1 to October 1 of each year.

(4) There is no annual fee for the license.

(5) The license issued pursuant to this section:

(a) is not subject to the quota provisions of 16-4-105;

(b) is nontransferable;

(c) does not permit gambling activities otherwise allowed under Title 23, part 5.

Section 2. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapters 1 through 6, and the provisions of Title 16, chapters 1 through 6, apply to [section 1].

Section 3. **Effective date.** [This act] is effective May 31, 1993.

Approved April 24, 1993.

CHAPTER NO. 530

[HB 601]

AN ACT PROVIDING A ONE-TIME BENEFIT INCREASE TO CERTAIN RETIRED MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; ADJUSTING THE EMPLOYER CONTRIBUTION RATE; AMENDING SECTION 19-4-605, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Benefit adjustment for pre-July 1977 retirees.** Effective January 1, 1994, a person who retired prior to July 1, 1977, and who is receiving a monthly retirement benefit must receive a one-time benefit increase of 0.5% for each year of service on record with the teachers' retirement system for which the person did not receive retirement service credit because of now-repealed provisions that limited service credit to years on which contributions were made prior to age 60 or to 35 years of service, whichever was greater.

Section 2. Section 19-4-605, MCA, is amended to read:

"**19-4-605. Pension accumulation fund — employer's contribution.** The pension accumulation fund is the fund in which the reserves for payment of pensions and annuities ~~shall~~ *must* be accumulated and from which pensions, annuities, and benefits ~~in lieu thereof shall~~ *must* be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund ~~shall~~ *must* be made as follows:

(1) Each employer shall pay into the pension accumulation fund an amount equal to ~~7.459%~~ *7.47%* of the earned compensation of each member employed during the whole or part of the preceding payroll period.

(2) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 20-9-501.

(3) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state school for the deaf and blind, the legislature shall appropriate to the employer an adequate amount to allow the payment of the employer's contribution.

(4) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under the budget.

(5) All interest and other earnings realized on the ~~moneys~~ *money* of the retirement system shall be credited to the pension accumulation fund, and the amount required to allow regular interest on the annuity savings fund shall be transferred to that fund from the pension accumulation fund.

(6) All pensions, annuities, and benefits ~~in lieu thereof shall~~ *must* be paid from the pension accumulation fund.

(7) The retirement board may, in its discretion, transfer from the pension accumulation fund an amount necessary to cover expenses of administration."

Section 3. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 4, part 7, and the provisions of Title 19, chapter 4, part 7, apply to [section 1].

Section 4. **Effective date.** [This act] is effective January 1, 1994.

Approved April 24, 1993.

CHAPTER NO. 531

[HB 639]

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE TO ESTABLISH A PROGRAM TO PROVIDE STATE FUNDS TO MATCH LOCAL ECONOMIC DEVELOPMENT FUNDS CONTINGENT UPON THE AVAILABILITY OF STATE MATCHING MONEY AND TO FUND THE CERTIFIED COMMUNITIES PROGRAM ADMINISTERED BY THE DEPARTMENT OF COMMERCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State matching funds program for economic development — distribution of proceeds — criteria for grants — local economic development matching funds.** (1) As used in this section, the following definitions apply:

(a) "Certified community lead organization" means the entity that has been endorsed by resolution of a local governing body and that meets and maintains requirements for certification established by the department.

(b) "Department" means the department of commerce provided for in 2-15-1801.

(2) The department shall create a program to provide state funds to match local economic development funds and to fund the certified communities program. The provision of state matching funds is contingent upon specific appropriations to the department for that purpose. The department shall distribute the funds in the following manner:

(a) 91% to certified community lead organizations, in the form of assistance grants;

(b) 8% to the department for administration of the certified communities program; and

(c) 1% to the department for certification assistance for noncertified communities. If there are no requests for certification assistance, the 1% allocation may be used by the department for administration of the certified communities program.

(3) An assistance grant to a certified community lead organization is based on an annual per capita payment for the area served by the organization,

according to its population in the last completed federal census. The grant may not exceed $75,000 and may not be less than $3,000 a year.

(4) To be eligible to receive a grant, a certified community lead organization:

(a) must be designated as the lead organization by the local governing body;

(b) shall maintain department requirements for certification;

(c) shall match each $1 of the grant with $1 raised from public or private sources; and

(d) shall participate in regional meetings of certified communities.

(5) Grants under this section must be used to conduct economic development programs consistent with strategic plans that are adopted by the certified communities and that are filed with the department.

(6) The department shall use its portion of the proceeds to:

(a) administer the certified communities program;

(b) assist noncertified communities in seeking certification; and

(c) organize and conduct regional meetings of certified communities.

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 532

[HB 640]

AN ACT CHANGING THE DEFINITION OF THE AVERAGE LEVY FOR THE TAXATION OF RAILROAD CAR COMPANIES TO BE THE AVERAGE STATEWIDE RATE ON COMMERCIAL AND INDUSTRIAL PROPERTY INSTEAD OF THE AVERAGE APPLICABLE TO FLEET MOTOR CARRIERS; AMENDING SECTION 15-23-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-211, MCA, is amended to read:

"**15-23-211. Definitions.** As used in 15-23-211 through 15-23-216, unless the context requires otherwise, the following definitions apply:

(1) "Average levy" means the *average statewide* rate of taxation ~~determined under 15-24-103~~ *on commercial and industrial property.*

(2) "Person" includes an individual, firm, association, company, partnership, corporation, joint-stock company, agency, syndicate, or cooperative.

(3) "Private railroad cars" means all railroad cars that:

(a) are not owned by a railroad company operating in this state;

(b) are used for transporting persons or freight; and

(c) are not otherwise assessed for property taxation in this state.

(4) "Railroad car company" means any person, other than a railroad company, engaged in operating, leasing, or furnishing private railroad cars, whether or not owned by that person, for the transportation of persons or freight over railroad lines located wholly or partially within this state."

Section 2. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

Approved April 24, 1993.

CHAPTER NO. 533

[HB 652]

AN ACT INCREASING THE AMOUNT OF REVENUE RETURNED TO THE SCHOOL TRUST BY ALLOCATING AN AMOUNT OF INCOME RECEIVED FROM THE SALE OF TIMBER FROM STATE TRUST LANDS TO THE DEPARTMENT OF STATE LANDS TIMBER SALE PROGRAM TO BE USED TO INCREASE ACTIVITIES THAT WILL RESULT IN ADDITIONAL TIMBER SALES; CLARIFYING STATUTORY REFERENCES TO DEDUCTIONS MADE FOR THE DEVELOPMENT OF STATE LANDS; ELIMINATING THE TERMINATION DATE ON THE TIMBER SALE PROVISION; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 17-3-1003, 18-2-107, 20-25-422, 77-1-606, 77-1-607, AND 77-1-608, MCA, AND SECTION 6, CHAPTER 14, SPECIAL LAWS OF JANUARY 1992; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the amount of timber harvested from state lands continues to decline; and

WHEREAS, the gap between the level of harvest and the biological sustained yield continues to grow; and

WHEREAS, the price of timber continues to escalate because of market conditions and reduced harvesting of federal timber; and

WHEREAS, Montana schools and other institutions face a continuing funding crisis; and

WHEREAS, the rate of return on timber sales is approximately 3 to 1; and

WHEREAS, the use of state trust lands is intended to provide the maximum dollar return to the trusts; and

WHEREAS, investment of a portion of the money from timber sales on state lands directly into activities that will result in additional sales being offered will result in more revenue flowing to the trusts.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Deduction of portion of income received from sale of timber from state trust lands — creation of account.** (1) There is an account in the state special revenue fund. The amount of $312,000 per year of the income received from the sale of timber from state trust lands must be deducted and placed in the account to the credit of the state timber sale program for use by the department in the manner set out in this section to enhance the revenue creditable to the trusts.

(2) Timber sale program funds deducted under subsection (1) must be directly applied to timber sale preparation and documentation.

(3) In order to increase the volume of timber sold at the earliest possible time while continuing to meet the requirements of applicable state and federal laws and in order to avoid unnecessary delays and extra costs that would result from increasing its permanent staff, the department may contract for services that will enable achievement of the purposes of this section and that will achieve the highest net return to the trusts.

(4) To maximize overall return to the trusts, the timely salvage of timber must be considered. However, salvage timber sales may not adversely affect the implementation of green timber sales programs.

(5) A timber purchaser who successfully bids on a contract to purchase timber from state trust lands shall deposit with the department 20% of the bid price as a downpayment when the contract is awarded.

Section 2. Section 77-1-606, MCA, is amended to read:

"**77-1-606. Restriction on use of income from school and institutional lands.** ~~Moneys~~ *Money* in the *resource development* account *created in 77-1-604 that is* derived from the income from public school lands, university lands, agricultural college lands, scientific school lands, normal school lands, capitol building lands, or institutional lands ~~shall~~ *must* be expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in developing public lands of the same trust. If the board determines that public lands in a trust may be developed and moneys in the account from that trust are insufficient to defray the necessary costs and expenses incurred, the board may transfer sufficient moneys from other trusts in the account. Trust accounts from which money is transferred ~~shall~~ *must* be reimbursed by a method approved by the board."

Section 3. Section 77-1-607, MCA, is amended to read:

"**77-1-607. Deductions from income for development account — maximum percentage.** *(1)* The board shall determine the amount or percentage of income, not to exceed 2 ½%, ~~which~~ *that* is necessary to achieve the purposes of this part and shall provide by rule for deductions of that amount or percentage from the income which is secured from the lands by the department for the trusts benefited by this part.

(2) The maximum percentage limitation in subsection (1) does not apply to income deducted and expended under the provisions of [section 1]."

Section 4. Section 77-1-608, MCA, is amended to read:

"**77-1-608. Crediting of deductions.** All deductions from gross proceeds made in accordance with 77-1-607*(1)* ~~shall~~ *must* be paid into the account, and the balance of the proceeds ~~shall~~ *must* be paid into the state treasury to the credit of the proper account."

Section 5. Section 17-3-1003, MCA, is amended to read:

"**17-3-1003. Support of state institutions.** (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, *after any deductions made under Title 77, chapter 1, part 6,* the income from all permanent endowments ~~therefor~~ *for the institution* and from all land grants as provided by law. All ~~moneys~~ *money* received or collected in connection with ~~such~~ *permanent* endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except revenues pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of ~~such~~ obligations or ~~moneys which may~~ *money that* ~~constitute~~ *constitutes* temporary deposits, all or part of which may be subject to withdrawal or repayment, ~~shall~~ *must* be paid over to the state treasurer who shall deposit the ~~same~~ *money* to the credit of the proper fund.

(2) Except as provided in subsection (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution ~~shall~~ *must* be deposited with the state treasurer of Montana for each ~~of such institutions~~ *institution,* to the credit of the state special revenue fund.

(3) All money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution."

Section 6. Section 18-2-107, MCA, is amended to read:

"**18-2-107. Deposit of capitol building grant revenues.** (1) The state treasurer ~~is hereby authorized and instructed to~~ *shall* deposit in a capital projects fund all revenue from the capitol building land grant *after any deductions made under Title 77, chapter 1, part 6.*

(2) The funds ~~so accumulated shall~~ *must* be held and dedicated for the purpose of constructing capitol buildings or additions ~~thereto~~ *to buildings* in accordance with the provisions of section 12 of The Enabling Act."

Section 7. Section 20-25-422, MCA, is amended to read:

"**20-25-422. Support of university of Montana.** (1) For the support and endowment of the university there is annually and perpetually appropriated:

(a) the university fund income and all other sums of money appropriated by law ~~thereto~~ *to the university fund after any deductions made under Title 77, chapter 1, part 6*;

(b) all tuition and matriculation fees; and

(c) all contributions derived from public or private bounty.

(2) The entire income of all ~~such~~ *the* funds ~~shall~~ *must* be placed at the disposal of the regents by transfer to its treasurer and ~~shall~~ *must* be kept separate and distinct from all other funds. The income ~~shall~~ *must* be used solely for the support of the colleges and departments of the university or those connected ~~therewith~~ *with the university.*

(3) All means derived from other public or private bounty ~~shall~~ *must* be exclusively devoted to the specific objects ~~for which they shall have been~~ designated by the donor."

Section 8. **Appropriation.** There is appropriated to the office of public instruction from the school equalization aid account up to $500,000 in fiscal year 1994 and up to $500,000 in fiscal year 1995 of the additional funds deposited in the account under [this act], for the purposes of providing state matching funds for the systemic initiative for Montana mathematics and science grant.

Section 9. Section 6, Chapter 14, Special Laws of January 1992, is amended to read:

"Section 6. **Effective date ~~— termination~~.** [This act] is effective on passage and approval~~, and [sections 3 through 5] terminate June 30, 1993~~."

Section 10. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, part 6, and the provisions of Title 77, chapter 1, part 6, apply to [section 1].

Section 11. **Effective date.** [This act] is effective June 30, 1993.

Section 12. **Termination.** [This act] terminates June 30, 1995.

Approved April 24, 1993.

CHAPTER NO. 534

[HB 660]

AN ACT ESTABLISHING A MONTANA COMMUNITY, CONSERVATION, AND VOLUNTEER SERVICE CORPS TO PROVIDE A VARIETY OF PUBLIC SERVICE OPPORTUNITIES FOR MONTANANS; ASSIGNING ADMINISTRATION AND COORDINATION RESPONSIBILITIES TO THE GOVERNOR'S OFFICE; CREATING AN ADVISORY COUNCIL ON COMMUNITY SERVICE; ESTABLISHING SPECIAL REVENUE ACCOUNTS AND PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 23-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 5] authorizes the office of community service to adopt rules relating to the Montana community service corps.

It is the intent of the legislature that a variety of opportunities be developed, enhanced, and coordinated that maximize the resources and abilities of citizens of Montana to renew the ethic of civic involvement and responsibility by:

(1) encouraging Montanans, regardless of age, income, or ability, to engage in full-time or part-time service;

(2) involving youth in programs that benefit the state and improve their own lives;

(3) enabling young adults to make a sustained commitment to service; and

(4) involving participants in activities to help meet human, educational, environmental, service, and public safety needs that would not otherwise be performed by paid workers.

It is also the intent of the legislature that the rules address the following:

(1) procedures for recruitment and involvement in service;

(2) procedures for review and approval of volunteer or work experience projects;

(3) a service code of conduct and grievance procedure;

(4) standards and procedures to evaluate and report on the performance of participants and projects;

(5) training guidelines for service leaders and participants;

(6) requirements necessary to ensure cooperation and compliance with any federal programs or requirements related to national public service legislation; and

(7) other requirements necessary to accomplish the purposes of the Montana community, conservation, and volunteer service corps.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 8] may be cited as the "Montana Community Service Act".

Section 2. **Definitions.** As used in [sections 1 through 8], unless the context requires otherwise, the following definitions apply:

(1) "Advisory council" means the advisory council on community service appointed by the governor to assist in implementation of [sections 1 through 8].

(2) "Community service" means any kind of public service that provides a benefit to the state of Montana, any of its political subdivisions, or a tribal government or that benefits disadvantaged or low-income persons, disabled persons, or senior citizens of Montana.

(3) "Coordinator" means the person appointed by the governor as the community service coordinator to administer and coordinate the provisions of [sections 1 through 8].

(4) "Corps" means the Montana community service corps, which includes any organization established to provide community services under [sections 1 through 8] and the Montana conservation corps created under 23-1-301.

(5) "Corpsmember" means a participant in the corps.

(6) "Crewleader" means a participant in the corps who supervises corpsmembers.

(7) "Program" means the Montana community service corps program, which includes all of the corps, educational projects, and volunteer projects established under [sections 1 through 8] and under the Montana conservation corps in 23-1-301.

(8) "Volunteer" means a person performing services under [sections 1 through 8] for an association, not-for-profit corporation, hospital, school, or state, local, or tribal governmental entity without compensation, except that partial or full reimbursement may be made for actual expenses incurred.

Section 3. **Office of community service.** (1) There is an office of community service, which is headed by a coordinator and established in the office of the governor.

(2) The purpose of this office is to:

(a) renew the ethic of civic responsibility in the state;

(b) encourage the citizens of the state, regardless of age or income, to engage in full-time or part-time service to the state;

(c) call young people to serve in projects that will benefit the state and improve their life chances through the acquisition of literacy, job skills, and interpersonal skills;

(d) build on the existing organizational framework of state and local governmental entities to expand full-time and part-time service opportunities in a wide variety of programs for all citizens, particularly youth and older Montanans;

(e) involve participants in activities that would not otherwise be performed by employed workers; and

(f) establish corps to accomplish labor-intensive improvements to public or low-income properties or to provide services for the benefit of the state, its communities, and its people through service contracts that specify the work to be performed by the corps.

(3) The coordinator must be appointed by the governor, after consultation with the advisory council. The coordinator serves at the pleasure of the governor.

(4) The coordinator shall, with the advice of the advisory council, assist the governor in the planning, coordination, operation, and evaluation of programs within state government or under grants, donations, bequests, or other resources received by and administered through state government for Montana community services.

(5) The coordinator is responsible for the submission of applications for federal grants and for funding from any other sources for the creation or operation of corps and volunteer projects. The coordinator shall ensure accountability for all resources received.

(6) The coordinator, together with the advisory council, shall integrate and develop state plans for all services provided under [sections 1 through 8], including but not limited to the office of public instruction's serve America program, the Montana university system innovative projects, the Montana conservation corps established in 23-1-301, the department of military affairs' corps involvement, and other community and volunteer service programs.

Section 4. **Advisory council on community service.** (1) The governor shall appoint an advisory council on community service composed of up to 15 members.

(2) Members must include a representative from a tribal government and from at least four state agencies in the following functional areas:

(a) natural resources;

(b) human services;

(c) labor;

(d) K-12 education;

(e) higher education; and

(f) military affairs.

(3) Members may include representatives from local government, not-for-profit agencies, federal agencies, business, labor unions, volunteer groups, and private citizens.

(4) To the extent possible, membership of the advisory council must be balanced according to race, ethnicity, age, gender, and disabilities.

(5) The advisory council shall assist in the development and coordination of state community service programs, integration of services, dissemination of information, recruitment of corpsmembers and volunteers, recruitment and training of crewleaders, development of materials, and evaluation of and accountability for the services provided.

Section 5. **Duties and powers of state agencies.** (1) In addition to the office of community service in the governor's office, the following state agencies are responsible for developing and implementing community service opportunities consistent with the mission and functions of each agency:

(a) The office of public instruction is the agency for corps and volunteer projects in elementary and secondary public, private, and home schools in Montana, including activities sponsored by schools or community-based agencies, to involve school-age youth, including dropouts and out-of-school youth, in service to the community, as well as for programs that involve adult volunteers in the schools. A school district is expected to be the first agency that informs students about the many opportunities to participate in broader community service under [sections 1 through 8] through the federal serve America grants and any other revenue received for purposes consistent with [sections 1 through 8].

(b) The Montana university system is the agency to assist institutions of higher education in Montana, explore new ways to integrate service into the curriculum, support model community service programs on campus, develop teacher and volunteer training programs, and involve students in community service. The community service may complement a student's course of study through the federal higher education innovative projects grants and any other revenue received for purposes consistent with [sections 1 through 8]. [The Montana university system shall provide assistance to the Montana student volunteer program established in House Bill No. 579.]

(c) The department of fish, wildlife, and parks is the agency for corps, community, and volunteer projects in conservation and natural resource settings that are designed to support and enhance state parks, wildlife, watchable wildlife, productivity of state lands, streams and lakes, county and city parks, scenic beauty and access, trails and signs, visitor information centers and rest areas, fairgrounds, and any other conservation-related projects that involve teenagers, young adults, or special community service members, such as adults or senior citizens who provide special skills for a project.

(d) The department of military affairs is the agency for corps, community, and volunteer projects that are designed to involve the national guard in leadership or support roles for service through the provision of organizational and leadership skills, equipment, crewleaders, and other support, as well as the command and coordination of corps that may be mobilized for emergency projects, such as fire suppression or search and rescue.

(e) The governor may designate other agencies, after consultation with the coordinator and the advisory council, for community service projects that focus on improving the quality of life for all Montanans, particularly low-income persons, senior citizens, homebound persons, disabled persons, or institutionalized persons, through preparing and delivering meals, assisting with shopping or other tasks, repairing and painting homes of qualifying persons, providing transportation to and from health care and other appointments, providing respite care, cataloging library books, assisting rural health care providers, providing recreational aides, arranging for tutoring and literacy training, restoring historical photographs, and offering other human service support and community services.

(2) Each agency listed in this section shall ensure that service opportunities that result in a public value are developed for everyone, regardless of race, creed, national origin, or geographical location, by providing leadership through its own network and by forming partnerships with other public or private nonprofit entities.

(3) Each agency listed in this section shall coordinate and integrate its plans with and through the office of community service.

(4) Projects developed or approved under [sections 1 through 8] and funded by an agency must be limited to service projects that provide community service, conservation service, educational service, or other public service and that provide documented public value or benefit.

(5) The state agencies listed in this section may:

(a) designate an agency volunteer coordinator to implement its responsibilities under [sections 1 through 8];

(b) develop and approve work experience and volunteer projects that meet the requirements of [sections 1 through 8];

(c) execute contracts or cooperative agreements that contain the terms and conditions necessary and desirable for the employment of crewleaders and corpsmembers in approved work experience projects with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations;

(d) execute contracts or cooperative agreements with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations for the purpose of administering the requirements of [sections 1 through 8];

(e) under the supervision of the office of community service, apply for and accept grants or contributions of services, funds, or lands from any public or private donors, including appropriations;

(f) develop procedures for participants to achieve incentive vouchers, education, credit toward education, skill training, scholarships, housing benefits, or other benefits upon completion of their term of service;

(g) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary to complete work experience or volunteer projects;

(h) authorize use of the corps for emergency projects, including but not limited to natural disasters, fire prevention and suppression, and rescue of lost or injured persons, and provide adequate training to corpsmembers prior to participation in an emergency project; and

(i) adopt rules and guidelines necessary to implement the provisions of [sections 1 through 8] and to effectively administer the program.

Section 6. **Prohibited activities.** (1) The office of community service and agencies listed in [section 5], in developing and approving work experience and volunteer projects, shall ensure that:

(a) work available to participants is not available as the result of a labor dispute, strike, or lockout and will not be assigned to cause a layoff or downgrading of a position or to prevent the return to work of an available competent employee; and

(b) a work experience project:

(i) does not impair existing contracts for service or collective bargaining agreements; and

(ii) is not inconsistent with the terms of a collective bargaining agreement without written concurrence of the labor organization and employer concerned.

(2) It is unlawful for a person to demand from any public officer, agency, employee, corpsmember, or crewleader an assessment or percentage of any money or profit or its equivalent in support, service, or any other thing of value, with the express or implied understanding that it will be used for political

purposes. [Sections 1 through 8] may not be construed to prohibit voluntary contributions to any political committee or organization for legitimate political purposes to the extent allowed by law.

Section 7. **Office of community service — accounts.** (1) There is an account in the state special revenue fund. The office of community service and all participating agencies shall deposit any fee, grant, donation, or reimbursement received under [sections 1 through 8] into the account to be used to pay expenses for administering and providing service projects.

(2) There is an account in the federal special revenue fund. The office of community service and all participating agencies shall deposit any federal revenue received under the National and Community Service Act of 1990, Public Law 101-610, as amended, and any other federal revenue received related to the purposes and implementation of the provisions of [sections 1 through 8] into the account to be used to pay expenses for administering and providing service projects.

(3) Reimbursement may be provided to state agencies for work on private property or for other public service. In the case of emergencies and natural disasters, projects may take place on properties not owned by a public agency without regard to private reimbursement.

(4) The money in the state special and federal special revenue accounts is statutorily appropriated, as provided in 17-7-502, to the office of community service.

(5) The office of community service may transfer funds to participating state agencies for approved community service projects, and lead agencies may transfer funds between each other for cooperative projects. Disbursement authority follows any transfers.

(6) Administrative costs from statutorily appropriated funds may not exceed 20%. Funds for additional personal services, operating costs, and equipment costs may be appropriated.

Section 8. **Indemnification for Montana community service act.** The provisions of 2-9-305 apply to community service crewleaders, corpsmembers, and volunteers for actions arising from the discharge of assigned community service functions or duties.

Section 9. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; ~~and~~ 90-9-306*; and [section 7]*.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 10. Section 23-1-301, MCA, is amended to read:

"**23-1-301. Montana conservation corps — purpose and intent.** (1) There is a Montana conservation corps within the parks division of the department of fish, wildlife, and parks. *The corps is part of the Montana community, conservation, and volunteer service corps provided for under [sections 1 through 8] and is subject to the oversight of the office of community service.*

(2) The purpose of the corps is to accomplish labor-intensive improvements to the state park system and to other public lands *and to perform community service activities* for which specific responsibilities are accepted through service contracts.

(3) It is the intent of the legislature that the corps grow in productive ways and that state agencies involved with the corps provide coordination of the conservation corps program *and the programs established under [sections 1 through 8]*. The legislature also intends that the Montana conservation corps program *have the authority to* contract with the job service or the human resource development council, as defined in 53-10-501."

Section 11. **Coordination requirements — coordination of programs.** The governor shall ensure that program activities under [sections 1 through 8] be coordinated with similar programs administered under federal acts and programs already established in this state in order to maximize coordination of programs and to prevent overlapping and duplication of services.

Section 12. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 13. **Coordination instruction.** If House Bill No. 579 is not passed and approved, then the bracketed language in [section 5(1)(b) of this act] is void.

Section 14. **Effective date.** [This act] is effective on passage and approval.

Section 15. **Termination.** [Section 7(4), the first sentence in section 7(6), and section 9] terminate July 1, 1995.

Approved April 24, 1993.

CHAPTER NO. 535

[HB 680]

AN ACT PROVIDING THAT THE REIMBURSEMENT FOR INTEREST RATE DIFFERENTIALS FOR LOW INTEREST ENERGY LOANS AND INSTALLATIONS PROVIDED BY PUBLIC UTILITIES THAT PROVIDE ELECTRICITY OR NATURAL GAS BE FINANCED FROM A UTILITY RATE BASE RATHER THAN BY A TAX CREDIT; PROVIDING THAT GRANTS FOR INSTALLATIONS PROVIDED BY PUBLIC UTILITIES BE INCLUDED IN A UTILITY RATE BASE; ELIMINATING THE PROVISION OF LOW INTEREST ENERGY LOANS BY FINANCIAL INSTITUTIONS; AMENDING SECTIONS 15-32-107 AND 69-3-305, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-107, MCA, is amended to read:

"**15-32-107. Loans by utilities and financial institutions — tax credit for interest differential** ***for loans made prior to July 1, 1995.*** (1) ~~A public utility providing electricity or natural gas may install or pay for the installation of energy conservation materials or recognized nonfossil forms of energy generation systems in a dwelling. The utility may agree with the occupant of the dwelling that the occupant shall reimburse the utility for its expenditure in periodic installment payments added to the occupant's regular bill for electricity or natural gas. The utility may charge interest not exceeding the equivalent of 7% per year on the declining balance of the sum advanced for the installation of energy conservation materials and recognized nonfossil forms of energy generation systems.~~

~~(2) A financial institution, as defined in 32-6-103, may offer and make loans at an interest rate not less than 2 percentage points below the discount rate on 90-day commercial paper in effect at the federal reserve bank in the ninth federal reserve district.~~

~~(3)~~ Except as provided in subsection ~~(6)~~ *(4)*, a public utility or a financial institution ~~lending money~~ *that lent money or made qualifying installations* under this section *as it read prior to July 1, 1995*, may compute the difference between interest it actually receives on ~~such~~ *the* transactions and the interest ~~which~~ *that* would have been received at the prevailing average interest rate for home improvement loans, as prescribed in rules made by the public service commission. The utility may apply the difference so computed as a credit against its tax liability for the electrical energy producer's license tax under 15-51-101 or for the corporation license tax under chapter 31, part 1. The public service commission shall regulate rates in such a manner that a utility making loans under this section may not make a profit as the result of this section. The financial institution may apply the difference so computed as a credit against its tax liability for the corporation license tax under chapter 31, part 1.

~~(4)~~*(2)* A utility may not claim a tax credit under this section exceeding $750,000 in any tax year. A financial institution may not claim a tax credit under this section exceeding $2,000 in any tax year.

~~(5)~~*(3)* The public service commission may make rules to implement this section as it ~~shall apply~~ *applies* to public utilities only.

~~(6)~~*(4)* A public utility whose purchases of or investments in conservation are placed in the rate base as provided in Title 69, chapter 3, part 7, may not receive a tax credit under subsection ~~(3)~~ *(1)*."

Section 2. Section 69-3-305, MCA, is amended to read:

"**69-3-305. Deviations from scheduled rates, tolls, and charges.** (1) A public utility may not:

(a) charge, demand, collect, or receive a greater or less compensation for a utility service performed by it within the state or for any service in connection with a utility service than is specified in the printed schedules, including schedules of joint rates, that may at the time be in force;

(b) demand, collect, or receive a rate, toll, or charge not specified in the schedules; or

(c) grant a rebate, concession, or special privilege to a consumer or user that, directly or indirectly, ~~shall~~ *has* or may have the effect of changing the rates, tolls, charges, or payments.

(2) The rates, tolls, and charges named in the printed schedules are the lawful rates, tolls, and charges until the rates, tolls, and charges are changed, as provided in this chapter.

(3) The commission may order refunds or credits of rates, tolls, or charges collected in violation of this section and may order payment of interest at a reasonable rate on the refunded amount.

(4) The provisions of this section do not prohibit the sharing of profits or revenues with customers in conjunction with an alternative form of regulation approved under 69-3-809.

(5) (a) ~~Additionally, a~~ *A* provider of regulated telecommunications service may offer, for a limited period of time, either rebates or reductions or waivers

of installation charges in conjunction with promotions, market trials, or other sales-related activities that are common business practices. Promotional pricing of services that remain fully tariffed requires advance approval of the commission. ~~No~~ *A* promotional offering may *not* combine monopoly services with competitive services.

(b) A public utility providing electricity or natural gas may offer grants and subsidized loans to install energy conservation and nonfossil forms of energy generation systems in dwellings.

(c) The commission may define the appropriate scope of promotions, rebates, ~~and~~ market trials, *and grants and subsidized loans,* either by rule or in response to complaints. The commission may determine whether a particular sales activity *or grant or subsidized loan program* under this subsection is unfairly discriminatory or is not cost-effective. Costs and expenses incurred or revenue foregone with respect to sales activities *and grant and subsidized loan programs* that the commission determines are unfairly discriminatory or not cost-effective are the responsibility of the provider's shareholders in rates set by the commission.

~~(5)~~*(6)* A public utility violating the provisions of this section is subject to the penalty prescribed in 69-3-206. This, however, does not have the effect of suspending, rescinding, invalidating, or in any way affecting existing contracts."

Section 3. **Effective date.** [This act] is effective July 1, 1995.

Approved April 24, 1993.

CHAPTER NO. 536

[HB 687]

AN ACT TEMPORARILY ALLOCATING A PERCENTAGE OF THE COAL SEVERANCE TAX TO A SPECIAL REVENUE ACCOUNT FOR USE BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR THE STABILIZATION AND PRESERVATION OF HISTORIC AND CULTURAL SITES WITHIN THE STATE PARK SYSTEM; PROVIDING AN APPROPRIATION; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"**15-35-108.** *(Temporary)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1992, and ending June 30, 1993, 12% of coal severance tax collections are allocated to the general fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17 ½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 ¼% to the credit of the renewable resource development bond fund;

(e) 0% to a nonexpendable trust fund for the purpose of parks management. Income from this trust fund must be appropriated for the development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 ⅔% to the Montana arts council, to be allocated as follows:

(i) 42 ½% for operating costs; and

(ii) 57 ½% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(k) beginning July 1, 1991, and ending June 30, 1993, 3 ⅓% to a special revenue account to be used by the department of fish, wildlife, and parks for the development, operation, and maintenance of state parks and the stabilization and preservation of historic sites within the state park system;

(l) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates June 30, 1993—sec. 3, Ch. 615, L. 1991, and sec. 3, Ch. 8, Sp. L. January 1992.)*

15-35-108. *(Effective July 1, 1993)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17 ½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 ¼% to the credit of the renewable resource development bond fund;

(e) ~~3 ⅛%~~ *0%* to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 ⅔% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) *beginning July 1, 1993, and ending June 30, 1995, 3 ⅓% to a special revenue account to be used by the department of fish, wildlife, and parks for the stabilization and preservation of historic and cultural sites within the state park system;*

(l) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates July 1, 2003—sec. 4, Ch. 191, L. 1991.)*

15-35-108. *(Effective July 1, 2003)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. **Appropriation — contingent applicability.** (1) The amount of $1,042,000 is appropriated from the special revenue account established in 15-35-108(3)(k) for the biennium ending June 30, 1995, to the department of fish, wildlife, and parks for the purposes of stabilization and preservation of historic and cultural sites within the state park system.

(2) The appropriation in subsection (1) constitutes legislative consent, within the meaning of 18-2-102, for the capital projects contained in subsection (1).

(3) The appropriation in subsection (1) is subject to the terms and conditions of [sections 1 through 9] of House Bill No. 5 if that bill is passed and approved by the 53rd legislature.

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Section 4. **Termination.** [This act] terminates June 30, 1995.

Approved April 24, 1993.

CHAPTER NO. 537

[HB 690]

AN ACT CLARIFYING THE AUTHORITY OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND TO PROVIDE ASSISTANCE TO PROGRAMS FOR THE VISUALLY IMPAIRED OR HEARING IMPAIRED; REQUIRING THE SCHOOL TO CHARGE A FEE FOR THE ASSISTANCE; AMENDING SECTION 20-8-102, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-8-102, MCA, is amended to read:

"**20-8-102. Objects and purposes — *assistance to programs — fee.*** *(1)* The Montana school for the deaf and blind is a residential and day school for children and adolescents who are deaf or blind or whose hearing or sight is so defective that they cannot be successfully taught and are unable to receive a sufficient or proper education in the public schools of the state.

(2) The school shall serve as a consultative resource for parents of hearing impaired and visually impaired children not yet enrolled in an educational program and for public schools of the state where hearing impaired or visually impaired children are enrolled. *The school upon request shall ensure that services and programs for hearing impaired or visually impaired children are appropriate and sufficient. The school may provide assistance to the programs that the school determines is needed. The school shall collect a reasonable fee for the assistance from the public school or other responsible agency receiving the assistance. The fee must be in an amount sufficient to cover the cost of services provided.*

(3) The object and purpose of the school is to furnish and provide, by the use of specialized methods and systems, an education for the hearing impaired and visually impaired children of this state that is commensurate with the education provided to nonhandicapped children in the public schools and that

will enable children being served by the school to become independent and self-sustaining citizens."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 538

[HB 691]

AN ACT PROVIDING FOR THE DEPOSIT OF CERTIFICATE OF NEED FEES IN A SPECIAL REVENUE ACCOUNT; AMENDING SECTION 50-5-310, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-310, MCA, is amended to read:

"**50-5-310. Fees.** (1) There is no fee for filing a letter of intent.

(2) An application for certificate of need approval must be accompanied by a fee ~~equaling~~ *that is at least equal to* 0.3% of the capital expenditure projected in the application, except that the fee may be no less than $500.

(3) With the exception of the department and an applicant whose proposal is approved and who does not request the hearing, each affected person who is a party in a reconsideration hearing held pursuant to 50-5-306(1) shall pay the department $500.

(4) Fees collected under this section must be deposited in ~~the~~ *a* state ~~general fund~~ *special revenue account for use by the department in conducting certificate of need reviews.*"

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 539

[SB 106]

AN ACT REVISING THE REFUND OF LOCAL GOVERNMENT TAXES BY A COUNTY; PROVIDING FOR JUDICIAL REVIEW OF A TAX REFUND DECISION BY COUNTY COMMISSIONERS; AMENDING SECTIONS 15-16-602, 15-16-612, 15-16-613, 15-24-920, AND 20-15-403, MCA; AND REPEALING SECTION 15-16-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Refund of taxes — limitations on refunds.** (1) Subject to the provisions in subsections (2) and (3), a board of county commissioners shall order a refund:

(a) on a tax, penalty, interest, or cost paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(b) on a tax paid for which a refund is allowed under 15-16-612 or 15-16-613;

(c) on a tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for duplicate taxes paid as determined by the department of revenue;

(d) on net or gross proceeds tax, centrally assessed property tax, or local government severance tax, penalty, or interest when the department of revenue notifies the board of county commissioners of an assessment revision completed pursuant to 15-8-601; or

(e) upon entry of a decision either by the district court or by the state tax appeal board under 15-2-306 that has not been appealed to a higher court.

(2) The taxpayer shall prove that a refund is due under subsection (1)(a) or (1)(b).

(3) A refund may not be granted under subsection (1)(a) or (1)(b) unless the taxpayer or a representative of the taxpayer files a written claim with the board of county commissioners within 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

Section 2. **Judicial review of tax refund denials.** (1) A taxpayer aggrieved by a final decision of the board of county commissioners under [section 1] is entitled to a judicial review of the decision under this section.

(2) Proceedings for review of a decision of the board of county commissioners must be instituted by filing a petition for judicial review in the district court of the county within 30 days of receipt of the board's decision. A copy of the petition must be served on the board of county commissioners within 10 days of the filing of the petition.

(3) Review of a decision of the board of county commissioners must be conducted by the district court under the standards of review set out in 2-4-704. Additional evidence may be received by the district court under the standards set out in 2-4-703.

Section 3. **Payment of refunds.** (1) In the order to refund a tax, penalty, interest, or cost under [section 1], the board of county commissioners shall determine the method of payment. The board may refund the amount due the taxpayer in installments over a period not to exceed 10 years. If the refund is made in installments, the taxpayer is entitled to interest on the unpaid balance at the interest rate received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(2) A refund of a tax, penalty, interest, or cost under [section 1] must be paid by the county treasurer out of the general fund of the county. The county treasurer shall transfer money from other funds of the county and of the state, school district, or other taxing jurisdictions that are proratably responsible for the refunds as may be necessary to reimburse the county general fund for the refund.

Section 4. Section 15-16-602, MCA, is amended to read:

"**15-16-602. Concurrent remedies.** ~~Section 15-16-601~~ *[Sections 1 through 3]* ~~shall~~ *may* not be ~~deemed~~ *considered* or construed to be in conflict with the provisions of ~~part 4 of~~ chapter 1, *part 4*. ~~but 15-16-601~~ *[Sections 1* *through 3]* and the provisions of ~~such~~ part 4 ~~shall~~ provide and afford concurrent remedies."

Section 5. Section 15-16-612, MCA, is amended to read:

"**15-16-612. Refund of tax paid.** (1) If the property is destroyed after the property taxes have been paid for the current year, the taxpayer is entitled to a refund of the amount of tax paid in excess of the adjusted amount required by 15-16-611.

(2) A refund ~~shall~~ *must* be made as provided for in ~~15-16-601~~ *[sections 1 through 3]*."

Section 6. Section 15-16-613, MCA, is amended to read:

"**15-16-613. Refund of certain taxes paid on migratory property.** (1) Subject to the provisions of ~~15-16-601~~ *[sections 1 through 3]* and upon proof that a tax was paid in another state on the same property, a taxpayer whose property is assessed under 15-24-303 for a period longer than the actual number of months that the property has taxable situs in the state is entitled to a refund, as provided in this section.

(2) To obtain a refund, a taxpayer shall file an application for refund with the county treasurer in the county where the property was originally taxed. ~~A~~ *If a taxpayer receives an order by the board of county commissioners pursuant to [section 1], the* taxpayer shall apply for a refund allowed under this section by January 31 following the year of assessment~~,~~. ~~and the~~ *The* county shall make the refund within the first quarter of the following fiscal year. The application must be made on a form provided by the department of revenue and may require information as prescribed by rule of the department.

(3) The amount of the refund is the difference between the amount of tax paid under 15-24-303 and the tax owed based upon the number of months the property had taxable situs in the state for the year. The refund may not exceed the amount of the tax paid.

(4) For the purposes of this section, "month" means any part of a calendar month."

Section 7. Section 15-24-920, MCA, is amended to read:

"**15-24-920. Election for proration of tax on livestock — refunds — additional assessment.** (1) An owner of livestock who moves ~~his~~ *the* livestock interstate may elect to have ~~his~~ *the* nonexempt livestock taxed on a prorated basis.

(2) The owner shall file ~~his~~ *an* election with the county assessor:

(a) on the statement required in 15-24-903; or

(b) if ~~his~~ *the* livestock have taxable situs in the state before March 1, on a form prescribed by the department. The statement must indicate the number of months the owner's livestock will be in the state.

(3) If a livestock owner elects to be taxed on a prorated basis, the tax on livestock that are moved interstate must be prorated according to the ratio of

the number of months the livestock have taxable situs in the county to the total number of months in the taxable year. Livestock must be prorated as provided in this section regardless of when the livestock gain taxable situs in the county during the taxable year.

(4) Subject to the provisions of ~~15-16-601~~ *[sections 1 through 3]*, a taxpayer whose nonexempt livestock are assessed under subsection (3) for a period longer than the actual number of months that the livestock have taxable situs in the state is entitled to a refund. The amount of the refund is equal to the difference between the original prorated amount paid and the subsequent amount owed after the actual number of tax situs months are determined at the end of the tax year. A taxpayer shall apply for a refund allowed under this subsection by January 31 following the year of assessment. The application must include a statement showing the date when the livestock were moved out of the state.

(5) A taxpayer whose nonexempt livestock are assessed under subsection (3) for a period shorter than the actual number of months that the livestock have taxable situs is subject to additional taxes for the number of additional months that the livestock has taxable situs in the state."

Section 8. Section 20-15-403, MCA, is amended to read:

"**20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, ~~15-16-601~~ *[section 3]*, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 9. **Repealer.** Section 15-16-601, MCA, is repealed.

Section 10. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 15, chapter 16, part 6, and the provisions of Title 15, chapter 16, part 6, apply to [sections 1 through 3].

Approved April 24, 1993.

CHAPTER NO. 540

[SB 357]

AN ACT LIMITING THE RIGHT OF A WITNESS IN A PROCEEDING BEFORE THE SECURITIES COMMISSIONER TO CLAIM THE PRIVILEGE AGAINST SELF-INCRIMINATION IN ORDER TO EXCLUDE THE USE OF THE TESTIMONY IN ANY CRIMINAL CASE; REVISING THE DURATION OF A TEMPORARY ORDER ISSUED BY THE COMMISSIONER PRIOR TO A HEARING ON AN ALLEGED VIOLATION OF STATE SECURITIES LAW; AMENDING SECTIONS 30-10-304 AND 30-10-305, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-304, MCA, is amended to read:

"**30-10-304. Investigations and subpoenas.** (1) The commissioner ~~in his discretion~~ may:

(a) make ~~such~~ public or private investigations or examinations within or ~~without~~ *outside* this state as ~~he~~ *the commissioner* ~~deems~~ *considers* necessary to determine whether any registration should be granted, denied, or revoked or whether any person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order ~~hereunder~~ *under this chapter* or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules and forms ~~hereunder~~ *under this chapter*;

(b) require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

(c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order ~~hereunder~~ *under this chapter*.

(2) (a) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the commissioner or any officer designated by ~~him~~ *the commissioner* may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records ~~which~~ *that* the commissioner ~~deems~~ *considers* relevant or material to the inquiry.

(b) The commissioner may issue and apply to enforce subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which the information is sought would be a violation of the Securities Act of Montana if the activities had occurred in this state.

(3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring ~~him~~ *the person* to appear before the commissioner or the officer designated by ~~him~~ *the commissioner*~~, there~~ to produce documentary evidence if ~~so~~ ordered or to give evidence ~~touching~~ *concerning* the matter under investigation or in question. Any failure to obey the order of the court may be punished by the court as a contempt of court.

(4) ~~No~~ *A* person is *not* excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by ~~him~~ *the commissioner*, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, ~~(~~documentary or otherwise~~)~~, required of ~~him~~ *the person* may tend to incriminate ~~him~~ or subject ~~him~~ *the person* to a penalty or forfeiture~~; but no compelled~~. *However,* testimony or evidence *that is compelled following a claim of privilege against self-incrimination* or any information directly or indirectly derived from ~~such~~ *the* testimony or evidence may *not* be used against the witness in any criminal case. ~~Nothing in this~~ *This* section ~~prohibits~~ *does not prohibit* the commissioner from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the commissioner determines, in ~~his~~ *the commissioner's* sole discretion, that the ends of justice would be served ~~thereby~~. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(5) The office of the securities commissioner is a criminal justice agency as defined in 44-5-103."

Section 2. Section 30-10-305, MCA, is amended to read:

"**30-10-305. Injunctions and other remedies — limitations on actions.** (1) If it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order ~~hereunder~~ *under this chapter,* ~~he~~ *the commissioner* may ~~in his discretion~~:

(a) issue an order directing the person to cease and desist from continuing the act or practice after reasonable notice and opportunity for a hearing. The commissioner may issue a temporary order pending the hearing that*:*

(i) remains in effect until 10 days after the hearing ~~on the allegations contained in the cease and desist order is held~~ *examiner issues proposed findings of fact and conclusions of law and a proposed order;* or

(ii) ~~that~~ becomes final if the person to whom notice is addressed does not request a hearing within 15 days after receipt of the notice; or

(b) without the issuance of a cease and desist order, bring an action in any court of competent jurisdiction to enjoin any ~~such~~ acts or practices and to enforce compliance with parts 1 through 3 of this chapter or any rule or order ~~hereunder~~ *under this chapter.* Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus ~~shall~~ *must* be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond. If the commissioner prevails, ~~he~~ *the commissioner* is entitled to reasonable attorneys' fees as fixed by the court.

(2) A final judgment or decree, criminal or civil, determining that a person has violated parts 1 through 3 of this chapter in an action brought by the commissioner for ~~such~~ *the* violation, other than a consent judgment or decree entered before trial, is prima facie evidence against that person in an action brought against ~~him~~ *the person* under 30-10-307.

(3) The commissioner may, after giving reasonable notice and an opportunity for a hearing under this section, impose a fine not to exceed $5,000 per violation upon a person found to have engaged in any act or practice constituting a violation of any provision of parts 1 through 3 of this chapter or any rule or order issued under parts 1 through 3 of this chapter. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under this subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any person fails to pay a fine referred to in this subsection, the amount of the fine is a lien upon all of the assets and property of ~~such~~ *the* person in this state and may be recovered by suit by the commissioner and deposited in the general fund. Failure of the person to pay a fine also constitutes a forfeiture of ~~his~~ *the* right to do business in this state under parts 1 through 3 of this chapter.

(4) (a) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded on a violation of 30-10-201(1) through (3) or 30-10-202 unless it is brought within 2 years after the violation occurs.

(b) An administrative or civil action may not be maintained by the commissioner under this section to enforce a liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued ~~thereunder~~ *under this chapter*, except 30-10-201(1) through (3) and 30-10-202, unless it is brought within 2 years after discovery by the commissioner or ~~his~~ *the commissioner's* staff of the facts constituting the violation.

(c) ~~In no event may an~~ *An* action *may not* be maintained under this section to enforce any liability founded on a violation of parts 1 through 3 of this chapter or any rule or order issued ~~thereunder~~ *under this chapter* unless it is brought within 5 years after the transaction on which the action is based."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 541

[SB 359]

AN ACT ENHANCING LOCAL RAIL TRANSPORTATION SERVICES IN MONTANA; PROVIDING LOANS AND GRANTS FOR THE CONTINUED OPERATION OF LOCAL RAIL FREIGHT TRANSPORTATION SERVICES AND FOR THE DEVELOPMENT AND IMPROVEMENT OF INTERMODAL TRANSPORTATION FACILITIES TO MITIGATE LONG-TERM HIGHWAY IMPACTS AND TO PROMOTE EFFICIENCY AND EFFECTIVENESS IN THE STATEWIDE TRANSPORTATION SYSTEM; AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO PROVIDE LOANS OR GRANTS TO CERTAIN RAILROADS AND PORT AUTHORITIES; AMENDING SECTIONS 60-11-111, 60-11-121, 60-11-122, AND 60-11-123, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-11-111, MCA, is amended to read:

"**60-11-111. Identification and acquisition of railroad rights-of-way — *identification of railroad lines for rehabilitation.*** (1) Identification of those railroad lines proposed for abandonment in the state of Montana that may have potential for local transportation service or future use as transportation corridors is necessary to determine the feasibility of acquisition by the state and to allow the state to negotiate for acquisition of those railroad lines or easements therein.

(2) Identification of those railroad branch lines in the state that may have potential for local rail freight transportation service is necessary to determine the feasibility of providing loans or grants to the owner or operator of the railroad line as provided in [section 5].

~~(2)~~*(3)* The department of transportation:

(a) shall identify railroad rights-of-way in this state that may be abandoned and research the feasibility of acquisition by the state of Montana of those rights-of-way that may be abandoned;

(b) shall identify, under the state rail planning program, railroad branch lines that should be preserved for continued operation;

~~(b)~~*(c)* shall report periodically to the legislative finance committee, created in 5-12-201, on the progress of the duties imposed upon it pursuant to ~~subsection (2)(a)~~ *subsections (3)(a) and (3)(b)*;

~~(c)~~*(d)* may negotiate for and acquire easements in the rights-of-way or the railroad rights-of-way and attendant facilities identified pursuant to subsection ~~(2)(a)~~ *(3)(a)* and:

(i) hold all ~~such~~ acquired lands in trust for transportation purposes; and

(ii) upon creation of an appropriate local authority, other than an agency of state government, shall transfer to ~~such~~ *the* local authority all attendant facilities and all rights and responsibility to operate and maintain transportation services over the lands acquired in subsection ~~(2)(c)~~ *(3)(d)*; ~~and~~

~~(d)~~*(e)* shall cooperate with and assist persons representing recreational, transportation, and utility interests and other interested persons, including adjacent landowners, in acquiring ownership or easement of abandoned railbeds*; and*

(f) shall establish procedures, including the use of federal funds received for rail freight assistance programs under 49 U.S.C. 1654, for providing loans and grants under [section 5].

~~(3)~~*(4)* Abandoned rights-of-way acquired and held in trust pursuant to subsection ~~(2)(c)(i)~~ *(3)(d)(i)* must be administered by the department of state lands, as prescribed in Title 77, until ~~such time as~~ the land is needed for transportation purposes."

Section 2. Section 60-11-121, MCA, is amended to read:

"**60-11-121. Legislative findings.** *(1)* The legislature finds that it is in the interests of the state of Montana to preserve and encourage, whenever possible, Montana's railroad transportation infrastructure, especially*:*

(a) those railroads classified as Class III carriers under 49 CFR, chapter 10, that operate mainly within the state*; and*

(b) those railroads within the state that are eligible for rail freight assistance programs under 49 U.S.C. 1654.

(2) The legislature further finds that:

(a) the railroad transportation infrastructure of the state is enhanced by the development and improvement of intermodal transportation facilities by port authorities created under Title 7, chapter 14, part 11; and

(b) abandonment of railroad branch lines and the increased demands for shipping have a negative impact on the highways of the state.

(3) The legislature further finds that the preservation of those railroads described in subsection (1)(b) and the development and improvement of intermodal transportation facilities are necessary to enhance access to markets, to mitigate rural isolation and long-term negative impacts on the highways of the state, and to promote the efficiency and effectiveness of the state's transportation system.

(4) The legislature declares that loans and grants made available under [section 5] to railroads and to port authorities are in the interest of the state."

Section 3. Section 60-11-122, MCA, is amended to read:

"**60-11-122. Special railroad facilities *and intermodal transportation facilities* account.** There is a special railroad facilities *and intermodal transportation facilities* account in the state special revenue fund."

Section 4. Section 60-11-123, MCA, is amended to read:

"**60-11-123. Disposition of revenue from state-owned railroads — use of money.** (1) Unless otherwise required by law, revenue from the lease or sale of assets of or revenue paid to the state of Montana by an operator of a railroad owned by the state of Montana must be deposited in the special railroad facilities *and intermodal transportation facilities* account created in 60-11-122.

(2) The department of transportation is authorized to administer, as provided in 60-11-121 through 60-11-123 *and [section 5]*, the special railroad facilities *and intermodal transportation facilities* account created in 60-11-122 to provide for improvement of railroad tracks and associated facilities of any state-owned railroad in Montana *and to provide loans and grants to railroad lines and intermodal transportation facilities as provided in [section 5]*."

Section 5. **Railroad and intermodal transportation facility loans and grants — authorization — eligibility.** (1) Money deposited in the special railroad facilities and intermodal transportation facilities account created in 60-11-122 may be used by the department of transportation, after deducting the necessary costs and expenses for administering this section, to provide loans and grants for the preservation and continued operation of railroad branch lines identified in 60-11-111 and for the development and improvement of intermodal transportation facilities. Proceeds of all repayments of loans, including interest, made under this section must be deposited in the special railroad facilities and intermodal transportation facilities account.

(2) An owner or operator of a railroad identified in 60-11-111(2) is eligible for a loan or grant under this section provided that the owner or operator:

(a) undertakes to repair, improve, or replace rail facilities to allow the continued operation of the railroad for local rail transportation service; and

(b) derives revenue from the continued operation of the railroad.

(3) A port authority created under Title 7, chapter 14, part 11, is eligible for a loan or grant under this section for the development or improvement of an intermodal transportation facility under this section provided that:

(a) the port authority is included in the state transportation planning process as described in 23 U.S.C. 135; and

(b) the intermodal transportation facility for which a loan or grant is sought is integrally related to the railroad transportation system of the state.

Section 6. **Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 60, chapter 11, part 1, and the provisions of Title 60, chapter 11, part 1, apply to [section 5].

Section 7. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 542

[SB 368]

AN ACT PROVIDING FOR THE PARTIAL WITHDRAWAL OF THE CONSENT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES TO PUBLIC LAW 280 JURISDICTION ON THE FLATHEAD RESERVATION; AMENDING SECTION 2-1-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Confederated Salish and Kootenai Tribes seek state approval to withdraw tribal consent and to partially retrocede from Public Law 280 jurisdiction on the Flathead Reservation in certain defined areas; and

WHEREAS, the State of Montana finds it appropriate at this time to consent to the resumption by the Confederated Salish and Kootenai Tribes of jurisdiction in those areas specifically provided for in this legislation.

THEREFORE, the Legislature of the State of Montana does hereby adopt this legislation to approve partial retrocession by the Confederated Salish and Kootenai Tribes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-1-306, MCA, is amended to read:

"**2-1-306. Withdrawal of consent to state jurisdiction.** ~~Any Indian tribe, community, band, or group of Indians that may consent to come within the provisions of this part may within 2 years from the date of the governor's proclamation withdraw their consent to be subject to the criminal and/or civil jurisdiction of the state of Montana, by appropriate resolution, and within 60~~

~~days after receipt of such resolution, the governor shall issue a proclamation to that effect.~~ *(1) No sooner than 6 months after [the effective date of this act] and after consulting with local government officials concerning implementation, the Confederated Salish and Kootenai tribes may, by tribal resolution, withdraw consent to be subject to the criminal misdemeanor jurisdiction of the state of Montana. Within 6 months after receipt of the resolution, the governor shall issue a proclamation to that effect.*

(2) The Confederated Salish and Kootenai tribes may, by separate resolution, withdraw consent to be subject to those areas of civil jurisdiction of the state of Montana that are delineated in tribal ordinance 40-A (revised and enacted May 5, 1965). The withdrawal is limited to those delineated areas of civil jurisdiction agreed upon in writing by the governor after consultation with the attorney general and officials of affected local governments. The tribes shall initiate this process by sending a certified letter to the governor. After consultation and execution of a written agreement between the governor and the tribes, the agreed-upon civil areas must be incorporated into a tribal resolution to be enacted by the tribes. Within 6 months after receipt of the tribal resolution, the governor shall issue a proclamation to that effect that reflects the terms of the written agreement.

(3) Subsections (1) and (2) do not alter the existing jurisdiction or authority of the Confederated Salish and Kootenai tribes or the state of Montana, except as expressly provided for in subsections (1) and (2)."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 24, 1993.

CHAPTER NO. 543

[HB 666]

AN ACT REVISING THE STATUTORY APPROPRIATION FOR THE PETROLEUM TANK RELEASE CLEANUP FUND; AMENDING SECTION 75-11-313, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-313, MCA, is amended to read:

"**75-11-313. Petroleum tank release cleanup fund.** (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund by the board *and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under subsections (3)(b) and (3)(c). Administrative costs under subsection (3)(a) must be paid pursuant to a legislative appropriation* ~~and is statutorily appropriated as provided in 17-7-502~~.

(2) There is deposited in the fund:

(a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

(b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;

(c) money appropriated or advanced to the fund by the legislature; and

(d) all interest earned on money in the fund.

(3) The fund may be used only:

(a) to administer this part, including payment of board and department expenses associated with administration;

(b) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and

(c) for repayment of any advance made under subsection (4), plus interest earned on the advance.

(4) (a) The legislature may appropriate to the fund repayable advances as necessary to carry out the purposes of this part. The outstanding total of repayable advances may not exceed the amount the board estimates will be received by the fund from the petroleum storage tank cleanup fee during the next 24 months.

(b) Advances to the fund must be repaid and interest earned on advances must be paid to the general fund when determined appropriate by the board. However, all advances to the fund plus the interest earned must be repaid on or before December 31, 1995."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved April 24, 1993.

CHAPTER NO. 544

[SB 235]

AN ACT GENERALLY REVISING TAXATION; ENACTING A 4 PERCENT SALES AND USE TAX; ALLOWING EXEMPTIONS FROM THE SALES TAX AND USE TAX; EXEMPTING CERTAIN PROPERTY FROM TAXATION; REVISING DEBT LIMITS FOR LOCAL GOVERNMENTS AND SCHOOLS; REVISING INDIVIDUAL INCOME TAXES AND PROPERTY TAXES; ALLOWING CREDITS AGAINST INDIVIDUAL INCOME TAX LIABILITY; PROVIDING FOR DISTRIBUTION OF SALES TAX AND USE TAX REVENUE; PROVIDING STATE SUPPORT FOR CERTAIN SCHOOL FUNDING; PROVIDING THAT THIS ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE STATE AT A SPECIAL ELECTION; AMENDING SECTIONS 7-1-2111, 7-3-1321, 7-6-2211, 7-6-4121, 7-6-4254, 7-7-107, 7-7-108, 7-7-2101, 7-7-2203, 7-7-4201, 7-7-4202, 7-13-4103, 7-14-236, 7-14-2524, 7-14-2525, 7-14-4402, 7-16-2327, 7-16-4104, 7-31-106, 7-31-107, 7-34-2131, 15-1-111, 15-6-133, 15-6-138, 15-6-141, 15-6-144, 15-6-207, 15-8-205, 15-23-703, 15-24-301, 15-30-101, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-117, 15-30-122, 15-30-126, 15-30-131, 15-30-137, 15-30-142, 15-30-177, 15-30-323, 15-31-131, 15-32-303, 15-36-112, 15-51-101, 16-1-306, 16-1-411, 16-2-301, 17-3-213, 19-11-503, 19-11-504, 20-3-205, 20-6-702, 20-9-331, 20-9-333, 20-9-343, 20-9-344, 20-9-346, 20-9-347, 20-9-351, 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-406, 20-9-407, 20-9-439, 20-9-501, 20-10-104, 20-10-141, 20-10-142, 20-10-144, 20-10-145, 20-15-311, 33-7-410, 61-3-303, 61-3-317, 61-3-502, 61-3-504, 61-3-506, 61-3-509, 61-3-701, AND 61-4-112, MCA; REPEALING SECTIONS 15-10-401, 15-10-402, 15-10-406, 15-10-411, 15-10-412, 15-30-121, 15-30-156, 15-30-157, 15-30-159, 15-30-160, AND 20-10-146, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

STATEMENT OF INTENT

In consideration of the legislative action on the sales tax, it is the intent of the legislature to provide a comprehensive sales tax reform package that brings balance to the Montana tax structure and makes Montana competitive with other states.

In recognition of the uncertainty of the fiscal impact of a 4% sales tax, it is the intent of the legislature that all funds in excess of estimates pursuant to 5-18-107 be used exclusively for reductions in property and income taxes.

The priority for use of any excess funds will be:

(1) reduction of mill levies used for school equalization; and

(2) reduction of income taxes.

A statement of intent is required for this bill because the department of revenue is granted authority to adopt rules for the administration and enforcement of the sales tax and use tax. The rules are intended to provide for an efficient process for the collection of the taxes, with minimum expense to both the taxpayer and the state.

The legislature contemplates that rules adopted by the department should, at a minimum, address the following:

(1) the registration and issuance of permits to persons engaging in the business of retail sales and services;

(2) the reporting form for the payment of the taxes, along with the requirements for the retention by the taxpayers of the necessary records;

(3) the required security and the acceptable forms of security for those taxpayers required to give security for payment of the taxes;

(4) the use of the nontaxable transaction certificate and clarification of any exemption from the taxes, including nontaxable sales;

(5) the necessary forms and the required procedures for reporting the taxes;

(6) the definition of terms and establishment of procedures as appropriate for efficient administration of the sales tax and use tax;

(7) procedures for the timely and efficient transfer of revenue to local governments and schools as replacement revenue for the reduced property tax base and property tax revenue; and

(8) procedures for payment of the sales tax and use tax based on bracket amounts rather than using a rounding method.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For purposes of [sections 1 through 71], unless the context requires otherwise, the following definitions apply:

(1) "Arboretums and botanical or zoological gardens" means establishments that are created for the exhibition of plants or animals and that are not operated for profit.

(2) "Construction services" means the services performed by various trades engaged in the construction of dwellings, commercial buildings, farm buildings, and similar structures. The term includes but is not limited to carpentry, plumbing, the installation of heating systems and air conditioning, electrical work, masonry, excavating, and concrete work. The term does not include indirect services, such as accounting, architectural design, engineering, drafting, leasing of construction equipment, and surveying services.

(3) "Department" means the department of revenue.

(4) "Engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit.

(5) "Food product for human consumption":

(a) means food for domestic home consumption as defined in 7 U.S.C. 2012(g), as amended, for purposes of the federal food stamp program as defined in 7 U.S.C. 2012(h), as amended; and

(b) does not mean or include:

(i) medicine or preparations, in liquid, powdered, granular, bottled, capsule, lozenge, or pill form, sold as a dietary supplement or adjunct not prescribed by a licensed physician;

(ii) carbonated water or soft drinks marketed in containers;

(iii) chewing gum;

(iv) candies or confectioneries; or

(v) seeds and plants to grow foods.

(6) "Lease", "leasing", or "rental" means an arrangement in which, for consideration, property is used for or by a person other than the owner of the property.

(7) (a) "Manufactured home" means a structure that:

(i) is not an improvement to real property;

(ii) is transportable in one or more sections;

(iii) when erected on site is 320 square feet or more;

(iv) is designed to be used as a dwelling with a permanent foundation when connected to the required utilities; and

(v) contains plumbing, heating, and electrical systems.

(b) The term also includes structures that:

(i) do not meet the size requirements of subsection (7)(a)(iii) but for which the manufacturer voluntarily filed the certification required by the secretary of housing and urban development; and

(ii) comply with the standards required under 42 U.S.C. 5401, et seq.

(8) "Manufacturing" means combining or processing components or materials, including the processing for ores in a mill, smelter, refinery, or reduction facility, to increase their value for sale in the ordinary course of business. The term does not include construction.

(9) "Medical services" means a service:

(a) performed by a person licensed to practice a health care profession or health care occupation licensed under Title 37 or licensed as a mental health professional or certified under Title 53, chapter 24, as a chemical dependency counselor as a regular part of the person's business activities; and

(b) applied externally or internally to the human body or mind for the diagnosis, cure, mitigation, treatment, or prevention of disease.

(10) "Medicine" or "drug" means and includes any substance or preparation that is:

(a) intended for use by external or internal application to the human body or mind in the diagnosis, cure, mitigation, treatment, or prevention of disease; and

(b) required by law or regulation to be prescribed by a person licensed to prescribe the medicine or drug.

(11) (a) "Membership organization" means an organization that operates on a membership basis, that requires the payment of dues to hold membership, and that is not operated for profit. The term includes but is not limited to an organization:

(i) that is engaged in promoting the business interests of its members, including an association that is owned by its members and that is organized to perform a specific business function;

(ii) that is composed of professional persons;

(iii) that is composed of workers organized for the purpose of improvement of wages and working conditions;

(iv) that is engaged in civic, social, or fraternal activities;

(v) that is established to promote the interests of a national, state, or local political party or candidate, including a group organized to raise funds for a political party or candidate; and

(vi) that is operated for worship, religious training or study, or government or administration of an organized religion or for promotion of religious activities.

(b) The term does not include an organization that provides sporting or recreational services to its members, such as a country club or a golf or tennis club.

(12) "Museums and art galleries" means establishments that are created for the exhibition of curiosities or works of art and that are not operated for profit.

(13) "Permit" means a seller's permit as described in [section 48].

(14) "Person" means:

(a) an individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity, including any gas, water, or electric utility owned or operated by a county, municipality, or other political subdivision of the state; or

(b) the United States or any agency or instrumentality of the United States or the state of Montana or any political subdivision of the state.

(15) "Sale", "selling", or "buying" means the transfer of property for consideration or the performance of a service for consideration.

(16) (a) "Sales price", in addition to the other meanings provided in this subsection (16), means the total amount of money or the value of other consideration, except trade-in property of like kind, received from selling property in Montana, from leasing property used in Montana, or from performing services in Montana. The term includes all consideration from the sale of property handled on consignment but excludes cash discounts allowed and taken and any type of time-price differential.

(b) In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, sales price means the reasonable value of the property or service exchanged.

(c) (i) Except as provided in [section 55], when the sale of property or services is made under any type of charge or conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor shall treat the sales price, excluding any type of time-price differential, under the contract as the sales price at the time of the sale.

(ii) If the seller or lessor transfers an interest in a contract referred to in subsection (16)(c)(i) to a third person, the third person or lessee shall pay the sales tax or use tax upon the full sale or leasing contract amount, excluding any type of time-price differential.

(d) Sales price includes the total commissions or fees derived from the business of buying, selling, or promoting the purchase, sale, or lease, as an agent or broker on a commission or fee basis, of any property, service, stock, bond, or security.

(e) Sales price includes all amounts paid by members of a cooperative association or similar organization for sales or leases of personal property or performance of services by the organization.

(17) "Sales tax" and "use tax" mean the applicable tax imposed by [section 2].

(18) (a) "Service" means an activity that is engaged in for another person for consideration and that is distinguished from the sale or lease of property. The term includes:

(i) activities performed by a person for its members or shareholders; and

(ii) construction activities and all tangible personal property that will become an ingredient or component part of a construction project.

(b) In determining what a service is, the intended use, principal objective, or ultimate objective of the contracting parties is irrelevant.

(19) "Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. In the event that the service address is not a specific location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems, and similar systems, service address means the location of a taxpayer's primary use of telecommunications equipment as determined by a telephone number, authorization code, or location in Montana where the taxpayer's telecommunications services bills are sent.

(20) "Social or family services organizations" means establishments that provide social or family services and rehabilitation services to persons with social or personal problems or to handicapped or disadvantaged persons and that are not operated for profit. These services include but are not limited to counseling services, senior citizen centers, youth centers, job counseling and training services, vocational rehabilitation services, and homes for physically and mentally handicapped persons.

(21) "Therapeutic and prosthetic devices" includes but is not limited to prescription eyeglasses, contact lenses, dentures, hearing aids, wheelchairs, crutches, or artificial limbs, prescribed, ordered, or dispensed by a person licensed to perform medical services.

(22) "Transportation services" means the transportation of persons or property by air, ground, or water. The term includes any reasonably necessary associated services for the transportation of persons or property.

(23) "Use" or "using" includes use, consumption, or storage, other than storage for resale or for use solely outside this state, in the ordinary course of business.

Section 2. **Imposition and rate of sales tax and use tax — exceptions.** (1) Except as provided in subsections (5) and (6), a sales tax of 4% is imposed on all sales of property or services. The tax is imposed on the purchaser and must be collected by the seller and paid to the department by the seller. The seller holds all taxes collected in trust for the state. The tax must be applied to the sales price.

(2) For the privilege of using property in this state, there is imposed on the person using property a use tax equal to 4% of the value of the property that was:

(a) manufactured by the person using the property in this state;

(b) acquired outside this state as the result of a transaction that would have been subject to the sales tax had it occurred within this state;

(c) acquired within the exterior boundaries of an Indian reservation within this state as a result of a transaction that would have been subject to the sales tax had it occurred outside of the exterior boundaries of an Indian reservation within this state; or

(d) acquired as the result of a transaction that was not initially subject to the sales tax imposed by subsection (1) or the use tax imposed by subsection (2)(b) or (2)(c) but which transaction, because of the buyer's subsequent use of the property, is subject to the sales tax or use tax.

(3) For the privilege of using services in this state, there is imposed on the person using services a use tax equal to 4% of the value of the services at the time at which they were rendered. Services taxable under this section must have been rendered as the result of a transaction that was not initially subject to the sales tax or use tax but that because of the buyer's subsequent use of the service, is subject to the sales tax or use tax.

(4) For purposes of this section, the value of property must be determined as of the time of acquisition, introduction into this state, or conversion to use, whichever is latest.

(5) (a) The sales tax or use tax on a motor vehicle is imposed by 61-3-502 and 61-3-504(4). The sale or use of a vehicle subject to the tax imposed under 61-3-502 or 61-3-504(4) is exempt from the sales tax and use tax imposed under this section.

(b) The sale of property or services exempt or nontaxable under [sections 1 through 71] is exempt from the tax imposed in subsections (1) through (3).

(6) (a) A sales tax of 2.5% is imposed upon the sales of all new or used mobile homes, as defined in 15-1-101, and on all manufactured homes, as defined in [section 1], that are not an improvement to real property. The tax is imposed on the purchaser and must be collected by the seller and paid to the department by the seller. The tax must be applied to the sales price. The seller holds all taxes collected in trust for the state.

(b) For the privilege of using a new or used mobile home or manufactured home in this state, there is imposed on the person using the property a use tax equal to 2.5% of the value of a home that was:

(i) acquired outside this state as the result of a transaction that would have been subject to the sales tax had it occurred within this state;

(ii) acquired within the exterior boundaries of an Indian reservation within this state as a result of a transaction that would have been subject to the sales tax had it occurred outside of the exterior boundaries of an Indian reservation within this state; or

(iii) acquired as the result of a transaction that was not initially subject to the sales tax imposed by subsection (6)(a) or the use tax imposed by subsection

(6)(b)(i) but which transaction, because of the buyer's subsequent use of the property, is subject to the sales tax or use tax.

(c) The provisions of [sections 1 through 71] apply to this subsection except as specifically provided in this subsection.

Section 3. **Presumption of taxability — value — rules.** (1) In order to prevent evasion of the sales tax or use tax and to aid in its administration, it is presumed that:

(a) all sales by a person engaging in business are subject to the sales tax or use tax; and

(b) all property bought or sold by any person for delivery into this state is bought or sold for a taxable use in this state.

(2) In determining the amount of tax due on the use of property or services, it is presumed, in the absence of preponderant evidence of another value, that value means the total amount of property or the reasonable value of other consideration paid for the use of the property or service, exclusive of any type of time-price differential. However, in an exchange in which the amount of money paid does not represent the value of the property or service purchased, the use tax must be imposed on the reasonable value of the property or service purchased.

(3) The department shall adopt rules providing for the payment of the sales tax and use tax based on a bracket amount method rather than a rounding method or other method.

Section 4. **Separate statement of tax — no advertising to absorb or refund tax.** (1) If any person collects a tax in excess of the tax imposed by [section 2], both the tax and the excess tax must be remitted to the department.

(2) The sales tax must be stated separately for all sales, except for sales from coin-operated or currency-operated machines.

(3) A person may not advertise, hold out, or state to the public or to any customer that the tax imposed by [sections 1 through 71] will be absorbed or refunded.

Section 5. **Liability of user for payment of sales tax or use tax.** (1) A person in this state who buys or uses property or services is liable to the state for payment of the sales tax or use tax if a tax is payable on the sales price or value of the property or services but has not been paid.

(2) The liability imposed by this section is discharged if the buyer has paid the sales tax or use tax to the seller for payment to the department.

Section 6. **Collection of sales tax and use tax — listing of business locations and agents — severability.** (1) A person engaged in the business of selling property or services subject to taxation under [sections 1 through 71] shall collect the sales tax from the purchaser and pay the tax collected to the department.

(2) (a) A person who solicits or exploits the consumer market in this state by regularly and systematically performing an activity within this state and

whose sales are not subject to the sales tax shall collect the use tax from the purchaser and pay the tax collected to the department.

(b) "Activity", for the purposes of this section, includes but is not limited to engaging in any of the following in this state:

(i) maintaining an office or other place of business that solicits orders through employees or independent contractors;

(ii) canvassing;

(iii) demonstrating;

(iv) collecting money;

(v) warehousing or storing merchandise;

(vi) delivering or distributing products as a consequence of an advertising or other sales program directed at potential customers;

(vii) soliciting orders for property or services by means of telecommunication or a television shopping system or by providing telecommunication services that use toll or toll-free numbers and that are intended to be broadcast by cable television or other means to consumers in this state;

(viii) soliciting orders, pursuant to a contract with a broadcaster or publisher located within this state, for property or services by means of advertising disseminated primarily to consumers located in this state and only secondarily to bordering jurisdictions;

(ix) soliciting orders for property or services by mail, through the distribution of catalogs, periodicals, advertising flyers, or other advertising;

(x) soliciting orders, pursuant to a contract with a cable television operator located in this state, for tangible property or services by means of advertising transmitted or distributed over a cable television system in this state;

(xi) any act that benefits from any banking, financing, debt collection, telecommunication, or marketing activities occurring in this state or that benefits from the location in this state of authorized installation, servicing, or repair facilities; or

(xii) the acceptance by a for-profit entity of hazardous waste, as defined in 75-10-403, or infectious waste, as defined in 75-10-1003, for treatment, disposal, or incineration.

(3) As used in [sections 1 through 71], "maintaining an office or other place of business" means:

(a) any person having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or place of business; or

(b) any agent operating within this state under the authority of the person or its subsidiary, whether the place of business or agent is located in the state permanently or temporarily or whether or not the person or subsidiary is authorized to do business within this state.

(4) A person engaging in business in this state shall, before making any sales, obtain a seller's permit as provided in [section 48] and at the time of making a sale, whether within or outside of the state, collect the tax imposed by [section 2] from the purchaser and give to the purchaser a receipt, in the manner and form prescribed by rule, for the tax paid.

(5) The department may authorize the collection of the tax imposed by [section 2] by any retailer who does not maintain a place of business within this state but who, to the satisfaction of the department, is in compliance with the law. When authorized, the person shall collect the tax upon all property and services that, to the person's knowledge, are for use within this state and subject to taxation under [sections 1 through 71].

(6) All sales tax and use tax required to be collected and all sales tax and use tax collected by any person under [sections 1 through 71] constitute a debt owed to this state by the person required to collect the tax.

(7) A person selling property or services to residents of this state, when the property is delivered to a location within this state or when the use of the service occurs within this state, shall, upon request by the department, provide a list of all sales to the department. The list must include the name and address of each purchaser and the amount of each sale. The department may pay to any person furnishing a list of sales or purchasers the reasonable costs of reproducing the list.

(8) A person engaging in business in this state shall provide to the department:

(a) the name and address of all the person's agents operating in this state; and

(b) the location of each of the person's distribution houses or offices, sales houses or offices, and other places of business in this state.

(9) If any application of this section is held invalid, the application to other situations or persons is not affected.

(10) Publishers who contract for newspaper delivery services shall include the sales tax in the newspaper subscription price and shall collect and pay the tax to the department. The contract carrier is not responsible for collection of the sales tax and payment to the department.

Section 7. **Nontaxable transaction certificate — requirements.** (1) A nontaxable transaction certificate executed by a buyer or lessee must be in the possession of the seller or lessor at the time a nontaxable transaction occurs.

(2) A nontaxable transaction certificate must contain the information and be in the form prescribed by the department.

(3) Only a buyer or lessee who has registered with the department and whose seller's permit is valid may execute a nontaxable transaction certificate.

(4) If the seller or lessor accepts a nontaxable transaction certificate within the required time and believes in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly

executed nontaxable transaction certificate is considered conclusive evidence that the sale is nontaxable.

Section 8. **Nontaxable transaction certificate — form.** (1) The department shall provide for a uniform nontaxable transaction certificate. A purchaser shall use the certificate when purchasing goods or services for resale or for other nontaxable transactions.

(2) At a minimum, the certificate must provide:

(a) the number of the seller's permit issued to the purchaser as provided in [section 48];

(b) the general character of property or service sold by the purchaser in the regular course of business or the category of nonprofit organization of the purchaser;

(c) the property or service purchased;

(d) the name and address of the purchaser; and

(e) a signature line for the purchaser.

(3) The department shall adopt rules to provide procedures for application for and provision of a nontaxable transaction certificate prior to [the applicability date of this section]. The rules adopted by the department should ensure that each eligible person who has applied in a timely fashion is issued a nontaxable transaction certificate prior to [the applicability date of this section].

Section 9. **Exemption — government agencies.** All sales by, sales to, or uses by the United States, an agency or instrumentality of the United States or of this state, a political subdivision of this state, an Indian tribe, or a foreign government are exempt from the sales tax and use tax.

Section 10. **Exemption — utility services.** (1) The sale of natural gas, water, electricity, telephone communications services, refuse collection and disposal, or other utility services is exempt from the sales tax and use tax.

(2) For purposes of this section, the term "utility services" does not include services provided by a cable television system as that term is defined in 35-18-102.

Section 11. **Exemption — food products.** (1) Except as provided in subsection (2), the sale or use of food products for human consumption is exempt from the sales tax and use tax.

(2) The sale of food products sold in the following manner is subject to the sales tax:

(a) food products served as meals on or off the premises of the retailer;

(b) milk or cream sold as beverages commonly referred to as milkshakes, malted milks, or any similar beverage;

(c) food products furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware, whether provided by the retailer or by a person with whom the retailer contracts to furnish, prepare, or serve food products to others;

(d) food products sold for immediate consumption, even though the products are sold on a "takeout", "to go", or "U-bake" order and are actually packaged or wrapped and taken from the premises of the retailer;

(e) food products sold for consumption within a place that charges an admission fee; or

(f) food or drink vended by or through machines on behalf of a vendor.

(3) The sale of food or a food service offered or delivered as part of a residential living arrangement and consumed by a person who is party to the arrangement is exempt from the sales tax and use tax.

Section 12. **Exemption — special supplemental food program for women, infants, and children.** The sale of food purchased under the special supplemental food program for women, infants, and children (WIC) as specified in 42 U.S.C. 1786, as amended, is exempt from the sales tax and use tax.

Section 13. **Exemption — nursing homes.** All sales to or uses by a nursing facility subject to the utilization fee for bed days in nursing facilities provided for in 15-60-102 are exempt from the sales tax and use tax.

Section 14. **Exemption — prescribed medicine, drugs, and certain devices — medical services.** (1) Medicine, drugs, insulin, contraceptives, and therapeutic and prosthetic devices are exempt from the sales tax and use tax.

(2) The following are exempt from the sales tax and use tax:

(a) medical services;

(b) any service reasonably related to the delivery of a medical service:

(i) by or at a health care facility as defined in 50-5-101; or

(ii) by or at the office of a physician, a mental health professional, or a dentist.

Section 15. **Exemption — wages.** Except as provided in [sections 1 through 71], wages, salaries, commissions, and any other form of remuneration for personal services are exempt from the sales tax if paid by an employer to an employee.

Section 16. **Exemption — agricultural products — livestock feeding.** (1) (a) The sale of livestock, live poultry, unprocessed agricultural products, hides, or pelts by a grower, producer, trapper, or nonprofit marketing association is exempt from the sales tax.

(b) A person engaged in the business of buying and selling wool or mohair or of buying and selling livestock on the person's own account and without the services of a broker, auctioneer, or other agent is considered a producer for the purposes of subsection (1)(a).

(2) Sales from feeding, pasturing, penning, or handling or training livestock prior to sale are exempt from the sales tax.

Section 17. **Exemption — gambling and amusement services.** All gambling or amusement services, including live games, video games, horseracing, and lotteries, which are licensed pursuant to Title 23, chapter 4, 5, or 7, are exempt from the sales tax and use tax.

Section 18. **Exemption — insurance premiums.** The premiums of an insurance company, a health service corporation, or a fraternal benefit society or of an agent of the company, corporation, or society are exempt from the sales tax.

Section 19. **Exemption — dividends, commissions and interest.** The following are exempt from the sales tax:

(1) interest on money loaned or deposited;

(2) dividends or interest from stocks, bonds, or securities;

(3) proceeds from the sale of stocks, bonds, or securities; and

(4) commissions or fees, derived from the business of buying, selling, or promoting any stock, bond, security, or contract of insurance.

Section 20. **Exemption — fuel.** The sale and use of gasoline, ethanol blended for fuel, and special fuel, including natural gas or propane, upon which tax has been paid or will be paid under Title 15, chapter 70, is exempt from the sales tax and use tax.

Section 21. **Exemption — isolated or occasional sale or lease of property or services.** The isolated or occasional sale or lease of property, other than a vehicle, or the performance of a service by a person who is not regularly engaged in or who does not claim to be engaged in the business of selling or leasing the same or a similar property or service is exempt from the sales tax and use tax. Occasional sales include sales that are occasional but not continuous and that are made for the purpose of fundraising by nonprofit organizations, including but not limited to youth clubs, service clubs, and fraternal organizations.

Section 22. **Exemption — oil, gas, and mineral interests.** The sale or lease of interests in minerals, as defined in 15-38-103, is exempt from the sales tax and use tax.

Section 23. **Exemption — minerals.** (1) Except as provided in subsection (2), the sale or use by a miner or by a producer of a mineral or by a broker acting on behalf of a miner or producer of a mineral, as defined in 15-38-103, is exempt from the sales tax and use tax.

(2) Minerals that are used for producing energy or that are used for conversion into energy are subject to the sales tax and use tax unless the energy is produced or converted for resale as a form of energy.

(3) Minerals used by the producer of the minerals for purposes of exploring for, producing, or transporting minerals are exempt from the sales tax and use tax except that the exemption does not include refined petroleum products.

Section 24. **Exemption — personal effects.** The use by an individual of personal or household effects brought into the state for the establishment by the individual of an initial residence in this state and the use of property brought into the state by a nonresident for the nonresident's own nonbusiness use while temporarily within this state is exempt from the use tax.

Section 25. **Exemption — advertising services.** The sale or use of advertising services, including the actual creation or development of the advertising, is exempt from the sales tax and use tax. For purposes of this section, "advertising services" includes but is not limited to all advertising by:

(1) newspaper, magazine, or other publication;

(2) radio or television;

(3) billboard, banner, sign, placard, or the like;

(4) handbill; or

(5) any other advertising means, media, or method.

Section 26. **Exemption — day-care services.** The sale or use of day-care services is exempt from the sales tax and use tax.

Section 27. **Exemption — feed, fertilizers, and agricultural services.** (1) The sale or use of feed for livestock, fish raised for human consumption, poultry, or animals raised for their hides or pelts; semen, ova, or embryos used in animal husbandry; seeds; Christmas trees; roots; bulbs; soil conditioners; fertilizers; insecticides; insects used to control the population of other insects; fungicides; weedicides; herbicides; or irrigation water for the production of agricultural products in commercial quantities is exempt from sales tax and use tax.

(2) The sale or use of an agricultural service is exempt from the sales tax and use tax.

Section 28. **Exemption — certain chemicals, reagents, and substances.** (1) The sale or use by any person of any chemical, reagent, or other substance that is normally used or consumed in the processing of ores or hydrocarbons at the extraction site; in a mill, smelter, refinery, or reduction facility; or in acidizing oil wells is exempt from the sales tax and use tax.

(2) The sale or use of explosives, blasting material, or dynamite is not exempt under this section.

Section 29. **Exemption — sale of certain services of mining or manufacturing.** The sale or use of the service of mining, manufacturing, combining, or processing components or materials, including minerals, is exempt from the sales tax and use tax.

Section 30. **Exemption — transportation services.** The sale or use of transportation services is exempt from the sales tax and use tax.

Section 31. **Exemption — private school tuition.** Tuition charged for attending a private educational institution that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code is exempt from the sales tax and use tax.

Section 32. **Exemption — construction services.** The sale or use of construction services for the construction, fabrication, or remodeling of residential or commercial buildings is exempt from the sales tax and use tax.

Section 33. **Exemption — rehabilitation services.** The sale or use of rehabilitation services, as defined in 39-71-1011(6), to or by a disabled worker is exempt from the sales tax and use tax.

Section 34. **Exemption — sales by social or family services organizations.** The sale of property and services by a social or family services organization is exempt from the sales tax and use tax.

Section 35. **Exemption — sales by museum, art gallery, arboretum, or botanical or zoological garden.** The sale of property and services by museums and art galleries and by arboretums and botanical or zoological gardens is exempt from the sales tax and use tax.

Section 36. **Exemption — sales by membership organization.** The sale of property and services by a membership organization is exempt from the sales tax and use tax.

Section 37. **Nontaxability — certain nonprofit organizations.** (1) All sales to or uses by an organization not operated for gain or profit and which may have property exempt from property taxation under 15-6-201 are nontaxable.

(2) In the case of a sale, the buyer must deliver a nontaxable transaction certificate.

Section 38. **Nontaxability — sale of property for resale.** The sale of property is nontaxable if:

(1) the sale is made to a buyer who delivers a nontaxable transaction certificate to the seller; and

(2) the buyer resells the property either by itself or in combination with other property in the ordinary course of business and the property will be subject to the sales tax.

Section 39. **Nontaxability — sale of service for resale.** (1) The sale of a service for resale is nontaxable if:

(a) the sale is made to a person who delivers a nontaxable transaction certificate;

(b) except as provided in subsection (2), the buyer resells the service and separately states the value of the service purchased in the charge for the service in the subsequent sale; and

(c) the subsequent sale is in the ordinary course of business and subject to the sales tax.

(2) The requirement in subsection (1)(b) to separately state the value of the service purchased for resale does not apply to the sale of telephone services.

Section 40. **Nontaxability — sale to miner or manufacturer.** (1) The sale of property to a buyer engaged in the business of mining or manufacturing is nontaxable if:

(a) the buyer delivers a nontaxable transaction certificate to the seller; and

(b) the buyer incorporates the property as an ingredient or component part of the product in the business of mining or manufacturing.

(2) For the purposes of this section, electrical energy or electricity used or consumed by electrolytic reduction used in the reduction or refinement of ores is considered a component part of the product.

Section 41. **Nontaxability — sale of tangible personal property for leasing.** The sale of property, other than coin-operated or currency-operated machines, and mobile homes purchased in this state is nontaxable if:

(1) the sale is made to a buyer who delivers a nontaxable transaction certificate to the seller;

(2) the buyer is engaged in a business deriving more than 50% of its receipts from leasing property of the type sold; and

(3) the buyer does not use the property in any manner other than holding it for lease or sale or leasing or selling it, either by itself or in combination with other property, in the ordinary course of business.

Section 42. **Lease for subsequent lease.** (1) The lease of property, other than furniture or appliances, and the rental or lease of property, other than coin-operated or currency-operated machines, and mobile homes, is nontaxable if:

(a) the lease is made to a lessee who delivers a nontaxable transaction certificate; and

(b) the lessee does not use the property in any manner other than for subsequent lease in the ordinary course of business.

(2) For the purposes of this section, the rental or lease by a person of a motion picture or a motion picture trailer for display on theater premises is considered a lease for subsequent lease.

Section 43. **Nontaxability — sale or lease of real property and lease of mobile homes.** (1) (a) The sale or lease of real property or improvements is nontaxable.

(b) The lease or rental of a mobile home for a period of 1 month or more is nontaxable.

(2) The inclusion of furniture or appliances furnished by the landlord or lessor as part of a leased or rented dwelling, house, mobile home, cabin, condominium, or apartment is nontaxable.

Section 44. **Nontaxability — transactions in interstate commerce — certain property used in interstate commerce — exception.** (1) A transaction in interstate commerce is nontaxable to the extent that the imposition of the sales tax or use tax would be unlawful under the United States constitution.

(2) The following are also nontaxable:

(a) transmitting messages or conversations by radio when the transmissions originate from a point outside this state and are received at a point within this state; and

(b) the sale of radio or television broadcast time if the advertising message is supplied by or on behalf of a national or regional seller or an advertiser that does not have its principal place of business in this state or that is not incorporated under the laws of this state.

(3) The sale or lease of a vehicle with a gross vehicle weight in excess of 46,000 pounds used primarily in interstate commerce and registered under 61-3-721 is nontaxable.

Section 45. **Nontaxability — sale of certain services to out-of-state buyer.** (1) Except as provided in subsection (3), sales of a service are not taxable if the sale is made to a buyer who delivers to the seller either a nontaxable transaction certificate or other evidence acceptable to the department that the transaction and the person who delivers the nontaxable transaction certificate or other evidence acceptable to the department meet the conditions set out in subsection (2).

(2) Sales of a service are not taxable if the buyer of the service, any of the buyer's employees, or any person in privity with the buyer:

(a) does not make initial use of the product or the service in this state;

(b) does not take delivery of the product or the service in this state; or

(c) concurrent with the performance of the service, does not have a regular place of work in this state or spend more than brief and occasional periods of time in this state and:

(i) does not have any communication in this state related in any way to the subject matter, performance, or administration of the service with the person performing the service; or

(ii) does not personally perform work in this state related to the subject matter of the service.

(3) Architectural, engineering, surveying, or graphic design services are nontaxable if the product resulting from the service or the service is used or applied exclusively outside of Montana. For the purposes of this subsection, the provisions of subsection (2) do not apply.

(4) Services that initially were nontaxable under this section but that no longer meet the criteria in subsection (2) are nontaxable only for the period prior to the disqualification and are, after disqualification, taxable.

Section 46. **Nontaxability — use of property for leasing.** The value of leased property is not considered in computing the use tax due if the person holding the property for lease:

(1) is engaged in a business that derives a substantial portion of its receipts from leasing or selling property of the type leased;

(2) does not use the property in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business; and

(3) does not use the property in a manner incidental to the performance of a service.

Section 47. **Credit — out-of-state taxes.** If a sales, use, or similar tax has been levied by another state or a political subdivision of another state on property that was bought outside this state but that will be used or consumed in this state and the tax was paid by the current user, the amount of tax paid may be credited against any use tax due this state on the same property. The credit may not exceed the sales tax or use tax due this state.

Section 48. **Seller's permit.** (1) A person wishing to engage in business in this state shall obtain a seller's permit before engaging in business in this state.

(2) Upon an applicant's compliance with [sections 1 through 71], the department shall issue to the applicant a separate, numbered seller's permit for each place of business within Montana. A permit is valid until revoked or suspended but is not assignable. A permit is valid only for the person in whose name it is issued and for the transaction of business at the place designated. The permit must be conspicuously displayed at all times at the place for which it is issued.

(3) The department shall adopt rules to provide procedures for application for and provision of a seller's permit to a person engaging in business in this state prior to [the applicability date of this section]. The rules adopted by the department should ensure that each person engaging in business in this state prior to [the applicability date of this section] is issued a seller's permit prior to [the applicability date of this section].

Section 49. **Permit application — requirements — place of business — form.** (1) (a) A person desiring to engage in the business of making retail sales or providing services in Montana shall file with the department an application for a permit. If the person has more than one place of business, an application may include multiple locations.

(b) A vending machine operator who has more than one vending machine location is considered to have only one place of business for purposes of this section.

(c) An applicant who does not have a regular place of business and who moves from place to place is considered to have only one place of business and shall attach the permit to the applicant's cart, stand, truck, or other merchandising device.

(2) Each person or class of persons obligated to file a return under [sections 1 through 71] is required to file an application for a permit.

(3) Each application for a permit must be on a form prescribed by the department and must set forth the name under which the applicant intends to transact business, the location of the applicant's place or places of business, and other information that the department may require. The application must be filed by the owner if the owner is a natural person, by a member or partner if the owner is an association or partnership, or by a person authorized to sign the application if the owner is a corporation.

Section 50. **Revocation or suspension of permit — hearing — notice — appeal.** (1) Subject to the provisions of subsection (2), the department may, for reasonable cause, revoke or suspend any permit held by a person who fails to comply with the provisions of [sections 1 through 71].

(2) The department shall provide written notice and an opportunity for a hearing on a proposed revocation or suspension. The hearing must be conducted informally and is not subject to the Montana Administrative Procedure Act.

(3) If a permit is revoked, the department may not issue a new permit except upon application accompanied by reasonable evidence of the intention of the applicant to comply with the provisions of [sections 1 through 71]. The department may require security in addition to that authorized by [section 59] in an amount reasonably necessary to ensure compliance with [sections 1 through 71] as a condition for the issuance of a new permit to the applicant.

(4) A person aggrieved by the department's final decision to revoke a permit as provided in subsection (1) may appeal the decision to the state tax appeal board within 30 days following the date on which the department issued its final decision.

(5) A decision of the state tax appeal board may be appealed to the district court.

Section 51. **Improper use of subject of purchase obtained with nontaxable transaction certificate — penalty.** (1) If a purchaser who uses a nontaxable transaction certificate uses the subject of the purchase for a purpose other than one allowed as nontaxable under [sections 1 through 71], the use is considered a taxable sale as of the time of first use by the purchaser and the sales price is the price the purchaser paid. If the sole nonexempt use is rental while holding for sale, the purchaser shall include in the sales price the amount of the rental charged. Upon subsequent sale of the property, the seller shall include the entire amount of the sales price, without deduction of amounts previously received as rentals.

(2) A person who uses a certificate for property that will be used for purposes other than the purpose claimed is subject to a penalty, payable to the department, of $100 for each transaction in which an improper use of a certificate has occurred.

(3) Upon a showing of good cause, the department may abate or waive the penalty or a portion of the penalty.

Section 52. **Commingling nontaxable certificate goods.** If a purchaser uses a nontaxable transaction certificate with respect to the purchase of fungible goods and commingles these goods with fungible goods that were not purchased with a nontaxable transaction certificate but that are of such similarity that the identity of the goods in the commingled mass cannot be determined, sales from the mass of commingled goods are considered to be sales of the goods purchased with the certificate until the quantity of commingled goods sold equals the quantity of goods originally purchased under the certificate.

Section 53. **Liability for payment of tax — security for retailer without place of business — penalty.** (1) Liability for the payment of the sales tax and use tax is not extinguished until the taxes have been paid to the department.

(2) A retailer who does not maintain a place of business in this state is liable for the sales tax or use tax in accordance with [sections 1 through 71] and may be required to furnish adequate security as provided in [section 59] to ensure collection and payment of the taxes. When authorized and except as otherwise provided in [sections 1 through 71], the retailer is liable for the taxes upon all property sold and services provided in this state in the same manner as a retailer who maintains a place of business within this state. The seller's permit provided for in [section 48] may be canceled at any time if the department considers the security inadequate or believes that the taxes can be collected more effectively in another manner.

(3) An agent, canvasser, or employee of a retailer doing business in this state who does not possess a seller's permit issued by the department may not sell, solicit orders for, or deliver any property or services in Montana. If an agent, canvasser, or employee violates the provisions of [sections 1 through 71], the person is subject to a fine of not more than $100 for each separate transaction or event.

Section 54. **Interstate and intrastate carriers as retailers.** A person engaged in the business of intrastate or interstate transportation of property or passengers shall register as a retailer and pay the taxes imposed by [sections 1 through 71].

Section 55. **Application for permission to report on accrual basis.** (1) A person who has a seller's permit may apply to the department for permission to report and pay the sales tax or use tax on an accrual basis.

(2) The application must be made on a form prescribed by the department that contains information that the department may require.

(3) A person may not report or pay the sales tax or use tax on an accrual basis unless the person has received written permission from the department.

Section 56. **Returns — payment — authority of department.** (1) Except as provided in subsection (2), on or before the 15th day of each month in which the tax imposed by [sections 1 through 71] is payable, a return, on a form provided by the department, and payment of the tax for the preceding month must be filed with the department. Every person engaged in business in this state or using property in this state that is subject to tax under [sections 1 through 71] shall file a return. A person making retail sales at two or more places of business shall file a separate return for each separate place of business.

(2) A person who has a tax liability that averages less than $100 per month may report and pay the tax imposed by [sections 1 through 71] on a quarterly basis and shall file a return with payment on or before the 15th day of the month following the end of the quarter.

(3) (a) For the purposes of the sales tax or use tax, a return must be filed by:

(i) a retailer required to collect the tax; and

(ii) a person who:

(A) purchases any items the storage, use, or other consumption of which is subject to the sales tax or use tax; and

(B) has not paid the tax to a retailer required to pay the tax.

(b) Each return must be authenticated by the person filing the return or by the person's agent authorized in writing to file the return.

(4) (a) A person required to collect and pay to the department the taxes imposed by [sections 1 through 71] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through 71] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of [sections 1 through 71], the department is authorized to examine or cause to be examined any books, papers, records, or memorandums relevant to making a determination of the amount of tax due, whether the books, papers, records, or memorandums are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

(i) require the attendance of a person having knowledge or information relevant to a return;

(ii) compel the production of books, papers, records, or memorandums by the person required to attend;

(iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;

(iv) take testimony on matters material to the determination; and

(v) administer oaths or affirmations.

(5) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

Section 57. **Credit for taxes paid on worthless accounts — taxes paid if account collected.** (1) Sales taxes paid on an accrual basis by a person filing a return under [section 56] on sales represented by accounts found to be worthless and actually deducted by the person as a bad debt for federal income tax purposes may be credited on a subsequent payment of the tax.

(2) If the accounts are subsequently collected, the sales tax must be paid on the amount collected.

Section 58. **Vendor allowance.** (1) (a) Beginning April 1, 1994, and ending March 31, 1995, a person filing a return under [section 56] may claim a monthly vendor allowance for each permitted location in the amount of 4% of the tax determined to be payable to the state or $100 per month, whichever is less.

(b) A person filing a quarterly return may claim 4% of the tax determined to be payable to the state or $300 per quarter, whichever is less.

(c) The allowance may be deducted on the return.

(2) (a) Beginning April 1, 1995, and thereafter, a person filing a return under [section 56] may claim a monthly vendor allowance for each permitted location in the amount of 2.5% of the tax determined to be payable to the state or $100 per month, whichever is less.

(b) A person filing a quarterly return may claim 2.5% of the tax determined to be payable to the state or $300 per quarter, whichever is less.

(c) The allowance may be deducted on the return.

Section 59. **Security — limitations — sale of security deposit at auction — bond.** (1) The department may require a retailer to deposit, with the department, security in a form and amount that the department determines is appropriate. The deposit may not be more than twice the estimated average liability for the period for which the return is required to be filed or $10,000, whichever is less. The amount of security may be increased or decreased by the department, subject to the limitations provided in this section.

(2) (a) If necessary, the department may sell, at public auction, property deposited as security to recover any sales tax or use tax amount required to be collected, including interest and penalties.

(b) Notice of the sale must be served personally upon or sent by certified mail to the person who deposited the security.

(c) After the sale, any surplus above the amount due that is not required as security under this section must be returned to the person who deposited the security.

(3) In lieu of security, the department may require a retailer to file a bond, issued by a surety company authorized to transact business in this state, to guarantee solvency and responsibility.

(4) In addition to the other requirements of this section, the department may require the corporate officers, directors, or shareholders of a corporation to provide a personal guaranty and assumption of liability for the payment of the tax due under [sections 1 through 71].

Section 60. **Examination of return — adjustments — delivery of notices and demands.** (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 56] constitutes the tax to be paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return, unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be:

(a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address; or

(b) served personally upon the taxpayer.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform tax review procedure provided in 15-1-211.

Section 61. **Penalties and interest for violation.** (1) (a) If a person, without purposely or knowingly violating any requirement imposed by [sections 1 through 71], fails to file a return and pay the tax on or before the due date, there must be imposed a penalty of 5% of the balance of debt unpaid with respect to the return as of the date due, but in no event may the penalty for failure to file a return by its due date be less than $20. The department may abate the penalty if the person establishes that the failure to file on time was due to reasonable cause and was not due to neglect by the taxpayer.

(b) If a person, without purposely or knowingly violating any requirement imposed by [sections 1 through 71], fails to pay a debt on or before its due date, there must be added to the debt a penalty of 10% of the debt, but not less than $20, and interest must accrue on the debt at a rate of 1% per month or fraction of a month for the entire period the debt remains unpaid. The department may abate the penalty if the person establishes that the failure to pay was due to reasonable cause and was not due to neglect by the taxpayer. The department shall adopt rules that define reasonable cause.

(2) If a person purposely or knowingly violates any requirement imposed by [sections 1 through 71] by failing to file a return or to pay a debt, there must be added to the debt an additional amount equal to 25% of the debt, but not less than $50, and interest at 1% for each month or fraction of a month during which the debt remains unpaid.

Section 62. **Authority to collect delinquent taxes.** (1) (a) The department shall collect taxes that are delinquent as determined under [sections 1 through 71].

(b) If a tax imposed by [sections 1 through 71] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds due the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

Section 63. **Interest on deficiency — penalty.** (1) Interest accrues on unpaid or delinquent taxes at the rate of 1% for each month or fraction of a month during which the taxes remain unpaid. The interest must be computed from the date the return and tax were originally due.

(2) If the payment of a tax deficiency is not made within 30 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, there must be added to the amount of the deficiency a penalty of 10% of the tax, but in no case less than $25.

Section 64. **Limitations.** (1) Except in the case of a person who purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of [sections 1 through 71], a deficiency may not be assessed or collected with respect to a month or quarter for which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period consented to.

(3) The limitations prescribed for giving notice of a proposed assessment of additional tax under subsection (1) do not apply if:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax, provided the suspension of the limitation set forth in this section lasts:

(i) only as long as the suspension of the federal statute of limitations; or

(ii) until 1 year after any changes in the person's federal tax have become final or any amended federal return is filed as a result of a suspension of the federal statute, whichever occurs later; or

(b) a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by 15-30-146 or 15-31-506 until 5 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

Section 65. **Refunds — interest — limitations.** (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 1 through 71] must be filed within 5 years of the date the return was due, without regard to any extension of time for filing.

(2) (a) Interest on an overpayment must be paid or credited at the same rate as the rate charged on delinquent taxes in [section 63].

(b) Except as provided in subsection (2)(c), interest must be paid from the date the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is credited or refunded within 6 months of the date a claim was filed; or

(ii) the amount of overpayment and interest does not exceed $1.

Section 66. **Administration — rules.** The department shall:

(1) administer and enforce the provisions of [sections 1 through 71];

(2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 71]; and

(3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 1 through 71].

Section 67. **Revocation of corporate license — hearing authorized — appeal.** (1) If a corporation authorized to do business in this state and required to pay the taxes imposed under [sections 1 through 71] fails to comply with any of the provisions of [sections 1 through 71] or any rule of the department, the department may, for reasonable cause, certify to the secretary of state a copy of an order finding that the corporation has failed to comply with specific statutory provisions or rules.

(2) The secretary of state shall, upon receipt of the certification, revoke the certificate authorizing the corporation to do business in this state and may issue a new certificate only when the corporation has obtained from the department an order finding that the corporation has complied with its obligations under [sections 1 through 71].

(3) An order authorized in this section may not be made until the corporation is given an opportunity to be heard before the department. A hearing conducted under this section is informal.

(4) A final decision of the department may be appealed to the state tax appeal board.

Section 68. **Taxpayer quitting business — liability of successor.** (1) (a) All taxes payable under [sections 1 through 71] are due and payable immediately whenever a taxpayer quits business or sells out, exchanges, or otherwise disposes of the business or disposes of the stock of goods.

(b) The taxpayer shall make a return and pay the taxes due within 10 days after the taxpayer quits business or sells out, exchanges, or otherwise disposes of the business or disposes of the stock of goods.

(2) Except as provided in subsection (4), a person who becomes a successor is liable for the full amount of the tax and shall withhold from the sales price payable to the taxpayer a sum sufficient to pay any tax due until the taxpayer produces either a receipt from the department showing payment in full of any tax due or a statement from the department that tax is not due.

(3) If a tax is due but has not been paid as provided in subsection (1)(b), the successor is liable for the payment of the full amount of tax. The payment of the tax by the successor is considered to be a payment upon the sales price and, if the payment is greater in amount than the sales price, the amount of the difference becomes a debt due to the successor from the taxpayer owing the tax under subsection (1).

(4) (a) A successor is not liable for any tax due from the person from whom the successor acquired a business or stock of goods if:

(i) the successor gives written notice to the department of the acquisition; and

(ii) an assessment is not issued by the department against the former operator of the business within 6 months of receipt of the notice from the successor.

(b) If an assessment is issued by the department as provided in subsection (4)(a)(ii), a copy of the assessment must also be mailed to the successor, or if an assessment is not mailed to the successor, the successor is not liable for the tax due.

Section 69. **Tax as debt.** (1) The tax imposed by [sections 1 through 71] and related interest and penalties become a personal debt of the person required to file a return from the time the liability arises, regardless of when the time for payment of the liability occurs.

(2) The debt of the personal representative of the estate of a decedent or a fiduciary is limited to the person's official or fiduciary capacity. However, if the person has voluntarily distributed the assets held in that capacity without reserving sufficient assets to pay the taxes, interest, and penalties, the person is personally liable for any deficiency.

(3) The officer or employee of a corporation whose duty it is to collect, truthfully account for, and pay to the state the amounts imposed by [sections 1 through 71] and who fails to pay the tax is liable to the state for the amounts imposed by [sections 1 through 71] and the penalty and interest due on the amounts.

Section 70. **Information — confidentiality — agreements with another state.** (1) (a) Except as provided in subsections (2) and (3), it is unlawful for an employee of the department or any other public official or public employee to divulge or otherwise make known information that is disclosed in a report or return required to be filed under [sections 1 through 71] or information that concerns the affairs of the person making the return and that is acquired from the person's records, officers, or employees in an examination or audit.

(b) This section may not be construed to prohibit the department from publishing statistics if they are classified in a way that does not disclose the identity and content of any particular return or report. A person violating the provisions of this section is subject to the penalty provided in 15-30-303 for violating the confidentiality of individual income tax information.

(2) (a) The department may enter into an agreement with the taxing officials of another state for the interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax in order to promote fair and equitable administration of the laws and to eliminate double taxation.

(b) In order to implement the provisions of [sections 1 through 71], the department may furnish information on a reciprocal basis to the taxing officials of another state, provided that the information remains confidential under statutes in the state receiving the information that are similar to this section.

(3) In order to facilitate processing of returns and payment of taxes required by [sections 1 through 71], the department may contract with vendors and may disclose data to the vendors. The data disclosed must be administered by the vendor in a manner consistent with this section.

Section 71. **Sales tax and use tax account.** (1) There is within the state special revenue fund a sales tax and use tax account.

(2) All money collected under [sections 1 through 71] must be paid by the department into the sales tax and use tax account.

(3) There must be retained in the sales tax and use tax account the amounts necessary under [sections 1 through 71] to repay overpayments, pay any erroneous receipts illegally assessed or collected or that are excessive in amount, and pay any other refunds otherwise required.

Section 72. **Disposition of sales tax and use tax revenue.** (1) Sales tax and use tax revenue deposited in the sales tax and use tax account established in [section 71] must be distributed according to the provisions of subsection (2) and is allocated as follows:

(a) the amount determined under 15-1-111(5) through (7) and (13) and [section 125] to provide property tax replacement revenue for each taxing jurisdiction;

(b) the amount appropriated to the department of revenue in [House Bill No. 2] for the purpose of administering [this act]; and

(c) the amount of sales tax and use tax revenue remaining after the allocations in subsections (1)(a) and (1)(b) is allocated in the same manner as income tax revenue is allocated under 15-1-501(2).

(2) (a) Except as provided in subsection (1)(c), distribution of sales tax and use tax revenue must be made according to the provisions of the statute governing allocation of the tax in effect on the last day of the tax period in which

the activity, enterprise, or product being taxed was engaged in, took place, was assembled, or was produced.

(b) All taxes collected pursuant to audit or collected after the date the tax is payable must be distributed according to the statute governing allocation of the tax in effect on the date the taxes are collected.

(c) For the fiscal year ending June 30, 1994, only $57 million, plus vendor allowances and administrative costs, may be distributed from the sales tax and use tax account, and for the fiscal year ending June 30, 1995, only $250 million, plus vendor allowances and administrative costs, may be distributed from the sales tax and use tax account. Any amount in excess of those amounts for each fiscal year must remain in the account to be used by the 54th legislature for the reduction of mill levies used for school equalization and the reduction of income taxes.

Section 73. **Renters' property tax credit — definitions.** As used in [sections 73 through 80], the following definitions apply:

(1) "Claimant" means an individual natural person who is eligible under [section 74] to file a claim.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(4) "Homestead" means a single-family dwelling or unit of a multiple-unit dwelling that is subject to ad valorem taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling.

(5) "Household" means an association of individuals who live in the same dwelling and who share its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(6) "Rent equivalent" means a rental payment paid by a governmental agency to a lessor or landlord.

Section 74. **Renters' property tax credit — eligibility.** (1) In order to be eligible to make a claim under [sections 73 through 80], an individual:

(a) must have resided in Montana for at least 9 months of the period for which the claim is made; and

(b) except as provided in [section 78], must have occupied one or more dwellings in Montana as a renter or lessee for at least 6 months of the claim period.

(2) An individual is not disqualified as a claimant because of a change of residence during the claim period, provided that the claimant occupies one or

more dwellings in Montana as a renter or lessee for at least 6 months during the claim period.

Section 75. **Renters' property tax credit — filing date.** (1) Except as provided in subsection (2), a claim must be submitted at the same time that the claimant's individual income tax return is due. For a claimant not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which relief is sought.

(2) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists. The department shall keep a record of each extension and the reason for granting the extension.

(3) If an individual who would have a claim under [sections 73 through 80] dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

Section 76. **Renters' property tax credit — form of relief.** (1) The credit under [sections 73 through 80] is a credit against the claimant's Montana individual income tax liability for the claim period.

(2) (a) If the amount of credit exceeds the claimant's tax liability under this chapter by $1 or more, the amount of the excess must be refunded to the claimant. If the excess is less than $1, the department may not make a refund.

(b) The credit may be claimed even though the claimant does not have income taxable under this chapter.

Section 77. **Renters' property tax credit.** (1) The amount of the tax credit granted under the provisions of [sections 73 through 80] is the amount of gross rent paid during the claim period or $150, whichever is less.

(2) In the case of a claimant who owned and rented the homestead during the claim period, the credit is prorated by dividing the amount of time the homestead was rented by the claimant by the number of months in the period for which a claim is made and then multiplying the quotient by the amount of credit allowed to the claimant under subsection (1).

(3) (a) For tax year 1994, the amount of credit allowed under this section is equal to the amount allowed under subsection (1), prorated by the number of months during the claim period that the sales tax and use tax were in effect.

(b) Except as provided in subsection (2), for tax years beginning after December 31, 1994, the amount of credit allowed under this section is equal to the full amount allowed under subsection (1).

Section 78. **Renters' property tax credit — limitations.** (1) Only one claimant per household is entitled to a credit in a claim period.

(2) A claim may not be allowed for any portion of rent, lease, or rent equivalent paid that is derived from a public rent or tax subsidy program.

(3) A claim may not be allowed on rented lands or rented dwellings that were not subject to ad valorem taxes in Montana during the claim period.

(4) A claimant who receives a residential property tax credit for the elderly under 15-30-171 through 15-30-179 is not entitled to receive the renters' property tax credit under [sections 73 through 80] for the same tax year.

Section 79. **Renters' property tax credit — proof of claim.** A receipt showing gross rent paid for the claim period must be filed with each claim. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support the claim.

Section 80. **Renters' property tax credit — denial of claim — penalty — interest.** If a false or fraudulent claim has been paid, the amount paid may be recovered as any other debt owed the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt bears interest, at the rate of 1% a month or fraction of a month, from the date of the original payment of the claim until paid.

Section 81. **Homeowners' tax credit — definitions.** As used in [sections 81 through 88], the following definitions apply:

(1) "Claimant" means an individual natural person who is eligible under [section 82] to file a claim.

(2) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(3) "Homestead" means a single-family residence owned on the last day of the claim period by a Montana resident or being purchased under a contract for deed by a Montana resident. The residence may not have been leased or rented by the owner or purchaser for more than 3 months.

(4) "Household" means an association of individuals who live in the same dwelling and who share its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

Section 82. **Homeowners' tax credit — eligibility.** In order to be eligible to make a claim under [sections 81 through 88], an individual:

(1) must have resided in Montana for at least 6 months of the period for which the claim is made; and

(2) must have occupied the homestead as the owner or contractor for deed for at least 6 months of the claim period.

Section 83. **Homeowners' tax credit — filing date.** (1) Except as provided in subsection (2), a claim must be submitted at the same time that the claimant's individual income tax return is due. For a claimant not required to file a tax return, the claim must be submitted on or before April 15 of the year following the year for which the credit is claimed.

(2) The department may grant a reasonable extension for filing a claim whenever, in its judgment, good cause exists. The department shall keep a record of each extension and the reason for granting the extension.

(3) If an individual who would have a claim under [sections 81 through 88] dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

Section 84. **Homeowners' tax credit — form of relief.** (1) The credit under [sections 81 through 88] is a credit against the claimant's Montana individual income tax liability for the claim period.

(2) (a) If the amount of credit exceeds the claimant's tax liability under this chapter by $1 or more, the amount of the excess must be refunded to the claimant. If the excess is less than $1, the department may not make a refund.

(b) The credit may be claimed even though the claimant does not have income taxable under this chapter.

Section 85. **Homeowners' tax credit.** (1) The amount of the tax credit granted under the provisions of [sections 81 through 88] is the amount that results from multiplying the lesser of the market value of the homestead or $20,000 by the tax rate applicable to property described in 15-6-134(1)(b), and by multiplying the resulting product by the total mill levy applied to the homestead, as shown on the November tax statement for the claim period.

(2) For tax year 1994, the amount of credit allowed under this section is equal to the amount allowed under subsection (1), prorated by the number of months during the claim period that the sales tax and use tax were in effect.

(3) For tax years beginning after December 31, 1994, the amount of credit allowed under this section is equal to the full amount under subsection (1).

Section 86. **Homeowners' tax credit — limitations.** (1) Only one claimant per household is entitled to a credit in a claim period.

(2) A claim is not allowed for a homestead that is not subject to ad valorem taxes in Montana during the claim period.

(3) A claimant who receives a residential property tax credit for the elderly under 15-30-171 through 15-30-179 is not entitled to receive the homeowners' tax credit under [sections 81 through 88] for the same tax year.

Section 87. **Homeowners' credit — proof of claim.** A copy of the November tax statement for the claim period must be filed with each claim. In addition, each claimant shall, at the request of the department, supply all additional information necessary to support the claim.

Section 88. **Homeowners' tax credit — denial of claim — penalty — interest.** If a false or fraudulent claim has been paid, the amount paid may be recovered as any other debt owed the state. An additional 10% may be added to the amount due as a penalty. The unpaid debt bears interest, at the rate of 1% a month or fraction of a month, from the date of the original payment of the claim until paid.

Section 89. **Credit for sales tax and use tax — definitions.** As used in [sections 89 through 93], the following definitions apply:

(1) "Claimant" means an individual natural person who is eligible under [section 90] to file a claim.

(2) "Gross household income" means all monetary benefits of any kind received by each individual member of the household, without regard to losses of any kind and without regard to whether the benefits are taxable income under state or federal income tax laws. Gross household income includes but is not limited to the following:

(a) 100% of the gains on all sales;

(b) alimony, child support, or any other type of maintenance payments;

(c) cash public assistance and relief, excluding the face value of all food stamps received;

(d) life insurance and endowment contracts;

(e) social security and the gross amount of any pension or annuity, including railroad retirement benefits and veterans' disability benefits;

(f) unemployment and workers' compensation benefits;

(g) all tax refunds; and

(h) any monetary benefits defined as income in the Internal Revenue Code or by this chapter.

(3) "Household" means an association of individuals who live in the same dwelling and who share its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

Section 90. **Credit for sales tax and use tax.** (1) Except as provided in subsection (2), there is allowed a credit, as provided in subsections (3) through (5), against tax liability for each resident or part-year resident who files an individual Montana income tax return under this chapter. The credit may be claimed even though the resident does not have taxable income under this chapter.

(2) A claim for the tax credit provided in this section may not be filed by a resident who:

(a) is an inmate of a public institution for more than 6 months during the tax year for which the tax credit is claimed;

(b) is not physically present in Montana for at least 6 months during the tax year for which the tax credit is claimed; or

(c) has gross household income in excess of $13,000.

(3) A credit is allowed in the amount of $90 per exemption for each exemption claimed under 15-30-112(2) and (5).

(4) If the amount of credit allowed in this section exceeds the claimant's tax liability under this chapter by $1 or more, the department shall refund the amount. If the excess is less than $1, the department may not make a refund.

(5) (a) For tax year 1994, the amount of credit allowed under this section is equal to the amount determined under subsection (3), multiplied by the

number of months during the tax year that the sales tax and use tax were in effect, and divided by 12.

(b) For tax years beginning after December 31, 1994, the amount of credit allowed under this section is equal to the full amount determined under subsection (3).

Section 91. **Credit for sales tax and use tax — filing date — extension.** (1) Except as provided in subsection (2), a claim for a credit must be submitted at the same time that the claimant's individual income tax return is due. For a claimant not required to file a tax return, a claim must be submitted on or before April 15 of the year following the year for which the credit is claimed. The claimant shall provide the social security number for each exemption, except dependent children under 1 year of age, for which the credit is claimed.

(2) The department may grant a reasonable extension for filing a claim whenever in its judgment good cause exists. The department shall keep a record of each extension and the reason for granting the extension.

(3) If an individual who would have a claim under [sections 89 through 93] dies before filing the claim, the personal representative of the estate of the decedent may file the claim.

Section 92. **Examination of credit claims — adjustments — delivery of notices and demands.** (1) The department may examine a claim for a credit and may make an investigation of the records and accounts of a claimant if the department considers it necessary to determine the accuracy of the claim.

(2) If the department determines that the amount of the credit due is different from the amount reported, the amount of credit computed on the basis of the examination conducted pursuant to subsection (1) constitutes the amount of credit due.

(3) If the credit due is less than the amount claimed as due by the claimant, the excess must be paid to the department within 60 days after notice and demand for payment is mailed to the claimant.

(4) The notice and demand provided for in this section must contain a statement of the computation of the credit and must be:

(a) sent to the claimant at the address given on the claim, if any, or to the claimant's last-known address; or

(b) served personally upon the claimant.

Section 93. **Penalties for violation.** (1) If a claimant, without purposely or knowingly, as those terms are defined in 45-2-101, violating the provisions of [section 90 or 91], receives a credit for which the claimant is not entitled, there must be added a penalty of 10% of the amount of excess, but the penalty may not be less than $20. Interest in the amount of 1% per month or fraction of a month on the amount of excess must be added to the penalty until the debt is satisfied.

(2) If a claimant purposely or knowingly violates the provisions of [sections 91 or 92], future claims for credits may be denied by the department.

Section 94. Section 33-7-410, MCA, is amended to read:

"**33-7-410. Taxation.** *(1)* A society organized or licensed under this chapter is a charitable and benevolent institution, and all of its funds are exempt from all state, county, district, municipal, and school taxes other than taxes on real estate and office equipment *and sales taxes and use taxes as provided in subsection (2).*

(2) (a) To the extent that sales are generated from ongoing business operations of the society, the sales of a society organized or licensed under this chapter are subject to the sales tax and use tax pursuant to [sections 1 through 71], to a resort tax imposed under 7-6-4464, and to a resort area tax imposed under 7-6-4468.

(b) Dues paid by members of the society and isolated or occasional sales, as described in [section 21], of the society are exempt from taxation."

Section 95. Section 7-1-2111, MCA, is amended to read:

"**7-1-2111. Classification of counties.** (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to that percentage of the true and full valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504(2), as follows:

(a) first class—all counties having a taxable valuation of $50 million or over;

(b) second class—all counties having a taxable valuation of more than $30 million and less than $50 million;

(c) third class—all counties having a taxable valuation of more than $20 million and less than $30 million;

(d) fourth class—all counties having a taxable valuation of more than $15 million and less than $20 million;

(e) fifth class—all counties having a taxable valuation of more than $10 million and less than $15 million;

(f) sixth class—all counties having a taxable valuation of more than $5 million and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, taxable valuation means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) the amount of interim production and new production taxes levied, as provided in 15-23-607, divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%;

(d) the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%; and

(e) ~~6%~~ *7.3%* of the taxable value of the county on January 1 of each tax year *beginning after December 31, 1993.*"

Section 96. Section 7-3-1321, MCA, is amended to read:

"**7-3-1321. Authorization to incur indebtedness — limitation.** (1) The consolidated municipality may borrow money or issue bonds for any municipal purpose to the extent and in the manner provided by the constitution and laws of Montana for the borrowing of money or issuing of bonds by counties and cities and towns.

(2) The municipality may not become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding ~~28%~~ *34%* of the taxable value of the taxable property therein, as ascertained by the last assessment for state and county taxes prior to incurring such indebtedness. All warrants, bonds, or obligations in excess of such amount given by or on behalf of the municipality shall be void."

Section 97. Section 7-6-2211, MCA, is amended to read:

"**7-6-2211. Authorization to conduct county business on a cash basis.** (1) In case the total indebtedness of a county, lawful when incurred, exceeds the *debt* limit ~~of 23%~~ established in 7-7-2101 by reason of great diminution of taxable value, the county may conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of the county out of the cash in the county treasury derived from its current revenue and under such restrictions and regulations as may be imposed by the board of county commissioners of the county by a resolution duly adopted and included in the minutes of the board.

(2) Nothing in this section restricts the right of the board to make the necessary tax levies for interest and sinking fund purposes, and nothing in this section affects the right of any creditor of the county to pursue any remedy now given ~~him~~ *the creditor* by law to obtain payment of ~~his~~ *a* claim *made by the creditor.*"

Section 98. Section 7-6-4121, MCA, is amended to read:

"**7-6-4121. Authorization to conduct municipal business on a cash basis.** (1) In case the total indebtedness of a city or town has reached ~~17%~~ *20.5%* of the total taxable value of the property of the city or town subject to taxation, as ascertained by the last assessment for state and county taxes, the city or town may conduct its affairs and business on a cash basis as provided by subsection (2).

(2) (a) Whenever a city or town is conducting its business affairs on a cash basis, the reasonable and necessary current expenses of the city or town may be

paid out of the cash in the city or town treasury and derived from its current revenues, under such restrictions and regulations as the city or town council may by ordinance prescribe.

(b) In the event that payment is made in advance, the city or town may require a cash deposit as collateral security and indemnity, equal in amount to such payment, and may hold the same as a special deposit with the city treasurer or town clerk, in package form, as a pledge for the fulfillment and performance of the contract or obligation for which the advance is made.

(c) Before the payment of the current expenses mentioned above, the city or town council shall first set apart sufficient money to pay the interest upon its legal, valid, and outstanding bonded indebtedness and any sinking funds therein provided for and shall be authorized to pay all valid claims against funds raised by tax especially authorized by law for the purpose of paying such claims."

Section 99. Section 7-6-4254, MCA, is amended to read:

"**7-6-4254. Limitation on amount of emergency budgets and appropriations.** (1) The total of all emergency budgets and appropriations made therein in any one year and to be paid from any city fund may not exceed ~~38%~~ *46.5%* of the total amount which could be produced for such city fund by a maximum levy authorized by law to be made for such fund, as shown by the last completed assessment roll of the county.

(2) The term "taxable property", as used herein, means the percentage of the value at which such property is assessed and which percentage is used for the purposes of computing taxes and does not mean the assessed value of such property as the same appears on the assessment roll."

Section 100. Section 7-7-107, MCA, is amended to read:

"**7-7-107. Limitation on amount of bonds for city-county consolidated units.** (1) Except as provided in 7-7-108, no city-county consolidated local government may issue bonds for any purpose which, with all outstanding indebtedness, may exceed ~~39%~~ *47.5%* of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness."

Section 101. Section 7-7-108, MCA, is amended to read:

"**7-7-108. Authorization for additional indebtedness for water or sewer systems.** (1) For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional indebtedness which may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement

of a water supply or for both such purposes may not in the aggregate exceed 10% over and above the ~~30%~~ *bond limit* referred to in 7-7-107 of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes."

Section 102. Section 7-7-2101, MCA, is amended to read:

"**7-7-2101. Limitation on amount of county indebtedness.** (1) No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding ~~23%~~ *28%* of the total of the taxable value of the property therein subject to taxation, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness.

(2) No county may incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414.

(3) Nothing in this section shall apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 103. Section 7-7-2203, MCA, is amended to read:

"**7-7-2203. Limitation on amount of bonded indebtedness.** (1) Except as provided in subsections (2) through (4), no county may issue general obligation bonds for any purpose which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed ~~11.25%~~ *13.5%* of the total of the taxable value of the property therein, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds.

(2) In addition to the bonds allowed by subsection (1), a county may issue bonds which, with all outstanding bonds and warrants, will not exceed ~~27.75%~~ *34%* of the total of the taxable value of the property in the county subject to taxation, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, when necessary to do so, plus the value of any other production occurring after December 31, 1988, multiplied by 60% for the purpose of acquiring land for a site for county high school buildings and for erecting or acquiring buildings thereon and furnishing and equipping the same for county high school purposes.

(3) In addition to the bonds allowed by subsections (1) and (2), a county may issue bonds for the construction or improvement of a jail which will not exceed ~~12.5%~~ *15%* of the taxable value of the property in the county subject to taxation.

(4) The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 104. Section 7-7-4201, MCA, is amended to read:

"**7-7-4201. Limitation on amount of bonded indebtedness.** (1) Except as otherwise provided, no city or town may issue bonds or incur other indebtedness for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed ~~28%~~ *34%* of the taxable value of the property therein subject to taxation, to be ascertained by the last assessment for state and county taxes.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town."

Section 105. Section 7-7-4202, MCA, is amended to read:

"**7-7-4202. Special provisions relating to water and sewer systems.** (1) Notwithstanding the provisions of 7-7-4201, for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town which owns and controls the water supply and water system and devotes the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted which is unpaid or outstanding, may not in the aggregate exceed 55% over and above the ~~28%,~~ *debt limit* referred to in 7-7-4201, of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes."

Section 106. Section 7-13-4103, MCA, is amended to read:

"**7-13-4103. Limitation on indebtedness for acquisition of natural gas system.** The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed ~~17%~~ *20.5%* of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes."

Section 107. Section 7-14-236, MCA, is amended to read:

"**7-14-236. Limitation on bonded indebtedness.** The amount of bonds issued to provide funds for the district and outstanding at any time shall not exceed ~~28%~~ *34%* of the taxable value of taxable property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds."

Section 108. Section 7-14-2524, MCA, is amended to read:

"**7-14-2524. Limitation on amount of bonds issued — excess void.** (1) Except as otherwise provided hereafter and in 7-7-2203 and 7-7-2204, a county may not issue bonds which, with all outstanding bonds and warrants except county high school bonds and emergency bonds, will exceed ~~11.25%~~ *13.5%* of the total of the taxable value of the property therein, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%. The taxable property and the amount of interim production and new production taxes levied must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(2) A county may issue bonds which, with all outstanding bonds and warrants except county high school bonds, will exceed ~~11.25%~~ *13.5%* but will not exceed ~~22.5%~~ *27.5%* of the total of the taxable value of such property, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612, plus the value of any other production occurring after December 31, 1988, multiplied by 60% when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways which have been destroyed or damaged by an act of God, disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county, except county high school bonds, shall not exceed ~~22.5%~~ *27.5%* of the total of the taxable value of the property within the county, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, as ascertained by the last preceding general assessment."

Section 109. Section 7-14-2525, MCA, is amended to read:

"**7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds ~~22.5%~~ *27.5%* of the total of the taxable value of the property therein, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612 multiplied by 60%, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement whereby the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest thereon in satisfaction thereof;

(b) enter into such agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders shall be embodied in full in the resolution providing for the issue of the bonds."

Section 110. Section 7-14-4402, MCA, is amended to read:

"**7-14-4402. Limit on indebtedness to provide bus service.** The total amount of indebtedness authorized under 7-14-4401(1) to be contracted in any form, including the then-existing indebtedness, may not at any time exceed ~~28%~~ *34%* of the total taxable value of the property of the city or town subject to taxation as ascertained by the last assessment for state and county taxes. No money may be borrowed or bonds issued for the purposes specified in 7-14-4401(1) until the proposition has been submitted to the vote of the taxpayers of the city or town and the majority vote cast in its favor."

Section 111. Section 7-16-2327, MCA, is amended to read:

"**7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, has the power and duty to contract an indebtedness in behalf of a county, upon the credit thereof, for the purposes of 7-16-2321(1) and (2).

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed ~~13%~~ *16%* of the total of the taxable value of the taxable property in the county, plus the amount of interim production and new production taxes levied divided by the appropriate tax rates described in 15-23-607(2)(a) or (2)(b) and multiplied by 60%, plus the amount of value represented by new production exempted from tax as provided in 15-23-612, plus the value of any other production occurring after December 31, 1988, multiplied by 60%, ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness.

(b) No money may be borrowed on bonds issued for the purchase of lands and improving same for any such purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at such election in the county affected thereby and a majority vote is cast in favor thereof."

Section 112. Section 7-16-4104, MCA, is amended to read:

"**7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes.** (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit thereof, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise swimming pools, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or combination thereof; and

(c) for furnishing and equipping the same.

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed ~~16.5%~~ *20%* of the taxable value of the taxable property of the city or town as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. No money may be borrowed on bonds issued for the purchase of lands and improving the same for any such purpose until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor thereof."

Section 113. Section 7-31-106, MCA, is amended to read:

"**7-31-106. Authorization for county to issue bonds — election required.** (1) If the petition is presented to the board of county commissioners, it shall be the duty of the board, for the purpose of raising money to meet the payments under the terms and conditions of said contract and other necessary and proper expenses in and about the same and for the approval or disapproval thereof:

(a) to ascertain, within 30 days after submission of the petition, the existing indebtedness of the county in the aggregate; and

(b) to submit, within 60 days after ascertaining the same, to the electors of such county the proposition to approve or disapprove the contract and the issuance of bonds necessary to carry out the same.

(2) The amount of the bonds authorized by this section may not exceed ~~22.5%~~ *27.5%* of the taxable value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained by the last assessment for state and county taxes previous to the issuance of said bonds and incurring of said indebtedness."

Section 114. Section 7-31-107, MCA, is amended to read:

"**7-31-107. Authorization for municipality to issue bonds — election required.** (1) If said petition is presented to the council of any incorporated city or town, the council, for the purpose of raising money to meet the payments under the terms and conditions of said contract and other necessary and proper expenses in and about the same and for the approval or disapproval thereof:

(a) shall ascertain, within 30 days after submission of the petition, the aggregate indebtedness of such city or town; and

(b) shall submit, within 60 days after ascertaining the same, to the electors of such city or town the proposition to approve or disapprove said contract and the issuance of bonds necessary to carry out the same.

(2) The amount of the bonds authorized by this section may not exceed ~~16.5%~~ *20%* of the taxable value of the taxable property therein, inclusive of the existing indebtedness thereof, to be ascertained in the manner provided in this part."

Section 115. Section 7-34-2131, MCA, is amended to read:

"**7-34-2131. Hospital district bonds and notes authorized.** (1) (a) A hospital district may borrow money by the issuance of its bonds to provide funds for payment of part or all of the cost of acquisition, furnishing, equipment, improvement, extension, and betterment of hospital facilities and to provide an adequate working capital for a new hospital.

(b) The amount of bonds issued for such purpose and outstanding at any time may not exceed ~~22.5%~~ *27.5%* of the taxable value of the property therein as ascertained by the last assessment for state and county taxes previous to the issuance of such bonds.

(c) Such bonds shall be authorized, sold, and issued and provisions made for their payment in the manner and subject to the conditions and limitations prescribed for bonds of school districts by Title 20, chapter 9, part 4.

(2) (a) A hospital district may borrow money by the issuance of notes to provide funds to finance the costs described in subsection (1) and to finance the working capital requirements of the district. The notes must be authorized and in a form and terms prescribed by a resolution adopted by the board of trustees. The notes must mature over a term not to exceed 15 years.

(b) The principal and interest on the notes must be paid from the taxes levied pursuant to 7-34-2133 and 7-34-2134, exclusive of the taxes levied to pay bonds issued in accordance with subsection (1), and all other revenue of the district. The annual amount of principal and interest payable on notes in any fiscal year must be included in the district's budget for that year.

(c) The notes may be secured by a mortgage of or a security interest in all or part of the district's assets and by a pledge of the taxes and revenue of the district, or either of them.

(d) Notes may not be issued unless the projected annual revenue of the district, including the taxes levied pursuant to 7-34-2133 and 7-34-2134 but exclusive of the taxes levied to pay bonds, is at least equal to the sum of the cost of operating and maintaining the hospital district plus the maximum amount of principal and interest due in any future fiscal year on the notes proposed to be issued and all notes outstanding upon the issuance of the proposed notes.

(3) Nothing herein shall be construed to preclude the provisions of Title 50, chapter 6, part 1, allowing the state to apply for and accept federal funds."

Section 116. Section 19-11-503, MCA, is amended to read:

"**19-11-503. Special tax levy for fund required.** (1) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to ~~4%~~ *4.9%* of the taxable valuation of all taxable property within the limits of the city or town.

(2) Whenever the fund contains less than ~~4%~~ *4.9%* of the taxable valuation of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a special tax as provided in 19-11-504. The special tax must be collected as other taxes are collected and, when so collected, must be paid into the disability and pension fund.

(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy."

Section 117. Section 19-11-504, MCA, is amended to read:

"**19-11-504. Amount of special tax levy.** Whenever the fund contains an amount which is less than ~~4%~~ *4.9%* of the taxable valuation of all taxable property in the city or town, the city council shall levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property within the city or town."

Section 118. Section 20-9-406, MCA, is amended to read:

"**20-9-406. Limitations on amount of bond issue.** (1) (a) ~~The~~ *Except as provided in subsection (1)(c), the* maximum amount for which an elementary district or a high school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is ~~45%~~ *55%* of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of the indebtedness~~, including:~~

~~(i) the taxable value of coal gross proceeds as determined for county bonding purposes in 15-23-703(2);~~

~~(ii) the taxable value of oil and gas net proceeds as determined for county bonding purposes in 15-23-607(3); and~~

~~(iii) the amount of the value of any other oil and gas production occurring after December 31, 1988, multiplied by 60%~~, *including the taxable value of oil and gas net proceeds as determined for county bonding purposes in 15-23-607(3).*

(b) ~~The~~ *Except as provided in subsection (1)(c), the* maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation as ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness. The total indebtedness of the high school district with an attached elementary district ~~as represented by the issuance of bonds~~ must be limited to the sum of ~~45%~~ *55%* of the taxable value of the property for elementary school program purposes and ~~45%~~ *55%* of the taxable value of the property for high school program purposes.

(c) The maximum amount for which an elementary district or a high school district that qualifies for guaranteed tax base aid under the provisions of 20-9-367 may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is

55% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 55% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(2) The maximum amounts determined in subsection (1), however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of the amount are void, except as provided in this section.

(3) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(4) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly."

Section 119. Section 20-9-407, MCA, is amended to read:

"**20-9-407. Industrial facility agreement for bond issue in excess of maximum.** (1) In a school district within which a new major industrial facility which seeks to qualify for taxation as class five property under 15-6-135 is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility qualifying as class five property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the ~~45%~~ *debt* limitation prescribed in 20-9-406. Under such an agreement, the school district may, with the approval of the voters, issue bonds which exceed the limitation prescribed in this section by a maximum of ~~45%~~ *the debt limitation prescribed in 20-9-406* of the estimated taxable value of the property of the new major industrial facility subject to taxation when completed. The estimated taxable value of the property of the new major industrial facility subject to taxation shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. A copy of the department's statement of estimated taxable value shall be printed on each ballot used to vote on a bond issue proposed under this section.

(2) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class five property, the new major industrial facility and its owners shall pay, in addition to the taxes imposed by the school district on property owners generally, so much of the principal and interest on the bonds provided for under this section as represents payment on an indebtedness in excess of the limitation prescribed in 20-9-406. After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in this section, the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. The credit shall as a total amount

be equal to the amount which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(3) A major industrial facility is a facility subject to the taxing power of the school district, whose construction or operation will increase the population of the district, imposing a significant burden upon the resources of the district and requiring construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year."

Section 120. Section 15-1-111, MCA, is amended to read:

"15-1-111. Reimbursement to local governments and schools — duties of department and county treasurer — statutory appropriation. (1) ~~(a) On or before May 1, 1990, the department of revenue shall remit to the county treasurer of each county 30% of the reimbursement amount specified in subsection (1)(b), as computed by the department. The department shall base the reimbursement on the reduction in personal property tax revenues due to the reduction in personal property tax rates for class eight property, as provided for in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145. The reimbursement basis must also include loss of personal property tax revenue due to the reclassification of new industrial property from class five to class eight with the reduced tax rate. The determination of the reimbursement basis must be made in the year in which the reclassification is made.~~

~~(b) The reimbursement revenue must be based on the county's taxable value and mill levies for tax year 1989.~~ *Prior to November 1 of each year, the department of revenue shall determine for each county the number of mills levied for the current tax year in each taxing jurisdiction levying mills against personal property.*

(2) ~~Prior to September 1, 1990, the department's agent in the county shall supply the following information to the~~ *(a) The* department ~~for~~ *shall determine the amount of taxable value lost within* each taxing jurisdiction within the county~~:~~

~~(a) the number of mills levied in the jurisdiction for taxable year 1989;~~

~~(b) the number of mills levied in the jurisdiction for taxable year 1990;~~

~~(c) the total taxable valuation for taxable years 1989 and 1990, reported separately for each year, of all personal property not secured by real property; and~~

~~(d) the total taxable valuation for taxable years 1989 and 1990, reported separately for each year, of all personal property secured by real property.~~ *because of the reduction in personal property tax rates for property included in class eight, class nine, and class ten, as those classes existed in 1989. The determination must be based on 1989 taxable values for class eight, class nine, and class ten property as reported to the department by each taxing jurisdiction that existed in 1989, less the taxable value for the same property in 1989 as determined by the 1991 tax rate for property included in 15-6-138.*

(b) The department shall calculate the taxable value lost in a taxing jurisdiction as a result of a reduction in the taxable value rate in 15-6-145 that results from a reduction in taxable value of property under 15-6-138.

(c) The amount of reimbursement is calculated by multiplying the current year mill levy for each taxing jurisdiction times the total amount of taxable value lost as determined in subsections (2)(a) and (2)(b).

(3) ~~After receipt of the information from its agent, the department shall calculate the amount of revenue lost to each taxing jurisdiction, using current year mill levies, due to the annual reduction in personal property tax rates set forth in 15-6-138, and any reduction in taxes based upon recalculation of the effective tax rate for property in 15-6-145.~~ The department shall total the amounts for all taxing jurisdictions within the county.

(4) ~~For taxable year 1990 and for each year thereafter, the~~ *The* department shall remit to the county treasurer *50% of* the ~~base~~ amount of revenue reimbursable, determined pursuant to subsection ~~(3), as follows:~~

~~(a)~~ *(2),* on or before November 30~~, 1990~~, and ~~on or before each November 30 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county; and~~

~~(b)~~ *the remaining 50%* on or before May 31~~, 1991, and on or before each May 31 thereafter, the department shall remit 50% of the base amount of the revenue reimbursable to the county~~.

~~(5) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as current year mill levies on personal property taxes are distributed.~~

~~(6) For the purposes of this section, "taxing jurisdiction" means local governments and includes school districts, each municipality with tax increment financing, and the state of Montana.~~

(5) Prior to December 31, 1993, for each county, the department shall determine the following information for each taxing jurisdiction that was in existence in tax year 1993:

(a) the number of mills levied in each taxing jurisdiction for tax year 1993; and

(b) the total taxable valuation for tax year 1993 of all property included in class eight.

(6) (a) (i) Based on the information determined under subsection (5), the department shall calculate the revenue loss for each taxing jurisdiction because of the change in the tax rate provided for in 15-6-138 and the reduction in commercial property market value provided for in 15-6-134.

(ii) For purposes of this section, revenue loss for each taxing jurisdiction is:

(A) the taxable value of all class eight property computed at the statutory tax rate in effect for tax year 1993 less the taxable value of all class eight property computed at the tax rate provided for in 15-6-138;

(B) multiplied by the number of mills levied in the taxing jurisdiction for tax year 1993.

(b) The total revenue loss within each county is the sum of the revenue loss computed for each taxing jurisdiction in the county.

(7) (a) Prior to May 1, 1994, the department shall remit to each county treasurer 30% of the total reimbursement due under this section to compensate taxing jurisdictions for loss of revenue associated with class eight personal property not secured by real property. The county treasurer shall distribute the total reimbursement to each taxing jurisdiction as calculated by the department.

(b) The amount of reimbursement due from the state to each county for tax years 1994, 1995, and 1996 is the total revenue loss calculated under subsections (5) and (6). The county treasurer shall distribute the total revenue loss to each taxing jurisdiction as calculated by the department.

(c) The amount of total reimbursement for each county for tax year 1997 and for each tax year thereafter is determined by using the formula R = A x (B/C) x (D/E) x (F/G), where:

(i) "R" is the amount of reimbursement to be received by the county for the current tax year;

(ii) "A" is the total statewide amount available for reimbursement and is determined by totaling the amount of reimbursement, "R", for all counties for the immediately preceding tax year. For tax year 1997, the total statewide amount available for reimbursement is the total revenue loss calculated in subsection (6) for all counties in tax year 1996.

(iii) "B" is the statewide total of all sales taxes and use taxes collected in the tax year immediately preceding the current tax year;

(iv) "C" is the statewide total of all sales taxes and use taxes collected in the tax year prior to the tax year immediately preceding the current tax year;

(v) "D" is the total taxable value of all commercial property in class four and all property in class eight within the county during the tax year immediately preceding the current tax year;

(vi) "E" is the total taxable value of all commercial property in class four and all property in class eight in the state during the tax year immediately preceding the current tax year;

(vii) "F" is the average countywide millage and is determined by dividing the amount of revenue collected in property taxes within all jurisdictions in the county in the immediately preceding tax year by the total taxable value of all property in the county in the immediately preceding tax year; and

(viii) "G" is the average statewide millage and is determined by dividing the amount of revenue collected in property taxes within all jurisdictions in the state

in the immediately preceding tax year by the total taxable value of all property in the state in the immediately preceding tax year.

(8) Funds appropriated from the sales tax and use tax account for reimbursements calculated under subsections (5) through (7) for tax year 1994 and subsequent tax years must be remitted to the county treasurer as follows:

(a) on or before November 30, 1994, and on or before each November 30 thereafter, the department shall remit 50% of the amount of the revenue reimbursable to the county; and

(b) on or before May 31, 1995, and on or before each May 31 thereafter, the department shall remit 50% of the amount of the revenue reimbursable to the county.

(9) (a) Upon receipt of the reimbursement provided for in subsections (1) through (4), the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(b) For tax year 1997 and subsequent tax years, upon receipt of the reimbursements from the department, the county treasurer of each county shall distribute the reimbursement to each taxing jurisdiction in the relative proportion determined under the total calculations provided by the department for tax year 1996.

(10) For the purposes of this section, "taxing jurisdiction" means the state of Montana; local governments, including counties and incorporated cities and towns, school districts, and tax increment financing districts; and miscellaneous taxing jurisdictions levying mills against property being reimbursed under this section.

(11) (a) For distributions made pursuant to subsection (9), the creation and dissolution of taxing jurisdictions are treated as follows:

(i) A taxing jurisdiction that existed in tax year 1989 and that no longer exists is not entitled to reimbursement.

(ii) Taxing jurisdictions that are combined into a single taxing jurisdiction are entitled to reimbursement based on the combined proportion of those jurisdictions in tax year 1989.

(iii) A taxing jurisdiction that existed in tax year 1989 and that is now split into two or more taxing jurisdictions is entitled to reimbursement based on the proportion of 1989 taxable value within each new taxing jurisdiction. The department shall determine the proportion of 1989 taxable value located in each taxing jurisdiction.

(iv) A taxing jurisdiction that did not exist in tax year 1989 is not entitled to reimbursement under subsection (9) unless the jurisdiction was created as described in subsection (11)(a)(iii).

(b) For distributions made pursuant to subsections (5) through (7), the creation and dissolution of taxing jurisdictions after tax year 1993 are treated as follows:

(i) Taxing jurisdictions that existed in tax year 1993 that no longer exist in subsequent tax years and that are not combined with another taxing jurisdiction

are no longer entitled to reimbursement. The reimbursement for a taxing jurisdiction that no longer exists must be prorated across all remaining jurisdictions in the relative proportions that would have existed in tax year 1993 had the jurisdiction not been in existence in that year.

(ii) Taxing jurisdictions that are combined into a single taxing jurisdiction are entitled to reimbursement based on the combined proportion of those jurisdictions in tax year 1993.

(iii) Taxing jurisdictions created as a result of splitting an existing jurisdiction are entitled to a share of the original reimbursement based on the relative proportion of all property in class eight and commercial property in class four within each of the newly created jurisdictions in the tax year that the new jurisdictions are created.

(iv) Taxing jurisdictions that did not exist in tax year 1993 are not entitled to reimbursement under subsection (9) unless created as described in subsection (11)(b)(iii).

~~(7)~~*(12)* The amounts necessary for the administration of this section, *except subsections (5) through (7),* are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse school districts and local governments for reductions in tax rates on personal property.

(13) (a) In addition to the calculation and distribution provided for in subsections (2), (3), and (6) through (8), each fiscal year, the department shall distribute from the sales and use tax account to each municipality, as defined in 7-15-4283(6), the amount, if any, as provided in subsection (13)(b), that is required to reimburse the municipality the revenue lost by the tax increment financing district, created pursuant to 7-15-4282 on or before July 1, 1993, as a result of the state reducing the mill levy for the elementary school and high school districts' debt service, transportation, and retirement funds.

(b) (i) Based on school fiscal year 1994, the department shall determine the number of mills levied by each school district in the tax increment financing district for the retirement fund and determine the reduction of transportation and debt service mills that would have occurred if [sections 143 and 148] had been in effect for that year.

(ii) For school fiscal year 1995 and each succeeding year, the reimbursement must be equal to the number of mills determined in subsection (3)(b)(i) times the incremental taxable value of the tax increment financing district. The department shall distribute the amounts to the municipalities in two equal installments on November 30 and May 31 of the fiscal year."

Section 121. Section 15-6-133, MCA, is amended to read:

"**15-6-133. Class three property — description — taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for such other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which such improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(2) Class three property is taxed at ~~the taxable percentage rate "P"~~ *30%* of its productive capacity.

~~(3) Until July 1, 1986, the taxable percentage rate "P" for class three property is 30%.~~

~~(4) Prior to July 1, 1986, the department of revenue shall determine the taxable percentage rate "P" applicable to class three property for the revaluation cycle beginning January 1, 1986, as follows:~~

~~(a) The director of the department of revenue shall certify to the governor before July 1, 1986, the percentage by which the appraised value of all property in the state classified under class three as of January 1, 1986, has increased due to the revaluation conducted under 15-7-111. This figure is the "certified statewide percentage increase".~~

~~(b) The taxable value of property in class three is determined as a function of the certified statewide percentage increase in accordance with the table shown below.~~

~~(c) This table limits the statewide increase in taxable valuation resulting from reappraisal to 0%. In calculating the percentage increase, the department may not consider agricultural use changes during calendar year 1985.~~

~~(d) The taxable percentage must be calculated by interpolation to coincide with the nearest whole number certified statewide percentage increase from the following table:Certified StatewideClass Three Taxable Percentage IncreasePercentage "P" 030.00 1027.27 2025.00 3023.08 4021.43 5020.00~~

~~(5) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a revaluation has been made as provided in 15-7-111.~~"

Section 122. Section 15-6-138, MCA, is amended to read:

"**15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all trailers, including those prorated under 15-24-102, except those subject to taxation under 61-3-504(2);

(e) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class;

(f) buses and trucks having a rated capacity of more than 1 ton, including those prorated under 15-24-102;

(g) truck toppers weighing more than 300 pounds;

(h) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(i) x-ray and medical and dental equipment;

(j) citizens' band radios and mobile telephones;

(k) radio and television broadcasting and transmitting equipment;

(l) cable television systems;

(m) coal and ore haulers;

(n) theater projectors and sound equipment; and

(o) all other property not included in any other class in this part, except that property subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at ~~9%~~ *4.5%* of its market value."

Section 123. Section 15-6-141, MCA, is amended to read:

"**15-6-141. Class nine property — description — taxable percentage.** (1) Class nine property includes~~:~~

~~(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);~~

~~(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and~~

~~(c)~~ *property owned, possessed, or controlled by a person and subject to central assessment, as provided in 15-23-101,* ~~centrally assessed companies' allocations~~ except:

~~(i)~~*(a)* electric power and natural gas companies' property, *including property of pipeline companies that transport natural gas, that is included in class thirteen;*

~~(ii)~~*(b)* property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

~~(iii)~~*(c)* property owned by organizations providing telephone communications to rural areas and classified in class seven;

~~(iv)~~*(d)* railroad transportation property included in class twelve; and

~~(v)~~*(e)* airline transportation property included in class twelve.

(2) Class nine property is taxed at 12% of market value."

Section 124. **Class thirteen property — description — taxable percentage.** (1) Class thirteen property includes:

(a) operating property owned, possessed, or controlled by electric power companies that is subject to central assessment, as provided in 15-23-101, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electric energy produced at privately owned generating facilities, not including rural electric cooperatives;

(b) property, including property owned by rural electric cooperatives, placed in service after June 8, 1993, for the purpose of generating, manufacturing, or producing electricity or electrical energy, except for pollution control facilities included in class five;

(c) property owned, possessed, or controlled by natural gas distribution companies that is subject to central assessment, as provided in 15-23-101, which companies have a major distribution system in this state; and

(d) property owned, possessed, or controlled by natural gas pipeline companies that is subject to central assessment, as provided in 15-23-101.

(2) Class thirteen property is taxed at 4.5% of market value.

Section 125. **Reimbursement to local governments and schools — centrally assessed utility property — duties of department and county treasurer.** (1) Prior to October 30, 1994, for each county, the department shall determine the following information for each taxing jurisdiction in existence in tax year 1994:

(a) the number of mills levied in each taxing jurisdiction for tax year 1994; and

(b) the total taxable valuation for tax year 1994 of all property included in class thirteen.

(2) (a) Based on the information determined under subsection (1), the department shall calculate the revenue loss for each taxing jurisdiction due to the difference in tax year 1994 taxable valuation rates between class thirteen property and the tax rate specified in 15-6-141 for class nine property. For purposes of this section, revenue loss for each taxing jurisdiction is determined as:

(i) the absolute difference between actual taxable valuation of class thirteen property in tax year 1994 and what that taxable valuation would have been had the class nine taxable valuation rate been applicable to class thirteen property;

(ii) multiplied by the number of mills levied in the taxing jurisdiction for tax year 1994.

(b) The total revenue loss within each county is the sum of the revenue loss computed for each taxing jurisdiction in the county.

(3) The amount of reimbursement due from the state to each county for tax years 1994, 1995, and 1996 is the total revenue loss calculated under subsection (2). The county treasurer shall distribute to each taxing jurisdiction the total revenue loss as calculated by the department.

(4) The amount of total reimbursement for each county for tax year 1997 and for each tax year thereafter is determined in the same manner as under the procedures provided in 15-1-111(7)(c) through (11).

Section 126. Section 15-6-144, MCA, is amended to read:

"**15-6-144. Class eleven property — description — taxable percentage.** (1) Class eleven property includes all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(2). Class eleven property includes 1 acre of real property beneath the ~~agricultural~~ improvements. The 1 acre shall be valued at market value.

(2) Class eleven property is taxed at 80% of the taxable percentage applicable to class four property."

Section 127. Section 15-6-207, MCA, is amended to read:

"**15-6-207. Agricultural exemptions.** (1) The following agricultural products are exempt from taxation:

(a) all unprocessed agricultural products on the farm or in storage and owned by the producer;

(b) all producer-held grain in storage;

(c) all unprocessed agricultural products, except livestock;

(d) except as provided in subsection (1)(e), livestock which have not attained the age of 24 months as of March 1;

(e) swine which have not attained the age of 6 months as of January 1;

(f) poultry and the unprocessed products of poultry; ~~and~~

(g) bees and the unprocessed product of bees*; and*

(h) cats, dogs, and other household pets not raised for profit.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if such implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area."

Section 128. Section 15-8-205, MCA, is amended to read:

"**15-8-205. Initial assessment of ~~class four~~ trailer and mobile home property — when.** The county assessor shall assess all ~~class four~~ trailer and mobile home property *described in 15-6-134 or included under 15-6-144* immediately upon arrival in the county if the taxes have not been previously paid for that year in another county in Montana."

Section 129. Section 15-23-703, MCA, is amended to read:

"**15-23-703. Taxation of gross proceeds — taxable value for bonding and guaranteed tax base aid to schools.** (1) The county assessor shall compute from the reported gross proceeds from coal a tax roll that ~~he~~ *the assessor* shall transmit to the county treasurer on or before September 15 each year. The county assessor may not levy or assess any mills against the reported gross proceeds of coal but shall levy a tax of 5% against the value of the reported gross proceeds as provided in 15-23-701(1)(d). The county treasurer shall proceed to give full notice to each coal producer of the taxes due and to collect the taxes as provided in 15-16-101.

(2) For bonding, county classification, and all nontax purposes, the taxable value of the gross proceeds of coal is 45% of the contract sales price as defined in 15-35-102(5).

(3) Except as provided in subsection (6), the county treasurer shall calculate and distribute to the state, county, and eligible school districts in the county the amount of the coal gross proceeds tax, determined by multiplying the unit value calculated in 15-23-705 times the tons of coal extracted, treated, and sold on which the coal gross proceeds tax was owed during the preceding calendar year.

(4) Except as provided in subsections (5), (6), and (8), the county treasurer shall credit the amount determined under subsection (3) and the amounts received under 15-23-706:

(a) to the state and to the counties that levied mills in fiscal year 1990 against 1988 production in the relative proportions required by the levies for state and county purposes in the same manner as property taxes were distributed in fiscal year 1990 in the taxing jurisdiction; and

(b) to school districts in the county that either levied mills in school fiscal year 1990 against 1988 production or used nontax revenue, such as Public Law 81-874 money, in lieu of levying mills against production, in the same manner that property taxes collected or property taxes that would have been collected would have been distributed in the 1990 school fiscal year in the school district.

(5) (a) If the total tax liability in a taxing jurisdiction exceeds the amount determined in subsection (3), the county treasurer shall, immediately following the distribution from taxes paid on May 31 of each year, send the excess revenue, excluding any protested coal gross proceeds tax revenues, to the department for redistribution as provided in 15-23-706.

(b) If the total tax liability in a taxing jurisdiction is less than the amount determined in subsection (3), the taxing jurisdiction is entitled to a redistribution as provided by 15-23-706.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of coal gross proceeds taxes that would have gone to a taxing unit, as provided in subsection (4)(a), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) ~~The~~ *Except as provided in subsection (6)(c), the* county treasurer shall first allocate the coal gross proceeds taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) ~~If~~ *Subject to the requirements of subsection (6)(c), if* the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(c) For fiscal year 1995 and each succeeding year, the county treasurer shall remit to the state treasurer the amount of money attributable to the mills levied in fiscal year 1990 for the county retirement fund provided for in 20-9-501 and for the county transportation fund, which was provided for in 20-10-146, as that section read on June 30, 1993. The state treasurer shall credit the money received to the state special revenue fund for state equalization aid to the public schools as provided in 20-9-343.

(7) The board of trustees of an elementary or high school district may reallocate the coal gross proceeds taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the coal gross proceeds taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(8) The county treasurer shall credit all taxes collected under this part from coal mines that began production after December 31, 1988, in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the previous fiscal year."

Section 130. Section 15-24-301, MCA, is amended to read:

"**15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment.** (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) any personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property which comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) Any motor vehicle not subject to a fee in lieu of tax brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for transportation of such person is subject to taxation and assessment for taxes as follows:

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter.

(5) Agricultural harvesting machinery ~~classified under class eight,~~ licensed in ~~other states,~~ *another state* and operated on the lands of ~~persons~~ *a person* other than the owner of the machinery under ~~contracts~~ *a contract* for hire ~~shall be~~ *is* subject to a fee in lieu of taxation of $35 per machine for the calendar year in which the fee is collected. The ~~machines shall be~~ *machinery is* subject to *property* taxation under ~~class eight~~ *Title 15, chapter 6,* only if ~~they are~~ *it is* sold in Montana."

Section 131. Section 15-36-112, MCA, is amended to read:

"**15-36-112. Disposition of oil and gas state and local government severance taxes — calculation of unit value for local government severance tax.** (1) Each year the department of revenue shall determine the amount of tax collected under this chapter from within each taxing unit.

(2) For purposes of the distribution of local government severance taxes collected under this chapter, the department shall determine the unit value of oil and gas for each taxing unit as follows:

(a) The unit value for petroleum and other mineral or crude oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on petroleum or mineral or crude oil produced in that taxing unit in calendar year 1988 by the number of barrels of petroleum or other mineral or crude oil produced in that taxing unit during 1988, excluding new and interim production.

(b) The unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced in that taxing unit in calendar year 1988 by the number of cubic feet of natural gas produced in that taxing unit during 1988, excluding new and interim production.

(3) The state and local government severance taxes collected under this chapter are allocated as follows:

(a) The local government severance tax is statutorily appropriated, as provided in 17-7-502, for allocation to the county for distribution as provided in subsection (4);

(b) The state severance tax is allocated to the state general fund.

(4) (a) For the purpose of distribution of the local government severance tax, the department shall adjust the unit value determined under this section according to the ratio that the local government severance taxes collected during the quarters to be distributed plus accumulated interest earned by the state and penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters to be distributed. The taxes must be calculated and distributed as follows:

(i) By November 30 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the calendar quarters ending March 31 and June 30 of the preceding calendar year.

(ii) By May 31 of each year, the department shall calculate and distribute to each eligible county the amount of local government severance tax, determined by multiplying unit value as adjusted in this subsection (4)(a) times the units of production on which the local government severance tax was owed during the 2 calendar quarters immediately following those quarters referred to in subsection (4)(a)(i).

(b) Any amount by which the total tax liability exceeds or is less than the total distributions determined in subsections (4)(a)(i) and (4)(a)(ii) must be calculated and distributed in the following manner:

(i) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(5) Except as provided in subsection (6), the county treasurer shall distribute the money received under subsection (4) to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that no distribution may be made to a municipal taxing unit.

(6) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of local government severance tax money that would have gone to a taxing unit, as provided in subsection (5), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(a) ~~The~~ *Except as provided in subsection (6)(c), the* county treasurer shall first allocate the {local government severance} taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(b) ~~If~~ *Subject to the requirements of subsection (6)(c), if* the allocation in subsection (6)(a) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(c) For fiscal year 1995 and each succeeding year, the county treasurer shall remit to the state treasurer the amount of money attributable to the mills levied in fiscal year 1990 for the county retirement fund provided for in 20-9-501 and for the county transportation fund, which was provided for in 20-10-146, as that section read on June 30, 1993. The state treasurer shall credit the money received to the state special revenue fund for state equalization aid to the public schools as provided in 20-9-343.

(7) The board of trustees of an elementary or high school district may reallocate the {local government severance} taxes distributed to the district by the county treasurer under the following conditions:

(a) The district shall first allocate the {local government severance} taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(b) If the allocation under subsection (7)(a) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district."

Section 132. Section 20-9-331, MCA, is amended to read:

"**20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program.** (1) The county commissioners of each county shall levy an annual basic tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state foundation program support. The revenue collected from this levy must be apportioned to the support of the elementary foundation programs of the school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary foundation program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; ~~and~~

(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204*; and*

(i) sales tax and use tax revenue."

Section 133. Section 20-9-333, MCA, is amended to read:

"**20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program.** (1) The county commissioners of each county shall levy an annual basic special tax for high schools of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state foundation program support. The revenue collected from this levy must be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school foundation program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; ~~and~~

(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204*; and*

(f) sales tax and use tax revenue."

Section 134. Section 20-9-343, MCA, is amended to read:

"**20-9-343.** *(Temporary)* **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the payment of guaranteed tax base aid and for equalization of the foundation program;

(b) the Montana educational telecommunications network as provided in 20-32-101; and

(c) filing fees for school district audits as required by 2-7-514(2).

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid, as required by subsections (1)(a) and (1)(b), throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium. *(Terminates June 30, 1993—sec. 5, Ch. 729, L. 1991.)*

20-9-343. *(Effective July 1, 1993)* **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the purposes of payment of guaranteed tax base aid ~~and~~, equalization of the foundation program, *and payment of retirement fund obligations, payment of debt service,* and for the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid as required for the purposes of guaranteed tax base aid, the foundation program, *retirement fund obligations, debt service,* and the Montana educational telecommunications network, throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; ~~and~~

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704*; and*

(k) money received from the collection of sales taxes and use taxes and distributed under [section 72].

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium."

Section 135. Section 20-9-344, MCA, is amended to read:

"**20-9-344. Purpose of state equalization aid and duties of board of public education for distribution.** (1) The money available for state equalization aid must be distributed and apportioned to provide:

(a) an annual minimum operating revenue for the elementary and high schools in each county, *revenue for the retirement fund,* ~~exclusive of~~ *and* ~~revenues~~ *revenue* required for debt service ~~and~~ *exclusive of revenue required* for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings and grounds, and transportation; and

(b) the Montana educational telecommunications network as provided in 20-32-101.

(2) The board of public education shall administer and distribute the state equalization aid and state advances for county equalization in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid and state advances for county equalization in accordance with the provisions of law;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education may not increase or decrease the state equalization aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) The board of public education may order the superintendent of public instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(4) Prior to any proposed order by the board of public education to withhold distribution of state equalization aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(5) If a district or county receives more state equalization aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(6) Except as provided in 20-9-347(3), the foundation program payment and guaranteed tax base aid payment must be distributed according to the following schedule:

(a) from August to May of the school fiscal year, 8% of the foundation program payment to each district;

(b) in November of the school fiscal year, one-half of the guaranteed tax base aid payment *and one-half of the state retirement obligation payment* to each district or county;

(c) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment *and one-half of the state retirement obligation payment* to each district or county; and

(d) in June of:

(i) the 1993 school fiscal year, one-half of the remaining foundation program payment of each district and on July 15, 1993, the remaining school fiscal year 1993 foundation program payment of each district; and

(ii) the school fiscal year, the remaining foundation program payment to each district.

(7) The distribution of foundation program payments and guaranteed tax base aid provided for in subsection (6) must occur by the last working day of each month."

Section 136. Section 20-9-346, MCA, is amended to read:

"**20-9-346. Duties of the superintendent of public instruction for state equalization aid distribution.** The superintendent of public instruction shall administer the distribution of the state equalization aid by:

(1) establishing the annual entitlement of each district and county to state equalization aid *in support of the retirement fund and foundation program,* based on the data reported in the retirement and general fund budgets for each district that have been duly adopted for the current school fiscal year and verified by the superintendent of public instruction and by applying the verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347;

(2) distributing by state warrant or electronic transfer the state equalization aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county or county where the district is located, in accordance with the distribution ordered by the board of public education;

(3) keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for state equalization aid of the districts of the state;

(4) reporting to the board of public education the estimated amount that will be available for state equalization aid; and

(5) reporting to the legislature as provided in 5-11-210:

(a) the figures and data available concerning distributions of state equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization."

Section 137. Section 20-9-347, MCA, is amended to read:

"**20-9-347. Formula for state equalization aid apportionment in support of foundation program *and retirement* — exceptions.** (1) The superintendent of public instruction shall apportion the state equalization aid available for support of the foundation program, individually for the elementary districts of a county or the high school districts of a county, in accordance with 20-9-346 and on the basis of the following procedure:

(a) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all counties.

(b) Determine the percentage that the total funds available in each county in support of the foundation programs in the county (excluding state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all districts of the county.

(c) Counties in which the percentage determined in subsection (1)(b) exceeds the percentage determined in subsection (1)(a) are not entitled to an apportionment of the state equalization aid in support of the foundation program.

(d) After elimination of the counties referred to in subsection (1)(c), determine the percentage that the total money available to all remaining counties in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all remaining counties.

(e) Each district of each remaining county is entitled to an apportionment of the state equalization aid in support of the foundation program equal to the difference between the percentage determined in subsection (1)(d) and the percentage determined for the county in subsection (1)(b) multiplied by the foundation program amount for the district.

(2) The superintendent of public instruction shall also apportion state equalization aid to each district in support of the district's retirement fund obligations. The superintendent of public instruction shall adopt rules to ensure

that for school fiscal year 1995 and succeeding years, each district receives retirement equalization aid equal to the full amount required by the elementary districts and high school districts in the county.

~~(2)~~*(3)* The superintendent of public instruction shall:

(a) supply the county treasurer and the county superintendent with a report of the apportionments of state equalization aid in support of the foundation program of each district of the county, and the state equalization aid in support of the foundation program must be apportioned to the districts in accordance with the report;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be raised for the basic county tax fund as provided in 20-9-331 and for the basic special tax fund as provided in 20-9-333;

(c) adopt rules to implement the provisions of subsection ~~(2)(b)~~ *(3)(b).*

~~(3)~~*(4)* (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the foundation program and guaranteed tax base aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212(9).

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. Nothing in this section may be construed to authorize the superintendent of public instruction to exceed a district's annual payment for state and county equalization aid."

Section 138. Section 20-9-351, MCA, is amended to read:

"**20-9-351. Funding of deficiency in state equalization aid.** If the money available for state equalization aid is not the result of a reduction in spending under 17-7-140 and is not sufficient to provide the foundation program schedule support determined in 20-9-348, ~~and~~ the guaranteed tax base aid required under 20-9-366 through 20-9-369, *and the retirement fund support required under 20-9-347,* the superintendent of public instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of guaranteed tax base aid, *retirement,* and the foundation programs of the elementary or secondary schools, or both, for the current biennium."

Section 139. Section 20-9-366, MCA, is amended to read:

"**20-9-366. Definitions.** As used in 20-9-366 through 20-9-369, the following definitions apply:

~~(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county~~

~~high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts.~~

~~(2)~~*(1)* "District mill value per ANB" means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year foundation program amount.

~~(3)~~*(2)* "Permissive amount" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 35% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.

~~(4)~~*(3)* "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for permissive and ~~retirement~~ *debt service* guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year foundation program amounts."

Section 140. Section 20-9-367, MCA, is amended to read:

"**20-9-367. Eligibility to receive guaranteed tax base aid.** ~~(1)~~ If the district mill value per ANB of any elementary or high school district is less than the corresponding statewide district mill value per elementary ANB or high school ANB, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of its permissive amount of the general fund budget *and its debt service fund.*

~~(2) If the county retirement mill value per elementary ANB or county retirement mill value per high school ANB is less than the corresponding statewide county mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.~~"

Section 141. Section 20-9-368, MCA, is amended to read:

"**20-9-368. Amount of guaranteed tax base aid — reversion.** ~~(1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide county mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.~~

~~(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide county mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.~~

~~(3)~~*(1)* The amount of guaranteed tax base aid per ANB that a district may receive in support of its permissive amount of the general fund budget is the difference between the district mill value per ANB and the corresponding statewide district mill value per ANB, multiplied by the number of mills levied in support of the district's permissive amount of the general fund budget.

(2) The amount of guaranteed tax base aid per ANB that a district may receive in support of its debt service fund budget is the difference between the district mill value per ANB and the corresponding statewide mill value per ANB, multiplied by the number of mills levied in support of the district's debt service fund budget.

~~(4)~~*(3)* Guaranteed tax base aid provided to any ~~county or~~ district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If the actual expenditures from the fund or portion of the fund for which guaranteed tax base aid is earmarked are less than the amount budgeted, the guaranteed tax base aid reverts in proportion to the amount budgeted but not expended. If a ~~county or~~ district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 142. Section 20-9-369, MCA, is amended to read:

"**20-9-369. Duties of superintendent of public instruction and department of revenue.** (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide and ~~county~~ *district* mill values per ANB and, by May 1 of each year, with the final statewide~~,~~ *and* district~~, and county~~ mill values per ANB, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) requiring each ~~county and~~ district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

(c) keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for such aid of the ~~counties and~~ districts that qualify;

(d) distributing the guaranteed tax base aid entitlement to each qualified ~~county or~~ district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305."

Section 143. Section 20-9-439, MCA, is amended to read:

"**20-9-439. Computation of net levy requirement — procedure when levy inadequate.** (1) The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:

(a) ~~determine~~ *Determine* the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435; and

(iii) any other money, *including money from federal sources,* anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from such sources as legally authorized money transfers into the debt service fund or from rental income, *excluding any guaranteed tax base aid.*~~;~~

(b) ~~the~~ *Subtract the* total amount available to reduce the property tax, determined in subsection (1)(a), ~~must be subtracted~~ from the final budget ~~expenditure amount~~ for the debt service fund as established in 20-9-438~~;~~.

(c) *Determine the number of mills to be levied on the taxable property in the district to finance the net debt service fund levy requirement by dividing the remainder determined in subsection (1)(b) by the sum of:*

(i) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(ii) the taxable valuation of the district divided by 1,000.

(2) ~~the~~ *The* net debt service fund levy requirement determined in subsection ~~(1)(b)~~ *(1)(c)* must be reported to the county commissioners on the second Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

~~(2)~~*(3)* If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for such purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county."

Section 144. Section 20-9-501, MCA, is amended to read:

"**20-9-501. Retirement fund.** (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 4, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-801. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the ~~levy requirement~~ *amount of the state obligation* by:

(a) determining the sum of the money available to reduce the ~~retirement fund levy requirement~~ *amount of the state obligation* by adding:

~~(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;~~

~~(ii) net proceeds taxes and local government severance taxes on any other oil and gas production occurring after December 31, 1988;~~

~~(iii) coal gross proceeds taxes under 15-23-703;~~

~~(iv)~~*(i)* any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.~~; and~~

~~(v)~~*(ii)* any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year~~, excluding any guaranteed tax base aid.~~*;*

(b) ~~notwithstanding the provisions of subsection (8),~~ subtracting the money available for reduction of the ~~levy requirement~~ *state obligation*, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total ~~the net retirement fund levy requirements~~ *the amount of the state obligation* separately for all elementary school districts, *including any joint district located in the county,* all high school districts, and all community college districts of the county, including any ~~prorated joint district or~~ special education cooperative agreement ~~levy~~ requirements; and

(b) report ~~each levy requirement~~ *the amount of the state obligation* to the ~~county commissioners~~ *superintendent of public instruction in the same manner as provided in 20-9-134* ~~on the second Monday of August~~ as the respective county ~~levy~~ requirements for elementary district~~,~~ *and* high school district~~,~~ *retirement funds* and *report to the board of regents in the same manner as provided in 20-9-134 the amount of the state obligation for* community college district retirement funds.

(5) The superintendent of public instruction shall pay the state obligation amounts determined in subsection (4) to each county according to the distribution schedule provided in 20-9-344.

~~(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.~~

~~(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.~~

~~(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151 and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.~~

~~(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:~~

~~(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and~~

~~(b) the taxable valuation of the district divided by 1,000.~~"

Section 145. Section 20-6-702, MCA, is amended to read:

"**20-6-702. Funding for K-12 school districts.** (1) Notwithstanding the provisions of subsections (2) through ~~(6)~~ *(5)*, a K-12 school district formed under the provisions of 20-6-701 is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) the calculation of ANB for purposes of determining the foundation program schedule payments must be in accordance with the provisions of 20-9-311;

(b) the basic county tax and revenues for the elementary foundation program amount for the district must be determined in accordance with the provisions of 20-9-331, and the basic special tax and revenues for the high school foundation program amount for the district must be determined in accordance with 20-9-333; and

(c) the guaranteed tax base aid for the permissive levy amount for a K-12 school district must be calculated separately, using the mill value per elementary ANB and the mill value per high school ANB as defined in 20-9-366. The permissive amount to be levied for the K-12 school district must be prorated based on the ratio of the foundation program amounts for elementary school programs to the foundation program amounts for high school programs.

~~(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.~~

~~(5)~~*(4)* For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

~~(6)~~*(5)* Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of chapter 5, part 3, except that the actual expenditures used for calculations in 20-5-305 and 20-5-312 must be based on an amount prorated between the elementary and high school programs in the appropriate funds of each district in the year prior to the attachment of the districts."

Section 146. Section 20-10-141, MCA, is amended to read:

"**20-10-141. Schedule of maximum reimbursement by mileage rates.** (1) The following mileage rates for school transportation constitute the maximum reimbursement to districts for school transportation from state ~~and county sources of~~ transportation revenue under the provisions of 20-10-145 ~~and 20-10-146~~. ~~These~~ *Except as provided in 20-10-143, the* rates may not limit the amount that a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school transportation during the ensuing school fiscal year. All bus miles traveled on routes approved by the county transportation committee are reimbursable. Nonbus mileage is reimbursable for a vehicle driven by a bus driver to and from an overnight location of a school bus when the location is more than 10 miles from the school. A district may approve additional bus or nonbus miles within its own district or approved service area but may not claim reimbursement for the mileage. Any vehicle, the operation of which is reimbursed for bus mileage under the rate provisions of this schedule, must be a school bus, as defined by this title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled must be determined in accordance with the following schedule when the number of eligible transportees that board a school bus on an approved route is not less than one-half of its rated capacity:

(a) 85 cents per bus mile for a school bus with a rated capacity of not less than 12 but not more than 45 children; and

(b) when the rated capacity is more than 45 children, an additional 2.13 cents per bus mile for each additional child in the rated capacity in excess of 45 must be added to a base rate of 85 cents per bus mile.

(3) Reimbursement for nonbus mileage provided for in subsection (1) may not exceed 50% of the maximum reimbursement rate determined under subsection (2).

(4) When the number of eligible transportees boarding a school bus on an approved route is less than one-half of its rated capacity, the rate per bus mile traveled must be computed as follows:

(a) determine the number of eligible transportees that board the school bus on the route;

(b) multiply the number determined in subsection (4)(a) by two and round off to the nearest whole number; and

(c) use the adjusted rated capacity determined in subsection (4)(b) as the rated capacity of the bus to determine the rate per bus mile traveled from the rate schedule in subsection (2).

(5) The rated capacity is the number of riding positions of a school bus as determined under the policy adopted by the board of public education."

Section 147. Section 20-10-142, MCA, is amended to read:

"**20-10-142. Schedule of maximum reimbursement for individual transportation.** The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state ~~and county sources of~~ transportation revenue under the provisions of 20-10-145 ~~and 20-10-146~~. These rates also ~~shall~~ constitute the limitation of the budgeted amounts for individual transportation for the ensuing school fiscal year. The schedules provided in this section ~~shall~~ *may* not be altered by any authority other than the legislature of the state of Montana. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school or to schools located within 3 miles of one another, the total reimbursement per day of attendance ~~shall~~ *must* be determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by 2, subtracting 6 miles from the product so obtained, and multiplying the difference by 21.25 cents provided that:

(a) if two or more eligible transportees are transported by a parent or guardian to two or more schools located within 3 miles of one another and if such schools are operated by different school districts, the total amount of the reimbursement ~~shall~~ *must* be divided equally between the districts;

(b) if two or more eligible transportees are transported by a parent or guardian to two or more schools located more than 3 miles from one another, the parent or guardian ~~shall~~ *must* be separately reimbursed for transporting the eligible transportee or transportees to each school;

(c) if a parent transports two or more eligible transportees to a school and a bus stop which school and bus stop are located within 3 miles of one another, the total reimbursement ~~shall~~ *must* be determined under the provisions of this subsection and ~~shall~~ *must* be divided equally between the district operating the school and the district operating the bus;

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section ~~shall~~ *must* be limited to one round trip per day for each scheduled arrival or departure time;

(e) notwithstanding subsection (1)(a), (1)(b), (1)(c), or (1)(d), ~~no~~ *a* reimbursement may *not* be less than 25 cents a day.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance ~~shall~~ *must* be determined by multiplying the distance in miles between the residence and the bus stop by 2, subtracting 3 miles from the product so obtained, and multiplying the difference by 22.5 cents provided that:

(a) if the eligible transportees transported attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally; and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian ~~shall~~ *must* be separately reimbursed for transportation to each bus.

(3) Where, due to excessive distances, impassable roads, or other special circumstances of isolation the rates prescribed in subsection (1) or (2) would be an inadequate reimbursement for the transportation costs or would result in a

physical hardship for the eligible transportee, ~~his~~ *the transportee's* parent or guardian may request an increase in the reimbursement rate. ~~Such a~~ *A* request for increased rates due to isolation ~~shall~~ *must* be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increased rate due to isolation ~~can~~ *may* be paid to the requesting parent or guardian, ~~such~~ *the* rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay ~~such~~ *the* increased rate due to isolation. The increased rate ~~shall~~ *must* be 1 ½ times the rate prescribed in subsection (1) above.

(4) When the isolated conditions of the household where an eligible transportee resides require ~~such~~ *the* eligible transportee to live away from the household in order to attend school, ~~he shall be~~ *the transportee is* eligible for the room and board reimbursement. Approval to receive the room and board reimbursement ~~shall~~ *must* be obtained in the same manner prescribed in subsection (3) above. The per diem rate for room and board ~~shall be~~ *is* $5.31 for one eligible transportee and $3.19 for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate ~~shall~~ *must* be the cost of such study, provided that the course of instruction is approved by the trustees and supervised by the district."

Section 148. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenues and net tax levy requirements for district transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c), *the transportation fund budget limitation provided for in 20-10-143,* or $100, whichever is ~~larger~~ *largest*, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount.

(2) ~~(a)~~ The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, ~~is divided by 2 and~~ is used to determine the available state ~~and county~~ revenue to be budgeted. ~~on the following basis:~~

~~(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and~~

~~(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.~~

~~(b)~~*(3)* When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection ~~(3)~~ *(4)*, to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce ~~the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).~~

~~(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county~~ *the state financial obligation in 20-10-145.*

~~(3)~~*(4)* The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988;

(h) sales tax and use tax revenue distributed under [section 72];

~~(h)~~*(i)* any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

~~(i)~~*(j)* any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

~~(4)~~*(5)* The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection ~~(3)~~ *(4)*, from the amount determined in subsection ~~(4)(a)~~ *(5)(a)*.

~~(5)~~*(6)* The transportation fund levy requirements determined in subsection ~~(4)~~ *(5)* for each district must be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 149. Section 20-10-145, MCA, is amended to read:

"**20-10-145. State transportation reimbursement.** (1) A district providing school bus transportation or individual transportation in accordance with this title, board of public education transportation policy, and superintendent of public instruction transportation rules must receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement is ~~one-half~~ *100%* of the reimbursement amounts established in 20-10-141 and 20-10-142 or ~~one-half~~ *100%* of the district's transportation fund budget, whichever is smaller, and must be computed on the basis of the number of days the transportation services were actually rendered, not to exceed 180 pupil-instruction days. In determining the amount of the state transportation reimbursement, an amount claimed by a district may not be considered for reimbursement unless the amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement must be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements must be routed by the district to the county superintendent, who after reviewing the claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining compliance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction. After making any necessary adjustments to the claims, the superintendent of public instruction shall order a disbursement from the state money appropriated by the legislature of the state of Montana for the state transportation reimbursement. The payment of all the district's claims within one county must be made to the county treasurer of the county, and the county superintendent shall apportion the payment in accordance with the apportionment order supplied by the superintendent of public instruction."

Section 150. Section 17-3-213, MCA, is amended to read:

"**17-3-213. Allocation to general road fund and countywide school levies.** (1) The forest reserve funds so apportioned to each county must be apportioned by the county treasurer in each county as follows:

(a) to the general road fund, 66 ⅔% of the total amount received;

(b) to the following countywide school levies, 33 ⅓% of the total sum received:

(i) county equalization for elementary schools provided for in 20-9-331; and

(ii) county equalization for high schools provided for in 20-9-333~~;~~

~~(iii) the county transportation fund provided for in 20-10-146; and~~

~~(iv) the elementary and high school district retirement fund obligations provided for in 20-9-501~~.

(2) The apportionment of money to the funds provided for under subsection (1)(b) must be made by the county superintendent based on the proportion that the mill levy of each fund bears to the total number of mills for all the funds. ~~Whenever the total amount of money available for apportionment under this section is greater than the total requirements of a levy, the excess money and any interest income must be retained in a separate reserve fund, to be reapportioned in the ensuing school fiscal year to the levies designated in subsection (1)(b).~~

(3) In counties in which special road districts have been created according to law, the board of county commissioners shall distribute a proportionate share of the 66 ⅔% of the total amount received for the general road fund to the special road districts within the county based upon the percentage that the total area of the road district bears to the total area of the entire county."

Section 151. Section 20-3-205, MCA, is amended to read:

"**20-3-205. Powers and duties.** The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, *or* 20-10-145~~, or 20-10-146~~;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to his successor;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

Section 152. Section 20-10-104, MCA, is amended to read:

"**20-10-104. Penalty for violating law or rules.** (1) Every district, its trustees and employees, and every person under a transportation contract with a district shall be subject to the policies prescribed by the board of public education and the rules prescribed by the superintendent of public instruction. When a district knowingly violates a transportation law or board of public education transportation policy, such district shall forfeit any reimbursement otherwise payable under 20-10-145 ~~and 20-10-146~~ for bus miles actually traveled during that fiscal year in violation of such law or policies. The county superintendent shall suspend all such reimbursements payable to the district until the district corrects the violation. When the district corrects the violation, the county superintendent shall resume paying reimbursements to the district, but the amount forfeited may not be paid to the district.

(2) When a person operating a bus under contract with a district knowingly fails to comply with the transportation law or the board of public education transportation policies, the district may not pay him for any bus miles traveled during the contract year in violation of such law or policies. Upon discovering such a violation, the trustees of the district shall give written notice to the person that unless the violation is corrected within 10 days of the giving of notice, the contract will be canceled. The trustees of a district shall order the operation of a bus operated under contract suspended when the bus is being operated in violation of transportation law or policies and the trustees find that such violation jeopardizes the safety of pupils."

Section 153. Section 20-15-311, MCA, is amended to read:

"**20-15-311. Funding sources.** The annual operating budget of a community college district shall be financed from the following sources:

(1) the estimated revenues to be realized from student tuition and fees, except those related to community service courses as defined by the board of regents;

(2) a mandatory mill levy on the community college district;

(3) the 1-mill adult education levy authorized under provisions of 20-15-305;

(4) the state general fund appropriation;

(5) an optional voted levy on the community college district that shall be submitted to the electorate in accordance with general school election laws;

(6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses as defined by the board of regents shall be considered restricted to a specific purpose;

(8) income from a political subdivision that is designated a community college service region under 20-15-241; *and*

(9) sales tax and use tax revenue distributed under [section 72]."

Section 154. Section 61-3-303, MCA, is amended to read:

"**61-3-303. Application for registration.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer where the owner makes ~~his~~ *the owner's* permanent residence at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned, an application for registration or reregistration upon a blank form to be prepared and furnished by the department. The application shall contain:

(a) name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) name and address of the holder of any security interest in the motor vehicle;

(c) description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity; and

(d) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321; and

(b) ~~unless it has been previously paid~~ *whichever tax of the following is applicable*:

(i) the personal property taxes assessed against the vehicle for the current year of registration and the immediately previous year, *unless the taxes have been previously paid*; ~~or~~

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration*; or*

(iii) the sales tax or use tax imposed by 61-3-504(4).

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department or its agent may not assess and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year, if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department or its agent may make full and complete investigation of the tax status of the vehicle. Any applicant for registration or reregistration must submit proof from the tax or other appropriate records of the proper county at the request of the department or its agent."

Section 155. Section 61-3-317, MCA, is amended to read:

"**61-3-317. New registration required for transferred vehicle — *sales tax and use tax* — grace period — penalty — display of proof of purchase.** Except as otherwise provided herein, the new owner of a transferred motor vehicle ~~shall have~~ *has* a grace period of 20 calendar days from the date of purchase to make application and pay the ~~taxes or fees, or both,~~ *sales tax or use tax* provided by part 5 of this chapter, ~~unless the~~ *in addition to any property* tax or fee *in lieu of tax that* has been paid for the year, as if the vehicle were being registered for the first time in that registration year. If the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period, provided that at all times during that period a vehicle purchase sticker in a form prescribed and furnished by the department, obtained from the county treasurer or a law enforcement officer as authorized by the department, reciting the date of purchase is clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under this section and 61-3-335*; however, the transfer may be subject to the sales tax or use tax provided by part 5 of this chapter*. Failure to make application within the time provided herein subjects the purchaser to a penalty of $10. The penalty ~~shall~~ *must* be collected by the county treasurer at the time of registration and shall be in addition to the fees otherwise provided by law."

Section 156. Section 61-3-502, MCA, is amended to read:

"**61-3-502.** *(Temporary)* **Sales tax on new motor vehicles — exemptions.** (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding *vehicles with a gross vehicle weight in excess of 46,000 pounds used exclusively in interstate commerce, vehicles registered as part of a fleet as defined in 61-3-318(2),* trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when ~~he applies~~ *applying* for ~~his~~ *an* original Montana license through the county treasurer.

(2) ~~Except as provided in subsections (4) and (5), the~~ *The* sales tax is~~:~~

~~(a) 1-1/2%~~ *4%* of the *sales price as defined in [section 1]* ~~f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;~~

~~(b) 1-1/8% of the list price during the second quarter of the year;~~

~~(c) 3/4 of 1% during the third quarter of the year;~~

~~(d) 3/8 of 1% during the fourth quarter of the year~~.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

~~(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1-1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.~~

~~(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.~~

~~(6)~~*(4)* Except as provided in 61-3-551, the proceeds from ~~this~~ *the* tax *imposed under subsections (1) and (2)* must be remitted to the state treasurer every 30 days for credit *as follows:*

(a) 37.5% to the state highway account of the state special revenue fund*; and*

(b) 62.5% to the sales tax and use tax account established in [section 71].

~~(7)~~*(5)* The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

~~(8)~~*(6)* (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

~~(9)~~*(7)* (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business.

61-3-502. *(Effective on receipt of taxes or fees for September 1993)* **Sales tax on new motor vehicles — exemptions.** (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding *vehicles with a gross vehicle weight in excess of 46,000 pounds used exclusively in interstate commerce, vehicles registered as part of a fleet as defined in 61-3-318(2),* trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when ~~he applies~~ *applying* for ~~his~~ *an* original Montana license through the county treasurer.

(2) ~~Except as provided in subsections (4) and (5), the~~ *The* sales tax is~~:~~

~~(a) 1-½%~~ *4%* of the *sales price as defined in [section 1]* ~~f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;~~

~~(b) 1-⅛% of the list price during the second quarter of the year;~~

~~(c) 3/4 of 1% during the third quarter of the year;~~

~~(d) 3/8 of 1% during the fourth quarter of the year~~.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

~~(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1-½% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.~~

~~(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.~~

~~(6)~~*(4)* The proceeds from ~~this~~ *the* tax *imposed under subsections (1) and (2)* must be remitted to the state treasurer every 30 days for credit *as follows:*

(a) 37.5% to the state highway account of the state special revenue fund*; and*

(b) 62.5% to the sales tax and use tax account established in [section 71].

~~(7)~~*(5)* The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

~~(8)~~*(6)* (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

~~(8)~~*(7)* (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business."

Section 157. Section 61-3-504, MCA, is amended to read:

"61-3-504. Computation of *property* tax — *sales tax and use tax on used vehicles.* (1) The amount of *property* taxes on a motor vehicle, other than an automobile, truck having a rated capacity of 1 ton or less, motorcycle, quadricycle, motor home, travel trailer, camper, or mobile home, is computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration.

(2) The amount of *property* tax on an automobile or truck having a rated capacity of 1 ton or less, except for vehicles owned by disabled veterans qualifying for special license plates under 61-3-332(10)(c), and on a motorcycle or quadricycle is 2% of the value determined under 61-3-503.

(3) The amount of *property* tax on fleet vehicles subject to the provisions of 61-3-318 is 1% of the value determined under 61-3-503.

(4) (a) A sales tax of 4% is imposed on the sale, measured by the sales price, as defined in [section 1], of all motor vehicles, except vehicles with a gross vehicle weight in excess of 46,000 pounds used exclusively in interstate commerce, not subject to the new car sales tax imposed under 61-3-502. The tax is imposed on the purchaser and must be paid at the time the motor vehicle is registered pursuant to 61-3-317.

(b) A use tax of 4% is imposed on the value of all used motor vehicles, except vehicles with a gross vehicle weight in excess of 46,000 pounds used exclusively in interstate commerce, that are:

(i) manufactured by the person using the motor vehicle in this state;

(ii) acquired outside this state as the result of a transaction that would have been subject to the sales tax had it occurred within this state;

(iii) acquired within the exterior boundaries of an Indian reservation within this state as a result of a transaction that would have been subject to the sales

tax had it occurred outside of the exterior boundaries of an Indian reservation within this state; or

(iv) acquired as the result of a transaction that was not initially subject to the sales tax imposed by subsection (4)(a) or the use tax imposed by subsection (4)(b) but which transaction, because of the buyer's subsequent use of the property, is subject to the sales tax or use tax.

(5) For the purpose of imposing the use tax imposed by subsection (4)(b), the motor vehicle must be valued according to the provisions for assessment contained in 61-3-503.

~~(4)~~*(6)* For all taxable motor vehicles, the amount of tax is entered on the application form in a space provided ~~therefor~~."

Section 158. Section 61-3-506, MCA, is amended to read:

"**61-3-506.** *(Temporary)* **Rules.** The department of revenue shall adopt rules for the payment of property taxes and the department of transportation shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520. The department of revenue may adopt rules for the proration of taxes for the implementation and administration of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520, but shall specifically provide that new car taxes shall be for a 12-month period. *(Terminates December 31, 1993—sec. 11, Ch. 525, L. 1989.)*

61-3-506. *(Effective January 1, 1994)* **Rules.** The department of revenue shall adopt rules for the payment of property taxes, *sales taxes under the provisions of 61-3-502, and sales taxes and use taxes under the provisions of [sections 1 through 71] and 61-3-504,* and the department of transportation shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316 and 61-3-501. The department of revenue may adopt rules for the proration of taxes for the implementation and administration of 61-3-313 through 61-3-316 and 61-3-501, but shall specifically provide that new car taxes *or sales taxes and use taxes* shall be for a 12-month period."

Section 159. Section 61-3-509, MCA, is amended to read:

"**61-3-509. Disposition of taxes.** (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3) and [section 161],* the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motor homes, travel trailers, and campers collected under 61-3-504*(1) through (3),* 61-3-521, and 61-3-537 to a motor vehicle suspense fund, and at some time between March 1 and March 10 of each year and every 60 days thereafter, the county treasurer shall distribute the money in the motor vehicle suspense fund in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

(2) The county treasurer shall deduct as a district court fee 7% of the amount of the 2% tax collected on an automobile or truck having a rated capacity of 1 ton or less. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this

subsection to the general fund to be used for purposes of state funding of the district court expenses as provided in 3-5-901. Any amount forwarded to the state treasurer under this subsection that is not used for district court expenses must be refunded to the counties in the proportion that the amount collected from each county bears to the total amount collected.

(3) In addition to the amount provided in subsection (2), the county treasurer shall deduct 10% of the amount of the 2% tax collected on an automobile or truck having a rated capacity of 1 ton or less. The county treasurer shall credit the amount deducted to a separate suspense account and shall forward the amount in the account to the state treasurer at the time the county treasurer distributes the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the school equalization aid account."

Section 160. Section 61-3-701, MCA, is amended to read:

"61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity. (1) Before any foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation, or profit or before the owner and/or user thereof uses the vehicle if such owner and/or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall make application to a county treasurer for registration upon an application form furnished by the department. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of property taxes *and use taxes*, if appropriate, as required by 15-8-201, 15-8-202, 15-24-301, 61-3-504, or 61-3-537, the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) The treasurer shall thereupon issue to the applicant a copy of the certificate entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the department. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which shall at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the period of the life of the license.

(3) The registration receipt shall not constitute evidence of ownership but shall be used only for registration purposes. No Montana certificate of ownership shall be issued for this type of registration.

(4) This section is not applicable to any vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana."

Section 161. **Distribution of sales tax or use tax collected by county treasurer.** The county treasurer shall:

(1) immediately upon collection, credit 50% of the sales tax and use tax collected pursuant to 61-3-303(2)(b)(iii) to the motor vehicle suspense fund described in 61-3-509; and

(2) on or before the 25th day of every month, remit the remaining 50% to the state treasurer for deposit in the sales tax and use tax account established in [section 71].

Section 162. Section 61-4-112, MCA, is amended to read:

"**61-4-112. New motor vehicles — transfers by dealers.** (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a sticker as prescribed in 61-4-111(1)(a) for transfers of used motor vehicles and retain a copy of the sticker;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the sticker issued under subsection (1)(a);

(ii) an application for certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a statement of origin as prescribed in 61-3-502~~(8)(b)~~*(6)(b)*.

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of ownership and certificate of registration together with a statement of lien as provided in 61-3-202."

Section 163. Section 15-30-101, MCA, is amended to read:

"**15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) ~~the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;~~

~~(b)~~ the exemptions contained in 15-30-112~~, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year~~;

~~(c)~~*(b)* the ~~maximum~~ standard deduction provided in 15-30-122~~, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year~~.

~~(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.~~

~~(3)~~*(2)* "Department" means the department of revenue.

~~(4)~~*(3)* "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

~~(5)~~*(4)* "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

~~(6)~~*(5)* "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

~~(7)~~*(6)* "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

~~(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June, 1980.~~

~~(9)~~*(7)* "Information agents" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

~~(10)~~*(8)* "Knowingly" is as defined in 45-2-101.

~~(11)~~*(9)* "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(12)~~*(10)* "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" ~~shall~~ *must* be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(13)~~*(11)* "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts after cessation of regular employment received from fully matured, privately purchased annuity contracts.

~~(14)~~*(12)* "Purposely" is as defined in 45-2-101.

~~(15)~~*(13)* "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" ~~shall~~ *must* be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(16)~~*(14)* "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

~~(17)~~*(15)* "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(18)~~*(16)* "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

~~(19)~~*(17)* "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Section 164. Section 15-30-103, MCA, is amended to read:

"**15-30-103. Rate of tax.** ~~(1)~~ There ~~shall be~~ *is* levied, collected, and paid for each taxable year commencing on or after December 31, ~~1968~~ *1993*, upon the taxable income of every ~~taxpayer~~ *individual* subject to this tax, after making allowance for exemptions and deductions ~~as hereinafter provided~~, a tax *at the rate of 6% of the individual's taxable income* ~~on the following brackets of taxable income as adjusted under subsection (2) at the following rates:~~

~~(a) on the first $1,000 of taxable income or any part thereof, 2%;~~

~~(b) on the next $1,000 of taxable income or any part thereof, 3%;~~

~~(c) on the next $2,000 of taxable income or any part thereof, 4%;~~

~~(d) on the next $2,000 of taxable income or any part thereof, 5%;~~

~~(e) on the next $2,000 of taxable income or any part thereof, 6%;~~

~~(f) on the next $2,000 of taxable income or any part thereof, 7%;~~

~~(g) on the next $4,000 of taxable income or any part thereof, 8%;~~

~~(h) on the next $6,000 of taxable income or any part thereof, 9%;~~

~~(i) on the next $15,000 of taxable income or any part thereof, 10%;~~

~~(j) on any taxable income in excess of $35,000 or any part thereof, 11%.~~

~~(2) By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that taxable year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that taxable year and shall be used as the basis for imposition of the tax in subsection (1) of this section.~~"

Section 165. Section 15-30-105, MCA, is amended to read:

"**15-30-105. Tax on nonresident — alternative tax based on gross sales.** (1) A like tax is imposed upon every person not resident of this state, which tax ~~shall~~ *must* be levied, collected, and paid annually at the ~~rates~~ *rate* specified in 15-30-103 with respect to ~~his entire net~~ *the person's taxable* income. ~~After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana.~~

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. ~~Such~~ *The* tax ~~shall be~~ *is* in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year ~~shall~~ *must* be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 166. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ *is* the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition ~~shall include~~ *includes* the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

~~(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability;~~

~~(c)~~*(b)* that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

~~(d)~~*(c)* depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; and

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange".

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in ~~his~~ *the shareholder's* adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ *the taxpayer's* business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. *(Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)* "

Section 167. Section 15-30-112, MCA, is amended to read:

"**15-30-112. Exemptions.** (1) ~~Except as provided in subsection (6), in~~ *In* the case of an individual, the exemptions provided by ~~subsections (2) through (5)~~ *this section* ~~shall be~~ *are* allowed as deductions in computing taxable income.

(2) (a) An exemption of ~~$800~~ *$3,500* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1993*, for the taxpayer.

(b) An additional exemption of ~~$800~~ *$3,500* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1993*, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of ~~$800~~ *$3,500* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1993*, for the taxpayer if ~~he~~ *the taxpayer* has attained the age of 65 before the close of ~~his~~ *the taxpayer's* taxable year.

(b) An additional exemption of ~~$800~~ *$3,500* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1993*, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of ~~$800~~ *$3,500* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1993*, for the taxpayer if ~~he~~ *the taxpayer* is blind at the close of ~~his~~ *the taxpayer's* taxable year.

(b) An additional exemption of ~~$800~~ *$3,500* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1993*, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind ~~shall~~ *must* be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination ~~shall~~ *must* be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if ~~his~~ *the individual's* central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if ~~his~~ *the individual's* visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of ~~$800~~ *$3,500* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1993*, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than ~~$800~~ *$3,500*; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) No exemption ~~shall be~~ *is* allowed under this subsection *(5)* for any dependent who has made a joint return with ~~his~~ *the dependent's* spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

~~(6) The department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103.~~"

Section 168. Section 15-30-117, MCA, is amended to read:

"**15-30-117. Net operating loss — computation.** (1) A Montana net operating loss *for a loss incurred in tax years beginning after December 31, 1993,* must be determined in accordance with section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in accordance with the following:

(a) The net operating loss deduction for Montana purposes is increased by ~~the following:~~

~~(i) that portion of the federal income tax and motor vehicle tax allowed as a deduction under 15-30-121 or 15-30-131 which is attributable to income from a Montana trade or business; and~~

~~(ii)~~ Montana wages and salaries allowed as a business deduction under 15-30-111(4).

(b) The net operating loss deduction for Montana purposes is decreased by the ~~following:~~

~~(i)~~ interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as non-business income under 15-30-111(1)(a)~~;~~

~~(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as Montana business income;~~

~~(iii) state income tax; and~~

~~(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income~~.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, a net operating loss does not include~~:~~

~~(a)~~ income defined as exempt from state taxation under 15-30-111(2)~~; or~~

~~(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 or as that section may be labeled or amended~~."

Section 169. Section 15-30-122, MCA, is amended to read:

"**15-30-122. Standard deduction.** (1) A standard deduction ~~equal to 20%~~ of adjusted gross income ~~shall be~~ *is* allowed ~~if elected by the taxpayer on his~~ *on the taxpayer's* return. ~~The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum~~

(2) (a) Except as provided in subsections (2)(b) through (2)(d), the standard deduction ~~shall be $1,500~~ *is $6,000.* ~~, as adjusted under the provisions of subsection (2), except that in the case of~~

(b) For a single joint return of husband and wife, *the standard deduction is $10,000.* ~~or in the case of~~

(c) For a single individual who qualifies to file as a head of household on ~~his~~ *the individual's* federal income tax return, the ~~maximum~~ standard deduction ~~shall be $3,000~~ *is $8,000.* ~~, as adjusted under the provisions of subsection (2).~~

(d) The standard deduction ~~shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the~~

~~standard deduction~~ *for married taxpayers filing separately is 50% of the standard deduction provided in subsection (2)(b) for a joint return.*

(3) For purposes of this section, the determination of whether an individual is married ~~shall~~ *must* be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination ~~shall~~ *must* be made as of the date of death.

~~(2) By November 1 of each year, the department shall multiply the maximum standard deduction for single returns by the inflation factor for that taxable year and round the product to the nearest $10. The standard deduction for joint returns and qualified head of household returns shall be twice the amount for single returns. The resulting adjusted deductions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103.~~"

Section 170. Section 15-30-126, MCA, is amended to read:

"**15-30-126. Small business corporation — deduction for donation of computer equipment to schools.** A small business corporation, as defined in 15-31-201, is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(2) the property is not transferred by the donee in exchange for money, other property, or services; *and*

(3) the electing small business corporation receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)~~; and~~

~~(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions.~~"

Section 171. Section 15-30-131, MCA, is amended to read:

"**15-30-131. Nonresident and ~~temporary~~ *part-year* resident taxpayers — adjusted gross income.** *(1)* In the case of a *nonresident or part-year resident* taxpayer ~~other than a resident of this state~~, adjusted gross income includes the entire amount of adjusted gross income ~~as provided for in 15-30-111~~ *from sources within this state but does not include income from annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations, except to the extent to which the income from annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations is a part of income from any business, trade, profession, or occupation carried on in this state. Interest income from installment sales of real or tangible commercial or business property located in Montana must be included in adjusted gross income. Adjusted gross income from sources within and outside of this state must* *be allocated and apportioned under rules adopted by the department in accordance with the Multistate Tax Compact.*

(2) For purposes of this section, "installment sales" means sales in which the buyer agrees to pay the seller in one or more deferred installments.

(3) The deductions allowed in computing net income are restricted to a prorated standard deduction, as adjusted, allowed under 15-30-122 and prorated exemptions, as adjusted, allowed under 15-30-112. The standard deduction and the claimable exemptions must be prorated according to the ratio that the taxpayer's Montana adjusted gross income bears to the taxpayer's federal adjusted gross income."

Section 172. Section 15-30-137, MCA, is amended to read:

"**15-30-137. Determination of tax of estates and trusts.** The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the ~~rates~~ *rate* contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable."

Section 173. Section 15-30-142, MCA, is amended to read:

"**15-30-142. Returns and payment of tax — penalty and interest — refunds — credits.** (1) *A return must be filed as provided in subsections (2)(a) through (2)(d) on forms and according to rules prescribed by the department.*

(2) A return must be filed by:

(a) ~~Every~~ *every* single individual ~~and every married individual not filing a joint return with his or her spouse and~~ having ~~a~~ gross income for the taxable year of more than ~~$1,000,~~ *the combined amount of the standard deduction for a single individual plus the amount for each exemption claimable by the individual as provided in 15-30-112;* ~~as adjusted under the provisions of subsection (7), and~~

(b) every individual filing as a head of household having gross income for the taxable year of more than the combined amount of the standard deduction for a head of household plus the amount for each exemption claimable by the individual as provided in 15-30-112;

(c) married individuals not filing separate returns and having a combined gross income for the taxable year of more than ~~$2,000,~~ *the combined amount of the standard deduction for married individuals not filing separately plus the amount for each exemption claimable by the individuals as provided in 15-30-112;*

(d) ~~as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe~~ *married individuals filing separately with combined gross income exceeding one-half of the combined amount of the standard deduction for married individuals not filing separately plus the amount for each exemption claimable by the individual as provided in 15-30-112.* ~~The gross income amounts referred to in the preceding sentence shall be increased by $800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance the~~

~~taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4).~~

(3) A nonresident ~~shall be~~ *is* required to file a return if ~~his~~ *the nonresident's* gross income for the taxable year derived from sources within Montana exceeds the *total* amount of the *prorated* exemption deduction *and prorated standard deduction* ~~he is entitled to claim for himself and his~~ *claimable by the nonresident and the nonresident's* spouse under the provisions of 15-30-112(2), (3), and (4).

~~(2)~~*(4)* In accordance with instructions set forth by the department, every taxpayer who is married, ~~and~~ *who is* living with ~~husband or wife~~ *the taxpayer's spouse,* and *who* is required to file a return may, at ~~his or her~~ *the taxpayer's* option, file a joint return with ~~husband or wife~~ *the spouse* even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax ~~shall~~ *must* be computed on the aggregate taxable income and the liability with respect to the tax ~~shall be~~ *is* joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department so consents.

~~(3)~~*(5)* If ~~any such~~ *a* taxpayer is unable to make ~~his own~~ *a* return *that is required to be made by the taxpayer,* the return ~~shall~~ *must* be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

~~(4)~~*(6)* All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer ~~shall be~~ *is* entitled to a refund of the excess.

~~(5)~~*(7)* As soon as practicable after the return is filed, the department shall examine and verify the tax.

~~(6)~~*(8)* If the amount of tax as verified is greater than the amount theretofore paid, the excess ~~shall~~ *must* be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there ~~shall be~~ *is* no penalty because of ~~such~~ *the* understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

~~(7)~~*(9)* By November 1 of each year, the department shall ~~multiply~~ *determine* the minimum amount of gross income necessitating the filing of a return ~~by the inflation factor~~ for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

~~(8)~~*(10)* Individual income tax forms distributed by the department for each taxable year must contain instructions and tables based on the adjusted base year structure for that taxable year.

(11) For the purposes of this section:

(a) "exemption" means the exemptions provided by 15-30-112;

(b) "standard deduction" means the deductions provided by 15-30-122."

Section 174. Section 15-30-177, MCA, is amended to read:

"**15-30-177. Residential property tax credit for elderly — limitations.** (1) Only one claimant per household in a claim period under the provisions of 15-30-171 through 15-30-179 is entitled to relief.

(2) Except as provided in subsection (3), no claim for relief may be allowed for any portion of property taxes paid or rent-equivalent taxes paid that is derived from a public rent or tax subsidy program.

(3) Except for dwellings rented from a county or municipal housing authority, no claim for relief may be allowed on rented lands or rented dwellings that are not subject to ad valorem taxation in Montana during the claim period.

(4) A claimant who receives the renters' property tax credit under [sections 73 through 80] or who receives a homeowners' tax credit under [sections 81 through 88] is not entitled to receive the residential property tax credit for the elderly under 15-30-171 through 15-30-179 for the same tax year."

Section 175. Section 15-30-323, MCA, is amended to read:

"**15-30-323. Penalty for deficiency.** (1) If the payment required by 15-30-142~~(6)~~*(8)* is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, there ~~shall~~ *must* be added to the amount of the deficiency 5% ~~thereof~~ *of the deficiency*; provided, however, that no deficiency penalty ~~shall~~ *may* be less than $2. Interest will be computed at the rate of 9% per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subsection, the interest ~~shall~~ *must* in all cases be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest ~~thereon~~ *on the tax due* at the rate of 9% per annum from the time when the return was originally required to be filed to the time of payment."

Section 176. Section 15-31-131, MCA, is amended to read:

"**15-31-131. Credit for dependent care assistance.** (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 89(k) and 129(d)(2) through (6) of the Internal Revenue Code.

(2) (a) The amount of the credit allowed under subsection (1) is 20% of the amount paid or incurred by the employer during the taxable year, but the credit may not exceed $1,250 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code.

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) An amount paid or incurred during the taxable year of an employer in providing dependent care assistance to or on behalf of any employee does not qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code.

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(5) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. ~~Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.~~

(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(8) If the taxpayer is an S corporation, as defined in section 1361 of the Internal Revenue Code, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A

shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (1):

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state.

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989."

Section 177. Section 15-32-303, MCA, is amended to read:

"**15-32-303. Deduction for purchase of Montana produced organic fertilizer.** In addition to all other deductions ~~from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or~~ from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct ~~his~~ expenditures *made by the taxpayer* for organic fertilizer produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income."

Section 178. Section 15-51-101, MCA, is amended to read:

"**15-51-101. Rate of tax — electrical energy producers.** *(1)* ~~In~~ *Except as provided in subsections (2) and (3), in* addition to the license tax ~~now provided by law~~, each person or other organization ~~now~~ engaged in the generation, manufacture, or production of electricity and electrical energy in the state of Montana~~, either through waterpower or by any other means,~~ for barter, sale, or exchange ~~(and hereinafter referred to as the "producer")~~ shall on or before the 30th day after each calendar quarter, quarterly periods ending March 31, June 30, September 30, and December 31, render a statement to the department of revenue showing the gross amount, except for actual and necessary plant use, required to produce the energy of electricity and electrical energy produced, manufactured, or generated during the preceding calendar quarter without any deduction and shall pay a license tax thereon in the sum of ~~$.0002~~ *$.00252* per kilowatt hour on all ~~such~~ electricity and electrical energy generated, manufactured, or produced, measured at the place of production and as shown on the statement required in the manner and within the time hereinafter provided.

(2) The license tax required to be paid by a qualified facility, as that term is defined in the Federal Power Act, as amended by the Public Utilities Regulatory Policies Act of 1978, that exceeds $.0002 per kilowatt hour must be reimbursed to the qualified facility by the wholesale purchaser making purchases of a qualified facility's electricity or electrical energy if the wholesale purchases are made pursuant to a contract in effect on June 30, 1993. The wholesale purchaser shall reimburse the qualified facility on or before the date that the qualified facility is required to pay the tax imposed under subsection (1).

(3) Notwithstanding the provisions of subsections (1) and (2), the tax rate on all electricity and electrical energy generated, manufactured, or produced from

a facility or from an additional generating unit of a facility placed in service after June 8, 1993, and prior to January 1, 1997, is as follows:

(a) $.0002 per kilowatt hour commencing on the first day of commercial operation of the facility or of an additional generating unit of a facility through the end of the calendar quarter ending 5 years after the first day of commercial operation;

(b) $.0008 per kilowatt hour for the next 5 years;

(c) $.0016 per kilowatt hour for the next 5 years; and

(d) $.00252 per kilowatt hour thereafter."

Section 179. Section 16-1-306, MCA, is amended to read:

"**16-1-306. Revenue to be paid to state treasurer.** Except as provided in *[section 71]*, 16-1-404, 16-1-405, 16-1-408, 16-1-410, ~~and~~ 16-1-411, *and 16-2-301*, all fees, charges, taxes, and revenues collected by or under authority of the department ~~shall~~ *must* be deposited with the state treasurer. ~~He~~ *The state treasurer* shall deposit the funds to the credit of the state general fund, *except for sales tax and use tax revenue that must be deposited according to [section 71]*."

Section 180. Section 16-1-411, MCA, is amended to read:

"**16-1-411.** *(Temporary)* **Tax on wine.** (1) A tax of 27 cents per liter is hereby levied and imposed on table wine imported by any table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor shall be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department shall be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) shall be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) ~~The~~ *In addition to sales taxes and use taxes imposed under [section 2], the* taxes computed and paid in accordance with 16-1-423, 16-2-301, and this section shall be the only taxes imposed by the state or any of its subdivisions, including cities and towns.

(5) The proceeds of the surtax imposed by 16-1-423 must be deposited in the state general fund.

16-1-411. *(Effective on receipt of taxes or fees for September 1993)* **Tax on wine.** (1) A tax of 27 cents per liter is hereby levied and imposed on table wine imported by any table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor shall be paid by the table wine distributor by the 15th day of the month following sale of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department shall be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) shall be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) ~~The~~ *In addition to the sales tax and use tax imposed under [section 2], the* tax computed and paid in accordance with this section shall be the only tax imposed by the state or any of its subdivisions, including cities and towns."

Section 181. Section 16-2-301, MCA, is amended to read:

"**16-2-301. Retail selling price on table wine — tax on certain table wine.** (1) *(a)* The retail selling price at which table wine is sold either by the department, through a state employee-operated store, or by a commission agent who was appointed before April 30, 1987, including subsequent renewals of such appointment, and who elects to order table wine from the department is computed by adding to the statewide weighted average cost of table wine the tax and state markup as designated by the department.

(b) The retail selling price at which table wine is sold pursuant to subsection (1)(a) may not include the sales tax or use tax imposed under [section 2]. The sales tax or use tax must be collected as provided in [sections 1 through 71] and must be deposited as provided in [section 71].

(2) *(a)* The retail selling price at which table wine is sold by a commission agent appointed by the department after May 1, 1987, is as determined by the agent.

(b) The retail selling price at which table wine is sold pursuant to subsection (2)(a) may not include the sales tax or use tax imposed under [section 2]. The sales tax or use tax must be collected as provided in [sections 1 through 71] and must be deposited as provided in [section 71].

(3) In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on table wine sold by a table wine distributor to an agent as described in subsection (2). This additional tax must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is paid. The department shall deposit the tax paid under this section in the general fund.

(4) The sales tax and use tax collected under [sections 1 through 71] are not considered to be collected under this section."

Section 182. **Transition.** (1) Notwithstanding the provisions of 15-30-111, the adjusted gross income of an individual includes refunds of federal income tax received for tax years prior to December 31, 1993, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) Notwithstanding the provisions of 15-30-122, all itemized deductions allowed pursuant to 26 U.S.C. 161 and 211 that may be carried forward, including but not limited to the contributions carryover, investment interest expense carryover, home mortgage interest amortization, bond premium amortization, and deduction for income in respect of a decedent, may be continued to be carried forward for a period not to exceed 5 years.

(3) (a) Notwithstanding the provisions of [section 48], each person engaging in business prior to [the applicability date of sections 1 through 71] must have applied for and received, prior to [the applicability date of sections 1 through 71], a valid seller's permit described in [section 48].

(b) Notwithstanding the provisions of [section 8], any person engaging in business prior to [the applicability date of sections 1 through 71] may apply for and receive, prior to [the applicability date of sections 1 through 71], a valid nontaxable transaction certificate described in [section 8].

(c) The department of revenue shall adopt rules to provide procedures for receiving and processing an application for a seller's permit and for providing a seller's permit and a nontaxable transaction certificate prior to [the applicability date of sections 1 through 71].

Section 183. **Sales tax and use tax rates — restrictions.** A sales tax rate or use tax rate imposed in [section 2] may be increased only if the increase is approved by the electorate.

Section 184. **Special election.** Pursuant to Article III, sections 5 and 6, of The Constitution of the State of Montana, this act shall be submitted to the qualified electors of Montana for their approval or disapproval at a statewide election to be held June 8, 1993.

Section 185. **Repealer.** Sections 15-10-401, 15-10-402, 15-10-406, 15-10-411, 15-10-412, 15-30-121, 15-30-156, 15-30-157, 15-30-159, 15-30-160, and 20-10-146, MCA, are repealed.

Section 186. **Codification instruction.** (1) [Sections 1 through 71, 182, and 183] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 71, 182, and 183].

(2) [Sections 73 through 88 and 89 through 93] are intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [sections 73 through 88 and 89 through 93].

(3) [Section 72] is intended to be codified as an integral part of Title 15, chapter 1, part 5, and the provisions of Title 15, chapter 1, part 5, apply to [section 72].

(4) [Section 161] is intended to be codified as an integral part of Title 61, and the provisions of Title 61 apply to [section 161].

(5) [Section 124] is intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15, chapter 6, part 1, apply to [section 124].

(6) [Section 125] is intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 125].

Section 187. **Coordination instruction.** (1) If House Bill No. 3 is passed and approved without an appropriation to fund the special election held pursuant to [section 184], then [this act] is void.

(2) If [this act] is approved at the special election held pursuant to [section 184] and if Senate Bill No. 32 is passed and approved and it amends 20-9-344, 20-9-366, 20-9-367, 20-9-368, 20-9-406, and 20-9-439, then Senate Bill No. 32 is void on June 30, 1994.

(3) If Senate Bill No. 168 is passed and approved, then [sections 121 and 126 of this act] are void.

(4) If House Bill No. 671 is passed and approved, then:

(a) [sections 163 through 177] are effective on January 1, 1994, and apply to tax years beginning after December 31, 1993; and

(b) House Bill No. 671 terminates December 31, 1993, and applies only to the tax year beginning in 1993.

Section 188. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 189. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 190. **Effective date.** [This act] is effective on approval by the electorate.

Section 191. **Applicability.** (1) (a) Except as provided in subsection (1)(b), [sections 1 through 93 and 154 through 162] apply on and after April 1, 1994.

(b) Purchases of goods and services pursuant to construction contracts that were bid prior to June 8, 1993, are exempt from the sales tax and use tax. However, property or services purchased on or after April 1, 1995, pursuant to a construction contract are subject to the sales tax and use tax regardless of when the contract was bid.

(2) [Sections 94 through 134, 163 through 181, and 185] apply on and after January 1, 1994, and to tax years beginning after December 31, 1993.

(3) [Sections 135 through 152] apply on and after July 1, 1994.

(4) Except as provided in subsection (5), distribution of taxes must be made according to the provisions of the statute governing allocation of the tax in effect on the last day of the tax period in which the activity, enterprise, or product being taxed was engaged in, took place, was assembled, or was produced.

(5) All taxes collected pursuant to audit or collected after the date the tax is payable must be distributed according to the statute governing allocation of the tax in effect on the date the taxes are collected.

Section 192. **Submission to electorate.** The question of whether this act will become effective shall be submitted to the qualified electors of Montana at the election called pursuant to section 184 by printing on the ballot the full title of this act and the following:

☐ FOR imposing a 4% sales tax and use tax as part of comprehensive tax reform.

☐ AGAINST imposing a 4% sales tax and use tax as part of comprehensive tax reform.

CHAPTER NO. 545

[SB 289]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII OF THE MONTANA CONSTITUTION TO LIMIT TO 4 PERCENT THE RATE OF A GENERAL STATEWIDE SALES TAX OR USE TAX; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII of The Constitution of the State of Montana is amended by adding a new section 15 that reads:

Section 15. Limitation on sales tax or use tax rates. The rate of a general statewide sales tax or use tax may not exceed 4%.

Section 2. **Effective date.** This amendment is effective upon approval by the electorate.

Section 3. **Submission to electorate.** The amendment set forth in section 1 shall be submitted to the qualified electors of Montana at the general election to be held November 8, 1994, by printing on the ballot the full title of this act and the following:

☐ FOR limiting the rate of a state sales tax or use tax to 4%.

☐ AGAINST limiting the rate of a state sales tax or use tax to 4%.

CHAPTER NO. 546

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1993; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limits.** Except as provided in [section 4], the appropriations contained in [this act] are intended to provide for the cost of only necessary and ordinary expenditures for fiscal year 1993. The unspent balance of an appropriation reverts to the fund from which it was appropriated.

Section 2. **Totals not appropriations.** The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 3. **Appropriations.** (1) The following money is appropriated, subject to the terms and conditions of [this act]:

Agency and Program	FY	Amount	Fund
GOVERNOR'S OFFICE			
Termination Pay-personal staff	1993	$ 71,046	General Fund
		11,180	Federal Special
Mental Disabilities Board of Visitors	1993	27,000	General Fund
SECRETARY OF STATE			
SB 235 Special Election	1993	846,156	General Fund
STATE AUDITOR			
Warrant Writing System	1993	155,000	General Fund
State Payroll-data processing	1993	45,620	General Fund
Judgments-personal services	1993	61,250	General Fund
Termination Pay-personal staff	1993	34,672	General Fund
Personal Services Shortfall	1993	40,712	General Fund
DEPARTMENT OF JUSTICE			
County Attorney Payroll	1993	35,000	General Fund
Transportation of Prisoners	1993	150,000	General Fund

Highway Patrol-retirements	1993	380,000	State Special
Highway Patrol-prisoners	1993	539,000	State Special
DEPARTMENT OF REVENUE			
Property Assessment	1993	910,000	General Fund
Income Tax	1993	19,217	General Fund
DEPARTMENT OF ADMINISTRATION			
Risk Mgt/Tort Defense-legal costs	1993	450,000	Proprietary
STATE FUND			
Compensation and Medical Benefits	1993	15,000,000	Proprietary
DEPARTMENT OF MILITARY AFFAIRS			
Disaster and Emergency Services	1993	8,000	General Fund
Air National Guard	1993	4,000	General Fund
Veterans' Affairs Division	1993	1,800	General Fund
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES			
Water Quality-subdivisions	1993	145,962	General Fund
DEPARTMENT OF LABOR AND INDUSTRY			
Employment Relations	1993	200,000	Proprietary
Dislocated Worker Program	1993	500,000	State Special
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES			
TEAMS	1993	175,000	General Fund
		325,000	Federal Special
Support Services Division	1993	365,779	General Fund
		26,971	State Special
		92,750	Federal Special
MEDS Contract	1993	65,000	General Fund
		65,000	Federal Special
AFDC Benefits	1993	1,069,723	General Fund
		29,897	State Special
		1,064,177	Federal Special
General Assistance	1993	259,526	General Fund
Extend Legal Services Contract	1993	50,000	General Fund
Medicaid Primary Care	1993	7,890,742	General Fund
		1,638,000	State Special
		18,900,058	Federal Special
FY92 Medicaid Primary Care	1993	1,008,795	General Fund
		2,604,779	Federal Special
Nursing Home Reimbursement	1993	981,257	General Fund
		2,829,589	Federal Funds
Federal Match-DFS youth psych benefits	1993	11,371,474	Federal Funds
Day Care	1993	84,585	General Fund
		145,543	Federal Special
Vocational Rehabilitation	1993	71,219	General Fund

		(71,219)	Federal Special
DEPARTMENT OF FAMILY SERVICES			
Pine Hills School	1993	189,244	General Fund
Mountain View School	1993	15,000	General Fund
Foster Care	1993	2,218,171	General Fund
Inpatient Youth Psychiatric	1993	2,027,411	General Fund
Residential Youth Psychiatric	1993	2,590,252	General Fund
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Enforcement Division-FLSA	1993	46,480	State Special
DEPARTMENT OF STATE LANDS			
Forestry Division-firefighting	1993	1,370,537	General Fund
DEPARTMENT OF LIVESTOCK			
Meat and Poultry Inspection	1993	105,512	General Fund
		105,512	Federal Special
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION			
Board of Water Well Contractors	1993	3,290	State Special
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES			
Corrections	1993	1,948,152	General Fund
Workers' Compensation Rates	1993	3,042,106	General Fund
BOARD OF PUBLIC EDUCATION			
Administration-lawsuits	1993	35,164	General Fund
	1993	5,649	State Special
SCHOOL FOR THE DEAF AND BLIND			
Workers' Comp Rate Increase	1993	13,043	General Fund
Add 2.00+ FTE Interpreters	1993	26,200	General Fund
OFFICE OF PUBLIC INSTRUCTION			
Legal Fees	1993	7,500	General Fund
Yellowstone Treatment Center	1993	258,626	General Fund
BUTTE VOCATIONAL-TECHNICAL CENTER			
Severance Pay	1993	22,637	General Fund
MISSOULA VOCATIONAL-TECHNICAL CENTER			
Severance Pay	1993	44,644	General Fund

STATEWIDE TOTALS

Fund	FY	Amount
General Fund	1993	$27,645,104
State Special Revenue	1993	3,165,997
Federal Special Revenue	1993	37,443,843
Proprietary and Other	1993	16,168,500
Total	1993	$84,423,444

(2) The appropriation in subsection (1) for the payout of accrued employee leave for the board of visitors is contingent upon the elimination of the mental disabilities board of visitors program.

(3) The appropriation in subsection (1) for the June 1993 special election costs in the Secretary of State's Office is contingent on the passage and approval of Senate Bill No. 235.

Section 4. **Appropriation for department of family services, secretary of state's office, and department of military affairs for fiscal year 1994.** At the end of fiscal year 1993, any unexpended funds in the appropriations made to the department of family services for inpatient youth psychiatric services and residential youth psychiatric services, any unexpended funds in the appropriation made to the secretary of state's office for the costs of the June 1993 special election, and any unexpended funds in the appropriation to the department of military affairs for disaster and emergency services are reappropriated for fiscal year 1994.

Section 5. **Agency not to record certain general fund encumbrances.** An agency, as defined in 17-7-102(2), that receives a general fund supplemental appropriation in [this act] for fiscal year 1992-93 may not record general fund encumbrances that are required by generally accepted accounting principles to be reported as a reservation of fund balance and that are commonly known as "a" accruals as expenditures, with the exception of the department of military affairs for repair and maintenance contracts.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1993.

CHAPTER NO. 547

[HB 11]

AN ACT APPROPRIATING MONEY FOR THE MONTANA EDUCATIONAL TELECOMMUNICATIONS NETWORK; AMENDING SECTION 20-32-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-32-103, MCA, is amended to read:

"**20-32-103. Fee collection and disposition for operational costs.** As a condition of participation in the network, the Montana university system, vocational-technical centers, and community colleges shall collect from appropriate discretionary funds in a manner approved by the board of regents an amount not to exceed ~~$1~~ *$5* for each full-time equivalent student enrolled in the units, centers, or colleges. The funds collected must be deposited with the commissioner of higher education by July 1 ~~of the fiscal year, beginning with fiscal year 1992~~ for the purposes of 20-32-102(4). The commissioner of higher education shall pay the department of administration the commissioner's share of the network costs~~, as provided in 20-32-104~~."

Section 2. **Appropriations.** (1) There is appropriated $500,000 from federal or other sources to the department of administration for each year of the biennium ending June 30, 1995, to be used for continued development and expansion of the Montana educational telecommunications network (METNET).

(2) There is appropriated $500,000 to the office of the commissioner of higher education for each fiscal year of the biennium ending June 30, 1995, to be used for METNET from fees collected in accordance with 20-32-103 and from other sources.

(3) There is appropriated each year of the biennium ending June 30, 1995, to the department of administration from the money collected under the provisions of 20-32-103 and from any other fees collected for the use of METNET the amount equal to any costs incurred by the department of administration for the purposes of 20-32-102(3).

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1993.

CHAPTER NO. 548

[HB 46]

AN ACT RESERVING A PERCENTAGE OF THE CIGARETTE TAX FOR THE OPERATION AND MAINTENANCE OF STATE VETERANS' NURSING HOMES; PROVIDING FOR THE ESTABLISHMENT OF A SPECIAL REVENUE ACCOUNT IN THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES; AMENDING SECTIONS 16-11-119 AND 17-5-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-119, MCA, is amended to read:

"**16-11-119.** *(Temporary)* **Disposition of taxes — retirement of bonds.** (1) Except as provided in subsection (2), all money collected under the provisions of 16-11-111, less the expense of collecting the taxes, must be paid to the state treasurer and deposited as follows: 72.79% in the long-range building program fund in the debt service fund type and 27.21% in the long-range building program fund in the capital projects fund type.

(2) In fiscal year 1993, $1,133,624 is transferred from the long-range building program fund in the capital projects fund type to the general fund. *(Terminates June 30, 1993—sec. 2, Ch. 3, Sp. L. July 1992.)*

16-11-119. *(Effective July 1, 1993)* **Disposition of taxes — retirement of bonds.** *The amount of 10.38% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of corrections and human services for the operation and maintenance of state veterans' nursing homes.* All ~~moneys~~ *remaining revenue* collected under the provisions of 16-11-111, less the expense of collecting ~~all~~ the taxes ~~levied, imposed, and assessed by said section~~, ~~shall~~ *must* be paid to the state treasurer and deposited as follows: ~~72.79%~~ *81.23%* in the long-range building program fund in the debt service fund type and ~~27.21%~~ *18.77%* in the long-range building program fund in the capital projects fund type.

16-11-119. *(Effective August 15, 1993)* **Disposition of taxes — retirement of bonds.** *The amount of 11.11% of the cigarette tax collected under the provisions of 16-11-111 on each package of cigarettes must be deposited in the state special revenue fund to the credit of the department of corrections and human services for the operation and maintenance of state veterans' nursing homes.* All ~~moneys~~ *remaining revenue* collected under the provisions of 16-11-111, less the expense of collecting ~~all~~ the taxes ~~levied, imposed, and assessed by said section~~, ~~shall~~ *must* be paid to the state treasurer and deposited as follows: ~~70.89%~~ *79.25%* in the long-range building program fund in the debt service fund type and ~~29.11%~~ *20.25%* in the long-range building program fund in the capital projects fund type."

Section 2. **Use of funds generated by taxation on cigarettes.** (1) Revenue generated by 16-11-119 and allocated to the department of corrections and human services must be used to support the operation and maintenance of the Montana veterans' homes programs.

(2) The legislature shall appropriate from the account established in 16-11-119 the funds required for the operation and maintenance of the Montana veterans' homes.

Section 3. Section 17-5-408, MCA, is amended to read:

"**17-5-408. Percentage of income, corporation license, and cigarette tax pledged.** (1) (a) The state pledges and appropriates and directs to be credited as received to the debt service account ~~9.8% for fiscal year 1990 and 8.7% for fiscal year 1991 of all~~ money received from the collection of the individual income tax and ~~11% for fiscal year 1990 and 10.5% for fiscal year 1991 of all money~~, except as provided in 15-31-702, *money* received from the collection of the corporation license and income tax, as provided in 15-1-501, ~~and such additional amount of said taxes, if any,~~ as may at any time be needed to comply with the principal and interest and reserve requirements stated in 17-5-405(4).

(b) ~~No more than the percentages described in subsection (1)(a) of such tax collections may be pledged for the purpose of 17-5-403(2).~~ The pledge and appropriation ~~herein~~ made ~~shall be and remain at all times~~ *by this section are* a first and prior charge upon all money received from the collection of ~~said~~ *the enumerated* taxes.

(2) ~~The~~ *Except for the amount credited to the veterans' home maintenance and improvement account under 16-11-119, the* state pledges and appropriates and directs to be credited to the debt service account ~~70.89%~~ *79.75%* of all *remaining* money received from the collection of the excise tax on cigarettes ~~which~~ *that* is levied, imposed, and assessed by 16-11-111. The state also pledges and appropriates and directs to be credited as received to the debt service account all money received from the collection of the taxes on other tobacco products ~~which~~ *that* are or may ~~hereafter~~ be ~~levied,~~ imposed~~, and assessed by law~~ for that purpose, including the tax ~~levied,~~ imposed~~, and assessed~~ by 16-11-202. ~~Nothing herein shall~~ *This section does not* impair or otherwise affect the provisions and covenants contained in the resolutions authorizing the presently outstanding long-range building program bonds. Subject to the provisions of the preceding sentence, the pledge and appropriation ~~herein~~ made ~~shall be and remain at all times~~ *by this section are* a first and prior charge upon

all money received from the collection of all taxes referred to in this subsection ~~(2)~~."

Section 4. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 10, chapter 2, part 4, and the provisions of Title 10, chapter 2, part 4, apply to [section 2].

Section 5. **Effective date.** [This act] is effective July 1, 1993.

Approved April 28, 1993.

CHAPTER NO. 549

[HB 65]

AN ACT CREATING A STATUTORY LEGISLATIVE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS; APPROPRIATING FUNDS FOR THE COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, it is necessary to establish consistency in the review of retirement legislation requests in order to better understand and control the costs of such legislation; and

WHEREAS, it is necessary to establish uniform policies for approving changes of benefits, postretirement adjustments, and funding; and

WHEREAS, the establishment of a statutory legislative committee to analyze the state's public employee retirement systems on an ongoing basis and to make recommendations for legislative action would enhance the uniformity and consistency of public employee retirement legislation.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Committee on public employee retirement systems — appointment.** (1) There is a committee on public employee retirement systems.

(2) The committee consists of four members of the senate appointed by the committee on committees and four members of the house of representatives appointed by the speaker of the house.

(a) No more than two of the committee members from each house may be members of the same political party.

(b) At least two committee members from each house shall serve on the standing committee to which retirement bills are regularly assigned during a regular session. One senate member shall serve on the senate finance and claims committee. One house member shall serve on the house appropriations committee.

(c) No more than two members appointed from each house may be public employees aside from their legislative service.

Section 2. **Terms of members — officers — vacancies.** (1) Appointments to the committee on public employee retirement systems are for 2 years and must be made before the final adjournment of a regular legislative session. Each member of the committee shall serve until the member's term of office as a legislator ends or until the member's successor is appointed, whichever occurs first.

(2) The committee shall elect one of its members as presiding officer and another, who must be from the opposite political party, as vice presiding officer. The committee shall elect other officers it considers necessary.

(3) A vacancy that occurs when the legislature is not in session must be filled by the selection of a member from the same house and political party by the remaining members of the committee. An appointment to the committee under this subsection is for the unexpired term of the original member.

Section 3. **Meetings — compensation.** (1) The committee on public employee retirement systems shall meet as often as the presiding officer considers necessary during and between legislative sessions.

(2) Committee members are entitled to receive compensation and expenses as provided in 5-2-302.

Section 4. **Staff assistance — contributions.** (1) The legislative council shall provide staff assistance to the committee on public employee retirement systems. On behalf of the committee, the legislative council has the same authority of investigation and examination under 5-11-106 and the same authority to hold hearings under 5-11-107 as it has for other committees.

(2) The committee may request personnel from state agencies, political subdivisions, or the state public employee retirement systems to furnish any information and render any assistance that the committee may request.

(3) The committee may accept from the retirement systems and public employee and retiree organizations monetary contributions for legislative retirement studies. The contributions must be deposited in the state special revenue fund for appropriation by the legislature.

Section 5. **Duties of committee — committee review and report.** (1) The committee on public employee retirement systems shall:

(a) consider the fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board and the public employees' retirement board, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;

(b) establish principles of sound fiscal and public policy as guidelines;

(c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles;

(d) solicit and review proposed statutory changes to any of the state's public employee retirement systems;

(e) report to the legislature on each legislative proposal reviewed by the committee. The report must include but is not limited to:

(i) a summary of the fiscal implications of the proposal;

(ii) an analysis of the effect that the proposal may have on other public employee retirement systems;

(iii) an analysis of the soundness of the proposal as a matter of public policy;

(iv) any amendments proposed by the committee; and

(v) the committee's recommendation on whether the proposal should be enacted by the legislature.

(f) attach the committee's report to any proposal that the committee considered and that is or has been introduced as a bill during a legislative session; and

(g) publish, for legislators' use, an information book on the state's public employee retirement systems.

(2) A proposal subject to review under subsection (1)(d) must be submitted to the committee at least 45 days before the first day of the next regular legislative session unless this time limitation is waived by a majority vote of the committee.

Section 6. **Appropriations.** (1) There is appropriated for the biennium ending June 30, 1995, $7,200 from the general fund to the legislative council for use by the committee on public employee retirement systems established in [section 1].

(2) There is appropriated for the biennium ending June 30, 1995, an amount not to exceed $14,400 to the legislative council from money contributed to the committee on public employee retirement systems pursuant to [section 4(3)].

Section 7. **Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 5, and the provisions of Title 5 apply to [sections 1 through 5].

Section 8. **Effective date.** [This act] is effective on passage and approval.

Section 9. **Termination.** [This act] terminates June 30, 1995.

Approved April 28, 1993.

CHAPTER NO. 550

[HB 145]

AN ACT PROVIDING AN APPROPRIATION FOR A HEALTH CARE AUTHORITY AND AN APPROPRIATION TO THE STATE AUDITOR'S OFFICE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations.** (1) If Senate Bill No. 285 is passed and approved, the department of health and environmental sciences is appropriated $750,000 of general fund money in fiscal year 1994 and $750,000 of general fund money in fiscal year 1995 for the health care authority.

(2) If Senate Bill No. 285 is passed and approved, the state auditor's office is appropriated $178,385 of general fund money in fiscal year 1994 and $163,817 of general fund money in fiscal year 1995.

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved April 28, 1993.

CHAPTER NO. 551

[HB 167]

AN ACT GENERALLY REVISING THE NURSERY LAWS; INCREASING THE NURSERY LICENSE FEE; MAKING IT UNLAWFUL TO SELL NOXIOUS WEEDS; PROVIDING CIVIL PENALTIES; ESTABLISHING QUARANTINES BY DEPARTMENT RULE; SETTING NURSERY STOCK CERTIFICATION STANDARDS BY DEPARTMENT RULE; ESTABLISHING A SPECIAL REVENUE ACCOUNT; AMENDING SECTIONS 80-7-104, 80-7-114, AND 80-7-133, MCA; REPEALING SECTIONS 80-7-101, 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113, 80-7-115, 80-7-116, 80-7-117, 80-7-118, 80-7-119, 80-7-120, 80-7-131, 80-7-134, 80-7-201, 80-7-202, 80-7-203, 80-7-204, 80-7-205, 80-7-206, 80-7-207, 80-7-208, 80-7-209, 80-7-210, 80-7-301, 80-7-302, 80-7-303, AND 80-7-304, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Firm" means an individual, company, partnership, association, or corporation.

(2) "Nursery" means the business or location where nursery stock is grown or offered for sale, resale, or as part of a landscape service.

(3) "Nursery stock" means botanically classified plants or parts of plants. The following plants and plant materials may not be considered nursery stock:

(a) aquatic plants used for aquarium purposes;

(b) field crop plants and seeds;

(c) pasture grasses;

(d) cut plants not for propagation;

(e) corms, tubers, and bulbs;

(f) fruits or vegetables for human or animal consumption;

(g) cut trees and products for processing; and

(h) plant debris for disposal or processing.

(4) "Nursery stock certification" means the process whereby the nursery stock or other plants have been inspected and found to meet certification standards established by department rule.

(5) "Plant inspection certificate" means a document issued by the department or the plant pest regulatory agency of another state that declares that the nursery stock, plants, or plant material grown by the firm named on the certificate is apparently free of injurious plant pests.

(6) "Plant pest" means an insect, fungus, virus, bacteria, or other organism that can directly or indirectly injure or cause damage in a plant or a product of a plant and that meets the criteria as a pest established by department rule. For purposes of this chapter, noxious weeds, as defined in 7-22-2101(7)(a)(i), or other exotic weeds are defined as plant pests.

Section 2. **License required — application and payment of license fee.** (1) A firm engaging in the business of selling or distributing nursery stock in this state shall obtain a license for each nursery from the department.

(2) The license must be in the name of the firm seeking the license and expires on December 31 following the date of issue. The applicant shall provide information the department finds necessary to carry out the provisions and purposes of this chapter.

(3) The license fee is $95 per nursery.

(4) A nursery that earns less than $1,000 in gross annual sales of nursery stock and that submits a notarized affidavit to that effect to the department is exempt from licensing.

(5) A new applicant or a firm failing to renew a license by January 1 of each year shall pay an additional nonrefundable application fee of $25 for each license.

(6) An out-of-state firm that imports nursery stock into Montana for resale by a licensed Montana nursery is not required to obtain a license if the firm is licensed in the state of origin of the nursery stock and if that state extends a similar exemption to Montana firms.

(7) If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee.

Section 3. **Nursery stock inspection — fees.** (1) The department may enter a firm or nursery premises during regular business hours for the purpose of inspecting nursery stock or other materials for possible plant pests or for determining licensure compliance. An inspection fee may not be assessed if the department requests the inspection.

(2) A firm or nursery may request the inspection of nursery stock, plants, or other materials by giving the department 5 days' notice prior to the time when the nursery stock, plants, or other materials are ready for inspection. A firm or nursery requesting an inspection shall pay a fee as established by department rule. The fee must cover the actual costs of inspection, surveys, and other services required to issue the plant inspection certificate.

(3) The department may issue a plant inspection certificate based on the results of a nursery stock or other plant inspection or inspection survey.

Section 4. **Duty to notify department of infestation.** A firm or nursery with nursery stock or other materials that are infested with plant pests, as defined in [section 1], shall notify the department. The firm or nursery shall comply with the instructions of the department for the control of the plant pests.

Section 5. **Penalty for violation.** (1) A firm or nursery that purposely, knowingly, or negligently violates or aids in the violation of a provision of this chapter or of the rules, orders, or quarantines of the department adopted under Title 2, chapter 4, and this chapter commits a civil offense and is subject to a civil penalty of not more than $1,000 for each violation.

(2) Assessment of a civil penalty may be made in conjunction with another warning, order, or administrative action authorized by this chapter. A civil penalty collected under this section must be deposited in the general fund.

(3) The department shall establish by rule:

(a) a penalty schedule that establishes the types of penalties and the amounts, not to exceed $1,000, for initial and subsequent offenses; and

(b) other matters necessary for the administration of civil penalties.

(4) [Sections 1 through 8] may not be construed as requiring the department or its agents to report violations of this chapter when the department believes that the public interest will be best served by a suitable notice of warning.

Section 6. **Quarantines.** The department may by rule adopt interstate and intrastate quarantines to prevent the spread of plant pests or the movement of plants that are carriers of or susceptible to specified pests and diseases.

Section 7. **Nursery stock certification.** At the request of a firm or nursery, the department may inspect nursery stock for the purpose of nursery stock certification. The department shall establish certification standards, inspection procedures, and fees by department rule.

Section 8. **Nursery account — investment of funds.** (1) There is an account in the state special revenue fund. All inspection and license fee revenue authorized under [sections 1 through 8] must be deposited in this account.

(2) Revenue received under [sections 1 through 8] not immediately required for the purpose of [sections 1 through 8] must be invested in accordance with the unified investment program established in Title 17, chapter 6, part 2. Income from the investments must be deposited in the account.

Section 9. Section 80-7-104, MCA, is amended to read:

"**80-7-104. Grounds for refusal or revocation of license.** The department, *in accordance with Title 2, chapter 4,* may refuse to issue a license or it may revoke a license under this part when:

(1) the ~~person~~ *firm* has been adjudged bankrupt, insolvent, or guilty of fraud or deceit by a court of competent jurisdiction; or

(2) a verified complaint is made to the department that a licensee has failed to comply with this part ~~or the horticulture laws~~."

Section 10. Section 80-7-114, MCA, is amended to read:

"**80-7-114. Removal of infected ~~trees~~ *nursery stock* — assessment of costs.** (1) If a ~~person~~ *firm* owning ~~any orchard or~~ nursery stock *or other materials* infected or infested with any injurious ~~insect~~ *plant* pest ~~or disease and which becomes a menace to the agricultural or fruit industry or a menace to ornamental trees, shrubs, plants, or vines~~ fails to comply with the instructions of the department for the destruction or control of the injurious ~~insect~~ *plant* pest ~~or disease~~ or the destruction of the infested or infected ~~orchard or~~ nursery stock *or other material* within the time specified by the department, the department may condemn, remove, or destroy the ~~orchard or~~ nursery stock or *other material or* treat it with a proper remedy.

(2) If an owner fails to pay the *actual* cost of the removal, treatment, or destruction within 30 days after notice has been mailed to the owner at ~~his~~ *the owner's* last-known post-office address and to any purchaser of the property under contract for deed at ~~his~~ *the purchaser's* last-known post-office address, the cost ~~shall become~~ *becomes* a lien on the land of the owner and ~~shall~~ *must* be added by the county treasurer to the taxes upon the property and collected as other taxes."

Section 11. Section 80-7-133, MCA, is amended to read:

"**80-7-133. Acts made unlawful — penalty.** (1) It is unlawful for ~~any person~~ *a firm* to:

(a) fail to properly identify nursery stock offered for sale at retail. Identification must include but is not limited to the common name and variety. Each nursery plant offered for sale as a separate plant must be identified. A single means of identification is allowed on each bundle of bare root seedlings, liners, or hedging grade nursery stock.

~~(a)~~*(b)* falsely represent or misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale;

~~(b)~~*(c)* falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in or came from a certain nursery or locality, when in fact ~~such~~ *the* nursery stock was grown in or came from another location or nursery;

~~(c)~~*(d)* deceive or defraud any ~~person~~ *firm* in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered; ~~or~~

~~(d)~~*(e)* willfully or intentionally bring into this state, offer for sale or distribution within this state or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with ~~any disease or insect~~ *a plant pest* dangerous to the horticultural interests of the state*; or*

(f) sell or distribute nursery stock or cut decorative or aquarium plants declared noxious weeds under 7-22-2101(7)(a)(i).

(2) In case of ~~such~~ misrepresentation, false representation, deceit, fraud, ~~or~~ substitution, *or sale and distribution of noxious weeds,* ~~such person~~ *the firm* is

subject to punishment as provided ~~by 80-7-134~~ *in [section 5]* and is liable to ~~the person, firm, or corporation~~ *a party* damaged or injured ~~thereby~~, to the extent of all damages sustained, to be recovered in a civil action in any court of competent jurisdiction."

Section 12. **Repealer.** Sections 80-7-101, 80-7-102, 80-7-103, 80-7-111, 80-7-112, 80-7-113, 80-7-115, 80-7-116, 80-7-117, 80-7-118, 80-7-119, 80-7-120, 80-7-131, 80-7-134, 80-7-201, 80-7-202, 80-7-203, 80-7-204, 80-7-205, 80-7-206, 80-7-207, 80-7-208, 80-7-209, 80-7-210, 80-7-301, 80-7-302, 80-7-303, and 80-7-304, MCA, are repealed.

Section 13. **Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 80, chapter 7, and the provisions of Title 80, chapter 7, apply to [sections 1 through 8].

Section 14. **Effective date.** [This act] is effective January 1, 1994.

Approved April 28, 1993.

CHAPTER NO. 552

[HB 190]

AN ACT SPECIFYING THE REQUIREMENTS FOR LICENSURE OF LICENSED SOCIAL WORKERS, LICENSED CLINICAL SOCIAL WORKERS, LICENSED PROFESSIONAL COUNSELORS, AND LICENSED CLINICAL PROFESSIONAL COUNSELORS; AMENDING THE PROCEDURE FOR CHARGING OF LICENSE VIOLATIONS BY LICENSED CLINICAL SOCIAL WORKERS; PROVIDING THE REQUIREMENTS FOR LICENSE RENEWAL AND CREATING AN INACTIVE STATUS FOR LICENSED CLINICAL SOCIAL WORKERS AND PROFESSIONAL COUNSELORS; AMENDING SECTIONS 37-22-301, 37-22-304, 37-22-305, 37-22-312, 37-23-201, 37-23-202, 37-23-205, AND 37-23-212, MCA; AND PROVIDING APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-22-301, MCA, is amended to read:

"**37-22-301. License requirements — exemptions.** (1) A license applicant shall satisfactorily complete an examination prepared and administered by the board~~, except that during the 365-day period following the effective date of this chapter a license must be granted without examination if the requirements of subsection (2) are met~~.

(2) Before an applicant may take the examination, ~~he~~ *the applicant* shall present three letters of reference from *licensed* social workers, *licensed clinical social workers,* psychiatrists, *or* psychologists~~, or psychiatric nurses~~ who have knowledge of the applicant's professional performance and *shall* demonstrate to the board that ~~he~~ *the applicant*:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has ~~accumulated 3,000 hours of postdegree work experience in psychotherapy~~ *completed at least 24 months of supervised post master's degree* *work experience in psychotherapy, which included 3,000 hours of social work experience, of which at least 1,500 hours were in direct client contact,* within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

(3) An applicant who submits an application for licensure before October 1, 1994, may acquire the supervised experience required by subsection (2)(b) in less than 24 months.

~~(3)~~*(4)* An applicant who has failed the examination may reapply to take the examination.

~~(4)~~*(5)* An applicant is exempt from the examination requirement if ~~he~~ *the applicant* satisfies the board that ~~he~~ *the applicant* is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that ~~he~~ *the applicant* has passed an examination similar to that required by the board."

Section 2. Section 37-22-304, MCA, is amended to read:

"**37-22-304. Renewal of license.** (1) An application for renewal of an existing license made within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect.

(2) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of completion of continuing education requirements.

(3) An individual may renew a license in the manner provided in subsection (2) within 1 year of the expiration date of the license. An applicant for renewal shall provide the board with proof that the applicant has satisfied the continuing education requirements of the board for the year for which the license is to be renewed.

(4) The renewal fee is increased by 10% for each month or part of a month that the renewal is delayed after the 60-day period provided in subsection (1). The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(5) A license not renewed within 1 year following its expiration date terminates automatically."

Section 3. Section 37-22-305, MCA, is amended to read:

"**37-22-305. Representation to public as licensed *clinical* social worker — limitations on use of title — *limitations on practice.*** (1) *Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical social worker".* ~~No~~ *Except as provided in subsection (2), a* person may *not* represent ~~himself to be~~ *that the person is* a licensed *clinical* social worker by adding the letters "LSW" *or "LCSW"* after ~~his~~ *the person's* name or by any other means unless licensed under this chapter.

(2) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed social worker" or "LSW" may use the title "licensed clinical social worker" or "LCSW".

~~(2)~~*(3)* Subsection (1) does not prohibit:

(a) qualified members of other professions, such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities, from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social ~~work~~ *worker*" or "licensed *clinical* social worker";

(b) activities, services, and use of an official title by a person in the employ of *or under a contract with* a federal, state, county, or municipal agency, ~~or~~ an educational, research, or charitable institution, *or a health care facility licensed under the provisions of Title 50, chapter 5,* ~~which~~ *that* are a part of the duties of the office or position;

(c) an employer from performing social work like activities performed solely for the benefit of ~~his~~ employees;

(d) activities and services of a student, intern, or resident in social work pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activities and services constitute a part of the supervised course of study;

(e) activities and services ~~of~~ *by* a person who is not a resident of this state~~, which services~~ *that* are rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the law of the state or country of residence to perform ~~such~~ *the* activities and services. However, ~~such persons~~ *the person* shall report to the department the nature and extent of the activities and services if they exceed 10 days in a calendar year.

(f) pending disposition of the application for a license, activities and services by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform ~~such~~ *the* activities and services in the state of ~~his~~ former residence."

Section 4. Section 37-22-312, MCA, is amended to read:

"**37-22-312. Procedure for charging violation.** (1) Any member of the board or other person may charge a licensee with a violation of 37-22-311. The charge must be made by affidavit and subscribed and sworn to by the person making it and filed with the department. The charge must be investigated by the board and, unless the board dismisses the charge after investigation as unfounded or trivial, the board ~~must~~ *shall* act on the charge ~~within 6 months after the date on which the charge was filed. The board is considered to have acted on a charge if it has given notice by mail to the licensee of its intent to reprimand him or revoke, suspend, or refuse to renew his license and the notice contains those matters required by 2-4-601~~.

(2) Any hearing on the charge must be ~~held before all five members of the board and must be~~ conducted in accordance with 37-1-121(1) and the Montana Administrative Procedure Act."

Section 5. Section 37-23-205, MCA, is amended to read:

"**37-23-205. Renewal of license.** (1) A license may be issued for no longer than 1 year. The board may adopt rules to provide for annual renewal of an existing license.

(2) An application for renewal of an existing license made within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect.

(3) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of completion of continuing education requirements established by the board.

(4) An individual may renew a license in the manner provided in subsection (3) within 1 year of the expiration date of the license. An applicant for renewal shall provide the board with proof that the applicant has satisfied the continuing education requirements of the board for the year for which the license is to be renewed.

(5) The renewal fee is increased by 10% for each month or part of a month that the renewal is delayed after the 60-day period provided in subsection (2). The maximum fee for delayed renewal may not exceed twice the normal renewal fee.

(6) A license not renewed within 1 year following its expiration date terminates automatically."

Section 6. Section 37-23-212, MCA, is amended to read:

"**37-23-212. Procedure for charging violation of professional or ethical standard.** (1) A member of the board or any other person may charge a licensee with violating a professional or ethical standard adopted by the board. The charge must be made by affidavit, subscribed and sworn to by the person making it, and filed with the department of commerce. The charge must be investigated by the board, and unless the board dismisses the charge after investigation as unfounded or trivial, the board ~~must~~ *shall* act on the charge ~~within 6 months after the date on which the charge was filed. The board is considered to have acted on a charge if it has given notice by mail to the licensee of its intent to suspend or revoke his license and the notice contains those matters required by 2-4-601~~.

(2) A hearing on the charge must be conducted in accordance with 37-1-121(1) and the Montana Administrative Procedure Act."

Section 7. **Inactive status.** (1) The board shall reclassify, for a maximum of 2 consecutive years, an active license to an inactive license for a licensee who furnishes satisfactory evidence that the licensee has discontinued the practice of social work within this state and has satisfied the continuing education requirements of the board for each year of inactive licensure.

(2) An individual with an inactive status license who wishes to convert the license to active status shall make application for conversion in the manner prescribed by the board. The application must be accompanied by a renewal fee prescribed by the board. If the applicant for conversion to active status has held an inactive status license for more than 1 year, the applicant shall submit with the application satisfactory evidence that the applicant has earned the number of continuing education credits prescribed by the board for each year that the applicant has held an inactive status license.

(3) An individual on inactive status for more than 2 consecutive years shall comply with the requirements of 37-22-301 in order to convert an inactive status license to an active status license.

(4) An inactive status licensee may not practice social work in this state.

Section 8. **Inactive status.** (1) The board shall reclassify, for a maximum of 2 consecutive years, an active license to an inactive license for a licensee who furnishes satisfactory evidence that the licensee has discontinued the practice of professional counseling within this state and has satisfied the continuing education requirements of the board for each year of inactive licensure.

(2) An individual with an inactive status license who wishes to convert the license to active status shall make application for conversion in the manner prescribed by the board. The application must be accompanied by a renewal fee prescribed by the board. If the applicant for conversion to active status has held an inactive status license for more than 1 year, the applicant shall submit with the application satisfactory evidence that the applicant has earned the number of continuing education credits prescribed by the board for each year that the applicant has held an inactive status license.

(3) An individual on inactive status for more than 2 consecutive years shall comply with the requirements of 37-23-202 in order to convert an inactive status license to an active status license.

(4) An inactive status licensee may not practice professional counseling in this state.

Section 9. Section 37-23-201, MCA, is amended to read:

"**37-23-201. Representation as licensed *clinical* professional counselor — license required.** (1) ~~No~~ *Upon issuance of a license in accordance with this chapter, a licensee may use the title "licensed clinical professional counselor". Except as provided in subsection (2), a* person may *not* represent ~~himself to be~~ *that the person is* a licensed professional counselor *or licensed clinical professional counselor* by adding the letters "LPC" *or "LCPC"* after ~~his~~ *the person's* name or by any other means unless licensed under this chapter~~; and~~.

(2) Individuals licensed in accordance with this chapter before October 1, 1993, who use the title "licensed professional counselor" or "LPC" may use the title "licensed clinical professional counselor" or "LCPC".

~~(2)~~*(3)* Subsection (1) does not prohibit:

(a) a qualified member of another profession, such as a physician, psychologist, lawyer, pastoral counselor, probation officer, court employee, nurse, social worker, school counselor, or educator, from professional counseling consistent with ~~his~~ *that person's* training if ~~he~~ *the person* does not ~~hold himself out to the public by~~ *use* a title or description incorporating the words "licensed professional counselor", "licensed counselor", ~~or~~ "professional counselor", *"licensed clinical professional counselor", or "licensed clinical counselor"*;

(b) an activity or service or use of an official title by a person employed by a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform such activity or service. However, such person shall report to the department of commerce the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform such activity or service in the state of his former residence."

Section 10. Section 37-23-202, MCA, is amended to read:

"**37-23-202. Licensure requirements.** ~~(1) To be licensed on or before December 31, 1987, as a professional counselor under this chapter, an applicant must have satisfactorily completed:~~

~~(a) a planned graduate program of study that was primarily counseling in nature which resulted in an advanced degree in a counseling field from an institution accredited to offer such a degree program;~~

~~(b) 2,000 hours or more of postdegree work experience as a counselor in a hospital, school, agency, or other supervised setting;~~

~~(c) and passed an examination prepared and administered by:~~

~~(i) the board, based on a national examination approved by the board;~~

~~(ii) the national board of certified counselors; or~~

~~(iii) the national academy of certified clinical mental health counselors; and~~

~~(d) an application form and process prescribed by the board that includes submission of three letters of nomination from counselors or related profes-~~

~~sionals, each of whom holds a master's degree or higher and who can attest to the quality of the applicant's work.~~

~~(2)~~ To be licensed ~~after December 31, 1987~~, an applicant must have satisfactorily completed:

~~(a)~~*(1)* a planned graduate program of 90 quarter hours, primarily counseling in nature, nine quarter hours of which were earned in an advanced counseling practicum, which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

~~(b)~~*(2)* ~~2,000~~ *3,000* hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse his application for licensure, attesting to the number of hours supervised.

~~(c)~~*(3)* and passed an examination prepared and administered by:

~~(i)~~*(a)* the board, based on a national examination approved by the board;

~~(ii)~~*(b)* the national board of certified counselors; or

~~(iii)~~*(c)* the national academy of certified clinical mental health counselors; and

~~(d)~~*(4)* an application form and process prescribed by the board."

Section 11. **Codification instruction.** (1) [Section 7] is intended to be codified as an integral part of Title 37, chapter 22, and the provisions of Title 37, chapter 22, apply to [section 7].

(2) [Section 8] is intended to be codified as an integral part of Title 37, chapter 23, and the provisions of Title 37, chapter 23, apply to [section 8].

Section 12. **Applicability.** (1) [Section 1(2)(b)] applies to persons licensed on or after October 1, 1994.

(2) [Section 10(2)] applies to persons licensed on or after July 1, 1996.

Approved April 28, 1993.

CHAPTER NO. 553

[HB 193]

AN ACT IMPLEMENTING THE MONTANA PRODUCE ACT BY GENERALLY UPDATING PROCEDURES AND REPLACING LAWS RELATED TO HORTICULTURE AND FARM PRODUCE; REPEALING SECTIONS 80-3-101, 80-3-102, 80-3-103, 80-3-104, 80-3-105, 80-3-106, 80-3-107, 80-3-108, 80-3-109, 80-3-110, 80-3-111, 80-3-201, 80-3-202, 80-3-203, 80-3-204, 80-3-205, 80-3-206, 80-3-207, 80-3-211, 80-3-212, 80-3-601, 80-3-602, 80-3-603, 80-3-604, 80-3-605, 80-3-606, 80-3-607, 80-3-608, 80-3-609, 80-3-610, 80-3-611, 80-3-612, 80-3-613, 80-3-701, 80-3-702, 80-3-703, 80-3-704, 80-3-705, 80-3-706, 80-3-707, 80-3-708, 80-3-709, 80-3-710, 80-3-711, 80-3-712, AND 80-3-713, MCA; AND

PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TRANSITION PROVISION.

STATEMENT OF INTENT

A statement of intent is required for this bill because the following sections extend additional rulemaking authority to the department of agriculture's present authority to regulate horticulture and farm produce:

(1) The definition of "produce" in [section 2] is intended to allow the department to establish by rule what products constitute produce and are subject to the Montana Produce Act.

(2) [Section 6(3)] is intended to allow the department to establish a penalty matrix that sets out the kinds of administrative penalties applicable to violations of the Montana Produce Act and delineate the degrees of penalty that may be assessed for initial and subsequent administrative violations.

(3) [Section 10(1)] is intended to grant the department the discretion to set and adjust the produce assessment fee, within the statutory range, to cover the department's assessment costs.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 14] may be cited as the "Montana Produce Act".

Section 2. **Definitions.** As used in [sections 1 through 14], unless the context indicates otherwise, the following definitions apply:

(1) "Container" means any package, sack, box, crate, carton, basket, or other object used for the shipping of produce.

(2) "Director" means the director of agriculture appointed pursuant to 2-15-3001.

(3) "Person" means an individual, firm, association, corporation, partnership, or any other form of business enterprise.

(4) "Produce" means any fruit, vegetable, or other natural product designated by department rule. The term does not include livestock and its byproducts, poultry and its byproducts, apiary products, dairy products, or grain.

(5) "Produce dealer" means a person who engages in a business involving or who as part of a business participates in purchasing, exchanging, negotiating, or soliciting the sale, resale, exchange, or transfer of produce in this state, except vegetative seed potato products intended or used for planting purposes.

(6) "Produce unit" means the standard size container for a given type of produce. A produce unit may be established by department rule.

(7) "Retail" means sale of produce to the ultimate consumer.

(8) "Shipping point inspection" means an inspection of produce at the location from which it was shipped.

(9) "Stop sale order" means a written notice to hold produce from sale or movement until a violation has been resolved and the produce is released by the department.

(10) "Wholesale" means the sale of produce intended for resale. The term does not include the sale of Montana-grown produce when sold by the Montana grower for purposes of resale or vegetative seed potato products intended or used for planting purposes.

Section 3. **Powers and duties of department.** (1) The department may:

(a) enter a premises at any reasonable time to inspect produce for condition, for grade, or for determining compliance with the provisions of [sections 1 through 14]; and

(b) cooperate with and enter into agreements with governmental agencies of this state, agencies of other states, agencies of the U.S. government, and private associations, in furtherance of [sections 1 through 14].

(2) The department shall adopt rules necessary for the efficient implementation of [sections 1 through 14].

Section 4. **Disposition of funds — produce account.** (1) There is a produce account in the state special revenue fund. All inspection and license fee revenue authorized and collected under [sections 1 through 14] must be deposited in the account to the credit of the department.

(2) Money received as revenue under [sections 1 through 14] that is not immediately required for the purposes of [sections 1 through 14] must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. All interest earned on the account must be deposited in the account.

Section 5. **Enforcement — stop sale order — injunction.** (1) The department may place a stop sale order on any lot of produce sold or transported without proper labeling or in violation of [sections 1 through 14].

(2) If a person violates any provision of [sections 1 through 14], the department may seek to enjoin that person from further business until the person has complied with [sections 1 through 14]. The department may file an injunction action in the first judicial district court. The injunction provided for by this section is in addition to the misdemeanor penalty provided for in [section 6].

Section 6. **Penalties.** (1) A person who violates or aids in the violation of any provision of [sections 1 through 14] or rules adopted under [sections 1 through 14] is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than $1,000 for each offense;

(b) a misdemeanor punishable as provided in 46-18-212.

(2) Assessment of a civil penalty under subsection (1)(a) may be made in conjunction with any other warning, order, or administrative action authorized by [sections 1 through 6] that is issued by the department. The proceeds of a civil penalty must be deposited in the general fund.

(3) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and other matters necessary for the administration of civil penalties under subsection (1)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

(4) Nothing in [sections 1 through 14] may be construed as requiring the department or its authorized representative to report violations of [sections 1 through 14] when a reasonable belief exists that the public interest will be served by a suitable warning.

(5) It is the duty of a county attorney to whom any violation is reported to cause appropriate proceedings to be initiated and prosecuted in a court of competent jurisdiction without delay.

Section 7. **Standard grades for produce.** (1) Unless a Montana grade standard has been established, the standard grades for produce:

(a) are limited to the U.S. grades governing the produce;

(b) must conform in all respects and be identical with the most recent standards established by the U.S. department of agriculture for the produce; and

(c) when conforming, must be accepted as the legal standards for this state.

(2) The department may by rule establish state grades for produce grown in Montana when the amount grown reaches a volume rendering it of market importance or when requested by the industry. State produce grades must be established in consultation with representatives of the various components of the produce industry, including growers, sellers, buyers, traders, wholesalers, retailers, and consumers.

(3) The grade "Montana unclassified" must contain at least 50% of produce that would grade U.S. No. 2 or better.

(4) Produce not conforming to established grades may be sold if it is marked in the same manner as graded produce, except that in place of specifying the grade, the word "ungraded" or "unclassified" must be used.

Section 8. **Markings — exceptions.** (1) A person may not sell, pack, offer for sale or transport, deliver, or consign in interstate or intrastate commerce produce prepared for market unless each container has been legibly marked with the declared grade of the produce and the name and address of the person responsible for the packing and grading. The grade declared must conform to the provisions of [sections 1 through 14].

(2) Produce that is grown in Montana or any other produce arriving or found in Montana in containers that have no grade marking must meet the requirements of the U.S. No. 1 grade or be marked with the proper grade.

(3) This section does not apply to:

(a) a person selling to the ultimate consumer produce that was grown by that person and that is not for resale; or

(b) the display of produce on a free choice rack.

(4) Produce may be sold for seed purposes when graded under rules adopted by the department and plainly marked for seed purposes.

Section 9. **Advertisements — grade stated.** Produce for which a grade is established in [sections 1 through 14], when advertised with a price stated, must meet the requirements of U.S. No. 1 grade or better or must show, in addition to the price quoted, the true grade of the produce as provided by law. Price tags exhibited in a place of business on exposed produce are not considered advertising under this section.

Section 10. **Reporting requirements — assessment fees — exceptions.** (1) Produce sold or distributed in this state must be reported, on forms approved by the department, and must be assessed a fee per produce unit or equivalent poundage. The fee amount may be adjusted by rule but must be at least 3 cents and not more than 7 cents per produce unit.

(2) The produce dealer who first distributes produce in this state or a grower who retails Montana-grown produce with gross annual sales exceeding $15,000 shall pay the produce assessment fee established in subsection (1). However, any produce dealer in possession of the produce may be held responsible for payment of the fee unless the grower has paid for a produce dealer license or has made available to the produce dealer a written form provided by the department stating that the assessment fees are being paid.

(3) The report and fees are due on or before the 30th day of the month following each calendar quarter.

(4) Payment of the produce assessment fee is not required on produce that is:

(a) grown and retailed in Montana by the grower if annual gross retail sales by the grower do not exceed $15,000;

(b) grown in this state, not packaged for market, and sold for resale by the grower;

(c) in the case of vegetative seed potato products, intended or used for planting purposes; or

(d) purchased from or distributed by a produce dealer licensed under [section 12] if the produce has been reported and the assessment fee has been paid.

Section 11. **Shipping point inspection — fees.** Produce graded and prepared for shipment is subject to a shipping point inspection by the department upon request; however, Montana-grown seed potatoes that are entered in the Montana seed certification program and prepared for shipment off the farm for planting purposes are subject to a shipping point inspection by the department. Inspection fees must be set by rule and must be commensurate with the cost of providing the inspection.

Section 12. **Produce dealer license — exception — renewal.** (1) A produce dealer license is required for any person who:

(a) wholesales produce in this state;

(b) transports produce from out of state into this state for retail sale; or

(c) retails produce grown by the produce dealer in this state when gross retail sales exceed $15,000 annually.

(2) A produce dealer license is not required for a person who complies with the requirements of [sections 1 through 14] and who:

(a) retails produce grown by that person in this state if annual gross produce sales do not exceed $15,000; however, the person shall, upon request by the department, furnish a sworn statement providing that the produce was grown by that person, stating the location where the produce was grown, and stating the amount of gross sales; or

(b) is a nonprofit organization that is recognized by the director and that retails only produce purchased from licensed produce dealers or from Montana produce dealers who are in compliance with [sections 1 through 14].

(3) An applicant for a produce dealer license shall provide any information that the department finds necessary to carry out the provisions of [sections 1 through 14]. Produce dealer licenses expire on December 31 of the year of issuance. A produce dealer shall pay a nonrefundable license fee of $50. A separate license is required for each place of business, including vehicles. The license fee must be credited toward the produce assessment fee prescribed in [section 10].

(4) A produce dealer license, if required, must be carried at any time produce is sold and the license is subject to inspection by any person.

(5) A license issued under this section may not be sold or transferred from one vehicle or location to another without the written consent of the department.

Section 13. **Revocation, suspension, and nonrenewal of license.** The department may revoke, suspend, or refuse to renew a produce dealer license if the department has reasonable cause to believe that the licensee has committed any of the following acts:

(1) refusal or consistent failure to file a produce report or to pay the assessment fee required in [section 10];

(2) intentional or consistent failure to grade or mark produce as required in [section 8];

(3) aiding another person in the violation of any of the provisions of [sections 1 through 14];

(4) failure or refusal to allow inspection of or to maintain and provide records, reports, or other information required by the department; or

(5) violation, failure, or refusal to comply with any other provision of [sections 1 through 14] or a rule adopted by the department in the implementation of [sections 1 through 14].

Section 14. **Publication of reports.** The department may publish the names and addresses of persons licensed under [sections 1 through 14] and may also publish a list of licenses revoked, suspended, or not renewed pursuant to [section 13] and the reasons for revocation, suspension, or nonrenewal.

Section 15. **Repealer.** Sections 80-3-101, 80-3-102, 80-3-103, 80-3-104, 80-3-105, 80-3-106, 80-3-107, 80-3-108, 80-3-109, 80-3-110, 80-3-111, 80-3-201, 80-3-202, 80-3-203, 80-3-204, 80-3-205, 80-3-206, 80-3-207, 80-3-211, 80-3-212, 80-3-601, 80-3-602, 80-3-603, 80-3-604, 80-3-605, 80-3-606, 80-3-607, 80-3-608, 80-3-609, 80-3-610, 80-3-611, 80-3-612, 80-3-613, 80-3-701, 80-3-702, 80-3-703, 80-3-704, 80-3-705, 80-3-706, 80-3-707, 80-3-708, 80-3-709, 80-3-710, 80-3-711, 80-3-712, and 80-3-713, MCA, are repealed.

Section 16. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Transition.** In order to implement the provisions of the produce dealer license established in [section 12] on a calendar year basis, the department shall issue a new 1993 produce dealer license to any licensee who has paid the license fee for 1993. The state treasurer shall transfer $50 of the 1993 fee to the produce account established in [section 4]. All remaining license fees must be refunded to the licensee at the time the new license is issued.

Section 18. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to produce dealer licenses issued and fees collected on and after January 1, 1993.

Section 19. **Codification instruction.** [Sections 1 through 14] are intended to be codified as an integral part of Title 80, chapter 3, and the provisions of Title 80 apply to [sections 1 through 14].

Approved April 28, 1993.

CHAPTER NO. 554

[HB 273]

AN ACT PROHIBITING MOTOR VEHICLE INSURANCE COMPANIES FROM DIRECTING INSUREDS TO SPECIFIC COMPANIES OR LOCATIONS FOR AUTOMOBILE GLASS REPLACEMENT, GLASS REPAIR SERVICE, OR GLASS PRODUCTS; PROHIBITING THE ESTABLISHMENT OF AN AGREEMENT WITH A COMPANY TO ARRANGE PAYMENT THROUGH A THIRD PARTY FOR AUTOMOBILE GLASS REPLACEMENT OR GLASS REPAIR SERVICE; PROHIBITING A COMPANY FROM ACTING AS GLASS BROKER FOR AN INSURANCE COMPANY WHEN THE GLASS BROKER SETS A PRICE THAT MUST BE MET BY A GLASS REPAIR SHOP AS A CONDITION TO DOING GLASS REPAIR WORK; DEFINING GLASS BROKER; PROHIBITING THE ESTABLISHMENT OF A PRICE TO BE MET BY A GLASS REPAIR SHOP AS A CONDITION TO DOING GLASS REPLACEMENT OR GLASS REPAIR WORK WHEN THE PRICE IS BELOW THE LOWEST PREVAILING MARKET PRICE; PROHIBITING PERSONS

WHO SELL, REPLACE, OR REPAIR AUTOMOBILE GLASS FROM OFFERING INCENTIVES; PROVIDING PENALTIES FOR VIOLATIONS; GRANTING ENFORCEMENT AUTHORITY TO THE INSURANCE COMMISSIONER AND THE DEPARTMENT OF COMMERCE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Designation of specific repair shops prohibited — lists allowed.** (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(b) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured in whole or in part under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonable standards of quality, service, and safety.

(b) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automobile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the lowest prevailing market price as defined in [section 2].

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

Section 2. **Lowest prevailing market price.** For purposes of [sections 1 and 3], "lowest prevailing market price" means the lowest market price in a local area. The lowest prevailing market price may not be less than cost as provided in 30-14-209.

Section 3. **Prohibited activities — glass broker defined.** (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with any person that requires a glass repair shop to bill through that person as a condition of doing glass replacement or glass repair work; or

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the lowest prevailing market price as provided in [section 2].

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer for the purpose of entering into agreements with other automobile glass dealers to perform glass replacement or glass repair work.

Section 4. **Prohibited practices — advertising allowed.** (1) A person engaged in the sale, repair, or replacement of automobile glass may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; or

(b) pay a sum or incentive to an individual or entity for directing glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A person may not manage, handle, or arrange automobile glass replacement or glass repair work for which the person retains a percentage of the claim or a set fee paid by the insurance company to the glass repair shop for an amount in excess of the amount paid to the glass repair shop.

Section 5. **Desist orders for prohibited practices.** Violations of [sections 1 through 3] are subject to cease and desist orders of the commissioner issued under 33-18-1004.

Section 6. **Codification instruction.** (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 33, chapter 18, part 2, and the provisions of Title 33, chapter 18, part 2, apply to [sections 1 through 3].

(2) [Section 4] is intended to be codified as an integral part of Title 30, chapter 14, part 2, and the provisions of Title 30, chapter 14, part 2, apply to [section 4].

(3) [Section 5] is intended to be codified as an integral part of Title 33, chapter 18, part 10, and the provisions of Title 33, chapter 18, part 10, apply to [section 5].

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1993.

CHAPTER NO. 555

[HB 287]

AN ACT GENERALLY REVISING THE WORKERS' COMPENSATION ACT AND THE OCCUPATIONAL DISEASE ACT OF MONTANA; DELETING THE UNINSURED EMPLOYERS' FUND FROM THE DEFINITION OF "INSURER"; CLARIFYING WHO IS SUBJECT TO ADMINISTRATIVE ASSESSMENT; ALLOWING ISSUANCE OF SUBPOENAS; EXEMPTING FROM WORKERS' COMPENSATION A PERSON WHO IS EMPLOYED BY AN ENROLLED TRIBAL MEMBER AND WHO OPERATES WITHIN THE BOUNDARIES OF A RESERVATION; PROVIDING FOR STATUTORY APPROPRIATIONS FOR THE UNINSURED EMPLOYERS' FUND AND THE SUBSEQUENT INJURY FUND; EXCLUDING FROM THE UNINSURED EMPLOYER PENALTY THE WAGES PAID TO SPOUSES OF SOLE PROPRIETORS OR SPOUSES OF PARTNERS; PROVIDING FOR A LIEN FOR AN UNPAID UNINSURED EMPLOYER PENALTY; CLARIFYING THE DEPARTMENT OF LABOR AND INDUSTRY'S ROLE IN COMPENSATION FOR DISFIGUREMENT; PROVIDING FOR PAYMENT OF ADMINISTRATIVE COSTS OUT OF THE SUBSEQUENT INJURY FUND; CHANGING THE SELF-INSURED EMPLOYER ANNUAL RENEWAL FROM THE DEPARTMENT'S FISCAL YEAR TO THE EMPLOYER'S POLICY YEAR; RECOGNIZING THE NATIONAL COUNCIL ON COMPENSATION INSURANCE AS AN AGENT FOR INSURERS; PROVIDING FOR BOOK-ENTRY SECURITIES; AUTHORIZING THE DEPARTMENT TO CONVERT SECURITIES TO CASH AND RELEASE SECURITIES TO THE MONTANA INSURANCE GUARANTY ASSOCIATION; CHANGING THE ASSESSMENT PERIOD FOR THE SELF-INSURERS GUARANTY FUND; CLARIFYING THE DEPARTMENT'S ROLE IN PAYMENT OF NONDISABLING OCCUPATIONAL DISEASE BENEFITS; PROVIDING FOR PAYMENT OF EXAMINATION COSTS BY THE REQUESTOR WHEN OCCUPATIONAL DISEASE CAUSES DEATH; PROVIDING A TIME LIMIT TO APPEAL AN UNINSURED EMPLOYERS' FUND BENEFIT ISSUE TO MEDIATION; PROVIDING FOR REVIEW AND MODIFICATION OF CLAIMS EXPENDITURES CODES; AMENDING SECTIONS 17-7-502, 39-71-116, 39-71-201, 39-71-304, 39-71-401, 39-71-503, 39-71-506, 39-71-708, 39-71-902, 39-71-907, 39-71-2104, 39-71-2106, 39-71-2204, 39-71-2205, 39-71-2206, 39-71-2615, 39-72-405, AND 39-72-608, MCA; REPEALING SECTIONS 39-71-2109 AND 39-71-2207, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if no beneficiary, as defined in subsections (3)(a) through (3)(d), exists; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e), exists.

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(7) "Days" means calendar days, unless otherwise specified.

(8) "Department" means the department of labor and industry.

(9) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(10) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, *or* the state fund under compensation plan No. 3~~, or the uninsured employers' fund provided for in part 5 of this chapter~~.

(11) "Invalid" means one who is physically or mentally incapacitated.

(12) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(13) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(14) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(15) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in some capacity but the physical restriction impairs the worker's ability to work.

(16) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker has no reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(17) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(18) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over ~~such~~ *the* place of business for the purpose of carrying on ~~his~~ *the employer's* usual trade, business, or occupation.

(19) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(20) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(21) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(22) "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

(23) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(24) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

(25) "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-201, MCA, is amended to read:

"**39-71-201. Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department must administer, *with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund,* are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, ~~no~~ *an* assessment of the plan No. 1 employer or plan No. 2 insurer may *not* be less than $200. *If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment.* The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan

No. 3. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon claim therefor."

Section 3. Section 39-71-304, MCA, is amended to read:

"**39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal — *subpoenas.*** *(1)* The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and such other information as may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for such inspection shall subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects as may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court."

Section 4. Section 39-71-401, MCA, is amended to read:

"**39-71-401. Employments covered and employments exempted.** (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to ~~his~~ *the employee's* main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(l)~~.~~*;*

(m) a person who is employed by an enrolled tribal member who operates solely within the exterior boundaries of an Indian reservation.

(3) (a) A sole proprietor or a working member of a partnership who ~~holds himself out~~ *represents to* ~~or~~ *the public that the person* ~~considers himself~~ *is* an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3~~,~~ but ~~he~~ may apply to the department for an exemption from the Workers' Compensation Act ~~for himself~~.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains ~~his~~ *the* status as an independent contractor until ~~he~~ *the independent contractor* notifies the department of any change in ~~his~~ status and provides a description of ~~his~~ present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to rules the department promulgates and subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and to the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, to the department, and to the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if ~~he~~ *the officer* elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer shall sign the notice required by subsection (4)(a) under oath or affirmation~~,~~ and ~~he~~ is subject to the penalties for false swearing under 45-7-202 if ~~he~~ *the officer* falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on ~~his~~ *the employer's* usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 5. Section 39-71-503, MCA, is amended to read:

"**39-71-503. Administration of fund — *appropriation.*** (1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves ~~shall~~ *may* not be kept for the fund. The department shall make such payments as it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. No lump-sum payments of future projected benefits, including impairment awards, may be made from the fund. The board of investments shall invest the ~~moneys~~ *money* of the fund. The cost of administration of the fund ~~shall~~ *must* be paid out of the money in the fund.

(3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 6. Section 39-71-506, MCA, is amended to read:

"**39-71-506.** ~~**Collection of payments from uninsured employer by suit**~~ ***Lien for payment of unpaid penalties and claims — levy and execution.*** *(1)* If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the ~~sums may be collected by the department through suit~~ *unpaid penalties and claims have the effect of a judgment against the employer at the time the payments become due. After the due process requirements of 39-71-2401(2) and (3) are satisfied, the department may issue a certificate setting forth the amount of payment due and direct the clerk of the district court of any county in the state to enter the certificate as a judgment on the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the employer. After satisfying any due process requirements, the department may enforce the judgment at any time within 10 years of creation of the lien.*

(2) The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504."

Section 7. Section 39-71-708, MCA, is amended to read:

"**39-71-708. Compensation for disfigurement.** (1) ~~The department may award proper and equitable benefits for~~ *Injured workers who suffer* serious face, head, or neck disfigurement~~,~~ *may be entitled to benefits* not to exceed $2,500, in addition to benefits payable under 39-71-703.

(2) ~~No~~ *A* payment under this section ~~shall~~ *may not* be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability."

Section 8. Section 39-71-902, MCA, is amended to read:

"**39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers.** (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the department may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer. *The cost of administration of the fund must be paid out of money in the fund.*

(2) When, in the judgment of the department, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities *and administrative costs*, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by the department."

Section 9. Section 39-71-907, MCA, is amended to read:

"**39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — insurer liability for compensation limited — *appropriation.*** *(1)* A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of ~~his~~ employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of ~~his~~ death resulting from such injury, the compensation must be paid to ~~his~~ *the person's* beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

(2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in section 17-7-502, from this fund."

Section 10. Section 39-71-2104, MCA, is amended to read:

"**39-71-2104. Renewal of application.** ~~Every~~ *An* employer, so long as ~~he~~ *that employer* continues ~~in his employment~~ *to employ* and ~~so long as he~~ continues to be bound by compensation plan No. 1, shall~~, at least 30 days before the expiration of each fiscal year,~~ *annually* renew ~~his~~ *the* application to be permitted to continue to make ~~such~~ payments ~~as aforesaid~~ directly to ~~his~~ employees for the next ~~ensuing fiscal~~ year~~, and under like circumstances as those mentioned for the granting of such permission upon such first application,~~. ~~the~~ *The* department may, with the concurrence of the Montana self-insurers guaranty fund, renew the ~~same~~ *application* from year to year. *The annual renewal application must be in the form, for the period, and subject to the time limits prescribed by the department.*"

Section 11. Section 39-71-2106, MCA, is amended to read:

"**39-71-2106. Requiring security of employer.** (1) (a) The department may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit in accordance with rules adopted by the department. *All securities of the United States treasury must be in book-entry form.* Except as provided in subsection (1)(b), the security deposit may be a surety bond, government bond, certificate of deposit, or letter of credit approved by the department and must be the greater of:

(i) $250,000; or

(ii) an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

(b) The department may, in accordance with rules adopted by the department, require a larger deposit as additional evidence of solvency and financial ability to pay the liabilities provided by this chapter.

(2) (a) The department shall require an employer to give security in addition to the security described in subsection (1) if:

(i) the department determines that the employer ~~is insolvent or~~ lacks the financial ability to pay the compensation that is ~~required~~ *expected* under this chapter and that is chargeable to the employer during the ~~fiscal~~ year to be covered by the permission provided for in 39-71-2103; or

(ii) the employer is ~~an association, corporation, or organization~~ *a group* of individual employers seeking permission to operate under compensation plan No. 1.

(b) The additional security required in subsection (2)(a) must be an amount that the department finds reasonable and necessary to meet all liabilities that the employer may accrue under this chapter during the fiscal year.

(3) (a) The security provided for in subsection (2) must be deposited with the department ~~and may be either an estimated percent of the employer's last preceding annual payroll or a percent of the established amount of his annual payroll for the fiscal year~~. The security may consist of:

(i) a bond ~~or undertaking~~ executed to the department in the amount to be fixed by it with ~~two or more sufficient sureties~~ *a surety*, which undertaking must be conditioned that the employer will pay or cause to be paid to ~~his~~ employees all sums and amounts for which the employer becomes liable under the terms of this chapter during the ~~fiscal~~ year; ~~or~~

(ii) any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations that the department considers solvent*; or*

(iii) other security deposits allowed in subsection (1)(a).

(b) Every deposit and the character and amount of the securities must at all times be subject to approval, revision, or change by the department as it may require.

(c) Upon proof of the final payment of the liability for which the securities are given, the securities or any remainder of the securities must be returned to the depositor.

(4) The department is liable for the value and safekeeping of all deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the deposits or securities and the earnings of the deposits or securities."

Section 12. Section 39-71-2204, MCA, is amended to read:

"**39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure.** (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and such other information as may be required by the department.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of coverage received from the national council on compensation insurance as the insurer's notice of coverage.

~~(2)~~*(3)* The department may, in its discretion, assess a penalty of no more than $200 against an insurer ~~which~~ *that* as a general business practice does not comply with the 30-day notice requirement ~~as~~ set forth in subsection (1) ~~of this section~~."

Section 13. Section 39-71-2205, MCA, is amended to read:

"**39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty.** (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) The department may:

(a) recognize the national council on compensation insurance as an agent for authorized workers' compensation insurers in Montana; and

(b) under terms and conditions acceptable to the department, accept notice of cancellation received from the national council on compensation insurance as the insurer's notice of cancellation.

~~(2)~~*(3)* (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules."

Section 14. Section 39-71-2206, MCA, is amended to read:

"**39-71-2206. Deposits by insurer with department to guarantee payment of liability.** (1) *(a)* Before issuance of any policy by an insurer as herein authorized, the insurer ~~must~~ *shall* deposit with the department ~~bonds~~ *book-entry securities* of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the department in an amount not less than $25,000 or more than $200,000, as the department may determine.

(b) If any insurer fails to discharge any liability after the amount thereof is determined by the department and within the time limited by the department, the department shall convert the bonds or ~~such~~ *any* part thereof as is necessary into cash and from the proceeds liquidate ~~such~~ *the* liability, and thereafter the insurer ~~must~~ *shall* make an additional deposit to meet any deficiency caused thereby. It is intended to give the department the discretion in the matter of whether an insurer has failed to discharge any liability.

(c) If any insurer fails to replace a canceling, terminating, or maturing security within the time limit established by the department, the department shall protect the security deposit by converting the canceling, terminating, or maturing security into cash and shall maintain the deposit until a replacement security acceptable to the department is deposited.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the department for the protection and guarantee of the payment of ~~such~~ *the* liability in ~~such~~ *a* sum as the department may direct. However, if the department considers the amount on deposit by the insurer under the provisions of subsection (1) ~~of this section~~ sufficient to cover all liabilities of the insurer, then no further deposit may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 must be held in trust by the department as security for the payment of the liability for which the deposit was made. ~~Such~~ *The* deposit may be reduced from time to time with the permission of the department as the payment of the liability of the insurer may reduce the amount required to be on deposit. ~~Such~~ *The* deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which ~~such~~ *the* deposit was made, any deposit remaining must be returned to the depositor. All earnings made by ~~such~~ *the* deposit must first be applied upon any liability of the depositors, and if no such liability exists, then ~~such~~ *the* earnings must upon demand be delivered to ~~such~~ *the* depositor. The department and its bondsmen are liable for the value and safekeeping of ~~such~~ *the* deposit and shall at any time, upon demand of a depositor, account for the same and the earnings thereof.

(4) In the event of an insolvency of a plan No. 2 insurer, the department may, at its discretion, release part or all of the deposit held to the Montana insurance guaranty association for payment of the insurer's Montana workers' compensation claims if:

(a) the insurer has been determined to be insolvent by a court of competent jurisdiction or bankruptcy proceedings have been instituted by or against it;

(b) the insurer is unable to pay its workers' compensation claims; and

(c) the insurer's Montana workers' compensation liabilities have become the responsibility of the Montana insurance guaranty association."

Section 15. Section 39-71-2615, MCA, is amended to read:

"**39-71-2615. Initial fee — assessment.** (1) A private self-insurer shall pay to the fund an initial fee of $1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the indemnity compensation paid by each member during the previous calendar year. Funds obtained by assessment pursuant to this subsection may be used only for the purposes of this part.

(3) A former member is liable for assessments made by the fund for 3 years following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the ~~12-month period~~ *compensation paid during the last approval year* immediately preceding the member's termination of its status as a private self-insurer.

(4) The board shall certify to the department the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment."

Section 16. Section 39-72-405, MCA, is amended to read:

"**39-72-405. General limitations on payment of compensation.** (1) Compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) When ~~any~~ *an* employee in employment on or after January 1, 1959, because ~~he~~ *the employee* has an occupational disease incurred in and caused by ~~such~~ *the* employment ~~which~~ *that* is not yet disabling, is discharged or transferred from the employment in which ~~he~~ *the employee* is engaged or when ~~he~~ *the employee* ceases ~~his~~ employment and it is in fact, as determined by the medical panel, inadvisable for ~~him~~ *the employee* on account of a nondisabling occupational disease to continue in employment and ~~he~~ *the employee* suffers wage loss by reason of the discharge, transfer, or cessation, ~~the department may allow compensation on account thereof as it considers just,~~ *compensation may be paid,* not exceeding $10,000, *by an agreement between the insurer and the claimant. If the parties fail to reach an agreement, the mediation procedures in Title 39, chapter 71, part 24, must be followed.*"

Section 17. Section 39-72-608, MCA, is amended to read:

"**39-72-608. Payment of medical examination, report, and autopsy expenses.** The expense of the first medical examination and report as provided in 39-72-602 must be borne by the insurer. The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be borne by the party requesting the autopsy. *When the occupational disease causes death, the expense of any examinations and reports, as provided in 39-72-605, must be borne by the party requesting the examination.*"

Section 18. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; *39-71-503; 39-71-907;* 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 19. **Time limit to appeal.** A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination or the determination is considered final.

Section 20. **Claims expenditures codes.** The state fund shall continually review its claims expenditure coding structure to separately account for claims and administrative expenses. If a review demonstrates a compelling need for expenditure information that is not available, the state fund shall expand or modify its claims expenditure coding structure.

Section 21. **Repealer.** Sections 39-71-2109 and 39-71-2207, MCA, are repealed.

Section 22. **Codification instruction.** [Sections 19 and 20] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 19 and 20].

Section 23. **Effective date.** [This act] is effective July 1, 1993.

Approved April 28, 1993.

CHAPTER NO. 556

[HB 323]

AN ACT ALLOWING A COURT, UPON A CONVICTION OF CRUELTY TO ANIMALS, TO PROHIBIT OR LIMIT THE DEFENDANT'S OWNERSHIP, POSSESSION, OR CUSTODY OF ANIMALS, AS THE COURT BELIEVES APPROPRIATE DURING THE TERM OF THE SENTENCE; AMENDING SECTION 45-8-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-211, MCA, is amended to read:

"**45-8-211. Cruelty to animals — exception.** (1) A person commits the offense of cruelty to animals if without justification ~~he~~ *the person* knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying or confining any animal in a cruel manner;

(c) failing to provide an animal in ~~his~~ *the person's* custody with:

(i) proper food, drink, or shelter; or

(ii) in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles, except a sanctioned endurance race.

(2) *(a)* A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second or subsequent offense of cruelty to animals shall be fined not to exceed $1,000 or be imprisoned in the ~~county jail~~ *state prison* for a term not to exceed ~~1~~ *2* ~~year~~ *years*, or both.

(b) If the *convicted* person is the owner, ~~he~~ *the person* may be required to forfeit to the county in which ~~he~~ *the person* is convicted any animal affected. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(3) In addition to the sentence provided in subsection (2), the court may:

(a) require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected*; and*

(b) prohibit or limit the defendant's ownership, possession, or custody of animals, as the court believes appropriate during the term of the sentence.

(4) Nothing in this section prohibits:

(a) a person from humanely destroying an animal for just cause; or

(b) the use of commonly accepted agricultural and livestock practices on livestock."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1993.

CHAPTER NO. 557

[HB 327]

AN ACT CLARIFYING THAT THE $5 MINIMUM PROPERTY TAX APPLIES TO ALL REAL AND PERSONAL PROPERTY TAXES; CLARIFYING THAT THE EXCESS IS TO BE DEPOSITED IN THE COUNTY GENERAL FUND; PROVIDING THAT MINIMUM ASSESSMENT PAYMENTS DO NOT APPLY TO GOVERNMENTAL ENTITIES UNLESS THE TOTAL OF LEVIED AMOUNTS IS LESS THAN $5; AMENDING SECTION 15-16-118, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-118, MCA, is amended to read:

"15-16-118. Minimum tax payment — limitation of appeal. (1) If the taxes and special assessments due for the current year shown in the written notice sent to the taxpayer as required in 15-16-101(2) are *less than $5 or if a tax notice of taxes and special assessments due on personal property is* less than $5, the county treasurer shall notify the taxpayer that a minimum tax of $5 is imposed and due. The $5 tax is imposed for purposes of defraying administrative expenses incurred in administering the tax. *The difference between the taxes and special assessments and the minimum tax of $5 is to be deposited in the county general fund.*

(2) The notification of the $5 minimum tax required by subsection (1) must be made in the notice required in 15-16-101(2) *or in the notice of taxes and special assessments due on personal property.*

(3) The minimum tax imposed by this section is not affected by the limitation on property taxes contained in Title 15, chapter 10, part 4.

(4) The minimum assessment imposed by this section does not apply to assessments levied against property owned by the state or a county, consolidated local government, city, town, school district, or other governmental entity unless the total assessments levied against all the property owned by the governmental entity are less than $5."

Section 2. **Applicability.** [Section 1] applies to all tax notices sent to taxpayers after September 30, 1993.

Approved April 28, 1993.

CHAPTER NO. 558

[HB 333]

AN ACT EXTENDING APPLICATION OF THE UTILIZATION FEE ON NURSING FACILITIES TO BED DAYS REIMBURSED BY ALL PAYORS IN ORDER TO MEET REQUIREMENTS FOR OBTAINING FEDERAL MATCHING FUNDS FOR FEE REVENUE EXPENDED BY THE STATE FOR MEDICAID ITEMS AND SERVICES; INCREASING THE UTILIZATION FEE; CREATING A STATE SPECIAL REVENUE ACCOUNT; DEPOSITING THE FEE IN THE ACCOUNT; APPROPRIATING FUNDS FOR THE 1995 BIENNIUM; AMENDING SECTIONS 15-60-101, 15-60-102, AND 15-60-210, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-60-101, MCA, is amended to read:

"**15-60-101. Definitions.** For purposes of this chapter, unless the context requires otherwise, the following definitions apply:

(1) *(a)* "Bed day" means each whole 24-hour period that a resident of a nursing facility is present in the facility and receiving skilled nursing care or intermediate nursing care or in which a bed is held for a resident while ~~he~~ *the resident* is on temporary leave from the facility.

(b) The term includes all periods ~~for which the nursing facility is reimbursed by a third party payor, including but not limited to a private or governmental insurer or public assistance program, but it does not include any period for which the nursing facility may be reimbursed only by the resident, a friend of the resident, or a member of the resident's family~~ *of 24 hours described in subsection (1)(a) regardless of the source of payment.* The term also includes the day of a resident's admission to a nursing facility and the day of the resident's death, even though the resident is present less than a whole 24-hour period on these days.

(2) "Calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or December 31.

(3) "Department" means the department of revenue.

(4) "Nursing facility" or "facility" means a health care facility licensed by the department of health and environmental sciences as a nursing facility to provide skilled nursing care or intermediate nursing care. The term includes nursing facilities, whether they are:

(a) operated as nonprofit or for-profit facilities;

(b) freestanding or part of another health care facility; or

(c) publicly or privately operated.

(5) "Skilled nursing care" and "intermediate nursing care" have the same meaning as those terms are defined in 50-5-101.

(6) "Report" means the report of bed days required in 15-60-201.

(7) "Utilization fee" or "fee" means the fee required to be paid for each bed day in a nursing facility, as provided in 15-60-102."

Section 2. Section 15-60-102, MCA, is amended to read:

"**15-60-102. Utilization fee for bed days in nursing facilities.** A nursing facility in the state shall pay to the department of revenue a utilization fee in the amount of ~~$1~~ *$2* for each bed day in the facility during fiscal year ~~1992~~ *1994* and ~~$2~~ *$2.80* for each bed day in the facility during fiscal year ~~1993~~ *1995* and each year thereafter. *The fees collected must be deposited in the nursing facility state special revenue account established in 15-60-210.*"

Section 3. Section 15-60-210, MCA, is amended to read:

"**15-60-210. Disposition of fee — *nursing facility account.*** *(1)* All proceeds from the collection of utilization fees, including penalties and interest, must be deposited in the ~~state general fund~~ *nursing facility state special revenue account established in subsection (2).*

(2) There is a nursing facility account in the state special revenue fund. The purpose of the account is to provide a continuing source of revenue for nursing facility reimbursements as appropriated by the legislature."

Section 4. **Appropriations.** The following money is appropriated from the account established in [section 3] and from federal matching funds to the department of social and rehabilitation services to fund medicaid payments to nursing facilities:

	Fiscal Year 1994
State Special Revenue	$ 4,656,028
Federal	11,410,321
Total	$16,066,349
	Fiscal Year 1995
State Special Revenue	$ 6,552,848
Federal	15,660,196
Total	$22,213,044

Section 5. **Applicability.** [This act] applies to all bed days on or after July 1, 1993.

Section 6. **Effective dates.** (1) [Sections 1 through 3] are effective July 1, 1993, except that rules to administer [sections 1 through 3] may be adopted, but may not be implemented, prior to July 1, 1993.

(2) This section is effective on passage and approval.

Approved April 28, 1993.

CHAPTER NO. 559

[HB 372]

AN ACT AUTHORIZING COUNTIES TO ISSUE SMALL DENOMINATION GENERAL OBLIGATION BONDS TO BE KNOWN AS "CITIZEN BONDS"; AMENDING SECTIONS 7-7-103, 7-7-2209, 7-7-2238, 7-7-2251, 7-7-2261, AND 7-7-2265, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Citizen bonds authorized.** (1) A county authorized to sell general obligation bonds under this chapter may issue and sell a portion of the bonds in denominations of less than $5,000, either by competitive public sale or directly to members of the public, at preestablished interest rates.

(2) Bonds issued under [sections 1 through 4] may be known as "citizen bonds".

(3) Citizen bonds may be issued for any purpose for which a county may issue general obligation bonds.

(4) An officer, employee, contracted financial consultant, or contracted adviser employed or retained by a county selling citizen bonds may not purchase those bonds.

Section 2. **Citizen bonds — procedural requirements prior to issuance.** (1) Prior to the final passage of the resolution provided for in 7-7-2238, a county shall notify the attorney general of its intention to issue citizen bonds.

(2) Prior to issuing citizen bonds, a county shall make available to interested investors:

(a) a preliminary official statement, a draft-form legal opinion from a recognized bond counsel, and a comparison to taxable yields at various income levels;

(b) application forms for the purchase of citizen bonds that must specify at a minimum:

(i) the time, date, and place that applications will be received, the manner in which applications will be processed, and the conditions under which the sale may be canceled if the issue is not fully subscribed during the application period;

(ii) the issue date, maturity dates, and the dates on which interest will be earned and paid;

(iii) the denominations of the bonds and the maximum amount of the bonds that one buyer may purchase;

(iv) the approximate yield on the bonds if held to maturity and the manner in which interest rates have been calculated; and

(v) the provision made for the transfer of ownership of outstanding bonds; and

(c) other information that the attorney general may require.

Section 3. **Citizen bonds — procedure when issue not fully subscribed.** If an entire issue of bonds is not fully subscribed during the period of time that the county has set for the sale of the bonds, the citizen bonds may be sold in the manner permitted for other county general obligation bonds.

Section 4. **Zero-coupon bonds and capital appreciation bonds.** The terms "zero-coupon bonds" and "capital appreciation bonds", as used in this part, mean those forms of bonds that do not make periodic interest payments but, rather, are sold at a discount from their face value.

Section 5. Section 7-7-103, MCA, is amended to read:

"**7-7-103. Review by attorney general — report — review of citizen bonds.** (1) The attorney general shall examine certified copies of all proceedings preliminary to the issuance of general obligation bonds by any county, city, or town ~~which~~ *that* are submitted ~~to him~~ for examination, and if the proceedings are found to be regular and valid, ~~he~~ *the attorney general* shall deliver to the recording officer of the local government a report of ~~his~~ *the* examination and determination.

(2) A certified copy of the report ~~shall~~ *must* be filed with the officer required by law to register the bonds, and a notation of the filing ~~shall~~ *must* be entered in the bond register.

(3) Within 10 days of receipt of the notice provided for in *[section 2] and* 7-7-4212, the attorney general may impose any requirements ~~he considers~~ *considered* necessary to adequately protect both the issuing city or town and the purchasers of the bonds."

Section 6. Section 7-7-2209, MCA, is amended to read:

"**7-7-2209. Types of bonds.** ~~All~~ *(1) Except as provided in subsection (2),* bonds ~~hereafter~~ issued by any county ~~shall~~ *must* be either amortization bonds or serial bonds. All things being equal, amortization bonds ~~shall~~ *must* be issued in preference to serial bonds~~,~~; otherwise, serial bonds may be issued.

(2) Citizen bonds may be amortization bonds, serial bonds, term bonds, capital appreciation bonds, or zero-coupon bonds, with no preference for amortization bonds."

Section 7. Section 7-7-2238, MCA, is amended to read:

"**7-7-2238. Resolution to issue bonds.** (1) If a sufficient percentage of the qualified electors entitled to vote at ~~such~~ *an* election voted on ~~such~~ *the* question and a sufficient percentage of ~~such~~ votes were cast in favor of the issuing of ~~such~~ bonds as provided in 7-7-2237, the board of county commissioners shall, at a regular or special meeting held within 30 days ~~thereafter~~ *after the election,* pass and adopt a resolution providing for the issuance of ~~such~~ *the* bonds.

(2) ~~Such~~ *The* resolution ~~shall~~ *must* recite:

(a) the purpose for which ~~such~~ *the* bonds are to be issued;

(b) the amount ~~thereof~~ *of bonds to be issued;*

(c) the maximum rate of interest the bonds may bear;

(d) the date they ~~shall~~ bear;

(e) the period of time through which they ~~shall be~~ *are* payable; and

(f) the optional provisions, if any.

(3) ~~Such~~ *The* resolution ~~shall~~ *must* provide for the manner of the execution of the bonds. ~~It shall~~ *The resolution must* provide that, *except in a bond issue of citizen bonds,* preference ~~shall~~ *must* be given *to* amortization bonds, but *it* ~~shall~~ *must* fix the denomination of serial bonds in case it ~~shall be~~ *is* found advantageous to issue bonds in that form. The board may in its discretion provide that ~~such~~ *the* bonds may be issued and sold in two or more series or installments.

(4) The resolution ~~shall~~ *must* adopt a form of notice of the sale of the bonds."

Section 8. Section 7-7-2251, MCA, is amended to read:

"**7-7-2251. Form of notice of sale of bonds.** *(1)* The notice of sale ~~shall~~ *must* state the purpose or purposes for which the bonds are to be issued and the amount proposed to be issued for each purpose and ~~shall~~ *must* be substantially in the following form:

NOTICE OF SALE OF COUNTY BONDS

Notice is hereby given by the board of county commissioners of .... County, state of Montana, that the board will on the .... day of ...., 19.., at the hour of ....m., at the office of the board in the courthouse in the (town or city) of .... in the said county, sell to the highest and best bidder for cash, either amortization or serial bonds of the ~~said~~ county in the principal amount of .... dollars ($....) for the purpose of .....

Amortization bonds will be the first choice and serial bonds will be the second choice of the ~~said~~ board.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the board may determine at the time of sale, both principal and interest to be payable in semiannual installments during a period of .... years from the date of issue.

If serial bonds are issued and sold, they will be in the amount of .... dollars ($....) each and will become payable according to the maturity schedule set forth below (set forth maturity schedule adopted by the board of county commissioners).

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding ....% per annum commencing on the .... day of .... (month), 19.., and payable semiannually on the .... day of .... (month) and .... (month) in each year thereafter and will be redeemable in full (here insert the optional provisions, if any, to be recited in the bonds).

The bonds will be sold for not less than their par value with accrued interest to date of delivery, and all bidders must state the lowest rate of interest at which they will purchase the bonds at par. The board reserves the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the board of investments of the state of Montana must be accompanied by a certified check in the sum of .... dollars, ($....), payable to the order of the clerk, which will be forfeited by the successful bidder in the event that ~~he shall fail or refuse~~ *the bidder fails or refuses* to complete the purchase of the bonds in accordance with the terms of ~~his~~ *the* bid.

All bids ~~should~~ *must* be addressed to the board of county commissioners ~~of said county~~ and delivered to the county clerk ~~of said county~~.

ATTEST:

....
(Chairman, Board of County Commissioners)
of .... County
State of Montana

....
(Clerk of the Board of County Commissioners)
of .... County, Montana
Address ...., Montana

(2) The form of notice required under this section may be modified to accommodate changes necessary to issue citizen bonds pursuant to [sections 1 through 4]."

Section 9. Section 7-7-2261, MCA, is amended to read:

"**7-7-2261. Maintenance of accounts for bond issues.** (1) The county treasurer of each county shall keep in ~~his~~ *the county's* books a special and separate sinking fund account for each series or issue of outstanding bonds, *including citizen bonds as provided in [sections 1 through 4],* issued by ~~his~~ *the* county. Each ~~such~~ fund must at all times show the exact condition ~~thereof~~ *of the bonds.*

(2) All taxes collected for interest and principal on county bonds ~~shall~~ *must* be placed to the credit of the sinking fund for which the taxes were levied.

(3) Interest from investment of money in a sinking fund account may, in the discretion of the board of county commissioners, be used as it accrues to fulfill or complete the specific project for which the bonds were issued.

(4) The sinking fund ~~shall~~ *must* be administered as provided in 7-7-123, 7-7-124, and 7-7-2270."

Section 10. Section 7-7-2265, MCA, is amended to read:

"**7-7-2265. Tax levy for payment of bonds.** (1) The board of county commissioners, at the time of making the levy of taxes for county purposes, must levy a separate and special tax upon all taxable property in the county for the payment of interest on and principal of each series or issue of bonds outstanding. The tax levy for any one series or issue of bonds must be entirely separate and distinct from ~~such~~ *the* levy for any other series or issue of bonds.

(2) ~~The~~ *Except as provided in subsection (3), the* levy made for the purpose of paying interest on and principal of each series or issue of bonds must be high enough to raise an amount sufficient to pay all interest on and so much of the principal, if any, of ~~such~~ *the* bonds as will become due and payable during the then-current fiscal year or within 90 days ~~thereafter~~ *after the fiscal year*, as ~~such amount is~~ shown by the treasurer's statement provided by 7-7-2264. If no part of the principal of ~~such~~ *the* bonds ~~will~~ become due and payable within ~~such~~ *that* time, then ~~such~~ *the* tax levy must be high enough to*:*

(a) raise an amount sufficient to pay all interest ~~which~~ *that* will become due and payable during the current fiscal year or within 90 days ~~thereafter~~ *after the fiscal year;* and

(b) ~~to also~~ place in the sinking fund for ~~such~~ *the* issue or series of bonds, for the payment of the principal ~~thereof~~ when ~~the same~~ *it* becomes due, an amount not less than a sum produced by dividing the whole amount for which ~~such~~ *the* series or issue of bonds ~~were~~ *was* originally issued by the number of years for which the ~~same were~~ *series or issue was* originally issued to run.

(3) The annual levies made for the purpose of paying off bonds that do not provide for periodic interest payments but, rather, are sold at a discount from their face value, as provided in [sections 1 through 4], must be actuarially sufficient so that at the time for redemption, there is an amount in the sinking fund sufficient to redeem the bonds."

Section 11. **Codification instruction.** [Sections 1 through 4] are intended to be codified as an integral part of Title 7, chapter 7, part 22, and the provisions of Title 7, chapter 7, part 22, apply to [sections 1 through 4].

Section 12. **Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1993.

CHAPTER NO. 560

[HB 405]

AN ACT CREATING THE CRIMINAL OFFENSE OF RITUAL ABUSE OF A MINOR; PROVIDING THE TIME WITHIN WHICH THE OFFENSE MUST BE PROSECUTED; CREATING A STATUTE OF LIMITATIONS FOR CIVIL ACTIONS TO RECOVER DAMAGES FOR INJURY SUFFERED AS A RESULT OF RITUAL ABUSE OF A MINOR; AMENDING SECTIONS 27-2-204 AND 45-1-205, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

It is the intent of the legislature that the phrase "ceremony, rite, or ritual" be interpreted in a manner that does not include a ceremony, rite, or ritual performed in a formal, commonly recognized religious ceremony.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Ritual abuse of minor — exceptions — penalty.** (1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, or felony assault against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) A person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

Section 2. Section 45-1-205, MCA, is amended to read:

"**45-1-205. General time limitations.** (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, ~~or~~ 45-5-625, *or [section 1],* may be commenced within 5 years after the victim reaches the age of 18 if the victim was less than 18 years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination ~~thereof~~ *of the minority or incompetency*;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not ~~himself~~ *personally* a party to the offense or, in the absence of ~~such~~ discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) ~~shall~~ *must* be extended in a prosecution for unlawful use of a computer, and prosecution ~~shall~~ *must* be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not ~~himself~~ *personally* a party to the offense or, in the absence of ~~such~~ discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(7) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Section 3. **Tort actions — ritual abuse of minor.** (1) An action based on intentional conduct brought by a person for recovery of damages for injury suffered as a result of ritual abuse of a minor must be commenced not later than:

(a) 3 years after the act of ritual abuse of a minor that is alleged to have caused the injury; or

(b) 3 years after the plaintiff discovers or reasonably should have discovered that the injury was caused by the act of ritual abuse of a minor.

(2) It is not necessary for a plaintiff to establish which act, in a series of acts of ritual abuse of a minor, caused the injury that is the subject of the suit. The plaintiff may compute the period referred to in subsection (1)(a) from the date of the last act by the same perpetrator.

(3) As used in this section, "ritual abuse of a minor" means any act committed against a plaintiff who was less than 18 years of age at the time the act occurred and that would have been a violation of [section 1].

(4) The provisions of 27-2-401 apply to this section.

Section 4. Section 27-2-204, MCA, is amended to read:

"**27-2-204. Tort actions — general and personal injury.** (1) Except as provided in 27-2-216 *and [section 3]*, the period prescribed for the commencement of an action upon a liability not founded upon an instrument in writing is within 3 years.

(2) The period prescribed for the commencement of an action to recover damages for the death of one caused by the wrongful act or neglect of another is within 3 years.

(3) The period prescribed for the commencement of an action for libel, slander, assault, battery, false imprisonment, or seduction is within 2 years."

Section 5. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45 apply to [section 1].

(2) [Section 3] is intended to be codified as an integral part of Title 27, chapter 2, part 2, and the provisions of Title 27, chapter 2, part 2, apply to [section 3].

Section 6. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **Retroactive applicability.** [Sections 3 and 4] apply to all causes of action commenced on or after October 1, 1993, regardless of when the cause of action arose. To this extent, [sections 3 and 4] apply retroactively, within the meaning of 1-2-109.

Approved April 28, 1993.

CHAPTER NO. 561

[HB 427]

AN ACT GENERALLY REVISING THE LAWS RELATING TO PUBLIC ASSISTANCE; REVISING THE STATE ASSUMPTION OF COUNTY WELFARE ASSISTANCE; REVISING THE MILL LEVY LIMIT FOR A COUNTY; ELIMINATING EMERGENCY GRANTS; ELIMINATING GENERAL RELIEF; REQUIRING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO PRESENT ALTERNATIVE PLANS FOR THE ADMINISTRATION OF PUBLIC ASSISTANCE PROGRAMS TO THE 54TH LEGISLATURE; AMENDING SECTIONS 7-6-2512, 7-6-2523, 15-10-412, 15-16-117, 33-32-103, 39-71-118, 40-4-215, 41-3-1122, 52-1-110, 53-2-201, 53-2-203, 53-2-207, 53-2-322, 53-2-601, 53-2-606, 53-2-608, 53-2-610, 53-2-801, 53-2-802, 53-2-803, 53-2-811, 53-2-812, 53-2-813, 53-2-1101, 53-2-1103, 53-2-1109, 53-3-205, AND 53-3-310, MCA; REPEALING SECTIONS 53-2-321, 53-2-323, 53-2-821, 53-2-822, 53-3-109, 53-3-110, 53-3-112, 53-3-113, 53-3-114, 53-3-121, 53-3-122, 53-3-201, 53-3-205, 53-3-207, 53-3-208, 53-3-209, 53-3-210, 53-3-211, 53-3-212, 53-3-215, 53-3-303, 53-3-304, 53-3-305, 53-3-307, 53-3-308, 53-3-309, 53-3-310, 53-3-311, 53-3-313, 53-3-314, 53-3-318, 53-3-321, 53-3-322, 53-3-323, 53-3-324, 53-3-325, 53-3-326, 53-3-327, 53-3-328, AND 90-4-211, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative findings.** (1) The legislature finds that in order to use the limited resources of the state for the purposes of providing public assistance to persons whom it has determined are in need, certain programs must be eliminated and the provision of public assistance programs must be reorganized for more efficient delivery of services.

(2) The legislature finds that county governments are in the best position to efficiently and effectively deliver services for those in need who are not otherwise eligible for similar services provided by the department of social and rehabilitation services.

(3) (a) The legislature finds that the needs of persons who are aged, infirm, or misfortunate are adequately and appropriately provided for through the following programs:

(i) medicaid;

(ii) aid for dependent children;

(iii) food stamps;

(iv) commodities; and

(v) low-income energy assistance.

(b) The legislature further finds that the counties may in their discretion provide other programs of public assistance that they determine are appropriate and that may be funded with money derived from the county poor fund mill levy.

(4) The legislature finds that the effects of eliminating the state program of general relief are not known and that the administration and financing of public assistance programs by each county may not provide uniform assistance throughout the state.

Section 2. Section 7-6-2512, MCA, is amended to read:

"7-6-2512. County tax levy for nursing homes and hospital facilities. The board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax, not to exceed 10 mills on each dollar of taxable valuation of property, upon all property within the county for the erection, maintenance, and operation of county-owned or county-operated hospitals and nursing homes or other hospital facilities created under 7-8-2102, 7-34-2201, 7-34-2301, and 7-34-2502. "Hospital facilities" as used in this section means a hospital or hospital-related facility, including outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, and infirmaries. The combined total number of mills levied under this section and for the county poor fund under ~~53-2-321~~ *53-2-322* may not exceed 18 mills. A higher levy may be made upon compliance with 7-6-2531 through 7-6-2537 *or 53-2-322*. If a hospital district is created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district."

Section 3. Section 7-6-2523, MCA, is amended to read:

"**7-6-2523. Special service levies replaced by all-purpose levy.** A county using the all-purpose levy may not impose any of the following levies:

(1) general fund levy, as provided in 7-6-2501;

(2) bridge levy, as provided in 7-14-2502;

(3) recreation levy, as provided in 7-16-101;

(4) county fair levy, as provided in 7-21-3410;

(5) weed levy, as provided in 7-22-2142;

(6) insect pest levy, as provided in 7-22-2306;

(7) poor fund levy, as provided in ~~53-2-321~~ *53-2-322*; or

(8) developmental disabilities facility levy, as provided in 53-20-208."

Section 4. Section 15-16-117, MCA, is amended to read:

"**15-16-117. Personal property — treasurer's duty to collect certain taxes.** (1) The county treasurer shall demand payment of poor *fund* taxes, authorized by ~~53-2-321~~ *53-2-322*, and road taxes, authorized by 7-14-2206 or 7-14-2501 through 7-14-2504, of every person liable ~~therefor~~ *for the taxes* whose name does not appear on the assessment lists. On the neglect or refusal of ~~any such~~ *a* person to pay the ~~same~~ *taxes*, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) These taxes must be added upon the assessment lists to other property taxes of persons paying taxes upon real and personal property and paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of ~~such~~ property by the county treasurer for ~~such~~ *the* taxes must be regulated by 15-16-113 and 15-17-911.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 5. Section 33-32-103, MCA, is amended to read:

"**33-32-103. Utilization review plan.** A person may not conduct a utilization review of health care services provided or to be provided to a patient covered under a contract or plan for health care services issued in this state unless that person, at all times, maintains with the commissioner a current utilization review plan that includes:

(1) a description of review criteria, standards, and procedures to be used in evaluating proposed or delivered health care services that, to the extent possible, must:

(a) be based on nationally recognized criteria, standards, and procedures;

(b) reflect community standards of care, except that a utilization review plan for health care services under the ~~general relief medical assistance or~~ medicaid ~~programs~~ *program* provided for in Title 53 need not reflect community standards of care;

(c) ensure quality of care; and

(d) ensure access to needed health care services;

(2) the provisions by which patients or providers may seek reconsideration or appeal of adverse decisions by the person conducting the utilization review;

(3) the type and qualifications of the personnel either employed or under contract to perform the utilization review;

(4) policies and procedures to ensure that a representative of the person conducting the utilization review is reasonably accessible to patients and health care providers at all times;

(5) policies and procedures to ensure compliance with all applicable state and federal laws to protect the confidentiality of individual medical records;

(6) a copy of the materials designed to inform applicable patients and health care providers of the requirements of the utilization review plan; and

(7) any other information as may be required by the commissioner that is necessary to implement this chapter."

Section 6. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, ~~workman,~~ and volunteer firefighter defined.** (1) The terms "employee"~~, "workman",~~ or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for ~~such~~ *the* corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) ~~a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and~~ any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party.

However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers;

(e) an airman or other person employed as a volunteer under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(2) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(3) (a) If the employer is a partnership or sole proprietorship, ~~such~~ *the* employer may elect to include as an employee within the provisions of this chapter any member of ~~such~~ *the* partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of ~~such~~ *an* election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (3)(d). A partner or sole proprietor is not considered an employee within this chapter until ~~such~~ notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.

(4) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service

area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 12.

(5) An employee~~, workman,~~ or worker in this state whose services are furnished by a person, association, contractor, firm, or corporation, other than a temporary service contractor, to an employer as defined in 39-71-117 is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(6) For purposes of this section, an "employee~~, workman,~~ or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state; or

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer."

Section 7. Section 40-4-215, MCA, is amended to read:

"**40-4-215. Investigations and reports.** (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. If the court orders the department of family services to conduct the investigation, the department may charge a reasonable fee. The department shall waive the fee for conducting the investigation if the parent or the child's custodian requesting the investigation is a recipient of aid to families with dependent children~~,~~ *or* food stamps~~, or general relief benefits~~. The cost of the investigation and report ~~shall~~ *must* be paid according to the final order.

(2) In preparing ~~his~~ *the* report concerning a child, the investigator may consult any person who may have information about the child and ~~his~~ potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if ~~he~~ *the child* has reached the age of 16 unless the court finds that ~~he~~ *the child* lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom ~~he~~ *the investigator* has consulted for cross-examination. A party may not waive ~~his~~ *the* right of cross-examination prior to the hearing."

Section 8. Section 41-3-1122, MCA, is amended to read:

"41-3-1122. **Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county.** (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the department of family services in a youth care facility, the department shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments so made during the month. The county must make reimbursement to the department within 20 days after the claim is presented.

(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.

(4) If a county's level of expenditure for foster care in fiscal year 1987 is $10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.

(5) A county that was state-assumed prior to 1987, but at a later date reassumes responsibility pursuant to 53-2-811, is responsible for reimbursement of foster care expenditures up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

~~(5)~~*(6)* The department shall conduct or arrange for the review required under 41-3-1115 of a youth placed in a youth care facility if the youth is placed by the department."

Section 9. Section 52-1-110, MCA, is amended to read:

"52-1-110. **County contribution for salaries and travel of protective services employees.** (1) Upon transfer of certain functions of the county welfare department to the department of family services as provided in section 12, Chapter 609, Laws of 1987, the salaries and travel expenses, as provided in 2-18-501 through 2-18-503, of protective services employees must be paid by the department of family services. The board of county commissioners shall reimburse the department of family services from county poor funds in an amount equal to that county's expenditures for salaries, travel expenses, and indirect costs of protective services employees in fiscal year 1987, adjusted for annual inflation.

(2) A county that was state-assumed prior to 1987, but at a later date reassumes responsibility pursuant to 53-2-811, is responsible for reimbursement of salaries, travel expenses, and indirect costs up to the county's calculated level of expenditures for fiscal year 1987 as if the county had not been state-assumed.

~~(2)~~*(3)* On or before the 20th day of the month following the month for which payments were made for protective services employees' salaries, travel, and indirect costs, the department of family services shall present to the board of county commissioners a claim for the required reimbursement. The board of county commissioners shall make ~~such~~ *the* reimbursement within 20 days after the presentation of the claim."

Section 10. Section 53-2-201, MCA, is amended to read:

"**53-2-201. Powers and duties of department.** (1) The department shall:

(a) administer ~~or~~ *and* supervise public assistance, including the provision of *food stamps, food commodities, aid to families with dependent children, energy assistance, weatherization, vocational rehabilitation, services for persons with severe disabilities, developmental disability services, and* medical care payments in behalf of recipients of public assistance;

(b) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when ~~so~~ requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(g) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection ~~shall~~ *must* be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance."

Section 11. Section 53-2-203, MCA, is amended to read:

"**53-2-203. Department to maintain merit system and supervise public assistance personnel.** ~~(1)~~ The department shall:

~~(a)~~*(1)* maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and salary schedules for all public assistance personnel; personnel standards ~~shall~~ *must* conform as far as possible with general standards established or required by the federal government;

~~(b)~~*(2)* have examinations held from time to time throughout the state to establish and furnish to county departments lists, in order of merit, of persons eligible for appointment;

~~(c)~~*(3)* develop policies relating to educational leave of employees and to staff development needs;

~~(d)~~*(4)* supervise the appointment, dismissal, and entire status of the public assistance personnel attached to county boards in accordance with the merit system.

~~(2) All public assistance personnel shall be residents of this state unless it is impossible to find residents of this state possessing qualifications required by the merit system. If possible, county assistance personnel shall be residents of the county in which they work.~~"

Section 12. Section 53-2-207, MCA, is amended to read:

"**53-2-207. Power of department in administering state ~~grants-in-aid~~ *and federal funds*.** In administering or supervising any state or federal funds appropriated or made available to the department for public assistance purposes, the department ~~shall have~~ *has* the authority to:

(1) require ~~as a condition for receiving grants-in-aid that~~ the county ~~shall~~ *to* bear the proportion of the total of local public assistance as is fixed by law relating to ~~such~~ *the* assistance;

(2) make use of all legal processes to enforce the ~~minimum~~ standards prescribed *for public assistance purposes* by the department ~~under laws providing for grants-in-aid, provided that such standards shall not exceed in cost the amount derived from levies established by state law~~; and

(3) require that each part of the public assistance laws ~~shall~~ be in effect in all counties of the state."

Section 13. Section 53-2-322, MCA, is amended to read:

"**53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities.** (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much ~~thereof~~ *of that amount* as may be necessary. ~~Counties transferring public assistance and protective services responsibilities to the state under part 8 of this chapter may not levy more than the difference between 13.5 mills and the state levy pursuant to 53-2-813.~~ *The board may levy up to an additional 12 mills if approved by the voters in the county. A county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. The department* *shall notify the counties of the number of mills required to be levied. Once an additional levy has been approved, the amount of the approved levy may continue to be levied without voter approval.*

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance and protective services purposes as ~~will enable the county welfare department to pay the general relief activities of the county and~~ *necessary* to reimburse the department ~~of social and rehabilitation services~~ and the department of family services for the county's proportionate share of the administrative costs ~~of the county welfare department~~ and of all public assistance and protective services and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department ~~of social and rehabilitation services~~ and the department of family services ~~shall~~ *must* be sufficient to make all of these reimbursements in full. The budget ~~shall~~ *must* make separate provision for each one of these public assistance and protective services activities, and proper accounts ~~shall~~ *must* be established for the funds for all ~~such~~ *the* activities.

(4) The department ~~of social and rehabilitation services~~ shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy ~~thereof shall without delay~~ *must* be mailed to the department ~~of social and rehabilitation services~~, and at any time before the final adoption of the budget, the department shall make ~~such~~ recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department ~~of social and rehabilitation services~~ shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make ~~such~~ changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department ~~of social and rehabilitation services~~ without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) ~~No part of the~~ *The* county poor fund, irrespective of the source of any part ~~thereof~~ *of the fund,* may *not* be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for ~~general relief expenditures by the county or is needed for~~ paying the county's proportionate share of public assistance and protective services or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing

home, may be made out of ~~any moneys~~ *money* in the county poor fund, whether ~~such moneys are~~ *the money was* produced by the ~~13.5-mill~~ *mill* levy provided for in subsection (1) ~~of this section~~ or from any additional levy authorized ~~or to be authorized~~ by law. ~~Such~~ *The* expenditure ~~shall~~ *may* be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for ~~such buildings~~ *the building* by the department of health and environmental sciences and when ~~such~~ *the* expenditure has been approved by the department of social and rehabilitation services and the department of family services.

(8) Money in the county poor fund may be used as matching funds for the receipt of federal money."

Section 14. Section 53-2-601, MCA, is amended to read:

"**53-2-601. Disqualification from public assistance when property transferred for purpose of qualifying for public assistance.** The department may deny public assistance to any person who has ~~divested himself~~ directly or indirectly ~~of~~ *transferred* any property for the purpose of qualifying for public assistance. The department ~~shall make~~ *may adopt* rules that raise a rebuttable presumption that any transfer of property within 30 months of the date of application ~~for general relief~~ was for the purpose of qualifying for ~~such~~ assistance. ~~The department may also make rules consistent with federal law raising a similar rebuttable presumption for purposes of state-administered federal public assistance programs authorized under Title 53.~~"

Section 15. Section 53-2-606, MCA, is amended to read:

"**53-2-606. Right of appeal.** (1) If an application for assistance ~~under this title~~ *for food stamps, aid to families with dependent children, or medicaid* is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, ~~he~~ *the applicant or recipient* may appeal to the board of social and rehabilitation appeals for a fair hearing by addressing a request for a hearing to the department. The board of social and rehabilitation appeals shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing. ~~A county welfare board which is involved in a grievance shall be represented at such a hearing.~~

(2) The department may upon its own motion review any decision of a county welfare board and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing ~~thereof~~ *of the decision.* The department may have an additional investigation made and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this title.

(3) If the department reviews a county decision on its own motion, applicants or recipients affected by the decisions of the department shall upon request be given reasonable notice and an opportunity for a fair hearing by the board of social and rehabilitation appeals.

(4) All decisions of the department or the board of social and rehabilitation appeals are final and are binding and ~~shall~~ *must* be complied with by the county department."

Section 16. Section 53-2-608, MCA, is amended to read:

"**53-2-608. Method of issuing assistance grants.** (1) Checks in payment of public assistance~~, with the exception of general relief, shall~~ *must* be issued by the department of social and rehabilitation services upon approved certificates of award and reports of changes of ~~such~~ eligible grantees as are forwarded by the county ~~department~~ to the state department, and all ~~such~~ checks ~~will~~ *must* be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance ~~shall~~ *must* be issued in the full approved amount for each eligible approved grantee, and the original monthly payment ~~shall~~ *must* be from the state public assistance accounts. All public assistance checks ~~shall~~ represent cash on demand at full par value to the recipient and vendor.

(2) Whenever the department of social and rehabilitation services, acting pursuant to standards established by the department, determines that any otherwise eligible recipient of public assistance has, by reason of any physical or mental condition, such inability to manage funds that making payments to ~~him~~ *the recipient* would be contrary to ~~his~~ *the recipient's* welfare, the department may, under standards established under the state plan, make the public assistance payment on behalf of ~~such~~ *the* recipient to another person found by the department to be interested in or concerned with the welfare of ~~such needy individual~~ *the recipient.*"

Section 17. Section 53-2-610, MCA, is amended to read:

"**53-2-610. County to reimburse department.** (1) On or before the 20th of each month, the department of social and rehabilitation services shall present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department shall make the reimbursement to the department of social and rehabilitation services within 20 days after the claim is presented.

(2) The counties may not be required to reimburse the department of social and rehabilitation services for:

(a) any portion of public assistance paid to a household eligible for aid to families with dependent children if the household includes an enrolled Indian who is the caretaker relative of a needy dependent child; or

(b) any payment on behalf of any person in a state-operated medical institution.

~~(3) The federal government may reimburse the state of Montana on behalf of counties providing general relief to enrolled Indians a sum in lieu of taxes which the counties would collect if the lands of such Indians were not in trust status.~~

~~(4)~~*(3)* (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private charitable institution ~~shall be~~ *are* the financial responsibility of the appropriate county as provided in subsections ~~(4)(b)~~ *(3)(b)* through ~~(4)(d)~~ *(3)(d).*

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except where court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the ~~above-enumerated~~ facilities *listed in subsection (3)(a)*, the county ~~which~~ *that* initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility.

(c) In all cases ~~where~~ *in which* a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, ~~he~~ *the person* may determine ~~his own~~ *the* county of residence when ~~he~~ *the person* is restored to competency and released. The person becomes the financial responsibility of the new county of residence."

Section 18. Section 53-2-801, MCA, is amended to read:

"**53-2-801. Purpose.** The purpose of this part is to provide for the department of social and rehabilitation services to assume all responsibilities for public assistance programs and for the department of family services to assume all responsibilities for protective services for children and adults that, as of July 1, 1983, are provided by the counties pursuant to Titles 41 and 53. The assumption may become effective only at the option and with the express consent of each individual county requesting state assumption. *State assumption allows counties to pay the state the proceeds from the 9-mill levy provided for in 53-2-813 rather than an amount based on the actual cost of providing public assistance and protective services in the county. Counties that opt for state assumption may provide other optional services for indigents with money available from funds derived from the difference between the 9-mill levy and the maximum amount of 13.5 mills permitted by 53-2-322.*"

Section 19. Section 53-2-802, MCA, is amended to read:

"**53-2-802. Definitions.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "County department" means the county department of public welfare provided for in part 3 of this chapter.

(2) "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.

(3) "Needy person" is one who is eligible for public assistance under the laws of this state.

(4) "Protective services" means services to children and adults to be provided by the department of family services as permitted by Titles 41 and 53.

(5) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county department, regardless of the original source of assistance.

(6) "State assumption" means the transfer to the department of social and rehabilitation services and the department of family services ~~for the county~~ by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through 53-2-306 and *for* public assistance and protective services, respectively, provided by the county department pursuant to Titles 41 and 53, except as otherwise specifically provided in this part. *A county may continue to provide optional indigent assistance as provided in [section 24] and nursing home and hospital services as provided in 7-6-2512.*"

Section 20. Section 53-2-803, MCA, is amended to read:

"**53-2-803. Authority to adopt rules.** ~~(1)~~ The department of social and rehabilitation services and the department of family services may adopt rules necessary to carry out the purposes of this part, including implementing transfer of the county programs to each department, respectively.

~~(2) The department of social and rehabilitation services may adopt rules:~~

~~(a) to determine the amount, scope, and duration of general relief, which may not exceed those services and amounts payable under the department of social and rehabilitation services' programs of medicaid and aid to families with dependent children as necessary to carry out the purposes of this part; and~~

~~(b) establishing a system of penalties and sanctions applicable to providers of health-related services to state-assumed counties in accordance with 53-6-111(2) through (5).~~"

Section 21. Section 53-2-811, MCA, is amended to read:

"**53-2-811. Transfer of county public assistance and protective services to state departments — *reassumption of responsibility.*** (1) All ~~authority granted to the board of county commissioners to establish and operate a~~ *responsibility of a county for* public assistance ~~program~~ and ~~provide~~ protective services for children and adults pursuant to Titles 41 and 53 may be transferred to the department of social and rehabilitation services and the department of family services, respectively, except that the county attorney shall continue to provide legal assistance and representation for the purposes of adult and child protective services without charge and all debts and obligations incurred prior to the effective date of state assumption continue as the responsibility of the county.

(2) The board of county commissioners, after public hearing, may by resolution or ordinance transfer to the department of social and rehabilitation services and the department of family services all powers and duties for public assistance and protective services for children and adults, respectively, including the selection, supervision, and termination of staff personnel associated with the performance of these activities. Upon the effective date of ~~such~~ *the* transfer, the department of social and rehabilitation services and the department of family services shall assume all powers and duties related to public assistance and protective services, respectively, and accorded by law to the county welfare

department. If the notice required in subsection (3) is given, the transfer is effective at the start of the next state fiscal year.

(3) Counties opting for state assumption shall notify the department of social and rehabilitation services and the department of family services ~~at least 90 days prior to the start of the state fiscal year unless the time period is waived in whole or in part by the director of each department.~~ *by October 1 if the county wishes to change its status on the following July 1. A county that has opted for state assumption prior to July 1, 1995, may reassume responsibility for public assistance and protective services on July 1, 1996, if the county notifies the department prior to September 30, 1995.*

(4) Counties opting for state assumption shall permit the department of social and rehabilitation services and the department of family services to use the same facilities currently occupied by the county department or substantially equal facilities, with fair rental value for ~~such~~ *the* facilities to be paid by each department. Counties opting for state assumption shall transfer to the appropriate department all materials, equipment, and supplies used in the operation of the county department and which were paid for in whole or in part with federal or state funds."

Section 22. Section 53-2-812, MCA, is amended to read:

"53-2-812. State assumption — permanent transfer to state — exceptions. ~~(1) A~~ *Except as provided in this section, a* county opting for state assumption does so on a complete and permanent basis~~, unless the county requests to retain or reassume responsibility for medical assistance or monetary payments to needy persons as provided in Title 53, chapter 3,~~. *State assumption or reassumption must be made* pursuant to the adoption of a resolution or ordinance as provided in 53-2-811(2) and notice to the department of social and rehabilitation services *and the department of family services* as provided in 53-2-811(3). *A county that has opted for state assumption prior to July 1, 1995, may reassume responsibility for public assistance and protective services if notice is provided pursuant to 53-2-811(2) and (3). A county shall notify the department of social and rehabilitation services and the department of family services by October 1 if the county wishes to change its status on the following July 1.* ~~Under such a retention or reassumption, staff personnel continue under the supervision and control of the department of social and rehabilitation services but the department may contract with the counties for the operation of programs provided in Title 53, chapter 3.~~ *Under a retention or reassumption, staff personnel continue under the supervision and control of the department. All debts and obligations of the department and the department of family services pertaining to public assistance and protective services at the time of reassumption must be transferred to the county opting for reassumption.* A county may not retain or reassume assistance programs partially funded by the federal government.

~~(2) A county transferring all duties and responsibilities to the state may reassume limited responsibility for medical assistance or monetary payments to needy persons as provided in subsection (1) but may not thereafter request full state assumption. A county initially requesting limited state assumption may not thereafter request full state assumption. A county opting for limited or full state assumption does so on a permanent basis, except as provided in this section.~~"

Section 23. Section 53-2-813, MCA, is amended to read:

"**53-2-813. Mill levy for counties transferring public assistance and protective services.** (1) For the purpose of this part, ~~12~~ *9* mills must be levied annually in those counties opting for state assumption.

(2) ~~For a county electing state assumption before July 1, 1986, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury for the purpose of paying the expenses of the department of social and rehabilitation services. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department.~~

~~(3)~~ For a county electing state assumption ~~on or after July 1, 1986~~, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury to the credit of the department of social and rehabilitation services. The general fund authority of the department of social and rehabilitation services ~~shall~~ *must* be reduced and the general fund authority of the department of family services ~~shall~~ *must* be increased by an amount equal to the county's expenditures for child and adult protective services in the fiscal year immediately preceding state assumption. ~~The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department of social and rehabilitation services and the department of family services.~~

~~(4) For a county retaining or reassuming operational responsibility for medical assistance or monetary payments to needy persons as provided in 53-2-812, the levy provided in subsection (1) must be reduced by the mill levy equivalent expended by that county or the department for such purposes in the fiscal year immediately preceding the option to retain or reassume such responsibility.~~"

Section 24. **Indigent assistance — optional county program.** (1) A county may provide a program of indigent assistance that it determines necessary. The program may include assistance for food, clothing, shelter, transportation, and medical assistance for individuals not eligible for state or federal programs providing similar assistance. A county may provide for the burial, entombment, or cremation of indigents. The indigent assistance program of the county includes:

(a) job search, job training, work-for-assistance, and employment programs; and

(b) health care, preventive care, and wellness programs as determined by the county commissioners.

(2) A county may establish the criteria for determining eligibility for assistance, including but not limited to residency requirements, limits on income and resources, and the amount, scope, and duration of assistance.

(3) A county may deny assistance for a reasonable period if a person has voluntarily left employment without good cause or is discharged due to misconduct.

(4) The program may be funded with money derived from the county poor fund mill levy established in 53-2-322.

(5) A person is indigent for purposes of this subsection if the value of all income and resources available to pay for that person's burial, entombment, or cremation at the time of death is less than the negotiated amount due the funeral home or mortician for an indigent burial. Available income and resources may be determined by the county.

(6) A county may seek reimbursement under 40-6-303, if applicable, for costs paid under this section.

(7) A county may not deduct amounts that may be recovered from an adult child of a deceased indigent or recovered from resources of a deceased indigent from a contract amount due a funeral home or mortician for burial services provided under 7-4-2915 or this section. A funeral home or a mortician that recovers an amount in excess of a contract amount paid under this subsection shall reimburse the county for the amount recovered up to the amount of the contract.

Section 25. Section 53-2-1101, MCA, is amended to read:

"**53-2-1101. Legislative findings.** The legislature finds and declares that:

(1) many economically disadvantaged persons are unable to take their place in the economic mainstream of society because they lack the skills and training needed to obtain productive employment or to avoid long-term dependency on public assistance programs;

(2) existing state and federal employment and training programs, including the work incentive program~~, the work programs provided for in 53-3-304,~~ and the programs administered under Title II-A of the Job Training Partnership Act, have proved to be a multiple, uncoordinated response to the needs of the economically disadvantaged; and

(3) a successful job training program will require a comprehensive, integrated range of nonduplicative employment and training services for economically disadvantaged persons that will result in economic self-sufficiency through placement of economically disadvantaged persons in long-term, sustainable employment."

Section 26. Section 53-2-1103, MCA, is amended to read:

"**53-2-1103. Definitions.** For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Economically disadvantaged person" has the same meaning as provided in section 4 of the Job Training Partnership Act (29 U.S.C. 1503).

(2) "Job Training Partnership Act" means the federal Job Training Partnership Act of 1982, Public Law 97-300 (29 U.S.C. 1501, et seq.), as amended.

(3) "Job training plan" means the plan for providing services and training in a service delivery area, as required in 53-2-1107.

(4) "Program" means the program created by 53-2-1104 to implement the provisions of Title II-A of the Job Training Partnership Act.

(5) "Program year" means the fiscal year beginning on July 1 of the year for which an appropriation is made for the program established under this part, as provided in section 161 of the Job Training Partnership Act (29 U.S.C. 1571).

(6) "Public assistance program" means the state program of ~~general relief assistance or~~ aid to families with dependent children.

(7) "Service delivery area" means an area designated as provided in section 101 of the Job Training Partnership Act (29 U.S.C. 1511)."

Section 27. Section 53-2-1109, MCA, is amended to read:

"**53-2-1109. Coordination of services.** The state job training coordinating council shall identify, in coordination with the appropriate state and local agencies, the employment, training, and vocational education needs throughout the state and assess the extent to which employment and training, vocational education, rehabilitation services, public assistance, economic development, and other federal, state, and local programs and services represent a consistent, integrated, and coordinated approach to meeting such needs. In carrying out this coordinating function, the council shall consider state policy set forth in 2-15-101 to eliminate overlapping and duplication of services within state government and in accordance with the provisions of section 121 of the Job Training Partnership Act (29 U.S.C. 1531) and other employment and training programs, including:

(1) programs operated under the federal Family Support Act of 1988; and

(2) programs and services of public assistance agencies~~, including the programs established in 53-3-304~~."

Section 28. Section 53-3-205, MCA, is amended to read:

"**53-3-205. Eligibility for general relief.** (1) Except as otherwise provided under this chapter, a person may receive general relief if the household is determined to be eligible under the provisions of this section.

(2) A person is eligible for general relief if ~~his~~ *the person's* total household income, including presumptive income but exclusive of the earned income disregard provided in subsection (4), does not exceed the amount established by the department by rule. The department shall establish eligibility and the amount of benefits to be granted, taking into account the size of the household and the estimated number of eligible households. Eligibility and the amount of benefits to be granted must be ~~based on a percentage~~ *set at 32%* of the federal poverty index. ~~The percentage is established in the state general appropriations act.~~

(3) The maximum benefit amount to be granted to a person new to Montana must be reduced by $50 per month for each of the first 2 months of the person's residency.

(4) For 4 consecutive months, the first $30 plus one-third of the remainder of the total income earned each month by each household member who is a current recipient must be disregarded in determining a household's eligibility for general relief. If the total household income, exclusive of this amount, exceeds the amount established by the department under subsection (2), the

household is not eligible for general relief. A current recipient is one who has been receiving general relief for at least 1 complete calendar month.

(5) (a) If a person's household income exceeds the monthly income standard provided in subsection (2) because of receipt of lump-sum income, ~~he~~ *the person* is ineligible for general relief for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard. Any income remaining from this calculation ~~will be~~ *is* considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the lump-sum income was used to pay medical bills for a serious medical condition.

(6) All applicants for and recipients of general relief who reside in the same residence are considered as one household.

(7) Eligibility for general relief must be determined prospectively, based on household income and other relevant circumstances reasonably certain to exist in the month in which assistance is to be provided. Once eligibility is determined, general relief ~~will~~ *must* be provided in accordance with 53-3-310 and 53-3-311.

(8) (a) Except as provided in subsection (8)(b), the equity value of all household resources must be considered available to meet the needs of the individual applying for general relief.

(b) The following resources of a household must be excluded from consideration of resources for eligibility purposes:

(i) the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

(ii) a motor vehicle that has no more than $1,500 in equity value;

(iii) personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

(iv) tools of a trade that are essential to the current or future employment of a household member.

(9) A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

(10) A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

(11) For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

(12) A household is ineligible to receive general relief if the household is ineligible for either of the public assistance programs commonly referred to as

medicaid and aid to families with dependent children because of overpayment, fraud, or failure or refusal to comply with requirements for continued participation in either program. The period of ineligibility for the household or individual household members is the same as the period of ineligibility for medicaid or the aid to families with dependent children program or, if ineligible for both programs, whichever period of ineligibility is longer.

(13) Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination."

Section 29. Section 53-3-310, MCA, is amended to read:

"**53-3-310. Scope of general relief medical assistance — limitations.** (1) General relief medical assistance is limited to ~~inpatient and outpatient hospital services,~~ physician services, *laboratory services, x-ray services,* and prescription drugs. Assistance may not exceed the scope or duration of similar services provided under the Montana medicaid program pursuant to Title 53, chapter 6, part 1, and rules adopted by the department to administer the program.

(2) General relief medical assistance in a county without state-assumed welfare services must, within the limitations of subsection (1), be provided in amounts determined by the county welfare board.

(3) General relief medical assistance in counties with state-assumed welfare services must, within the limitations of subsection (1), be provided in amounts not to exceed payments under the medicaid program. Services must be limited to the least costly method of alleviating the serious medical condition.

(4) General relief medical assistance is limited to covered medical needs not met by other services or benefits available to the person. Available services or benefits include but are not limited to health and accident insurance, veterans' benefits, industrial accident benefits, medicare and medicaid benefits, and other liable third parties.

(5) A person who is chronically ill may receive general relief medical assistance for services limited to treatment of a serious medical condition related to chronic illness.

(6) A person who has an acute medical need but who is not chronically ill may receive general relief medical assistance but only for services necessary to treat a serious medical condition that requires immediate medical attention to alleviate a serious health risk.

(7) A child less than 18 years of age may receive the same scope and duration of services as provided under the Montana medicaid program provided for in Title 53, chapter 6.

(8) A person who requires medical services in order to obtain or retain employment may receive services similar to those provided under the Montana medicaid program but only for the duration of need.

(9) Except as provided in subsection (7), nothing in this chapter may be construed to require the same scope of medical services as provided under the Montana medicaid program."

Section 30. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in classes four and eleven is valued according to the procedures used in 1986, including the designation of 1982 as the base year; until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four or class eleven property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4);

(j) levies authorized under 7-6-502 for juvenile detention programs; ~~and~~

(k) elementary and high school districts; *and*

(l) voted poor fund levies authorized under 53-2-322.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2).

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 31. **Alternative plans.** (1) The department of social and rehabilitation services shall develop alternative structures for the administration of public assistance programs. At least three alternative plans must be prepared for presentation to the 54th legislature. One alternative must be administered primarily by each county, one alternative must be administered primarily by the state, and one alternative must provide for multicounty administration. Each plan must include an analysis of alternative financing methods, including a statewide mill levy.

(2) The department director shall appoint and consult with an advisory committee of not more than 12 persons in developing the plans. The committee should include representatives of the legislature, the low-income coalition, the human resource development councils, the Montana united Indian alliance, other state departments, county commissioners, and county welfare directors. The committee shall serve without pay.

(3) In preparing the recommendations, the department shall analyze the effect on persons previously receiving general assistance and on persons who would have received general assistance prior to the approval of [this act]. The department shall analyze methods of providing assistance to persons who do not qualify for federal assistance programs. The department shall analyze the effectiveness of different general relief programs in the various counties.

Section 32. **Repealer.** Sections 53-2-321, 53-2-323, 53-2-821, 53-2-822, 53-3-109, 53-3-110, 53-3-112, 53-3-113, 53-3-114, 53-3-121, 53-3-122, 53-3-201, 53-3-205, 53-3-207, 53-3-208, 53-3-209, 53-3-210, 53-3-211, 53-3-212, 53-3-215, 53-3-303, 53-3-304, 53-3-305, 53-3-307, 53-3-308, 53-3-309, 53-3-310, 53-3-311, 53-3-313, 53-3-314, 53-3-318, 53-3-321, 53-3-322, 53-3-323, 53-3-324, 53-3-325, 53-3-326, 53-3-327, 53-3-328, and 90-4-211, MCA, are repealed.

Section 33. **Codification instruction.** [Sections 1 and 24] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 1 and 24].

Section 34. **Effective dates.** (1) [Sections 28, 29, 31, and 33 and this section] are effective on passage and approval.

(2) [Sections 1 through 27, 30, and 32] are effective July 1, 1993.

Approved April 28, 1993.

CHAPTER NO. 562

[HB 437]

AN ACT REVISING THE DEFINITION OF NET BUSINESS INCOME IN DETERMINING THE ELIGIBILITY FOR LOW-INCOME PROPERTY TAX RELIEF; AMENDING SECTION 15-6-134, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-134, MCA, is amended to read:

"**15-6-134. Class four property — description — taxable percentage.** (1) Class four property includes:

(a) all land except that specifically included in another class;

(b) all improvements, including trailers or mobile homes used as a residence, except those specifically included in another class;

(c) the first $80,000 or less of the market value of any improvement on real property, including trailers or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 10 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income ~~or loss~~ and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $10,000 for a single person or $12,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii)~~;~~. *For the purposes of this subsection (c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.*

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least 9 holes and not less than 3,000 lineal yards.

(2) Class four property is taxed as follows:

(a) Except as provided in 15-24-1402 or 15-24-1501, property described in subsections (1)(a) and (1)(b) is taxed at 3.86% of its market value.

(b) (i) Property described in subsection (1)(c) is taxed at 3.86% of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$ 0 - $ 1,000	$ 0 - $ 1,200	0%
1,001 - 2,000	1,201 - 2,400	10%
2,001 - 3,000	2,401 - 3,600	20%
3,001 - 4,000	3,601 - 4,800	30%
4,001 - 5,000	4,801 - 6,000	40%
5,001 - 6,000	6,001 - 7,200	50%
6,001 - 7,000	7,201 - 8,400	60%
7,001 - 8,000	8,401 - 9,600	70%
8,001 - 9,000	9,601 - 10,800	80%
9,001 - 10,000	10,801 - 12,000	90%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1986; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a).

(3) After July 1, 1986, ~~no~~ *an* adjustment may *not* be made by the department to the taxable percentage rate for class four property until a revaluation has been made as provided in 15-7-111.

(4) Within the meaning of comparable property as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property, and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 2. **Applicability.** [This act] applies to tax years beginning after December 31, 1993.

Approved April 28, 1993.

CHAPTER NO. 563

[HB 469]

AN ACT REVISING THE TUITION LAWS; PERMITTING A CHILD TO ATTEND A SCHOOL DISTRICT OUTSIDE THE CHILD'S DISTRICT OF RESIDENCE, SUBJECT TO DISCRETIONARY APPROVAL BY THE TRUSTEES OF THE RESIDENT DISTRICT AND THE DISTRICT OF CHOICE;

REQUIRING MANDATORY ATTENDANCE APPROVAL BY THE TRUSTEES OF THE DISTRICT OF CHOICE IN CERTAIN CIRCUMSTANCES; REQUIRING THAT THE DISTRICT OR COUNTY OF RESIDENCE PAY ANY TUITION AND TRANSPORTATION OBLIGATIONS ASSOCIATED WITH MANDATORY ATTENDANCE APPROVAL; PROVIDING TUITION RATES FOR SPECIFIC PROGRAMS; ALLOWING A SCHOOL DISTRICT TO DIRECT OUT-OF-DISTRICT TUITION THROUGH THE MISCELLANEOUS PROGRAMS FUND; AMENDING SECTIONS 20-3-205, 20-3-210, 20-5-314, 20-6-702, 20-7-420, 20-7-421, 20-7-422, 20-7-424, 20-9-141, 20-9-507, 20-10-105, 20-10-144, AND 20-10-146, MCA; REPEALING SECTIONS 20-5-301, 20-5-302, 20-5-303, 20-5-304, 20-5-305, 20-5-306, 20-5-307, 20-5-311, 20-5-312, AND 20-5-313, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] of the bill gives the superintendent of public instruction authority to adopt administrative rules regarding a flat tuition rate for each funding category in the foundation program schedules, using statewide district expenditure and revenue data for certain funds.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Attendance with discretionary approval.** (1) A child may be enrolled in and attend a school in a Montana school district that is outside of the child's district of residence or a public school in a district of another state or province that is adjacent to the county of the child's residence, subject to discretionary approval by the trustees of the resident district and the district of choice. If the trustees grant discretionary approval of the child's attendance in a school of the district, the parent or guardian may be charged tuition and may be charged for transportation.

(2) (a) Whenever a parent or guardian of a child wishes to have the child attend a school under the provisions of this section, the parent or guardian shall apply to the trustees of the district where the child wishes to attend. The application must be made on an out-of-district attendance agreement form supplied by the district and developed by the superintendent of public instruction.

(b) The attendance agreement must set forth the financial obligations, if any, for tuition and for costs incurred for transporting the child under Title 20, chapter 10.

(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

(3) An out-of-district attendance agreement approved under this section requires that the parent or guardian initiate the request for an out-of-district attendance agreement and that the trustees of both the district of residence and the district of choice approve the agreement.

(4) If the trustees of the district of choice waive tuition, approval of the resident district trustees is not required.

(5) The trustees of a school district may approve or disapprove the out-of-district attendance agreement consistent with this part and the policy adopted by the local board of trustees for out-of-district attendance agreements.

(6) The approval of an out-of-district attendance agreement by the applicable approval agents or as the result of an appeal must authorize the child named in the agreement to enroll in and attend the school named in the agreement for the designated school year.

(7) The trustees of the district where the child wishes to attend have the discretion to approve any attendance agreement.

(8) This section does not preclude the trustees of a district from approving an attendance agreement for educational program offerings not provided by the resident district, such as the kindergarten or grades 7 and 8 programs, if the trustees of both districts agree to the terms and conditions for attendance and any tuition and transportation requirement. For purposes of this subsection, the trustees of the resident district shall initiate the out-of-district agreement.

(9) (a) A provision of this title may not be construed to deny a parent the right to send a child, at personal expense, to any school of a district other than the resident district when the trustees of the district of choice have approved an out-of-district attendance agreement and the parent has agreed to pay the tuition as prescribed by [section 4]. However, under this subsection (9), the tuition rate must be reduced by the amount the parent or guardian of the child paid in district and county property taxes during the immediately preceding school fiscal year for the benefit and support of the district in which the child will attend school.

(b) For the purposes of this section, "parent or guardian" includes an individual shareholder of a domestic corporation as defined in 35-1-113 whose shares are 95% held by related family members to the sixth degree of consanguinity or by marriage to the sixth degree of affinity.

(c) The tax amount to be credited to reduce any tuition charge to a parent or guardian under subsection (9)(a) is determined in the following manner:

(i) determine the percentage of the total shares of the corporation held by the shareholder parent or parents or guardian;

(ii) determine the portion of property taxes paid in the preceding school fiscal year by the corporation, parent, or guardian for the benefit and support of the district in which the child will attend school.

(d) The percentage of total shares as determined in subsection (9)(c)(i) is the percentage of taxes paid as determined in subsection (9)(c)(ii) that is to be credited to reduce the tuition charge.

(10) As used in [sections 1 through 5], the term "guardian" means the guardian of a minor as provided in Title 72, chapter 5, part 2.

Section 2. **Attendance with mandatory approval — tuition and transportation.** (1) An out-of-district attendance agreement that allows a child to enroll in and attend a school in a Montana school district that is outside of the child's district of residence or in a public school district of a state or province that is adjacent to the county of the child's residence is mandatory whenever:

(a) the child resides closer to the school that the child wishes to attend and more than 3 miles from the school the child would attend in the resident district;

(b) the child resides in a location where, due to road or geographic conditions, it is impractical to attend the school nearest the child's residence;

(c) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided the child resides more than 3 miles from an elementary school in the resident district or the parent must move to the elementary district where the high school is located to enroll another child in high school;

(d) the child has been adjudicated by a court of competent jurisdiction to be an abused, neglected, or dependent child, as defined in 41-3-102, or a youth in need of supervision or a delinquent youth, as defined in 41-5-103, and has been placed in a licensed youth care facility that is approved by the department of family services and, as a result of the placement, is required to attend school outside of the child's district of residence; or

(e) the child is required to attend school outside of the district of residence as the result of a placement by a state agency or parent in a group home licensed by the state or an order of a court of competent jurisdiction.

(2) (a) Whenever a parent or guardian of a child, an agency of the state, or a court wishes to have a child attend a school under the provisions of this section, the parent or guardian, agency, or court shall complete an out-of-district attendance agreement in consultation with an appropriate official of the district the child will attend.

(b) The attendance agreement must set forth the financial obligations, if any, for costs incurred for tuition and transportation as provided in [section 4] and Title 20, chapter 10.

(c) The trustees of the district of choice may waive any or all of the tuition rate, but any waiver must be applied equally to all students.

(3) Except as provided in subsection (4), the trustees of the resident district and the trustees of the district of choice shall approve the out-of-district attendance agreement and notify the county superintendent of schools of the county of the child's residence of the approval of the agreement within 10 days. The county superintendent shall approve the agreement for payment under [section 5 (5)].

(4) Unless the child is a child with disabilities who resides in the district, the trustees of the district where the school to be attended is located may disapprove an out-of-district attendance agreement whenever they find that, due to insufficient room and overcrowding, the accreditation of the school would be adversely affected by the acceptance of the child.

Section 3. **Residency determination — notification — appeal for attendance agreement.** (1) In considering an out-of-district attendance agreement, the trustees shall determine the child's district of residence on the basis of the provisions of 1-1-215.

(2) Within 10 days of the initial application for an agreement, the trustees of the district of choice shall notify the parent or guardian of the child and the trustees of the district of residence involved in the out-of-district attendance agreement of the anticipated date for approval or disapproval of the agreement.

(3) Within 10 days of approval or disapproval of an out-of-district attendance agreement, the trustees shall provide copies of the approved or disapproved attendance agreement to the parent or guardian and to the child's district of residence.

(4) Within 15 days of receipt of an approved out-of-district attendance agreement, the trustees of the district of residence shall approve or disapprove the agreement under the provisions of this part and forward the completed agreement to the county superintendent of schools of the county of residence, the trustees of the district of choice, and the parent or guardian.

(5) If an out-of-district attendance agreement is disapproved or no action is taken, the parent may appeal the disapproval or lack of action to the county superintendent and, subsequently, to the superintendent of public instruction under the provisions for the appeal of controversies in this title.

Section 4. **Tuition and transportation rates.** (1) Except as provided in subsections (3) and (4), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of [section 1 or 2], the basis of the rate of tuition is a flat rate for each funding category in the foundation program schedules determined by rule by the superintendent of public instruction by March 15 of each year, using statewide district expenditure and revenue data for the general fund, debt service fund, and retirement fund to determine the average district contribution.

(2) The tuition for children with disabilities must be determined under rules adopted by the superintendent of public instruction for the calculation of tuition for special education pupils.

(3) The tuition rate for out-of-district placement pursuant to [section 2(1)(d) and (1)(e)] for a student without disabilities who requires a program with costs that exceed the average district costs must be determined as the actual individual costs of providing that program according to the following:

(a) the district of attendance and the district, person, or entity responsible for the tuition payments shall approve an agreement with the district of attendance for the tuition cost; and

(b) for a Montana resident student, the average district per-ANB foundation payment amount received in the year for which the tuition charges are calculated must be subtracted from the per-student program costs for a Montana resident student.

(4) When a child attends a public school of another state or province or has been placed by a state agency in an out-of-state residential program, the amount of daily tuition may not be greater than the average annual cost per student in the child's district of residence. This calculation for tuition purposes is deter-

mined by totaling all of the expenditures for all of the district budgeted funds for the preceding school fiscal year and dividing that amount by the October 1 enrollment in the preceding school fiscal year. For the purposes of this subsection, the following do not apply:

(a) placement of a child with disabilities pursuant to Title 20, chapter 7, part 4;

(b) placement made in a state or province with a reciprocal tuition agreement pursuant to 20-5-314; or

(c) an order issued under Title 40, chapter 4, part 2.

(5) The amount, if any, charged for transportation may not exceed the lesser of the average transportation cost per student in the child's district of residence or 21.25 cents per mile. The average expenditures for the district transportation fund for the preceding school fiscal year must be calculated by dividing the transportation fund expenditures by the October 1 enrollment for the preceding fiscal year.

Section 5. **Tuition report and payment provisions.** (1) At the close of the school term of each school fiscal year and before July 15, the trustees of a district shall report to the county superintendent:

(a) the name and district of residence of each child who is attending a school of the district under an approved mandatory out-of-district attendance agreement;

(b) the number of days of enrollment for each child reported under the provisions of subsection (1)(a);

(c) the annual tuition rate for each child's tuition payment, as determined under the provisions of [section 4], and the tuition cost for each reported child; and

(d) the names, districts of attendance, and amount of tuition to be paid by the district for resident students attending public schools out of state.

(2) The county superintendent shall send, as soon as practicable, the reported information to the county superintendent of the county in which a reported child resides.

(3) Before July 30, the county superintendent shall report the information in subsection (1)(d) to the superintendent of public instruction, who shall determine the total foundation amount for which the district would be eligible if the student were enrolled in the resident district. The reimbursement amount is the difference between the actual amount paid and the amount calculated in this subsection.

(4) Notwithstanding the requirements of subsection (5), tuition payment provisions for out-of-district placement of students with disabilities must be determined pursuant to Title 20, chapter 7, part 4.

(5) Except as provided in subsection (6), when a child has approval to attend a school outside the child's district of residence under the provisions of [section

1 or 2], the district of residence shall finance the tuition amount from the district tuition fund and any transportation amount from the transportation fund.

(6) When a child has mandatory approval under the provisions of [section 2], the tuition and transportation obligation for an elementary school child attending a school outside of the child's county of residence must be financed by the county basic tax for elementary districts, as provided in 20-9-331, for the child's county of residence or for a high school child attending a school outside the county of residence by the county basic tax for high school districts, as provided in 20-9-333, for the child's county of residence.

(7) By December 31 of the school fiscal year, the county superintendent or the trustees shall pay at least one-half of any tuition and transportation obligation established under this section out of the money realized to date from the appropriate basic county tax account provided for in 20-9-334 or from the district tuition or transportation fund. The remaining tuition and transportation obligation must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer in each county with a school district that is entitled to tuition and transportation. Except as provided in subsection (9), the county treasurer shall credit tuition receipts to the general fund of a school district entitled to a tuition payment. The tuition receipts must be used in accordance with the provisions of 20-9-141. The county treasurer shall credit transportation receipts to the transportation fund of a school district entitled to a transportation payment.

(8) The superintendent of public instruction shall reimburse the district of residence from the state equalization account for the foundation amount determined in subsection (3).

(9) (a) Any tuition receipts received under the provisions of Title 20, chapter 7, part 4, or [section 4(3)] for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and must be used for that year in the manner provided for in 20-9-507 to support the costs of the program for which the tuition was received.

(b) Any other tuition receipts received for the current school fiscal year that exceed the tuition receipts of the prior year may be deposited in the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget.

Section 6. Section 20-3-205, MCA, is amended to read:

"**20-3-205. Powers and duties.** The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in ~~his~~ *the* county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition ~~application~~ *and transportation obligation* submitted ~~to him~~ in accordance with the provisions of ~~20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312~~ *[sections 4 and 5]*;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned ~~to him~~ under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned ~~to him~~ under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 20-9-348 and the other general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of ~~his~~ official acts, preserve all reports submitted to ~~him~~ *the superintendent* under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to ~~his successor~~ *the next superintendent*;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

Section 7. Section 20-3-210, MCA, is amended to read:

"**20-3-210. Controversy appeals and hearings.** (1) Except as provided under 20-3-211, the county superintendent shall hear and decide all matters of controversy arising in ~~his~~ *the* county as a result of decisions of the trustees of a district in the county. Except as provided in subsection (2), exhaustion of administrative remedies under this chapter is required prior to filing an action in district court concerning a decision of the trustees. When appeals are made under 20-4-204 relating to the termination of services of a tenure teacher or under 20-4-207 relating to the dismissal of a teacher under contract, the county superintendent may appoint a qualified attorney at law to act as a legal adviser who shall assist the superintendent in preparing findings of fact and conclusions of law. Subsequently, either the teacher or trustees may appeal to the superintendent of public instruction under the provisions for appeal of controversies in this title. ~~Furthermore, he~~ *The county superintendent* shall hear and decide all controversies arising under:

(a) ~~20-5-304 or 20-5-311~~ *[sections 1 and 2]* relating to the approval of ~~tuition applications~~ *out-of-district attendance agreements*;

(b) 20-4-206(4); or

(c) any other provision of this title for which a procedure for resolving controversies is not expressly prescribed.

(2) Exhaustion of administrative remedies is not a prerequisite to filing an action in district court concerning a decision of the trustees of a district in the following instances:

(a) a state agency has been granted primary jurisdiction over the matter;

(b) the matter is governed by a specific statute; or

(c) the board of trustees has acted without jurisdiction or in excess of its jurisdiction.

(3) The county superintendent shall hear the appeal and take testimony in order to determine the facts related to the controversy and may administer oaths to the witnesses that testify at the hearing. ~~He~~ *The county superintendent* shall prepare a written transcript of the hearing proceedings. The decision on the matter of controversy ~~which~~ *that* is made by the county superintendent ~~shall~~ *must* be based upon the facts established at ~~such~~ *the* hearing.

(4) The decision of the county superintendent may be appealed to the superintendent of public instruction, and if it is appealed, the county superintendent shall supply a transcript of the hearing and any other documents entered as testimony at the hearing to the superintendent of public instruction.

(5) Cost incurred by the office of the county superintendent ~~shall~~ *must* be paid from the general fund budget of the county in which the controversy is initiated."

Section 8. Section 20-5-314, MCA, is amended to read:

"20-5-314. Reciprocal ~~tuition~~ *attendance* agreement with adjoining state *or province*. (1) The superintendent of public instruction ~~shall have the authority to~~ *may* execute a reciprocal ~~tuition~~ *attendance* agreement with the superintendent of public instruction or a department of education of any state *or province* adjoining Montana ~~to allow the eligible children of~~ *to allow a child who is a* Montana *resident* to attend school in the adjoining state *or province* and ~~to allow children of~~ *a child of* the adjoining state *or province* to attend school in Montana. In negotiating a reciprocal ~~tuition~~ *attendance* agreement, the tuition rates prescribed by ~~20-5-305 and 20-5-312 shall be~~ *[section 4] are* waived and the reciprocal tuition rate may be negotiated as a flat amount or an actual-cost-per-pupil amount. The superintendent of public instruction shall supply a copy of any reciprocal ~~tuition~~ *attendance* agreement that is executed to the county superintendent of each county that may be affected by ~~such~~ *the* agreement.

(2) ~~Any tuition~~ *An out-of-district attendance* agreement approved under the provisions of ~~20-5-301, 20-5-302, or 20-5-311~~ *[sections 1 and 2] must be completed* for a child's attendance at a school outside ~~of~~ the state ~~shall be completed in accordance with the applicable reciprocal tuition agreement~~ *or for an out-of-state child to attend a school in Montana.*"

Section 9. Section 20-6-702, MCA, is amended to read:

"**20-6-702. Funding for K-12 school districts.** (1) Notwithstanding the provisions of subsections (2) through (6), a K-12 school district formed under the provisions of 20-6-701 is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) the calculation of ANB for purposes of determining the foundation program schedule payments must be in accordance with the provisions of 20-9-311;

(b) the basic county tax and revenues for the elementary foundation program amount for the district must be determined in accordance with the provisions of 20-9-331, and the basic special tax and revenues for the high school foundation program amount for the district must be determined in accordance with 20-9-333; and

(c) the guaranteed tax base aid for the permissive levy amount for a K-12 school district must be calculated separately, using the mill value per elementary ANB and the mill value per high school ANB as defined in 20-9-366. The permissive amount to be levied for the K-12 school district must be prorated based on the ratio of the foundation program amounts for elementary school programs to the foundation program amounts for high school programs.

(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.

(5) For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

(6) Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of ~~chapter 5, part 3~~ *[sections 1 through 5]*, except that the actual expenditures used for calculations in ~~20-5-305 and 20-5-312~~ *[section 4]* must be based on an amount prorated between the elementary and high school programs in the

appropriate funds of each district in the year prior to the attachment of the districts."

Section 10. Section 20-7-420, MCA, is amended to read:

"**20-7-420. Residency requirements — financial responsibility for special education.** (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of ~~his~~ *the child's* parents or of ~~his~~ *the child's* guardian unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last known district of residence is the child's district of residence.

(2) The ~~district~~ *county* of residence is financially responsible for tuition *and transportation* as established under ~~20-5-305 and 20-5-312~~ *[section 4]* for a child with disabilities, as defined in 20-7-401, including a child who has been placed by a state agency in a foster care or group home licensed by the state. The ~~district~~ *county* of residence is not financially responsible for tuition *and transportation* for a child with disabilities who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If a child with disabilities who is in need of special education is placed in an in-state residential treatment facility or children's psychiatric hospital as defined in 20-7-436 but the educational placement is in a public school district, the ~~district~~ *county* of residence is responsible for tuition *and transportation* for the proportion of time the child is served in the public school district unless the public school district is operated primarily for the purpose of providing education to children who attend the residential facility or hospital.

(4) Under the provisions of 20-7-422(3), the superintendent of public instruction shall provide funds for the education fees required to provide a free appropriate public education for a child with disabilities who is in need of special education and is placed by a state agency in an out-of-state private residential facility or out-of-state public school, provided that, in determining the special education services needed for the child with disabilities, the district of residence has complied with the rules promulgated under 20-7-402.

(5) A state agency that makes a placement of a child with disabilities is responsible for the room and board and the treatment of the child."

Section 11. Section 20-7-421, MCA, is amended to read:

"**20-7-421. Arranging attendance in another district in lieu of a special education program — tuition.** (1) In accordance with a placement decision made by persons determining an individualized education program for a child with disabilities, the trustees may arrange for the attendance of a child in need of special education in another district within the state of Montana.

(2) Tuition *and transportation* as required under ~~20-5-305 and 20-5-312~~ *[section 4]* may be charged as provided in 20-7-420."

Section 12. Section 20-7-422, MCA, is amended to read:

"**20-7-422. Out-of-state placement of children with disabilities — payment of costs.** (1) In accordance with a placement made by persons determining an individualized education program for a child with disabilities, the trustees of a district may arrange for the attendance of the child in a special education program offered outside of the state of Montana. ~~The arrangements are not subject to the out-of-state attendance provisions in 20-5-301 and 20-5-311.~~

(2) ~~(a)~~ Except as provided in subsection (3), when the persons determining the individualized education program of a child with disabilities who is in need of special education recommend placement in an out-of-state private residential facility, the trustees of the district of residence shall negotiate the amount and manner of payment of all costs associated with the placement.

~~(b) If the placement of the child with disabilities has met the requirements of 20-7-402, the superintendent of public instruction shall approve the amount of special education instructional fees to be included as a contracted service. Only the special education instructional fees may be included as a contracted service for the purposes of 20-7-431(1)(a)(iii)(A).~~

(3) Whenever a child with disabilities who is in need of special education is adjudicated by a court of competent jurisdiction to be an abused, neglected, or dependent child as defined in 41-3-102 or a youth in need of supervision or delinquent youth as defined in 41-5-103 and is placed by a state agency in an out-of-state private residential facility, the superintendent of public instruction shall negotiate with:

(a) the provider for the amount and manner of payment of education fees consistent with the individualized education program determined for the child under the provisions of 20-7-402; and

(b) the state agency that makes the placement for the portion of the placement costs that represents the child's education program.

(4) Payments for a child with disabilities as negotiated in subsection (3) must be paid by the superintendent of public instruction from the state special education appropriation."

Section 13. Section 20-7-424, MCA, is amended to read:

"**20-7-424. No tuition when attending a state institution.** ~~When~~ *Whenever* a child is attending ~~an~~ *a state-funded* institution ~~supported solely by funds of the state of~~ *in* Montana, the resident district or county ~~shall not be~~ *is not* required to pay tuition to the state institution for ~~such~~ *the* child, but whenever at the recommendation of institution officials ~~such~~ *the* child attends classes conducted by a school within a local district, the district or county~~, whichever is applicable, wherein~~ *where* the parents or guardian of the child ~~maintain~~ *maintains* legal residence shall pay tuition to the district ~~or county~~ operating the school in accordance with the provisions of ~~20-5-305 or~~ *[section 2] or* 20-7-421, whichever section applies to the circumstances of the child. Transportation payments ~~shall~~ *must* be made for students enrolled in ~~such~~ *any school district* classes or receiving training, including summer sessions, at the state institution. The schedule of transportation payments ~~shall~~ *must* be approved in accordance with existing ~~special education~~ transportation payment schedules and ~~shall~~ *must* be approved by the county transportation committee and the superintendent of public instruction."

Section 14. Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the amount established by the schedules in 20-9-316 through 20-9-321 by totaling:

(i) the district's nonisolated school foundation program requirement to be met by a district levy as provided in 20-9-303; and

(ii) any additional general fund budget amount adopted by the trustees of the district under the provisions of 20-9-145 and 20-9-353, including any additional levies authorized by the electors of the district.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(ii) anticipated tuition payments for out-of-district pupils under the provisions of ~~20-5-303, 20-5-307, 20-5-312, and 20-5-313~~ *[sections 2 through 4]*;

(iii) general fund balance reappropriated, as established under the provisions of 20-9-104;

(iv) anticipated or reappropriated state impact aid received under the provisions of 20-9-304;

(v) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(vi) anticipated net proceeds taxes for new production, as defined in 15-23-601;

(vii) anticipated revenue from local government severance taxes as provided in 15-36-112;

(viii) anticipated revenue from coal gross proceeds under 15-23-703;

(ix) anticipated interest to be earned or reappropriated interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(x) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(xi) any other revenue anticipated by the trustees to be received during the ensuing school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any additional general fund budget amount adopted by the trustees of the district as the permissive amount under the provisions of 20-9-145 to determine the general fund permissive net levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by a district levy as provided in 20-9-303 and 20-9-353 to determine the additional general fund levy requirement.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund permissive net levy requirement by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the second Monday of August by the county superintendent as the general fund permissive net levy requirement and the additional general fund levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142."

Section 15. Section 20-9-507, MCA, is amended to read:

"**20-9-507. Miscellaneous programs fund.** (1) The trustees of a district receiving money from local, state, federal, or other sources provided in ~~20-5-307(4), 20-5-312(8),~~ *[section 5]* and 20-9-321(3) other than money under the provisions of Title I of Public Law 81-874 or federal money designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district or may be a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall cause a separate accounting to be maintained for each federal grant program and for the aggregate of all reimbursement money.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

Section 16. Section 20-10-105, MCA, is amended to read:

"**20-10-105. Determination of residence.** When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the residence ~~shall~~ *must* be established on the basis of the general state residence law as provided in 1-1-215. Whenever ~~any district or~~ *a* county is determined to be responsible for paying tuition for any pupil in accordance with ~~20-5-301, 20-5-302, or 20-5-311~~ *[sections 2 through 4]*, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes."

Section 17. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenues and net tax levy requirements for district transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount*; plus*

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for ~~his~~ *a* child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988;

(h) *anticipated transportation payments for out-of-district pupils under the provisions of [sections 1 through 5];*

(i) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

~~(i)~~*(j)* any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 18. Section 20-10-146, MCA, is amended to read:

"**20-10-146. County transportation reimbursement.** (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount; ~~and~~

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration*; and*

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of [section 2].

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts *or reimbursements under the mandatory attendance agreement provisions of [section 2]*;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(ii) net proceeds taxes and local government severance taxes on other oil and gas production occurring after December 31, 1988;

(iii) coal gross proceeds taxes under 15-23-703;

(iv) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund. The county transportation fund operating reserve may not be more than 35% of the final county transportation fund budget for the ensuing school fiscal year and must be used for the purpose of paying transportation fund warrants under the county transportation fund budget.

(v) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vi) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

(c) notwithstanding the provisions of subsection (3), subtracting the money available as determined in subsection (2)(b) to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the second Monday of August by the county superintendent and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 19. **Repealer.** Sections 20-5-301, 20-5-302, 20-5-303, 20-5-304, 20-5-305, 20-5-306, 20-5-307, 20-5-311, 20-5-312, and 20-5-313, MCA, are repealed.

Section 20. **Codification instruction.** [Sections 1 through 5] are intended to be codified as an integral part of Title 20, chapter 5, part 3, and the provisions of Title 20, chapter 5, part 3, apply to [sections 1 through 5].

Section 21. **Instruction to code commissioner.** Section 20-7-437 is intended to be renumbered and codified as an integral part of Title 20, chapter 5.

Section 22. **Effective date — applicability.** [This act] is effective for the school fiscal year beginning July 1, 1993, and applies to calculations and payments for tuition for the school fiscal year beginning July 1, 1993.

Approved April 28, 1993.

CHAPTER NO. 564

[HB 483]

AN ACT PROVIDING THAT A PERSON OPERATING A VEHICLE UPON THE WAYS OF THE STATE OPEN TO THE PUBLIC CONSENTS TO MORE THAN ONE TEST FOR THE PRESENCE OF ALCOHOL OR DRUGS; PROVIDING THAT AN ALCOHOL TEST BE GIVEN FIRST AND THAT A DRUG TEST MAY NOT BE GIVEN IF THE ALCOHOL TEST IS FAILED; AND AMENDING SECTIONS 61-8-402, 61-8-403, 61-8-404, AND 61-8-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-402, MCA, is amended to read:

"**61-8-402. Blood, breath, or urine tests.** (1) Any person who operates or is in actual physical control of a vehicle upon ways of this state open to the public ~~shall be deemed~~ *is considered* to have given consent, subject to the provisions of 61-8-401, to a test *or tests* of ~~his~~ *the person's* blood, breath, or urine for the purpose of determining any measured amount or detected presence of alcohol *or drugs* in ~~his~~ *the person's* body if arrested by a peace officer for driving or for being in actual physical control of a vehicle while under the influence of alcohol, drugs, or a combination of the two. The test *or tests* ~~shall~~ *must* be administered at the direction of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two. The arresting officer may designate which test or tests ~~shall be~~ *are* administered. *A test for alcohol must be given first, whether or not that test also tests for drugs, and if the test shows an alcohol concentration of 0.10 or more, a test for drugs may not be given.*

(2) Any person who is unconscious or who is otherwise in a condition rendering ~~him~~ *the person* incapable of refusal ~~shall be deemed~~ *is considered* not to have withdrawn the consent provided by subsection (1) of this section.

(3) If a driver under arrest refuses upon the request of a peace officer to submit to a test *or tests* designated by the arresting officer as provided in subsection (1), ~~none shall~~ *a test may not* be given, but the officer shall, on behalf of the department, immediately seize ~~his~~ *the person's* driver's license. The peace officer shall forward the license to the department, along with a sworn report that ~~he~~ *the peace officer* had reasonable grounds to believe the arrested person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, and that the person had refused to submit to the test *or tests* upon the request of the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (5).

(4) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is valid for 72 hours after the time of issuance.

(5) The following suspension and revocation periods are applicable upon refusal to submit to a test *or tests*:

(a) upon a first refusal, a suspension of 90 days with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(6) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to a test *or tests.*

(7) All ~~such~~ suspensions are subject to review as ~~hereinafter~~ provided *in this part.*"

Section 2. Section 61-8-403, MCA, is amended to read:

"**61-8-403. Right of appeal to court.** The department shall immediately notify any person whose license or privilege to drive has been suspended or revoked~~, as hereinbefore authorized,~~ in writing, and ~~such~~ *the* person ~~shall have~~ *has* the right to file a petition within 30 days ~~thereafter~~ *after notice* for a hearing in the matter in the district court in the county ~~wherein such~~ *in which the* person resides or in the district court in the county in which this arrest was made. ~~Such~~ *The* court ~~is hereby vested with~~ *has* jurisdiction and ~~it~~ shall ~~be its duty to~~ set the matter for hearing upon 10 days' written notice to the county attorney of the county ~~wherein~~ *in which* the appeal is filed, and ~~such~~ *the* county attorney shall represent the state~~, and thereupon the~~. *The* court shall take testimony and examine into the facts of the case, except that the issues ~~shall~~ *are* ~~be~~ limited to whether a peace officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two, whether the person was placed under arrest, and whether ~~such~~ *the* person refused to submit to the test *or tests.* The court shall ~~thereupon~~ determine whether the petitioner is entitled to a license or is subject to suspension ~~as heretofore provided~~."

Section 3. Section 61-8-404, MCA, is amended to read:

"**61-8-404. Evidence admissible — conditions of admissibility.** (1) Upon the trial of any criminal action or other proceeding arising out of acts alleged to have been committed by any person in violation of 61-8-401 or 61-8-406:

(a) evidence of any measured amount or detected presence of alcohol *or drugs* in the person at the time of the act alleged, as shown by an analysis of ~~his~~ *the person's* blood, breath, or urine, is admissible~~; and~~. *A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.*

(b) a report of the facts and results of any test *or tests* of a person's blood, breath, or urine administered under 61-8-402 is admissible in evidence if:

(i) the breath test was performed by a person certified by the forensic sciences division of the department to administer breath tests or the blood or urine test was a laboratory analysis and the analysis was done in a laboratory operated by the department or by any other laboratory or facility certified or exempt from certification under the rules of the department; and

(ii) the test was on a blood sample, the person withdrawing the blood was competent to do so under 61-8-405(1).

(2) If the person under arrest refused to submit to the test *or tests* as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of the two.

(3) The provisions of this part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of the two."

Section 4. Section 61-8-405, MCA, is amended to read:

"**61-8-405. Administration of tests.** (1) Only a physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse acting at the request of a peace officer may withdraw blood for the purpose of determining any measured amount or detected presence of alcohol in the person. This limitation does not apply to the taking of breath or urine specimens.

(2) The person may, at ~~his~~ *the person's* own expense, have a physician or registered nurse of ~~his~~ *the person's* own choosing administer a test, in addition to any administered at the direction of a peace officer, for the purpose of determining any measured amount or detected presence of alcohol *or drugs* in the person at the time alleged, as shown by analysis of ~~his~~ *the person's* blood, breath, or urine. The failure or inability to obtain an additional test by a person does not preclude the admissibility in evidence of the test *or tests* taken at the direction of a peace officer.

(3) Upon the request of the person tested, full information concerning the test *or tests* taken at the direction of the peace officer must be made available to ~~him~~ *the person* or ~~his~~ *the person's* attorney.

(4) ~~No~~ *A* physician or registered nurse or other qualified person under the supervision and direction of a physician or registered nurse ~~shall~~ *does not* incur any civil or criminal liability as a result of the proper administering of a blood test when requested in writing by a peace officer to administer ~~such~~ a test.

(5) If a test given under 61-8-402 or 61-8-806 is a test of urine, the person tested must be given ~~such~~ privacy in the taking of the urine specimen ~~as~~ *that* will ensure the integrity of the specimen and, at the same time, maintain the dignity of the individual involved.

(6) The department in cooperation with any appropriate agency shall adopt uniform rules for the giving of tests and may require certification of training to administer the tests as considered necessary."

Approved April 28, 1993.

CHAPTER NO. 565

[HB 505]

AN ACT ALLOWING AN INDIVIDUAL INCOME TAX DEDUCTION FOR EMPLOYMENT-RELATED EXPENSES CONSIDERED TO HAVE BEEN PAID FOR A CHILD CARED FOR AT A LICENSED DAY-CARE HOME OPERATED BY THE CHILD'S PARENT; AMENDING SECTION 15-30-121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-121, MCA, is amended to read:

"**15-30-121. Deductions allowed in computing net income.** In computing net income, there are allowed as deductions:

(1) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 ~~shall be~~ *are* labeled or amended, subject to the following exceptions which are not deductible:

(a) items provided for in 15-30-123;

(b) state income tax paid;

(2) federal income tax paid within the taxable year;

(3) expenses of household and dependent care services as outlined in subsections (3)(a) through (3)(c) *and (9)* and subject to the limitations and rules as set out in subsections (3)(d) through (3)(f) as follows:

(a) expenses for household and dependent care services necessary for gainful employment incurred for:

(i) a dependent under 15 years of age for whom an exemption can be claimed;

(ii) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable ~~to care for himself~~ *to provide self-care* because of physical or mental illness; and

(iii) a spouse who is unable ~~to care for himself~~ *to provide self-care* because of physical or mental illness;

(b) employment-related expenses incurred for the following services, but only if such expenses are incurred to enable the taxpayer to be gainfully employed:

(i) household services which are attributable to the care of the qualifying individual; and

(ii) care of an individual who qualifies under subsection (3)(a);

(c) expenses incurred in maintaining a household if over half of the cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and ~~his~~ *the individual's* spouse;

(d) the amounts deductible in subsection (3)(a) through (3)(c) are subject to the following limitations:

(i) a deduction is allowed under subsection (3)(a) for employment-related expenses incurred during the year only to the extent ~~such~~ *the* expenses do not exceed $4,800;

(ii) expenses for services in the household are deductible under subsection (3)(a) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for the care of a qualifying individual described in subsection (3)(a)(i) and only to the extent ~~such~~ *the* expenses incurred during the year do not exceed:

(A) $2,400 in the case of one qualifying individual;

(B) $3,600 in the case of two qualifying individuals; and

(C) $4,800 in the case of three or more qualifying individuals;

(e) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the taxable year during which the expenses are incurred, the amount of the employment-related expenses incurred must be reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(f) for purposes of this subsection (3):

(i) married couples shall file a joint return or file separately on the same form;

(ii) if the taxpayer is married during any period of the taxable year, employment-related expenses incurred are deductible only if:

(A) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(B) the spouse is a qualifying individual described in subsection (3)(a)(iii);

(iii) an individual legally separated from ~~his~~ *the individual's* spouse under a decree of divorce or of separate maintenance may not be considered as married;

(iv) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(v) payment made to a child of the taxpayer who is under 19 years of age at the close of the taxable year and payments made to an individual with respect to whom a deduction is allowable under 15-30-112(5) are not deductible as employment-related expenses;

(4) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code that were in effect for the taxable year ended December 31, 1978;

(5) that portion of expenses for organic fertilizer allowed as a deduction under 15-32-303 which was not otherwise deducted in computing taxable income;

(6) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to the conditions set forth in 15-30-156;

(7) premium payments for long-term care insurance with benefits that meet or exceed the minimum standards as established by the state insurance commissioner; and

(8) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159.

(9) (a) Subject to the conditions of subsection (3), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (3)(d)(ii).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (9). (Subsection (8) terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.) "

Section 2. **Coordination instruction — contingent termination.** (1) If House Bill No. 671 is passed and approved and it repeals 15-30-121, then [this act] is void.

(2) If Senate Bill No. 235 is passed and approved by the electors of Montana and it repeals 15-30-121 and if House Bill No. 671 is not passed and approved, then [this act] terminates December 31, 1993.

Section 3. **Effective date — retroactive applicability date.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

Approved April 28, 1993.

CHAPTER NO. 566

[HB 516]

AN ACT IMPOSING AN ASSESSMENT ON CLASS I MILK TO FUND MILK INSPECTION AND DIAGNOSTIC LABORATORY FUNCTIONS; AMENDING SECTION 81-23-202, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-23-202, MCA, is amended to read:

"**81-23-202. Licenses — disposition of income.** (1) A producer, producer-distributor, distributor, or jobber may not engage in the business of producing or selling milk subject to this chapter in this state without first having obtained a license from the department of livestock or, in the case of milk entering this state from another state or foreign nation, without complying with the requirements of the Montana Food, Drug, and Cosmetic Act and without being licensed under this chapter by the department. The annual fee for the license from the department is $2 and is due before July 1 and ~~shall~~ *must* be deposited by the department to the credit of the general fund. The license required by this chapter is in addition to any other license required by state law or any municipality of this state. This chapter ~~shall apply~~ *applies* to every part of the state of Montana.

(2) In addition to the annual license fee, the department shall, in each year, before April 1, for the purpose of securing funds to administer and enforce this chapter, levy an assessment upon producers, producer-distributors, and distributors as follows:

(a) a fee per hundredweight on the total volume of all milk subject to this chapter produced and sold by a producer-distributor;

(b) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a producer;

(c) a fee per hundredweight on the total volume of all milk subject to this chapter sold by a distributor, excepting that which is sold to another distributor.

(3) The department shall adopt rules fixing the amount of each fee. The amounts may not exceed levels sufficient to provide for the administration of this chapter. The fee assessed on a producer or on a distributor may not be more than one-half the fee assessed on a producer-distributor.

(4) In addition to the fees established in subsections (1) through (3), the department shall assess a fee of 14.97 cents per hundredweight on the volume of class I milk produced and sold by a producer to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department of livestock. The board shall include this fee in its formulas for fixing by rule the minimum producer, wholesale, jobber, and retail prices for class I milk in 81-23-302.

~~(4)~~*(5)* The ~~assessment~~ *assessments* upon producer-distributors, producers, and distributors ~~shall~~ *must* be paid quarterly before January 15, April 15, July 15, and October 15 of each year. The amount of the ~~assessment~~ *assessments* ~~shall~~ *must* be computed by applying the fee designated by the department *and the fee established in subsection (4)* to the volume of milk sold in the preceding calendar quarter.

~~(5)~~*(6)* Failure of a producer, producer-distributor, or distributor to pay an assessment when due is a violation of this chapter, and ~~his~~ *a* license under this chapter automatically terminates and is void. A *terminated* license ~~so terminated shall~~ *must* be reinstated by the department upon payment of a delinquency fee equal to 30% of the assessment which was due.

~~(6)~~*(7)* ~~All~~ *Except for the assessment provided for in subsection (4), all* assessments required by this chapter ~~shall~~ *must* be deposited by the department in the state special revenue fund. All costs of administering this chapter, including the salaries of employees and assistants, per diem and expenses of board members, and all other disbursements necessary to carry out the purpose of this chapter, ~~shall~~ *must* be paid out of *the board* ~~control board moneys~~ *money* in that fund.

(8) The assessment provided for in subsection (4) must be deposited by the department in an account in the state special revenue fund. Money in the account must be used to carry out the purposes of Title 81, chapter 22.

~~(7)~~*(9)* The department may, if it finds the costs of administering and enforcing this chapter can be derived from lower rates, amend its rules to fix the rates at a less amount on or before April 1 in any year."

Section 2. **Effective date — applicability.** [This act] is effective July 1, 1993. Payment of the assessment in [section 1] begins with the quarterly payment due on October 15, 1993.

Approved April 28, 1993.

CHAPTER NO. 567

[HB 517]

AN ACT PROVIDING A RETIREMENT INCENTIVE FOR MEMBERS WHO ARE ELIGIBLE TO RETIRE UNDER THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND WHO TERMINATE EMPLOYMENT WITHIN A PRESCRIBED WINDOW OF ELIGIBILITY; PROVIDING A VOLUNTARY TERMINATION INCENTIVE FOR CERTAIN MEMBERS WHO ARE ELIGIBLE TO RETIRE UNDER THE TEACHERS' RETIREMENT SYSTEM AND WHO TERMINATE EMPLOYMENT WITHIN A PRESCRIBED WINDOW OF ELIGIBILITY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A TERMINATION DATE, AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 1] gives the public employees' retirement board authority to adopt rules to implement the provisions of the bill.

It is the intent of the legislature to provide an active member of the public employees' retirement system who is eligible for normal or early retirement with an incentive to terminate service within the timeframe or window prescribed in this bill. The incentive provided in this bill is that the employer, at no cost to an eligible member, will buy for the eligible member up to 3 years of additional service for the purpose of calculating the member's retirement benefit.

The employer of an eligible member will pay the total cost for purchasing the additional service, up to 3 years, that the member is eligible to purchase under existing statute. It is the intent of the legislature that the state and the university system be mandated to provide this retirement incentive but that providing the incentive be optional for contracting employers under the public employees' retirement system.

It is also the intent of the legislature that the employer may pay for the additional service on an installment basis over as many as 10 years. Interest would be charged at a rate set according to the retirement board's policy.

It is not the intent of the legislature to provide this retirement incentive to anyone who is an inactive member of the retirement system or who is ineligible for early or normal retirement within the prescribed window or to change the benefit formula used to determine benefits under the retirement system.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Retirement incentive program — window of eligibility.** (1) Except as provided in subsection (4), a person who is an active member on February 1, 1993, and who voluntarily terminates service or whose service is involuntarily terminated because of a reduction in force on or after June 25, 1993, but before January 1, 1994, and who is eligible for a normal service retirement under 19-3-901 or early retirement under 19-3-902 is entitled to the retirement incentive provided in subsection (2).

(2) The employer of an eligible member under subsection (1) shall pay the total cost of purchasing up to 3 years of additional service that the member is qualified to purchase under 19-3-513. A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section.

(3) An active member who is involuntarily terminated because of a reduction in force on or after March 1, 1993, but before June 25, 1993, and who, if the member had not been terminated, would have been eligible under subsection (1) for the retirement incentive is entitled to the retirement incentive under subsection (2) if the member was, at the time of termination, eligible for normal service retirement under 19-3-901 or early retirement under 19-3-902 and retires on or after June 25, 1993.

(4) A contracting employer's participation in the incentive program described in this section is optional. A contracting employer may elect to provide the incentive by filing with the board a written notice of election on or before June 1, 1993, and complying with rules adopted pursuant to subsection (5).

(5) The board may allow an employer to pay the contributions required under subsection (2) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-3-304. The board shall adopt rules to implement the provisions of this section.

(6) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year shall forfeit the additional service. The employer's contributions to purchase that member's additional service, minus any retirement benefits already paid, must be refunded to the employer. For purposes of this subsection, all agencies of the state, including the university system, are considered the same jurisdiction and other public employers contracting with the retirement system are each considered separate jurisdictions.

Section 2. **Montana university system voluntary termination for teachers' retirement system members.** (1) The board of regents shall establish a voluntary termination incentive during the 1994-95 biennium for all members of the teachers' retirement system employed on a full-time basis on or before February 1, 1993, who are eligible for normal service retirement under 19-4-801 and 19-4-802. The termination incentive, combined with employer contributions due the teachers' retirement system under 19-4-101(5)(d), must be an amount equal to 1 year of the combined member and employer contributions established in 19-4-602 and 19-4-605 for each 5 years of creditable service within the teachers' retirement system, not to exceed the amount of combined contributions for 3 years.

(2) A member who terminates employment under the provisions of subsection (1) and who returns to employment in a unit of the Montana university system, except as provided in 19-4-804, shall refund the voluntary termination incentive to the university system.

(3) To qualify for the termination incentive authorized in this section, the participant shall announce an intent to terminate employment no later than the end of the 1993-94 academic contract year or the end of the 1994 summer session on or before December 1, 1993.

(4) The board of regents shall define the terms of the voluntary termination incentive by July 1, 1993.

Section 3. **Montana university system voluntary termination for optional teachers' retirement system participants.** (1) The board of regents shall establish a voluntary termination incentive during the 1994-95 biennium for all optional retirement participants who are employed on a full-time basis on or before February 1, 1993, and who are at least 50 years of age on or before the date of termination. The incentive must be an amount equal to 1 year of the combined member and board of regents contributions established in 19-21-203 for each 5 years of service with the Montana university system, not to exceed the amount of combined contributions for 3 years.

(2) A participant who terminates employment under the provisions of subsection (1) and who returns to employment in a unit of the Montana university system, except as provided in 19-4-804, shall refund the voluntary termination incentive to the university system.

(3) To qualify for the termination incentive authorized in this section, the participant shall announce an intent to terminate employment no later than the end of the 1993-94 academic contract year or the end of the 1994 summer session on or before December 1, 1993.

(4) The board of regents shall define the terms of the voluntary termination incentive by July 1, 1993.

Section 4. **Reports on effect of incentives.** The department of administration, in cooperation with the university system and the public employees' retirement board, shall report to the 54th legislature on the effect of the retirement incentive offered to members of the public employees' retirement system employed by the state, including the university system. The board of regents, in cooperation with the teachers' retirement board, shall report to the

54th legislature on the effect of the voluntary termination incentives offered to members of the teachers' retirement system employed by the Montana university system. These reports must include, but are not limited to:

(1) a summary of the positions from which employees terminated employment under the provisions of [section 1];

(2) whether positions vacated under [section 1] were refilled and when; and

(3) the cost or savings resulting from the implementation of [section 1].

Section 5. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to occurrences on or after March 1, 1993.

Section 6. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 19, chapter 3, part 9, and the provisions of Title 19, chapter 3, part 9, apply to [section 1].

Section 7. **Effective date.** [This act] is effective on passage and approval.

Section 8. **Termination.** [Sections 2 and 3] terminate June 30, 1995.

Approved April 28, 1993.

CHAPTER NO. 568

[HB 519]

AN ACT CLARIFYING THE DEFINITION OF RECYCLED MATERIAL THAT IS ELIGIBLE FOR A DEDUCTION FROM TAXABLE INCOME; PROVIDING THAT A TAX CREDIT FOR DEDUCTIBLE EQUIPMENT USED IN RECLAIMING MATERIAL MAY ALSO BE CLAIMED FOR RECLAIMING CERTAIN MATERIAL GENERATED BY THE TAXPAYER; INCREASING THE DEDUCTION ALLOWED FOR PURCHASE OF RECYCLED MATERIAL TO 10 PERCENT FROM 5 PERCENT; AMENDING SECTIONS 15-32-601, 15-32-603, AND 15-32-610, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is included in this bill because [section 2] requires rulemaking by the department of revenue. The department is to conduct rulemaking to define the recycled materials that qualify for a tax deduction under 15-32-610.

The goal of amending 15-32-601 and of adopting rules to implement the amendment is to reduce solid waste and pollution. The greater the quantity of material reclaimed, the longer landfills will last and the less pollution they will create. The best way to reduce landfill material is to reclaim postconsumer material for reuse. The rules of the department should provide for using the maximum postconsumer reclaimed material content possible when defining the reclaimed material eligible for additional tax deduction.

It is intended that the department keep abreast of the recycling industry and try to encourage maximum use of recycled materials through the use of the tax deduction. The department should define recycled material by the amount and type of reclaimable material, as defined in 15-32-601, that it contains. The amount of material may be measured by volume, weight, fiber content, or other applicable standard. Recycled material may also be defined by the type of reclaimed material it contains, such as postconsumer, de-inked, or other applicable type.

The amounts and types of reclaimed material should follow industry standards so that industry labeling, as certified by appropriate bodies, can be used by purchasers to ensure that the products they are purchasing meet departmental deductibility definitions.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-32-601, MCA, is amended to read:

"**15-32-601.** *(Temporary)* **Definitions.** For the purposes of this part, unless otherwise required by the context, the following definitions apply:

(1) "Collect" means the collection and delivery of reclaimable materials to a recycling or reclaimable materials processing facility.

(2) "Postconsumer material" means a product or packaging material that has served its final intended use, that has been discarded by an individual, commercial enterprise, or other entity after having fulfilled its intended application or use, and that is usually thrown away and hauled to landfills. This term does not include wastes generated during production of an end product.

~~(2)~~*(3)* "Reclaimable material" means material that has useful physical or chemical properties after serving a specific purpose and that would normally be disposed of as solid waste, as defined in 75-10-203, by a consumer, processor, or manufacturer. *Except for claiming a tax credit as provided in 15-32-603(1)(d), material may not be considered reclaimed by the consumer, processor, or manufacturer that generated the material.*

~~(3)~~*(4)* "Recycled material" means a substance that is produced from ~~at least 90%~~ reclaimed material *as provided in [section 2]. (Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)* "

Section 2. **Recycled material qualifying for deduction — purpose — rulemaking.** (1) The purpose of providing a tax deduction for the purchase of recycled materials is to encourage the use of goods made from reclaimed materials, especially postconsumer materials, and to discourage consumption of the same goods made from new materials. To achieve this goal, the definition of recycled material must be left to department of revenue expertise. Definitions cannot be legislatively enacted to achieve the purpose of this section because of rapid changes in technology, social awareness, and market economics. It is the intent of the legislature that the department revise, as often as it considers necessary to fulfill the purpose of this section, the definition of qualifying recycled material.

(2) The department shall by rule adopted pursuant to 15-32-611 specify recycled material that qualifies for the deduction authorized by 15-32-610. The department shall classify qualifying recycled material into different categories based upon the reclaimed material used in producing the recycled material, the ultimate use of the recycled material produced from the reclaimed material, and

the amount and type of reclaimed material the recycled material must contain. In the definition of recycled material, the department may consider the point in the manufacturing and consumption cycle from which material was reclaimed and other factors contributing to precise definitions.

(3) In addition to the public participation provisions of Title 2, chapter 4, the department shall establish a register of interested persons and experts in the field of recycling. Prior to proposing an administrative rule, the department shall mail a notice to the interested persons of the department's contemplated actions, soliciting their views on possible solutions or courses of action. All proposed and adopted rules must also be mailed to the interested persons.

(4) The rules must specify the unit of measurement for classifications of recycled materials. The measurement may be based upon volume, weight, fiber content, or other applicable standard.

(5) The department shall by rule designate one or more agencies that are generally recognized in the industry to certify the contents of recycled materials.

Section 3. Section 15-32-603, MCA, is amended to read:

"15-32-603. *(Temporary)*. **Credit for investment in property used to collect or process reclaimable material or to manufacture a product from reclaimed material.** (1) The following requirements must be met to be entitled to a tax credit for investment in property to collect or process reclaimable material or to manufacture a product from reclaimed material:

(a) The investment must be for depreciable property used primarily to collect or process reclaimable material or to manufacture a product from reclaimed material.

(b) (i) The taxpayer claiming a credit must be a person who, as an owner, including a contract purchaser or lessee, or who pursuant to an agreement owns, leases, or has a beneficial interest in a business that collects or processes reclaimable material or that manufactures a product from reclaimed material. For the purposes of this section, a business qualifies as a business that collects reclaimable material if it gathers reclaimable material for later sale or processing for another business that has as its primary business function the collection or processing of reclaimable material or the manufacture of a product from reclaimed material. The collection of reclaimable material may be a minor or nonprofit part of a business otherwise engaged in a retail trade or other business activity.

(ii) The taxpayer may but need not operate or conduct a business that collects or processes reclaimable material or manufactures a product from reclaimed material. If more than one person has an interest in a business with qualifying property, they may allocate all or any part of the investment cost among themselves and their successors or assigns.

(c) The business must be owned or leased during the tax year by the taxpayer claiming the credit, except as otherwise provided in subsection (1)(b), and must have been collecting or processing reclaimable material or manufacturing a product from reclaimed material during the tax year for which the credit is claimed.

(d) The reclaimed material collected, processed, or used to manufacture a product may not be an industrial waste generated by the person claiming the tax credit *unless:*

(i) the person generating the waste historically has disposed of the waste onsite or in a licensed landfill; and

(ii) standard industrial practice has not generally included the reuse of the waste in the manufacturing process.

(2) A credit under this section may be claimed by a taxpayer for a business only if the qualifying property was purchased on or after January 1, 1990, but before January 1, 1996.

(3) The credit provided by this section is not in lieu of any depreciation or amortization deduction for the investment or other tax incentive to which the taxpayer otherwise may be entitled under Title 15.

(4) A tax credit otherwise allowable under this section that is not used by the taxpayer in the taxable year may not be carried forward to offset a taxpayer's tax liability for any succeeding tax year.

(5) The taxpayer's adjusted basis for determining gain or loss may not be further decreased by any tax credits allowed under this section.

(6) If the taxpayer is a shareholder of an electing small business corporation, the credit must be computed using the shareholder's pro rata share of the corporation's cost of investing in equipment necessary to collect or process reclaimable material or to manufacture a product from reclaimed material. In all other respects, the allowance and effect of the tax credit apply to the corporation as otherwise provided by law. *(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)* "

Section 4. Section 15-32-610, MCA, is amended to read:

"**15-32-610.** *(Temporary)* **Deduction for purchase of recycled material.** In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct an additional amount equal to ~~5%~~ *10%* of the taxpayer's expenditures for the purchase of recycled material that was otherwise deductible by the taxpayer as business-related expense in Montana. *(Terminates December 31, 1995—sec. 9, Ch. 712, L. 1991.)* "

Section 5. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 15, chapter 32, part 6, and the provisions of Title 15, chapter 32, part 6, apply to [section 2].

Section 6. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

Approved April 28, 1993.

CHAPTER NO. 569

[HB 548]

AN ACT PROHIBITING THE SALE OR DISTRIBUTION OF TOBACCO PRODUCTS TO A PERSON UNDER 18 YEARS OF AGE; REQUIRING A LICENSE FOR RETAIL SALES OF TOBACCO PRODUCTS; REQUIRING THE POSTING OF SIGNS; PROHIBITING THE DISTRIBUTION OF TOBACCO PRODUCTS IN OTHER THAN SEALED PACKAGES; RESTRICTING SALES FROM TOBACCO VENDING MACHINES; PROHIBITING THE USE OF TOBACCO PRODUCTS ON PUBLIC SCHOOL PROPERTY; AUTHORIZING CERTAIN LOCAL REGULATIONS; AND PROVIDING PENALTIES.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 11] grants the department of revenue authority to adopt rules.

It is the intent of the legislature to reduce the number of young people who use tobacco products, to recognize the responsibility of retail sellers for contributing to the use of tobacco products by young people, to establish a system of regulations and sanctions prohibiting the sale or distribution of tobacco products to young people, and to provide for the posting of signs informing young people that sales or distribution of tobacco products to them is illegal.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 11] may be cited as the "Youth Access to Tobacco Products Control Act".

Section 2. **Definitions.** For the purposes of [sections 1 through 8], the following definitions apply:

(1) "Distribute" means:

(a) to give, deliver, sample, or sell;

(b) to offer to give, deliver, sample, or sell; or

(c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or sell.

(2) "Health warning" means a tobacco product label required by federal law and intended to alert users of the product to the health risks associated with tobacco use. The term includes warning labels required under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act of 1986.

(3) "License" means a retail tobacco product sales license.

(4) "Person" means a natural person, company, corporation, firm, partnership, organization, or other legal entity.

(5) "Tobacco product" means a substance intended for human consumption that contains tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

Section 3. **License for retail sale of tobacco products.** (1) A person may not sell tobacco products at retail, whether over the counter, by vending machine, or otherwise, without a license obtained from the department of revenue.

(2) A license for the retail sale of tobacco products may be obtained from the department of revenue.

(3) The fee collected by the department must be deposited in the general fund.

Section 4. **Signs.** A retail seller of tobacco products shall conspicuously display, at each place on the premises at which tobacco products are sold, a sign that is to be provided without charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products to persons under 18 years of age."

Section 5. **Sale or distribution of tobacco products to persons under 18 years of age prohibited.** (1) A person may not sell or distribute a tobacco product to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

(2) If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual.

Section 6. **Sales from tobacco vending machines.** Tobacco products may be sold through a vending machine only in:

(1) factories, businesses, offices, and other places not open to the general public;

(2) places to which individuals under 18 years of age are not permitted access;

(3) places where alcoholic beverages are sold and consumed on the premises; and

(4) places where the vending machine is under the direct supervision of the owner or an employee of the establishment. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco products by that person for purposes of [section 5].

Section 7. **Distribution of tobacco products in other than sealed packages prohibited.** A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law.

Section 8. **Penalties.** (1) Failure to obtain a license as required by [section 3] or to post signs as provided in [section 4] is punishable by a civil penalty of $100.

(2) A person who violates [section 5(1)] may be punished by a civil penalty of $100. A subsequent violation within 1 year is punishable by a civil penalty of $200. A third violation is punishable by a civil penalty of $300 if two violations

occurred within the 2-year period prior to that violation. A fourth violation is punishable by a civil penalty of $500 if three or more violations occurred within the 2-year period prior to that violation.

(3) A person who violates [section 7] is guilty of a misdemeanor and upon conviction is liable for a civil penalty of not more than $100 for the first violation. A subsequent violation is punishable by a civil penalty of not more than $200. A third or subsequent violation is punishable by a civil penalty of not more than $500.

(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his employee or agent if the sale was without the knowledge of the license holder and the license holder shows that the license holder had in place a system to prevent violations of [section 5(1)].

(5) The county attorney of the county in which a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of the penalty.

Section 9. **Use of tobacco product in public school building or property prohibited.** (1) An individual may not use a tobacco product in a public school building or property during school hours.

(2) Subsection (1) does not apply to the use of a tobacco product:

(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member;

(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official; or

(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Public school building or property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

Section 10. **Local regulations.** A local government may by ordinance adopt regulations on the subjects of [sections 1 through 8] that are no more stringent than [sections 1 through 8].

Section 11. **Rulemaking authority.** The department of revenue may adopt rules to implement [sections 1 through 8].

Approved April 28, 1993.

CHAPTER NO. 570

[HB 555]

AN ACT GENERALLY REVISING THE FEES CHARGED BY THE CLERK OF THE DISTRICT COURT; INCREASING THE FEES FOR FILING A PETITION FOR JUDICIAL DETERMINATION OF BIRTHDATE AND THE ENTRY OF THE JUDGMENT; REQUIRING GOVERNMENTAL ENTITIES TO PAY FOR CERTIFICATIONS; CLARIFYING DISTRIBUTION OF FEES FOR ENTRY OF JUDGMENT AND ISSUANCE OF AN EXECUTION OR ORDER OF SALE ON A FORECLOSURE OF A LIEN; INCREASING THE FEE FOR FILING AND DOCKETING A TRANSCRIPT OF JUDGMENT OR TRANSCRIPT OF THE DOCKET; AMENDING SECTIONS 25-1-201, 25-10-405, AND 27-32-104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-1-201, MCA, is amended to read:

"**25-1-201. Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, a fee of $120; and for filing a petition for legal separation, a fee of $120;

(b) from each defendant or respondent, on ~~his~~ appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in ~~his~~ *the clerk's* office, 50 cents per page for the first five pages of each file, per request, and 25 cents per *additional* page ~~thereafter~~;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or ~~abstract of judgment~~ *transcript of the docket* from all other courts, ~~$25~~ *the fee for entry of judgment provided for in subsection (1)(c)*;

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100.

(2) Except as provided in subsections (3) through (8), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state to be deposited as provided in 19-5-404.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $14 must be deposited in and credited to the state general fund, $6.40 must be deposited in and credited to the county general fund, and $9.60 must be remitted to the state to be deposited as provided in 19-5-404.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $40 must be deposited in the state general fund, $35 must be remitted to the state to be deposited as provided in 19-5-404, $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on ~~his~~ appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; *and*

~~(iv) on the entry of judgment as provided in subsection (1)(h), $20;~~

~~(v) for issuing an execution or order of sale as provided in subsection (1)(i), $3; and~~

~~(vi)~~*(iv)* from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state to be deposited as provided in 19-5-404.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries."

Section 2. Section 25-10-405, MCA, is amended to read:

"**25-10-405. Governmental entities not required to prepay fees — exceptions.** The state, a county, a municipality, or any subdivision thereof or any officer when prosecuting or defending an action on behalf of the state, a county, a municipality, or a subdivision thereof is not required to pay or deposit any fee or amount to or with any officer during the prosecution or defense of an action, except the fee under 25-1-201(1)(p) for filing a motion for substitution of a judge and all fees for photocopies, postage and handling, *certifications,* authentications, and record searches."

Section 3. Section 27-32-104, MCA, is amended to read:

"**27-32-104. Fees.** The petitioner, upon the filing of the petition, ~~must~~ *shall* pay to the clerk of court ~~a~~ *the* fee ~~of $1~~ *for commencing an action, as provided for in 25-1-201*, and upon the entry of judgment, the applicant ~~must~~ *shall* pay to the clerk of court an additional fee ~~of $1~~ *for entry of judgment, as provided for in 25-1-201.* ~~No~~ *A* charge ~~shall~~ *may not* be made for posting of the notices required ~~hereunder~~ *under this part.* If the applicant ~~shall provide~~ *provides* a true copy of the judgment rendered, then the clerk of court ~~must~~ *shall* certify the ~~same~~ *copy* without additional charge."

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved April 28, 1993.

CHAPTER NO. 571

[HB 572]

AN ACT REVISING FEES FOR OVERWEIGHT VEHICLE PERMITS; AMENDING SECTION 61-10-125, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-125, MCA, is amended to read:

"**61-10-125. Other fees.** *(1)* ~~In addition to the permit fee, there shall be~~ *There is* charged for *a* single trip ~~permits,~~ *permit* for ~~the excess load~~ *a load that is* over the gross allowable load ~~or the sum of the excess axle loads, whichever is greater~~ *provided for by the formula in 61-10-107(1) but that does not exceed axle limits set forth in 61-10-107(1)*:

~~(1)~~*(a)* $10 for distances to and including 100 miles;

~~(2)~~*(b)* $30 for distances from 101 to 199 miles; and

~~(3)~~*(c)* $50 for distances over 200 miles traveled.

(2) There is charged a fee of $200 for a term permit for a load that is in excess of the limits set forth in 61-10-107(1) but that does not exceed a total of 5,000 pounds in excess axle weight.

(3) There is charged for a permit to move a load that exceeds the single axle, tandem axle, or axle group limits set forth in 61-10-107(1) the following fee based upon the sum of excess in axle or axle group weights:

Total Excess Axle Weight (pounds)	*Calculated Cost of 25 Miles (dollars)*
5,000	*3.50*
10,000	*7.00*
15,000	*10.50*
20,000	*14.00*
25,000	*17.50*
30,000	*21.00*
35,000	*24.50*
40,000	*28.00*
45,000	*31.50*
50,000	*35.00*
55,000	*38.50*
60,000	*42.00*
65,000	*45.50*
70,000	*49.00*
75,000	*52.50*
80,000	*56.00*
85,000	*59.50*
90,000	*63.00*

95,000	*66.50*
100,000	*70.00*
over 100,000	*70.00 + 3.50 per 5,000 lbs. or part of 5,000 lbs. in excess of 100,000 lbs.*

(4) For purposes of subsection (3):

(a) mileage must be rounded off in units of 25 miles and mileage in excess of a 25-mile increment must be assessed at the next higher 25-mile increment; and

(b) weight must be rounded off in 5,000-pound increments and weight in excess of a 5,000-pound increment must be assessed at the next higher 5,000-pound increment.

(5) A vehicle must be licensed to the maximum allowable weight authorized under 61-10-107 before an overweight permit may be issued."

Section 2. **Effective date.** [This act] is effective January 1, 1994.

Approved April 28, 1993.

CHAPTER NO. 572

[HB 581]

AN ACT CREATING A STATE HOUSING TASK FORCE; PROVIDING FOR THE APPOINTMENT OF THE MEMBERS OF THE TASK FORCE; PROVIDING FOR THE POWERS AND DUTIES OF THE TASK FORCE; AND PROVIDING A TERMINATION DATE.

WHEREAS, there currently exists a shortage of affordable, good quality housing available for lower-income and middle-income Montanans; and

WHEREAS, there are certain authorities and mechanisms established by law to assist lower-income and middle-income Montanans in obtaining housing, but those authorities and mechanisms may be inadequate; and

WHEREAS, a state housing task force would bring to bear different expertise and perspectives to assist the state in identifying other means to assist persons in obtaining affordable housing of good quality; and

WHEREAS, a state housing task force should be appointed to study and report its findings and recommendations to the Governor and to the Legislature.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State housing task force — creation — membership — administration.** (1) There is a state housing task force consisting of those members appointed pursuant to this section.

(2) The governor shall appoint by November 1, 1993, the following individuals to the state housing task force:

(a) one member of the senate;

(b) one member of the house of representatives;

(c) a representative of the public housing authorities in the state;

(d) a representative of the Montana league of cities and towns;

(e) a representative of the Montana association of realtors;

(f) a representative of the Montana bankers association;

(g) a representative of the Montana league of savings institutions;

(h) a representative of the human resource development council directors association;

(i) a representative of a Montana landlords' association;

(j) a representative of the Montana building industry association;

(k) a representative of low income groups;

(l) a representative of the Montana association of counties;

(m) a representative of the national association of housing and redevelopment officials;

(n) a representative of neighborhood housing services;

(o) a representative of physically disabled persons; and

(p) a representative of the governor's office.

(3) Members of the task force, except legislators or public employees otherwise entitled to such reimbursement by their employing agency, may not be compensated or reimbursed from state funds for their expenses in performing task force duties.

(4) The task force has the powers and duties of an interim subcommittee under Title 5, chapter 5, part 2, and may receive staff assistance from the legislative council.

Section 2. **State housing task force — powers and duties.** The state housing task force shall:

(1) study the availability of housing within the state to persons in middle-income and lower-income groups;

(2) study the current methods and mechanisms for housing assistance to the persons referred to in subsection (1), including those authorities contained in Title 7, chapter 15, parts 21, 44, and 45, and in Title 90, chapter 6, part 1;

(3) study possible alternative methods of housing assistance, including the methods available to persons in other states, and the feasibility and necessity of creating other mechanisms for housing assistance in Montana;

(4) prepare a report of its findings and recommendations, along with any legislation the task force considers necessary, for the governor and the 54th legislature by October 1, 1994.

Section 3. **Termination.** [This act] terminates October 1, 1994.

Approved April 28, 1993.

CHAPTER NO. 573

[HB 588]

AN ACT ALLOWING THE SUPERVISORS OF A CONSERVATION DISTRICT TO LEVY, WITH VOTER APPROVAL, AN ANNUAL SPECIAL ADMINISTRATIVE ASSESSMENT FOR THE ADMINISTRATIVE COSTS AND EXPENSES OF THE DISTRICT; PROVIDING FOR THE REDUCTION OR REPEAL OF THE ADMINISTRATIVE ASSESSMENT; EXCLUDING THE SPECIAL ADMINISTRATIVE ASSESSMENT FROM THE PROPERTY TAX LIMITS OF INITIATIVE MEASURE NO. 105; AMENDING SECTIONS 15-10-412, 76-15-515, 76-15-516, AND 76-15-527, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Special administrative assessment permitted — voter approval.** (1) (a) In addition to the levy authorized in 76-15-515 and 76-15-516(3), the supervisors of a conservation district may levy an annual special administrative assessment, not to exceed the amount determined under subsection (1)(b) each year, for administrative costs and expenses of the district if, at a regularly scheduled election or special election, the qualified electors of the district approve the imposition of the additional assessment.

(b) The annual levy authorized by this section may not exceed the difference between the amount raised by the annual mill levy authorized under 76-15-515 and $20,000.

(c) Nonmill-levy revenue that is distributed based on the relative proportion of mill levies may not be distributed to the special administrative assessment.

(2) The special administrative assessment question may be presented to the qualified electors of the district by resolution of the supervisors.

(3) If the conservation district is located in more than one county, the special administrative assessment question must be presented to and approved by the qualified electors who reside in the district from each county.

(4) The resolution referring the special administrative assessment question must state:

(a) the rate of the assessment;

(b) the amount of money anticipated to be raised by the assessment; and

(c) the purposes for which the special administrative assessment revenue may be used.

Section 2. **Limitations — reduction or repeal of special administrative assessment.** (1) In each year following the approval of the special administrative assessment as provided in [section 1], the rate of the levy imposed for the special administrative assessment may not raise more revenue than was proposed in the resolution and approved by the qualified electors of the district.

(2) If the supervisors of the district reduce the amount of the special administrative assessment, they may not raise the assessment without the approval of the qualified electors of the district.

(3) On or before the second Monday in July, a petition, signed by at least 50% of the eligible voters within the district, calling for a reduction in or the repeal of the special administrative assessment for the ensuing fiscal year may be presented to the supervisors. Following verification of the signatures on the petition, the supervisors shall reduce or repeal the administrative assessment as specified in the petition.

Section 3. Section 76-15-515, MCA, is amended to read:

"**76-15-515. Maximum regular assessment.** ~~The~~ *Except as provided in [sections 1 and 2], the* regular assessment in any one year ~~shall~~ *may* not exceed 1 ½ mills on the dollar of total taxable valuation of real property within the district. The valuation ~~shall~~ *must* be determined according to the last assessment roll."

Section 4. Section 76-15-516, MCA, is amended to read:

"**76-15-516. Levy of regular and special ~~assessment~~ *assessments.*** (1) The board of county commissioners of each county in which ~~there lies~~ any portion of the district *lies* may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. ~~It shall~~ *The levy must* be known as the ".... (name of district) conservation district regular assessment" and ~~shall~~ *must* be sufficient to raise the amount reported to ~~them~~ *the county commissioners* in the estimate of the supervisors.

(2) Subject to the conditions of [sections 1 and 2], the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district special administrative assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

~~(2)~~*(3)* The board of county commissioners of each county in which ~~there lies~~ any portion of a project area *lies* may, annually at the time of levying county taxes, levy an assessment not to exceed 3 mills on the taxable real property within the project area. ~~It shall~~ *The levy must* be known as ".... (name of the project area) special assessment" and ~~shall~~ *must* be sufficient to raise the amount reported to ~~them~~ *the county commissioners* in the estimate of the supervisors."

Section 5. Section 76-15-527, MCA, is amended to read:

"**76-15-527. Purpose of expenditures.** All money collected under 76-15-511 through 76-15-526, *[section 1], and [section 2]* ~~shall~~ *must* be expended for the purposes provided in ~~76-15-502 and 76-15-503 and for an established conservation practice loan program~~ *Title 76, chapter 15.*"

Section 6. Section 15-10-412, MCA, is amended to read:

"**15-10-412. Property tax limited to 1986 levels — clarification — extension to all property classes.** Section 15-10-402 is interpreted and clarified as follows:

(1) The limitation to 1986 levels is extended to apply to all classes of property described in Title 15, chapter 6, part 1.

(2) The limitation on the amount of taxes levied is interpreted to mean that, except as otherwise provided in this section, the actual tax liability for an individual property is capped at the dollar amount due in each taxing unit for the 1986 tax year. In tax years thereafter, the property must be taxed in each taxing unit at the 1986 cap or the product of the taxable value and mills levied, whichever is less for each taxing unit, except in a taxing unit that levied a tax in tax years 1983 through 1985 but did not levy a tax in 1986, in which case the actual tax liability for an individual property is capped at the dollar amount due in that taxing unit for the 1985 tax year.

(3) The limitation on the amount of taxes levied does not mean that no further increase may be made in the total taxable valuation of a taxing unit as a result of:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(g) transfer of property from tax-exempt to taxable status; or

(h) revaluations caused by:

(i) cyclical reappraisal; or

(ii) expansion, addition, replacement, or remodeling of improvements.

(4) The limitation on the amount of taxes levied does not mean that no further increase may be made in the taxable valuation or in the actual tax liability on individual property in each class as a result of:

(a) a revaluation caused by:

(i) construction, expansion, replacement, or remodeling of improvements that adds value to the property; or

(ii) cyclical reappraisal;

(b) transfer of property into a taxing unit;

(c) reclassification of property;

(d) increases in the amount of production or the value of production for property described in 15-6-131 or 15-6-132;

(e) annexation of the individual property into a new taxing unit; or

(f) conversion of the individual property from tax-exempt to taxable status.

(5) Property in classes four and eleven is valued according to the procedures used in 1986, including the designation of 1982 as the base year, until the reappraisal cycle beginning January 1, 1986, is completed and new valuations are placed on the tax rolls and a new base year designated, if the property is:

(a) new construction;

(b) expanded, deleted, replaced, or remodeled improvements;

(c) annexed property; or

(d) property converted from tax-exempt to taxable status.

(6) Property described in subsections (5)(a) through (5)(d) that is not class four or class eleven property is valued according to the procedures used in 1986 but is also subject to the dollar cap in each taxing unit based on 1986 mills levied.

(7) The limitation on the amount of taxes, as clarified in this section, is intended to leave the property appraisal and valuation methodology of the department of revenue intact. Determinations of county classifications, salaries of local government officers, and all other matters in which total taxable valuation is an integral component are not affected by 15-10-401 and 15-10-402 except for the use of taxable valuation in fixing tax levies. In fixing tax levies, the taxing units of local government may anticipate the deficiency in revenues resulting from the tax limitations in 15-10-401 and 15-10-402, while understanding that regardless of the amount of mills levied, a taxpayer's liability may not exceed the dollar amount due in each taxing unit for the 1986 tax year unless:

(a) the taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year. If a taxing unit's taxable valuation decreases by 5% or more from the 1986 tax year, it may levy additional mills to compensate for the decreased taxable valuation, but in no case may the mills levied exceed a number calculated to equal the revenue from property taxes for the 1986 tax year in that taxing unit.

(b) a levy authorized under Title 20 raised less revenue in 1986 than was raised in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, raise each year thereafter an additional number of mills but may not levy more revenue than the 3-year average of revenue raised for that purpose during 1984, 1985, and 1986;

(c) a levy authorized in 50-2-111 that was made in 1986 was for less than the number of mills levied in either 1984 or 1985, in which case the taxing unit may, after approval by the voters in the taxing unit, levy each year thereafter an additional number of mills but may not levy more than the 3-year average number of mills levied for that purpose during 1984, 1985, and 1986.

(8) The limitation on the amount of taxes levied does not apply to the following levy or special assessment categories, whether or not they are based on commitments made before or after approval of 15-10-401 and 15-10-402:

(a) rural improvement districts;

(b) special improvement districts;

(c) levies pledged for the repayment of bonded indebtedness, including tax increment bonds;

(d) city street maintenance districts;

(e) tax increment financing districts;

(f) satisfaction of judgments against a taxing unit;

(g) street lighting assessments;

(h) revolving funds to support any categories specified in this subsection (8);

(i) levies for economic development authorized pursuant to 90-5-112(4);

(j) levies authorized under 7-6-502 for juvenile detention programs; ~~and~~

(k) levies authorized under [section 1] and [section 2] for conservation district special administrative assessments; and

~~(k)~~*(l)* elementary and high school districts.

(9) The limitation on the amount of taxes levied does not apply in a taxing unit if the voters in the taxing unit approve an increase in tax liability following a resolution of the governing body of the taxing unit containing:

(a) a finding that there are insufficient funds to adequately operate the taxing unit as a result of 15-10-401 and 15-10-402;

(b) an explanation of the nature of the financial emergency;

(c) an estimate of the amount of funding shortfall expected by the taxing unit;

(d) a statement that applicable fund balances are or by the end of the fiscal year will be depleted;

(e) a finding that there are no alternative sources of revenue;

(f) a summary of the alternatives that the governing body of the taxing unit has considered; and

(g) a statement of the need for the increased revenue and how it will be used.

(10) (a) The limitation on the amount of taxes levied does not apply to levies required to address the funding of relief of suffering of inhabitants caused by famine, conflagration, or other public calamity.

(b) The limitation set forth in this chapter on the amount of taxes levied does not apply to levies to support:

(i) a city-county board of health as provided in Title 50, chapter 2, if the governing bodies of the taxing units served by the board of health determine, after a public hearing, that public health programs require funds to ensure the public health. A levy for the support of a local board of health may not exceed the 5-mill limit established in 50-2-111.

(ii) county, city, or town ambulance services authorized by a vote of the electorate under 7-34-102(2).

(11) The limitation on the amount of taxes levied by a taxing jurisdiction subject to a statutory maximum mill levy does not prevent a taxing jurisdiction from increasing its number of mills beyond the statutory maximum mill levy to produce revenue equal to its 1986 revenue.

(12) The limitation on the amount of taxes levied does not apply to a levy increase to repay taxes paid under protest in accordance with 15-1-402."

Section 7. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 76, chapter 15, part 5, and the provisions of Title 76, chapter 15, part 5, apply to [sections 1 and 2].

Section 8. **Effective date.** [This act] is effective July 1, 1993.

Approved April 28, 1993.

CHAPTER NO. 574

[HB 642]

AN ACT DIVERTING A PORTION OF THE PROCEEDS FROM THE LODGING FACILITY USE TAX TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR PARK MAINTENANCE; AMENDING SECTION 15-65-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-65-121, MCA, is amended to read:

"**15-65-121. Distribution of tax proceeds — general fund loan authority.** (1) The proceeds of the tax imposed by 15-65-111 must be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds as provided in subsections (1)(a) through ~~(1)(e)~~ *(1)(d)*, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the general fund. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the general fund is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, ~~and~~ to the university system, *and to the department of fish, wildlife, and parks,* as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program; ~~and~~

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use, subject to [section 2]; and

~~(c)~~*(d)* the balance of the proceeds as follows:

(i) 75% to be used directly by the department of commerce;

(ii) except as provided in subsection ~~(1)(c)(iii)~~ *(1)(d)(iii),* 25% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; *and*

(iii) if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The department of commerce may use general fund loans for efficient implementation of this section."

Section 2. **Department to maintain parks from allocation of lodging facility use tax revenue.** The department shall use the funds provided under 15-65-121(1)(c) for the maintenance of state parks that have both resident and nonresident tourist usage. The department shall by July 1 of each year report to the tourism advisory council on the identity and status of all contracts or activities funded pursuant to this section.

Section 3. **Distribution of lodging facility use tax revenue to department of fish, wildlife, and parks.** In each year of the biennium, the amount specified in 15-65-121(1)(c) must be transferred to an account in the state special revenue fund to the credit of the department of fish, wildlife, and parks in quarterly installments.

Section 4. **Coordination instruction.** If [this act] and House Bill No. 591 are both passed and approved, then 15-65-121 reads as follows:

"**15-65-121. Distribution of tax proceeds — general fund loan authority.** (1) The proceeds of the tax imposed by 15-65-111 must be deposited in an account in the state special revenue fund to the credit of the department of revenue. ~~The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax.~~

(2) ~~Before allocating the balance of the~~ *The* tax proceeds *must be used or distributed by the department* as ~~provided in subsections (1)(a) through (1)(c),~~ *follows:*

(a) The department may spend from the account established in subsection (1) in accordance with an expenditure appropriation by the legislature, based on an estimate of the costs of collecting and disbursing the proceeds of the tax.

(b) ~~the~~ *The* department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct ~~4%~~ *5%* of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the general fund.

(c) ~~The~~ *After subtracting the amounts necessary under subsections (2)(a) and (2)(b), the* balance of the tax proceeds received each reporting period ~~and not deducted pursuant to the expenditure appropriation or deposited in the general fund~~ is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund ~~to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, and to the university system,~~ *for distribution by the department* as follows:

~~(a)~~*(i)* ~~1%~~ *0.8%* to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

~~(b)~~*(ii)* ~~2.5%~~ *2%* to the university system for the establishment and maintenance of a Montana travel research program; ~~and~~

~~(c) the balance of the proceeds as follows:~~

~~(i)~~*(iii)* ~~75%~~ *64% to the credit of the department of commerce for distribution as follows:*

(A) 66.65% to be used directly by the department of commerce *for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials*;

~~(ii)~~*(B)* except as provided in subsection ~~(1)(c)(iii)~~ *(2)(c)(iii)(C)*, 25% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide;

~~(iii)~~*(C)* if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county*; and*

(D) 8.35% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use, subject to [section 2 of House Bill No. 642]; and

(iv) 12.7% to the general fund of counties and incorporated cities and towns. Each county, city, and town must receive a distribution based upon the ratio of proceeds collected within the jurisdiction to total statewide collections. For the purposes of the origin distribution, collections originating within a county are considered to be only those collections from facilities outside the corporate limits of the cities and towns in the county.

(v) 20.5% to the state general fund.

~~(2)~~*(3)* If a city or consolidated city-county qualifies under ~~this section~~ *subsection (2)(c)(iii)(C)* for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

~~(3)~~*(4)* If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

~~(4)~~*(5)* The department of commerce may use general fund loans for efficient implementation of this section."

Section 5. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 23, chapter 1, part 3, and the provisions of Title 23, chapter 1, part 3, apply to [section 2].

Section 6. **Effective date.** [This act] is effective July 1, 1993.

Approved April 28, 1993.

CHAPTER NO. 575

[HB 651]

AN ACT RESTRUCTURING THE FEE TABLES AND FEE CLASSES FOR GROSS VEHICLE WEIGHT FEES; ELIMINATING THE PROPERTY TAX ON TRAILERS AND SEMITRAILERS LICENSED FOR 26,000 POUNDS OR MORE; LEVYING A 45-MILL LEVY ON TRUCKS AND TRUCK TRACTORS OVER 26,000 POUNDS; PROVIDING FOR THE DISTRIBUTION OF THE FUNDS RAISED FROM THE MILL LEVY; INCREASING THE TAX ON SPECIAL FUELS FROM 20 CENTS PER GALLON TO 20.75 CENTS PER

GALLON; PROVIDING FOR BUSES TO BE TAXED BY GROSS WEIGHT RATHER THAN BY SEATS; INCLUDING FERTILIZER SPREADERS IN THE AGRICULTURAL FEE CLASS; REVISING TRANSIT FEES; CORRECTING REFERENCES TO THE MOTOR CARRIER SERVICES DIVISION; INCREASING THE WEIGHT THRESHOLD FOR VEHICLES REQUIRED TO ENTER WEIGH STATIONS; AMENDING SECTIONS 15-6-138, 15-6-201, 15-70-311, 15-70-321, 15-71-102, 61-1-134, 61-3-321, 61-3-502, 61-3-521, 61-4-301, 61-4-302, 61-10-124, 61-10-141, 61-10-201, 61-10-203, 61-10-206, 61-10-209, 61-12-201, AND 61-12-206, MCA; REPEALING SECTIONS 61-10-202, 61-10-204, 61-10-205, 61-10-207, 61-10-208, AND 61-10-210, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

"**15-6-138. Class eight property — description — taxable percentage.** (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all trailers *and semitrailers*, including those prorated under 15-24-102, except those subject to taxation under 61-3-504(2) *or exempt under 15-6-201(1)(v)*;

(e) all goods and equipment intended for rent or lease, except goods and equipment specifically included and taxed in another class;

(f) buses and trucks having a rated capacity of more than 1 ton, including those prorated under 15-24-102;

(g) truck toppers weighing more than 300 pounds;

(h) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(i) x-ray and medical and dental equipment;

(j) citizens' band radios and mobile telephones;

(k) radio and television broadcasting and transmitting equipment;

(l) cable television systems;

(m) coal and ore haulers;

(n) theater projectors and sound equipment; and

(o) all other property not included in any other class in this part, except that property subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at 9% of its market value."

Section 2. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) the property of:

(i) the United States, the state, counties, cities, towns, school districts, except, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, the property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(ii) irrigation districts organized under the laws of Montana and not operating for profit;

(iii) municipal corporations; ~~and~~

(iv) public libraries; *and*

(v) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land they occupy and furnishings ~~therein~~ *in the buildings*, owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of health and environmental sciences and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that meets the following conditions:

(i) is owned and held by any association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) is devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) is not maintained and operated for private or corporate profit;

(e) property owned by institutions of purely public charity and directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) a truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached. This property is also exempt from taxation under 61-3-504(2) and 61-3-537.

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes, travel trailers, and campers;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) property owned and used by a corporation or association organized and operated exclusively for the care of the developmentally disabled, mentally ill, or vocationally handicapped as defined in 18-5-101, which is not operated for gain or profit, and property owned and used by an organization owning and operating facilities for the care of the retired, aged, or chronically ill, which are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and not held or used for private or corporate gain or profit. For purposes of this subsection (q), "nonprofit corporation" means an organization exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) provided the tools are owned by the taxpayer, the first $15,000 or less of market value of tools that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105; ~~and~~

(u) beginning January 1, 1994, timber as defined in 15-44-102~~.~~*; and*

(v) all trailers and semitrailers with a licensed gross weight of 26,000 pounds or more. For purposes of this subsection (v), the terms "trailer" and "semitrailer" mean a vehicle with or without motive power that is:

(i) designed and used only for carrying property;

(ii) designed and used to be drawn by a motor vehicle; and

(iii) either constructed so that no part of its weight rests upon the towing vehicle or constructed so that some part of its weight and the weight of its load rests upon or is carried by another vehicle.

(2) (a) The term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants; however, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment made after January 1, 1979, in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 3. Section 15-70-311, MCA, is amended to read:

"**15-70-311. Special fuel user's temporary trip permits — nonresident agricultural harvesting equipment special fuel permit.** (1) Any person operating a special fuel-powered vehicle upon the public roads and highways of this state who fails or neglects to carry in the vehicle a valid special fuel vehicle permit or registration card indicating the special fuel use permit number, as provided by 15-70-302, ~~shall be~~ *is* required to purchase a special fuel user's temporary trip permit. The permits ~~will~~ *must* be issued by scale house personnel, ~~gross vehicle weight patrol crews~~ *motor carrier services division personnel,* Montana highway patrol officers, and ~~such~~ other enforcing agents ~~as~~ *that* the department may prescribe by order or rule.

(2) Any nonresident upon entering the state with agricultural harvesting equipment powered by special fuel and operating upon the public roads and highways of this state who fails or neglects to carry in or on equipment a valid special fuel vehicle permit, as provided by 15-70-302, ~~shall be~~ *is* required to purchase a nonresident agricultural harvesting equipment special fuel permit. The permit ~~will~~ *must* be issued by scale house personnel, ~~gross vehicle weight patrol crews~~ *motor carrier services division personnel,* Montana highway patrol officers, and ~~such~~ other enforcing agents ~~as~~ *that* the department may prescribe by order or rule."

Section 4. Section 15-70-321, MCA, is amended to read:

"**15-70-321. Tax on diesel fuel and volatile liquids.** The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax in an amount equal to ~~20~~ *20.75* cents for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state or used in motor vehicles, motorized equipment, and the internal combustion of ~~any and all~~ engines, including stationary engines, used in connection with ~~any and all~~ work performed under ~~any and all~~ contracts pertaining to the construction, reconstruction, or improvement of ~~any~~ *a* highway or street and ~~their~~ *its* appurtenances awarded by ~~any and all~~ public agencies, including federal, state, county, municipal, or other political subdivisions."

Section 5. Section 15-71-102, MCA, is amended to read:

"**15-71-102. Temporary trip permit required.** (1) Upon entering the state, a nonresident operating any motor vehicle powered by liquefied petroleum gas is required to purchase a liquid petroleum gas temporary trip permit. The permits ~~will~~ *must* be issued by scale house personnel, ~~gross vehicle weight patrol crews~~ *motor carrier services division personnel,* Montana highway patrol officers, and ~~such~~ other enforcing agents ~~as~~ *that* the department of transportation may prescribe.

(2) A temporary liquid petroleum gas permit ~~shall cost~~ *costs* $20. The permit is valid for a period of time not to exceed 72 hours and ~~will be~~ *is* automatically

void if the vehicle leaves the state during this period. Special liquid petroleum gas permits, remittance forms, and any other papers necessary for the enforcement of this chapter ~~shall~~ *must* be furnished by the department."

Section 6. Section 61-1-134, MCA, is amended to read:

"**61-1-134. Commercial motor vehicle defined — exceptions.** (1) "Commercial motor vehicle" means a motor vehicle used to transport passengers or property if the vehicle:

(a) has a gross vehicle weight of 26,001 pounds or more;

(b) is designed to transport more than 15 passengers, including the driver; or

(c) is used to transport hazardous material.

(2) Commercial motor vehicles under this section do not include vehicles operated within the state of Montana that are:

(a) registered as paying the ~~16%~~ *35%* gross weight fee under 61-10-206;

(b) used for firefighting and that are bearing Montana tax-exempt plates; or

(c) police emergency response and safety education units.

(3) Vehicles that are operated within the state of Montana by farmers or persons employed by farmers who are transporting farm products or farm supplies and that are operated within 150 miles of the farm headquarters are not considered commercial motor vehicles under this section."

Section 7. Section 61-3-321, MCA, is amended to read:

"**61-3-321. Registration fees of vehicles — public-owned vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors and/or trucks, $10;

(f) buses are classed as motortrucks and licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds maximum gross loaded weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds maximum gross loaded weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds maximum gross loaded weight, $10, *except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement*;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except passenger cars, used for towing a trailer or semitrailer.

(4) If any motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee.

(5) An additional fee of $5.25 per year for each registration of a vehicle, *except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement*, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department shall distribute 25 cents from the motor vehicle registration fee for payment of supplemental benefits provided for in 19-6-709.

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers or semitrailers, or tractors owned or controlled by the United States of America or any state, county, or city.

(8) The provisions of this section relating to the payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335."

Section 8. **Tax levy on trucks and truck tractors over 26,000 pounds.** In addition to all other levies, including those under part 1, there is levied upon the taxable value of all trucks and truck tractors of 26,000 pounds or more licensed weight or gross vehicle weight 45 mills to offset the decrease in the amount of property tax caused by the exemption in 15-6-201(1)(v). The funds raised from the levy must be distributed in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed.

Section 9. Section 61-3-502, MCA, is amended to read:

"61-3-502. *(Temporary)* **Sales tax on new motor vehicles — exemptions.** (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when ~~he~~ *the purchaser* applies for ~~his~~ *an* original Montana license through the county treasurer.

(2) Except as provided in subsections (4) and (5), the sales tax is:

(a) 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 ⅛% of the list price during the second quarter of the year;

(c) 3/4 of 1% during the third quarter of the year;

(d) 3/8 of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.

(6) Except as provided in 61-3-551, the proceeds from this tax must be remitted to the state treasurer every 30 days for credit to the state highway account of the state special revenue fund. *The county treasurer shall retain 5% of the taxes collected to pay for the cost of administration.*

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) ~~No~~ *A* motor vehicle may *not* be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided ~~herein~~ *in this section,* by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from ~~such~~ *the* limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business.

61-3-502. *(Effective on receipt of taxes or fees for September 1993)* **Sales tax on new motor vehicles — exemptions.** (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when ~~he~~ *the purchaser* applies for ~~his~~ *an* original Montana license through the county treasurer.

(2) Except as provided in subsections (4) and (5), the sales tax is:

(a) 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 1/8% of the list price during the second quarter of the year;

(c) 3/4 of 1% during the third quarter of the year;

(d) 3/8 of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.

(6) The proceeds from this tax must be remitted to the state treasurer every 30 days for credit to the state highway account of the state special revenue fund. *The county treasurer shall retain 5% of the taxes collected to pay for the cost of administration.*

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the

motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) ~~No~~ *A* motor vehicle may *not* be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided ~~herein~~ *in this section,* by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from ~~such~~ *the* limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business."

Section 10. Section 61-3-521, MCA, is amended to read:

"**61-3-521. Fee in lieu of tax for certain vehicles.** (1) There is a fee in lieu of property tax imposed on motor homes, travel trailers, and campers. The fee is in addition to annual registration fees.

~~(2) The provisions of 61-10-208 do not apply to a vehicle that qualifies under subsection (1) above.~~

~~(3)~~*(2)* The fee imposed by subsection (1) ~~above~~ need not be paid by a dealer for vehicles that constitute inventory of the dealership."

Section 11. Section 61-10-124, MCA, is amended to read:

"**61-10-124. Special permits — fee — cranes.** (1) As used in this section, "crane" means a self-propelled single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

(2) Except as provided in subsections (3)(b), (3)(d), and (6), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(3) (a) Except as provided in subsections (3)(b), (3)(d), (6), and (7), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight

vehicle, combination of vehicles, load, or other thing in excess of 14 feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length, and the long semitrailer cargo unit of the combination may not exceed 48 feet in length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (6) and (7). Special permits for vehicle combinations may specify and special permits under subsections (6) and (7) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (3)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 ~~and 61-10-202~~ and with payment of the fee prescribed in subsection (2), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(4) Except as provided in subsection (3)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(5) The owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for overweight if the crane has a current special mobile equipment identification plate and if the department of transportation has approved the configuration of the crane through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is $200.

(6) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system as defined in 60-1-103 and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) ~~no~~ *an* individual cargo unit of the combination may *not* exceed 28 ½ feet in length and 102 inches in width;

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a restricted route permit under 61-10-107(3) and a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(7) The department of transportation may issue special permits under subsection (6) for vehicle combinations consisting of a truck-trailer-trailer if:

(a) the vehicle combination's overall length inclusive of front and rear bumpers is not more than 95 feet;

(b) a person, firm, or corporation applying for a permit under this subsection (7) operated the truck-trailer-trailer combination before July 1, 1987;

(c) truck-trailer-trailer operations are restricted to the specified routes those vehicles operated on before July 1, 1987; and

(d) a person, firm, or corporation applying for a permit provides the department of transportation with an affidavit designating the routes the vehicle operated on before July 1, 1987."

Section 12. Section 61-10-141, MCA, is amended to read:

"**61-10-141. Officers authorized to weigh vehicles and require removal of excessive loads — enforcement of motor carrier safety standards — duty to obtain bills of lading for agricultural seeds.** (1) A peace officer, officer of the highway patrol, or employee of the department of transportation may weigh any vehicle regulated by 61-10-101 through 61-10-110, except recreational vehicles as defined in 61-1-132, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within 2 miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in 61-10-101 through 61-10-110.

(2) Commodities and material unloaded as required by this section ~~shall~~ *must* be cared for and removed from the highway right-of-way by the owner or operator of the vehicle at the risk of that owner or operator. The removal ~~shall~~ *must* be within a reasonable time designated by the person who has compelled the unloading.

(3) The department of transportation may establish, maintain, and operate weigh stations, either intermittently or on a continuous schedule, and may require vehicles, except passenger cars and pickup trucks under ~~8,000~~ *14,000* pounds G.V.W. and recreational vehicles as defined in 61-1-132 (that are not new or used recreational vehicles traveling into or through Montana for delivery to a distributor or a dealer), to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements. *The department may require vehicles over 10,000 pounds to be inspected and weighed by portable scale crews.*

(4) The department of transportation shall work with the highway patrol in the enforcement of safety standards adopted pursuant to 44-1-1005. For the purposes of the joint enforcement, the highway patrol is designated as the lead agency. The highway patrol and the department of transportation shall cooperate to assure minimum duplication and maximum coordination of enforcement effort.

(5) In order to enforce compliance with safety standards adopted pursuant to 44-1-1005, the department of transportation shall designate employees as peace officers. The designated employees must be employed in the administration of the ~~gross vehicle weight~~ *motor carrier services* functions of the department of transportation. Each employee designated as a peace officer may:

(a) issue citations and make arrests in connection with violations of safety standards adopted under 44-1-1005;

(b) issue summons;

(c) accept bail;

(d) serve warrants for arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles utilized by motor carriers; and

(g) require production of documents relating to the cargo, driver, routing, or ownership of ~~such~~ *the* vehicles.

(6) In addition to other enforcement duties assigned under this section, an employee of the department of transportation has:

(a) the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203; and

(b) the duty to secure or make copies, or both, of all bills of lading or other evidence of delivery for shipment of agricultural seeds as defined in 80-5-120 that have been sold or are intended for sale in Montana and to forward the copies to the department of agriculture within 24 hours of the date the bill of lading was obtained."

Section 13. Section 61-10-201, MCA, is amended to read:

"**61-10-201. Gross weight fees on motortrucks ~~and~~, truck tractors, *and buses*.** In addition to other fees for the licensing of vehicles *and except as provided in 61-10-203*, there ~~shall~~ *must* be paid and collected annually for each truck, ~~and~~ truck tractor, *and bus*, based upon the maximum gross loaded weight ~~thereof~~ *and the maximum gross weight of any towed unit of each truck and truck tractor* as set by the licensee in ~~his~~ *the licensee's* application, the following fees:

Schedule I

Up to 6,000 lbs.	$	7.50
6,001 through 8,000 lbs.	~~12.50~~	*9.50*
8,001 through 10,000 lbs.	~~17.50~~	*13.25*
10,001 through 12,000 lbs.	~~20.00~~	*15.00*
12,001 through 14,000 lbs.	~~22.50~~	*17.00*
14,001 through 16,000 lbs.	~~27.50~~	*21.00*
16,001 through 18,000 lbs.	~~37.50~~	*28.00*
18,001 through 20,000 lbs.	~~50.00~~	*37.50*
20,001 through 22,000 lbs.	~~62.50~~	*47.00*
22,001 through 24,000 lbs.	~~93.75~~	*70.00*
24,001 through 26,000 lbs.	~~125.00~~	*90.00*
26,001 through 28,000 lbs.	~~156.25~~	*110.00*
28,001 through 30,000 lbs.	~~206.25~~	*130.00*
30,001 through 32,000 lbs.	~~262.50~~	*150.00*
32,001 through 34,000 lbs.	~~318.75~~	*170.00*
34,001 through 36,000 lbs.	~~375.00~~	*190.00*
36,001 through 38,000 lbs.	~~431.25~~	*215.00*
38,001 through 40,000 lbs.	~~487.50~~	*235.00*
40,001 through 42,000 lbs.	~~543.75~~	*255.00*
42,001 through 44,000 lbs.		*275.00*
44,001 through 46,000 lbs.		*300.00*
46,001 through 48,000 lbs.		*320.00*
48,001 through 50,000 lbs.		*340.00*
50,001 through 52,000 lbs.		*360.00*
52,001 through 54,000 lbs.		*380.00*
54,001 through 56,000 lbs.		*400.00*
56,001 through 58,000 lbs.		*420.00*
58,001 through 60,000 lbs.		*440.00*
60,001 through 62,000 lbs.		*460.00*
62,001 through 64,000 lbs.		*482.50*
64,001 through 66,000 lbs.		*502.50*
66,001 through 68,000 lbs.		*522.50*
68,001 through 70,000 lbs.		*545.75*
70,001 through 72,000 lbs.		*566.50*
72,001 through 74,000 lbs.		*607.50*
74,001 through 76,000 lbs.		*655.00*
76,001 through 78,000 lbs.		*695.00*

78,001 through 80,000 lbs.	*750.00*
Over ~~42,000~~ *80,000* lbs. and within the weight limits specified in 61-10-101 through 61-10-110	~~62.50~~ *750.00 plus an additional 46.00* ~~per~~ *for each* ton or fraction ~~thereof~~ *of a ton in excess of 80,000 lbs.*"

Section 14. Section 61-4-301, MCA, is amended to read:

"**61-4-301. Permit and transit plates for new vehicles being transported by driveaway or towaway methods — *used mobile homes.*** (1) *(a)* A person, firm, partnership, or corporation, regularly and lawfully engaged in the transportation of new vehicles over the highways of this state from manufacturing or assembly points to agents of manufacturers and dealers in this state or in other states, territories, or foreign countries or provinces by the driveaway or towaway methods, where the vehicles being driven, towed, or transported by the saddle-mount, towbar or full-mount methods, or a lawful combination of these methods, will be transported over the highways of the state but once, may annually apply to the department of justice for a permit to use the highways of this state and shall pay, upon filing the application, a fee of $100. Upon processing of the application, that department shall issue an annual permit to the applicant.

(b) A person moving used mobile homes from a point outside the state to a point inside the state may apply to the department for the permit authorized pursuant to subsection (1)(a).

(2) The permitholder may also apply to the department of justice for a sufficient number of distinctive transit plates or devices showing the permit number for identification of the vehicles being transported by the permitholder, and the plates or devices may be used on a vehicle being driven, towed, or transported by and under the control of the permitholder. That department shall collect the additional sum of $1 for each pair of transit plates or devices applied for and issued.

(3) The department of justice shall retain the permit and plate fees to defray costs of administering 61-4-301 through 61-4-308.

(4) The permit and transit plates or devices expire on December 31 of each year."

Section 15. Section 61-4-302, MCA, is amended to read:

"**61-4-302. One-trip fee in addition to permit and plate fees payable quarterly — *exception.*** *(1)* In addition to the permit and plate fees, a permit holder shall pay to the department of justice a one-trip fee of $5 per driven vehicle. The fee shall be paid within 15 days after the end of the calendar quarter upon forms recommended or supplied by that department.

(2) A person moving new or used mobile homes is not subject to the one-trip fee required by subsection (1)."

Section 16. Section 61-10-203, MCA, is amended to read:

"**61-10-203. Alternative gross weight fees on ~~truck-trailer~~ *motortrucks and truck tractors with special trailer* combinations.** (1)

In addition to other fees for the licensing of vehicles, there ~~may~~ *must* be paid and collected annually ~~instead of the fees provided in 61-10-201,~~ for each motortruck or truck tractor *operating under the provisions of 61-10-124(6) and (7),* based upon the maximum combined gross loaded weight of a truck tractor ~~with a semitrailer, a truck tractor with a semitrailer and a full trailer, a motortruck and a trailer,~~ or a motortruck and trailers, as set by the licensee in ~~his~~ *the* application, the following fees:

Schedule ~~III~~ *II*

Truck tractor ~~with a semitrailer, a truck tractor with a semitrailer and a full trailer, a motortruck and a trailer,~~ or a motortruck and trailers:

Up to 42,000 lbs	$ 571.00
42,001 to 44,000 lbs	631.00
44,001 to 46,000 lbs	691.00
46,001 to 48,000 lbs	752.00
48,001 to 50,000 lbs	812.00
50,001 to 52,000 lbs	871.00
52,001 to 54,000 lbs	931.00
54,001 to 56,000 lbs	992.00
56,001 to 58,000 lbs	1,052.00
58,001 to 60,000 lbs	1,112.00
60,001 to 62,000 lbs	1,172.00
62,001 to 64,000 lbs	1,233.00
64,001 to 66,000 lbs	1,293.00
66,001 to 68,000 lbs	1,352.00
68,001 to 70,000 lbs	1,412.00
70,001 to 72,000 lbs	1,473.00
72,001 to 74,000 lbs	1,533.00
74,001 to 76,000 lbs	1,593.00
76,001 to 78,000 lbs	1,653.00
78,001 and over	65.50 per ton or fraction thereof.

~~(2) Payment of the fees provided in this section exempts a semitrailer or trailer in combination with a motortruck or truck tractor so licensed from the fees provided in 61-3-701, 61-10-202, 61-10-210, and 61-10-211.~~

~~(3)~~*(2)* The trailers or semitrailers must be currently registered in another *country,* state, or county.

~~(4) A trailer or semitrailer entering the state in combination with a truck or truck tractor licensed under the above schedule or a trailer or semitrailer registered to a Montana-based carrier with trucks or truck tractors licensed under the above schedule may be moved in the local delivery zone within a 15-mile radius of the city or town in combination with a truck or truck tractor, licensed under 61-10-201, without payment of any additional fees on the truck or truck tractor, trailer, or semitrailer.~~"

Section 17. Section 61-10-206, MCA, is amended to read:

"**61-10-206. Special fees — certain farm vehicles.** *(1)* Except for motortrucks owned and operated by cooperative associations or cooperative marketing associations, there ~~shall~~ *must* be paid and collected annually a fee equal to ~~16%~~ *35%* of the fees provided in Schedule I and Schedule II ~~above~~ on*:*

(a) motortrucks~~, trailers, and semitrailers~~ owned and operated by ranchers or farmers in the transportation of their own ranch, farm, orchard, or dairy products from point of production to market, or of supplies, commodities, or equipment to be used on the ranch, farm, orchard, or dairy, or in the infrequent or seasonal transportation by one farmer for another for any purpose other than commercial hire of products of the farm, orchard, or dairy, or of supplies or commodities to be used on the farm, orchard, or dairy~~, and on~~*;*

(b) one truck tractor and lowboy trailer used by contractors engaged exclusively in soil conservation work and land leveling activities that result in direct benefit to agriculture*; and*

(c) fertilizer spreader trucks and spreader trailers used exclusively to transport and apply fertilizer to agricultural fields and plots.

(2) The applicant under the fertilizer exception for special fees under subsection (1)(c) shall show, when the fee is paid as provided in 61-10-222, a valid fertilizer dealer license issued by the department of agriculture as provided in 80-10-202.

(3) ~~However, the~~ *The* minimum fee ~~so paid shall be~~ *is* $6. ~~The terms "trailers and semitrailers" as used herein shall not include farm wagons.~~"

Section 18. Section 61-10-209, MCA, is amended to read:

"**61-10-209. Monthly payment — quarterly payment — penalty for failure to pay fee.** (1) When the gross weight of a vehicle exceeds 24,000 pounds, the gross weight or special fees for trucks, ~~trailers,~~ tractors, ~~pole trailers,~~ or ~~semitrailers~~ *buses* may be paid for a 1-month period for one-twelfth the regular fee or for a 3-month period for one-fourth the regular fee at the beginning of any quarter of the calendar year. For each fee ~~so~~ paid other than at the time of payment of the annual vehicle registration fee, an additional fee of $5 ~~shall~~ *must* be charged. The department may adopt rules relative to the issuance and display of certificates or insignia, which ~~shall~~ *must* state the months for which the vehicle is licensed.

(2) A vehicle licensed under this section may not be operated over the public highways after the expiration of:

(a) the 1-month period until the owner pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year; or

(b) the 3-month period unless the owner or operator of the vehicle, within 10 calendar days or 7 business days as provided by law, whichever is greater, pays the required fee for a license for an additional 1-month or 3-month period or for the remainder of the year.

(3) A person who operates a vehicle upon the public highways in violation of subsection (2) is guilty of a misdemeanor. In addition ~~he shall be~~ *the person is* required to purchase a gross weight license for the vehicle involved at the fee covering an entire year's license for operation of the vehicle less the fees for the period of the year already paid.

(4) If, within 5 days ~~thereafter no~~ *after a requirement under subsection (3) is applicable, a* license for a full year has *not* been purchased as required, the

Montana highway patrol, county sheriff, or city police may impound the vehicle in the manner ~~which~~ *that* is directed for these cases by the department until the requirement is met."

Section 19. Section 61-12-201, MCA, is amended to read:

"**61-12-201. Appointment of employees as peace officers.** The director of transportation may appoint employees of the department as peace officers to carry out this part. The employees appointed may include only those employees of the department who are employed in the administration of the ~~gross vehicle weight~~ *motor carrier services* functions of the department. Each employee appointed ~~shall~~ *must* be issued a certificate of appointment and execute an oath of office, which ~~shall~~ *must* be entered into the records of the department."

Section 20. Section 61-12-206, MCA, is amended to read:

"**61-12-206. Offenses for which arrest authorized.** (1) Employees appointed under 61-12-201 may make arrests for violations of the following statutory provisions only:

(a) part 1, chapter 10, of this title;

(b) part 3, chapter 4, of this title;

(c) sections 15-24-201 through 15-24-205;

(d) sections 15-70-302 through 15-70-307;

(e) sections 15-70-311 through 15-70-314;

(f) sections 15-71-101 through 15-71-105;

(g) section 61-3-502(1);

(h) sections 61-10-201, *61-10-203, 61-10-206, 61-10-209, and 61-10-211* through 61-10-215;

(i) sections 61-10-222 through 61-10-224;

(j) sections 61-10-231 through 61-10-233.

(2) These employees may not arrest for violations other than specified in this section."

Section 21. **Repealer.** Sections 61-10-202, 61-10-204, 61-10-205, 61-10-207, 61-10-208, and 61-10-210, MCA, are repealed.

Section 22. **Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 15, chapter 24, and the provisions of Title 15, chapter 24, apply to [section 8].

Section 23. **Coordination instruction.** (1) If House Bill No. 572 is not passed and approved, then [this act] is void.

(2) If Senate Bill No. 257 is passed and approved and if it amends 15-70-321 to increase the tax on diesel fuel and volatile liquids, then:

(a) [section 4 of this act] is void; and

(b) the tax rates on diesel fuel and volatile liquids imposed by 15-70-321 in Senate Bill No. 257 are increased by 3/4 cent on January 1, 1994.

Section 24. **Effective date.** [This act] is effective January 1, 1994.

Approved April 28, 1993.

CHAPTER NO. 576

[HB 658]

AN ACT REVISING THE WHEAT AND BARLEY ASSESSMENT PROCEDURE TO REQUIRE COLLECTION FROM A GRAIN SELLER AT THE TIME OF FIRST SALE; AMENDING SECTIONS 80-11-206 AND 80-11-207, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-206, MCA, is amended to read:

"**80-11-206. Maximum annual assessment on wheat and barley grown, *delivered, or stored.*** (1) There is ~~hereby~~ levied an annual assessment of not more than 10 mills per bushel upon all wheat ~~grown~~ and not more than 15 mills per hundredweight on all barley grown, *delivered, or stored* in the state of Montana and sold through commercial channels.

(2) The assessment is ~~hereby~~ levied and imposed

~~—on each grower of wheat or barley in the state of Montana~~:

(a) in the case of *a* sale of wheat or barley, at the time of ~~any~~ *first* sale of *any* wheat or barley by a ~~grower~~ *seller*, and ~~shall~~ *must* be collected by the first purchaser of the wheat or barley from the ~~grower~~ *seller* at the time of each settlement for wheat or barley purchased; or

(b) in the case of a pledge or mortgage of wheat or barley as security for a loan under any federal price support program, ~~the assessment shall~~ *and must* be collected by deducting the amount ~~thereof~~ *of the assessment* from the proceeds of ~~such~~ *the* loan at the time the loan is made by the agency or person making the loan.

~~(2)~~*(3)* The assessment levied under the provisions of this part ~~shall~~ *must* be deducted and collected as provided by this part, whether ~~such~~ *the* wheat or barley is stored in this or any other state. The assessment ~~shall attach~~ *attaches* to each transaction, but ~~no~~ *a* ~~grower~~ *seller* ~~shall be~~ *is not* subject to assessment more than once irrespective of the number of times ~~it shall be~~ *the wheat or barley is* the subject of a sale, pledge, mortgage, or other transaction~~, the~~. *The* assessment ~~being~~ *is* imposed and ~~attaching~~ *attaches* on the initial sale, pledge, mortgage, or other transaction in which the wheat or barley ~~grower~~ *seller* parts with title to the wheat or barley~~;~~ or creates some interest ~~therein~~ *in the wheat or barley* in a pledgee, mortgagee, or other person."

Section 2. Section 80-11-207, MCA, is amended to read:

"**80-11-207. ~~Buyer's delivery~~ *Delivery* of invoice ~~to grower~~ — form — filing of sworn statement — payment of assessment — refund.** (1) The purchaser of the wheat or barley at the time of sale or the pledgee, mortgagee, or other lender at the time of the loan or advance shall give separate invoices for each purchase, *delivery, or storage charge* to the ~~grower~~ *seller or person delivering the wheat or barley or entering it into storage.* The invoices ~~shall~~ *must* be on forms approved by the department and ~~shall~~ *must* show:

(a) the name and address of the ~~grower and~~ seller *or of the person delivering the wheat or barley or entering it into storage*;

(b) the name and address of the purchaser or the lender;

(c) the number of bushels of wheat or hundredweights of barley sold, mortgaged, ~~or~~ pledged, *delivered, or stored*;

(d) the date of the purchase, mortgage, ~~or~~ pledge, *delivery, or storage* and the amount of assessment collected and remitted to the department.

(2) The purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, within 20 days after the end of a month in which ~~he~~ *a purchaser* purchases ~~a grower's~~ wheat or barley or in which a lender makes a loan or advance on ~~a grower's~~ wheat or barley, a sworn statement of the number of bushels of wheat or hundredweights of barley purchased in Montana, ~~or~~ the number of bushels of wheat or hundredweights of barley mortgaged or pledged or otherwise transferred or liened as security for a loan during the preceding calendar month, *or the number of bushels of wheat or hundredweights of barley delivered or stored.* At the time the sworn statement is filed, the purchaser or lender shall pay to the department the assessment provided for in 80-11-206 for deposit in the wheat and barley account in the state special revenue fund.

(3) The statement referred to in subsections (1) and (2) ~~of this section shall~~ *must* be legibly written and ~~shall be~~ entirely free of any corrections or erasures. A person may not alter any part of a statement.

(4) After 30 days and before 90 days following the deduction of the assessment by the first purchaser or the first lender *under 80-11-206(2)*, the ~~grower~~ *seller* may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request ~~shall~~ *must* be accompanied by the original invoices received by the ~~grower~~ *seller* at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section. Records of refunds may be destroyed 2 years after the refund is made. All original invoices ~~shall~~ *must* be returned to the ~~grower~~ *seller* with the refund payment."

Section 3. **Applicability.** [This act] is not intended to affect or impair any agreement for collection of the wheat and barley assessment entered into on or before [the effective date of this act] or to preclude entry into an agreement for collection of the wheat and barley assessment after [the effective date of this act].

Section 4. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act]

is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1993.

CHAPTER NO. 577

[HB 673]

AN ACT REQUIRING THAT PROBATIONERS AND PAROLEES PAY A SUPERVISORY FEE; APPROPRIATING THE MONEY COLLECTED FROM THE FEE; PROVIDING THAT THE MONEY BE USED FOR EQUIPMENT AND TRAINING FOR PROBATION AND PAROLE OFFICERS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Supervisory fees — account established.** (1) (a) Except as provided in subsection (1)(b), a probationer or parolee shall pay a supervisory fee of $120 a year, prorated at $10 a month for the number of months under supervision. The fee must be collected by the clerk of the district court with jurisdiction during the probationer's or parolee's period of supervision under this part.

(b) The court or the board may reduce or waive the fee or suspend the monthly payment of the fee if it determines that the payment would cause the probationer or parolee a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the fees collected under the provisions of this section.

(b) District court clerks shall deduct from the total fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a).

Section 2. **Appropriation.** All fees collected and deposited under the provisions of [section 2], to a maximum of $444,000 for each year of the 1994-95 biennium, are appropriated to the department and must be used to support equipment purchases and training for probation and parole officers.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [sections 1 and 2].

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved April 28, 1993.

CHAPTER NO. 578

[HB 679]

AN ACT REVISING THE LAW RELATING TO OFF-HIGHWAY VEHICLE USE; ALLOWING OFF-HIGHWAY VEHICLES TO CROSS PUBLIC ROADS UNDER CERTAIN CONDITIONS; ESTABLISHING A STANDARD OF RESPONSIBILITY FOR OFF-HIGHWAY VEHICLE OPERATORS; PROVIDING FOR OFF-HIGHWAY VEHICLE SAFETY TRAINING AFTER 1994; APPROPRIATING FEDERAL FUNDS FOR OFF-HIGHWAY VEHICLE SAFETY TRAINING; AND AMENDING SECTION 17-7-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Off-highway crossings of public roads.** (1) Except as provided in subsection (2), an off-highway vehicle may make a direct crossing of a public road when the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The off-highway vehicle must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(2) An off-highway vehicle may not be operated on or across a highway that is part of the federal-aid interstate system.

Section 2. **Off-highway vehicle operator responsibilities.** (1) An off-highway vehicle operator shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of off-highway vehicle use and shall regulate personal conduct at all times so that injury to self or other persons or property that results from the risks inherent in the sport of off-highway vehicle operation is avoided.

(2) Risks inherent in the sport of off-highway operation include variations in terrain, surface or subsurface conditions, crevices, ravines, streams, poor visibility, rocks, trees, other forms of forest growth or debris, and any other natural hazard.

(3) An off-highway vehicle operator is responsible for:

(a) knowing the range of the operator's ability to navigate any slope, trail, or area for off-highway vehicle use within the limits of the operator's ability, taking into consideration the conditions;

(b) maintaining control of speed and course at all times while operating the off-highway vehicle;

(c) heeding all posted warnings; and

(d) refraining from acting in a manner that may cause or contribute to the injury of anyone.

(4) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of off-highway equipment or products or safety equipment used incidental to the operation of an off-highway vehicle.

Section 3. **Off-highway vehicle safety education training program — appropriation.** (1) There is an off-highway vehicle safety education training program. Beginning October 1, 1994, the department of fish, wildlife, and parks shall coordinate the program as funds are available.

(2) Beginning October 1, 1994, the department of justice shall transfer to the department of fish, wildlife, and parks all money available for the program under 23 U.S.C. 402.

(3) There is an account in the federal special revenue fund in which all money received for the administration of the off-highway vehicle safety education training program must be deposited. The money in the account is statutorily appropriated, as provided in 17-7-502, to the department of fish, wildlife, and parks for the administration of the program.

Section 4. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; *[section 3];* 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient*

eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.) "

Section 5. **Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 23, chapter 2, part 8, and the provisions of Title 23, chapter 2, part 8, apply to [sections 1 through 3].

Section 6. **Contingent voidness.** If on July 1, 1995, funding is not available for the training program provided for in [section 3], then the provisions of [section 3] are void.

Approved April 28, 1993.

CHAPTER NO. 579

[HB 685]

AN ACT GENERALLY REVISING CORRECTIONS AND HUMAN SERVICES LAWS TO IMPLEMENT BUDGET REDUCTIONS; ALLOWING THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES TO USE CIGARETTE TAX REVENUE FOR VETERANS' NURSING HOMES; PROVIDING THAT A DEFENDANT WHO IS SENTENCED TO A COUNTY JAIL OR PRISON MAY BE COMMITTED TO THE DEPARTMENT FOR PLACEMENT IN AN APPROPRIATE INSTITUTION OR PROGRAM; PROVIDING FOR THE GRANTING OF GOOD TIME TO INMATES IN ORDER TO REGULATE INMATE NUMBERS; REVISING THE TIME PERIOD IN WHICH THE BOARD OF PARDONS CONSIDERS ELIGIBLE INMATES FOR PAROLE; REDUCING THE LEVEL OF SUPERVISION OF PROBATIONERS AND PAROLEES WHEN THE CASELOAD REACHES CERTAIN LEVELS; ALLOWING A CHARGE FOR BOARD, ROOM, AND ANCILLARY SERVICES PROVIDED TO INCARCERATED PERSONS; DISCONTINUING THE SWAN RIVER FOREST CAMP; AUTHORIZING THE OPERATION OF THE WOMEN'S CORRECTIONAL CENTER IN A TEMPORARY LOCATION; DISCONTINUING THE GALEN CAMPUS OF THE MONTANA STATE HOSPITAL; REVISING THE LOCATION AND FUNCTIONS OF THE CHEMICAL DEPENDENCY TREATMENT CENTER; DIRECTING THE COORDINATION OF RESOURCES TO ENSURE DELIVERY OF SERVICES TO CHILDREN WITH EMOTIONAL DISTURBANCES; PROVIDING EXPENDITURE FLEXIBILITY; ELIMINATING MOST CONDITIONS ATTACHED TO THE SALE OF THE MONTANA YOUTH TREATMENT CENTER; AMENDING SECTIONS 10-2-416, 46-18-201, 46-23-202, 46-23-1011, 46-23-1021, 52-5-111, 53-1-104, 53-1-202, 53-1-402, 53-21-202, 53-21-601, 53-21-603, 53-30-101, AND 53-30-105, MCA, AND SECTION 5, CHAPTER 14, SPECIAL LAWS OF JUNE 1986; REPEALING SECTIONS 10-2-412, 10-2-413, 50-17-104, 52-2-118, 52-5-104, AND 53-21-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because it authorizes the department of corrections and human services to adopt rules concerning the granting of good time to inmates when the population of an institution reaches capacity and providing that individuals within the corrections system pay for services. It is the intent of the legislature that rules adopted by the department to grant good time to inmates when the capacity of an institution is exceeded be primarily based upon proximity to parole eligibility or discharge but also take into consideration factors such as behavior, attitude, and criminal history.

The rules adopted to manage the Montana state hospital population must take into account the facilities, the personnel available at the hospital, emergency access to services, public and individual safety, active treatment of patients, discharge planning of patients, and access to community-based services. The department is directed to involve consumers, family members of consumers, mental health advocates, mental health providers, law enforcement officials, and other governmental officials in the development of the administrative rules authorized by this bill.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Use of cigarette tax.** The revenue allocated to the department of corrections and human services from revenue deposited under 16-11-119 must be used to support the operation and maintenance of the Montana veterans' homes.

Section 2. Section 10-2-416, MCA, is amended to read:

"**10-2-416. Pledge to continue operation and maintenance.** Pursuant to 38 U.S.C. 641 and 5035(a)(6), the state shall appropriate *funds either* from the general fund *or from funds generated under 16-11-111* to the department of corrections and human services financial support necessary to provide for continued operation and maintenance of the project upon completion. *The department of corrections and human services may contract with a private vendor to provide for the operation of the eastern Montana veterans' home and may charge the contract vendor a rental fee for the maintenance and upkeep of the facility.*"

Section 3. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) *impose a county jail or state prison sentence, as provided in Title 45, for the offense or* commit the defendant to ~~a~~ *the department of corrections and human services for placement in an appropriate* correctional institution~~, with or without a fine as provided by law for the offense~~ *or program*;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or a women's correctional facility, the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225."

Section 4. Section 46-23-202, MCA, is amended to read:

"**46-23-202. Investigation of prisoner by board.** (1) Within the 2 months prior to ~~his~~ *a prisoner's* official parole eligibility date *or within the 2 months following the date a prisoner becomes eligible pursuant to 53-30-105(5),* the board shall consider all pertinent information regarding each prisoner, including the circumstances of ~~his~~ *the* offense, ~~his~~ *the prisoner's* previous social history and criminal record, ~~his~~ *the prisoner's* conduct, employment, and attitude in prison, and the reports of any physical and mental examinations ~~which~~ *that* have been made.

(2) Before ordering the parole of any prisoner, the board shall interview ~~him~~ *the prisoner.*"

Section 5. Section 46-23-1011, MCA, is amended to read:

"**46-23-1011. Supervision on probation.** (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation ~~shall~~ *must* be signed by the probationer and given to ~~him~~ *the probationer* and ~~his~~ *the probationer's* probation and parole officer, who shall report on ~~his~~ *the probationer's* progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage ~~him~~ *the probationer* to improve ~~his~~ *the probationer's* condition and conduct and inform ~~him~~ *the probationer* of *the* restoration of ~~his~~ rights on successful completion of ~~his~~ *the* sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice ~~shall~~ *must* be given to the probation and parole officer before any condition is modified, and ~~he shall~~ *the officer must* be given an opportunity to present ~~his~~ *the officer's* ideas or recommendations on any modification. A copy of a modification of conditions ~~shall~~ *must* be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

(6) (a) Upon recommendation of the probation and parole officer, a court may conditionally discharge a probationer from supervision before expiration of ~~his~~ *the probationer's* sentence if the court determines that a conditional discharge from supervision is in the best interests of the probationer and society.

(b) ~~Nothing in subsection~~ *Subsection* (6)(a) ~~prohibits~~ *does not prohibit* a court from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to the court that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the court may not place an offender on probation under supervision by that district office unless it grants a conditional discharge to a probationer being supervised by that district office. The department may recommend probationers to the court for conditional discharge. The court may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 6. Section 46-23-1021, MCA, is amended to read:

"**46-23-1021. Supervision on parole.** (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of ~~his~~ parole ~~shall~~ *must* be signed by the parolee and given to ~~him~~ *the parolee* and to ~~his~~ *the parolee's* probation and parole officer, who shall report on ~~his~~ *the parolee's* progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist ~~him~~ *the parolee* in adjusting to community life, and inform ~~him~~ *the parolee* of the restoration of ~~his~~ rights on successful completion of sentence.

(5) The probation and parole officer shall keep ~~such~~ records as the board or department may require. All records ~~shall~~ *must* be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of ~~his~~ *the parolee's* sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society.

(b) ~~Nothing in subsection~~ *Subsection* (6)(a) ~~prohibits~~ *does not prohibit* the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.

(c) If the department certifies to the board that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the board may not parole a prisoner to that district office unless it grants a conditional discharge to a parolee being supervised by that district office. The department may recommend parolees to the board for conditional discharge. The board may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 7. Section 52-5-111, MCA, is amended to read:

"**52-5-111. Commutation of sentence to state prison and transfer of prisoner to youth correctional facility ~~or Swan River forest camp~~.** (1) Upon the application of a person under 19 years of age who has been sentenced to the state prison or upon the application of ~~his~~ *the youth's* parents or guardian, the governor may, after consulting with the department of corrections and human services and the department of family services and with the approval of the board of pardons, commute the sentence by committing ~~such~~ *the* person *who may benefit from programs offered at a youth correctional facility* to the department of family services until ~~he~~ *the youth* is 19 years of age or until sooner placed or discharged.

(2) If ~~such~~ *the* person's behavior after being committed to the department of family services indicates that ~~he~~ *the youth* is not a proper person to reside at one of the youth correctional facilities, the governor, after consulting with the department of corrections and human services and the department of family services and with the approval of the board of pardons, may revoke the commutation and return ~~him~~ *the youth* to the state prison to serve out ~~his~~ *the youth's* unexpired term, and the time spent by ~~him~~ *the youth* at one of the youth correctional facilities or while a refugee from one of the youth correctional facilities ~~shall not be~~ *is not* considered as a part of ~~his~~ *the youth's* original sentence.

(3) Upon recommendation of the warden and with the approval of the department of corrections and human services and the department of family services, a person under 19 years of age who has been sentenced to the state prison *and who may benefit from programs offered at a youth correctional facility* may be transferred to any youth correctional facility under the jurisdiction and control of the department of family services.

~~(4) Upon recommendation of the warden and approval of a person sentenced to the state prison or application of a person sentenced to the state prison and approval of the warden and with the approval of the department of corrections and human services, such person sentenced to the state prison who is 25 years of age or younger may be transferred to the Swan River forest camp. Prior to departmental approval of the transfer, the person must undergo an evaluation by the department to determine his suitability for transfer to the camp. The results of the evaluation must include a finding that a minimum security facility is an appropriate placement for such person or the transfer shall be denied. If the person is transferred, he shall be under the supervision and control of the facility to which he is transferred.~~

~~(5)~~*(4)* If ~~such~~ *the* person's behavior after transfer to a youth correctional facility ~~or the Swan River forest camp~~ indicates ~~he~~ *that the youth* might be released on parole or ~~his~~ *that the youth's* sentence *might* be commuted and ~~he~~ *the youth* be discharged from custody, the superintendent of ~~such~~ *the* facility, with the approval of the department of corrections and human services and the department of family services ~~in the case of a youth correctional facility or with the approval of the department of corrections and human services in the case of the Swan River forest camp~~, may make an appropriate recommendation to the board of pardons and the governor, who may in their discretion parole such person or commute ~~his~~ *the youth's* sentence.

~~(6)~~*(5)* If ~~such~~ *the* person's behavior after transfer to a youth correctional facility ~~or the Swan River forest camp~~ indicates ~~he~~ *that the youth* is not a proper person to reside in ~~such~~ *the* facility, upon recommendation of the superintendent and with the approval of the department of corrections and human services and the department of family services ~~in the case of a youth correctional facility or with the approval of the department of corrections and human services in the case of the Swan River forest camp~~, ~~such person shall~~ *the youth must* be returned to the state prison to serve out ~~his~~ *the* unexpired term."

Section 8. Section 53-1-104, MCA, is amended to read:

"**53-1-104. Release of arsonist — notification of department of justice.** (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice whenever ~~such a~~ *the* person is admitted or released by it:

(a) Montana state hospital;

(b) state prison;

(c) Mountain View school;

(d) Pine Hills school; *or*

(e) ~~Swan River forest camp; or~~

~~(f)~~ any county or city detention facility.

(2) The notification ~~shall~~ *must* disclose:

(a) the name of the person;

(b) where the person is or will be located; and

(c) the type of fire the person was involved in."

Section 9. Section 53-1-202, MCA, is amended to read:

"**53-1-202. Department of corrections and human services.** (1) The following components are in the department of corrections and human services to carry out the purposes of the department:

(a) adult corrections services consisting of the following institutional components to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

(i) Montana state prison;

(ii) ~~Swan River forest camp;~~

~~(iii)~~ the Montana women's correctional center; and

~~(iv)~~*(iii)* appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(A) in prerelease centers;

(B) under intensive supervision;

(C) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(D) in other appropriate programs;

(b) mental health services consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) Montana state hospital;

(ii) Montana center for the aged; and

(iii) a community services component consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 2;

(c) chemical dependency services consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(d) institutional and residential components of the developmental disabilities system for those developmentally disabled persons who require that care according to Title 53, chapter 20, consisting of:

(i) the Montana developmental center; and

(ii) Eastmont human services center; and

(e) veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

(i) Montana veterans' home; and

(ii) eastern Montana veterans' home at Glendive.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature."

Section 10. Section 53-1-402, MCA, is amended to read:

"**53-1-402. Residents subject to per diem and ancillary charges.** *(1)* The department shall assess and collect per diem and ancillary charges for the care of residents in the following institutions:

~~(1)~~*(a)* Montana state hospital;

~~(2)~~*(b)* Montana developmental center;

~~(3)~~*(c)* Montana veterans' home;

~~(4)~~*(d)* eastern Montana veterans' home;

~~(5)~~*(e)* Montana center for the aged;

~~(6)~~*(f)* Eastmont human services center.

(2) This section does not apply to the eastern Montana veterans' home if the department contracts with a private vendor to operate the facility as provided for in 10-2-416."

Section 11. **Rates for board, room, and ancillary services charged to inmates.** (1) The department may establish and charge reasonable rates for board, room, and ancillary services as described in 53-1-401 for persons incarcerated in an institutional correctional facility.

(2) The department may prescribe rules that establish criteria and a procedure for determining ability to pay. The department may not make an assessment that would place an undue financial burden on the person.

Section 12. Section 53-21-202, MCA, is amended to read:

"**53-21-202. Duties of department.** The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. ~~Such~~ *The* means ~~shall~~ *must* be utilized to initiate and operate these services in cooperation with local agencies as established under this part.

(3) collect and disseminate information relating to mental health;

(4) prepare and maintain a comprehensive plan for the development of public mental health services in the state;

(5) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of

money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(6) establish standards for mental health programs that receive funds from the department; ~~and~~

(7) evaluate performance of programs that receive funds from the department in compliance with federal and state standards*;*

(8) coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers; and

(9) appoint an advisory council to make recommendations to the department regarding services for emotionally disturbed children. The members of the advisory council shall serve without compensation and must include but not be limited to a representative of:

(a) the department;

(b) the department of family services;

(c) the office of public instruction;

(d) a youth court;

(e) parents of emotionally disturbed children; and

(f) service provider groups."

Section 13. Section 53-21-601, MCA, is amended to read:

"**53-21-601. Location and primary function of hospital.** (1) The ~~agency~~ *facility* providing ~~comprehensive~~ *mental* health care services at ~~Galen and~~ Warm Springs, Montana, is the Montana state hospital and as its primary function provides~~:~~

~~(a)~~ care and treatment of mentally ill persons~~;~~

~~(b) diagnosis, care, evaluation, treatment, referral, and rehabilitation of persons afflicted with chemical dependency;~~

~~(c) care and treatment of institutional residents or clients of the department's community and residential programs who require acute hospital care or nursing care;~~

~~(d) treatment of tuberculosis and silicosis (commonly called miner's consumption);~~

~~(e) detoxification of those persons who seek relief from the disabling effects of alcohol and other chemical substances; and~~

~~(f) contingent upon space and funds, the treatment of pulmonary diseases and other medical or organic disorders~~.

(2) The ~~campus facility at Warm Springs, Montana,~~ *Montana state hospital* is ~~the component designated as the~~ *a* mental health facility, as defined in 53-21-102, of the department of corrections and human services for the care and treatment of mentally ill persons.

(3) ~~The designated campus facilities at Galen, Montana, are the components designated as the department's residential treatment facilities for those persons suffering from chemical dependency.~~

~~(4) The campus facility at Galen, Montana, licensed to provide acute hospital and intermediate nursing care, is the facility component designated for the care and treatment of the medical and organic disorders described in this section.~~ *The department shall adopt rules to manage the state hospital patient population in a manner that will ensure emergency access to services, protect public and individual safety, provide active treatment, implement effective discharge planning, and assure access to appropriate community-based services.*

(4) The department shall prepare a report to the 54th legislature that:

(a) describes current and projected future use of the Montana state hospital; and

(b) describes progress toward, and additional steps required for achievement of, accreditation by the joint commission on accreditation of healthcare organizations."

Section 14. Section 53-21-603, MCA, is amended to read:

"**53-21-603. ~~Alcoholic~~ *Chemical dependency* treatment center.** (1) There is ~~an alcoholic~~ *a Montana chemical dependency* treatment center ~~located at the Montana state hospital~~. The ~~admittance and discharge procedures for alcoholics are the same as for ill persons~~ *Montana chemical dependency treatment center is the approved public treatment facility as defined in 53-24-103.*

(2) ~~As used in this section:~~

~~(a) "alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health, interpersonal relations, or economic functioning or to an extent which endangers the public health, welfare, or safety;~~

~~(b) an "alcoholic" is a person suffering from the illness of alcoholism.~~

~~(3)~~ The ~~alcoholic~~ *Montana chemical dependency* treatment center shall provide ~~care~~ *detoxification,* evaluation, treatment, referral, and rehabilitation to persons in Montana who are referred for the treatment of ~~the illness of~~ alcoholism or ~~the complications thereof~~ *other chemical dependency.*"

Section 15. Section 53-30-101, MCA, is amended to read:

"**53-30-101. Location and function of prison and women's correctional center.** (1) The institution at Deer Lodge is the state prison and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult male criminal offenders.

(2) The institution located in accordance with sections 1 through 7, Chapter 651, Laws of 1991, is the women's correctional center and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult female criminal offenders. *The department of corrections and human services may continue to operate the women's correctional center in a temporary location during the 1994-95 biennium.*"

Section 16. Section 53-30-105, MCA, is amended to read:

"**53-30-105. Good time allowance.** (1) The department of corrections and human services shall adopt rules providing for the granting of good time allowance for inmates employed in any prison work or activity *and to implement subsection (5)*. The good time allowance shall operate as a credit on ~~his~~ *the inmate's* sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules made by the department or the warden. The rules adopted by the department *under this subsection* may not grant good time allowance to exceed:

(a) 10 days per month for inmates assigned to maximum, close, and medium I security classifications;

(b) 13 days per month for those classified as medium II and minimum security classifications;

(c) 15 days per month for inmates after having been assigned as medium II or minimum security for an uninterrupted period of 1 year;

(d) 13 days per month for those inmates enrolled in school who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) 3 days per month for those inmates participating in self-improvement activities designated by the department.

(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden of the state prison shall advise the department of any attempted escape or violation of rules on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.

(3) A person may not earn good time under this section while ~~he~~ *the person* is on probation. A person may earn good time while on parole at the rate of 30 days per month. If the department determines that a person has violated ~~his~~ *the* conditions of parole, it may, in its discretion, deduct good time credit accumulated under this subsection in an amount up to and including all credit accumulated on the date of the violation.

(4) The warden of the state prison may request that all or portions of any previously forfeited good time be restored as a result of subsequent good behavior. Any restoration of good time allowance must be approved by the department.

(5) If the population at the Montana state prison or the Montana women's correctional center exceeds the design capacity of the institution, the department

may grant an inmate additional good time credits in an amount necessary to permit the inmate to become eligible for parole or to discharge the inmate's sentence. Good time credits for the discharge of a sentence may not exceed 180 days. The award of good time under this subsection must generally be provided to inmates who are nearest to parole eligibility or discharge."

Section 17. **Funds transfer and expenditure.** Subject to 17-7-138, during fiscal years 1994 and 1995, the department of corrections and human services may expend funds in any category that were appropriated for personal services or that were indicated in legislative intent as having been appropriated for personal services.

Section 18. Section 5, Chapter 14, Special Laws of June 1986, is amended to read:

"**Section 5. ~~Conditions~~ *Condition* of sale.** The sale of the Montana youth treatment center is subject to ~~the following conditions:~~

~~(1) The buyer shall agree that as long as it holds title to the Montana youth treatment center it will accept those youth who are committed to the facility by the district courts pursuant to the Montana Youth Court Act, Title 41, chapter 5, and Title 53, chapter 21. The buyer shall agree to make available a minimum of 40 beds for treatment of such youth. The buyer or any subsequent transferee shall keep reasonable documentation of compliance with this condition. Failure to comply with the provisions of this section may result in the loss of hospital licensure.~~

~~(2) The buyer shall agree to maintain a license as a psychiatric hospital pursuant to Title 50, chapter 5, part 2, and to operate the facility as defined in 53-21-102(6) as a mental health treatment facility. The buyer shall also agree to comply with state requirements relating to review and recommendations by the mental disabilities board of visitors.~~

~~(3) The buyer shall enter a written contract with the board of land commissioners providing that the buyer will bind by written agreement any purchaser or successor to its interest by transfer of the property to the conditions contained in [this act]. The board of land commissioners may make an exception to these conditions in any subsequent sale or transfer.~~

~~(4) If~~ *the condition that if* the buyer of the facility proposes to sell the facility at any time, the state of Montana has the first option to repurchase the facility and land at its appraised value at the time of ~~such~~ *the* sale. *The board of land commissioners shall attempt to conform the sale contract to this section and to remove any encumbrance on the title of the facility that does not reflect this section.* ~~The buyer and the state shall each commission an appraisal by a qualified appraiser at the time of sale. The appraised value is the average of the two appraisals.~~

~~(5) The buyer shall demonstrate that it is able to meet, at the time it proposes to purchase, the standards of the joint commission on accreditation of hospitals for adolescent psychiatric facilities and the certification standards of the health care financing administration of the United States department of health and human services for inpatient psychiatric services for individuals~~

~~under age 21. The buyer shall demonstrate successful participation in the early survey option program of the joint commission on accreditation of hospitals.~~

~~(6) The buyer shall provide services to medicaid-eligible and indigent patients and shall receive no per diem reimbursement from the department of institutions for services provided to youth ordered to the facility by the courts. Such services become the financial responsibility of the buyer, who may bill medicaid or private insurers when appropriate.~~

~~(7) The buyer shall accept emergency psychiatric admissions pursuant to 53-21-129 regardless of ability to pay and subject only to its licensure limitations.~~

~~(8) The buyer shall accept applications of all Montana youth treatment center employees who desire to continue employment with the purchaser. Among the substantially qualified applicants, present employees of the Montana youth treatment center must be given preference in hiring by the purchaser.~~

~~(9) Montana youth treatment center employees who wish to remain state employees shall be provided relocation assistance of up to $1,000 and any training necessary to qualify for similar vacant positions within the department of institutions.~~"

Section 19. **Repealer.** Sections 10-2-412, 10-2-413, 50-17-104, 52-2-118, 52-5-104, and 53-21-602, MCA, are repealed.

Section 20. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 10, chapter 2, part 4, and the provisions of Title 10, chapter 2, part 4, apply to [section 1].

(2) [Section 11] is intended to be codified as an integral part of Title 53, chapter 1, part 5, and the provisions of Title 53, chapter 1, part 5, apply to [section 11].

Section 21. **Coordination instruction.** (1) If [this act] is passed and approved, then Senate Bill No. 39 and Senate Bill No. 40 are void.

(2) If House Bill No. 46 is passed and approved and if it includes a section providing that the cigarette tax collected under 16-11-111 may be used for the operation and maintenance of state veterans' homes, then [section 1 of this act] is void.

(3) If House Bill No. 2 is passed and approved and if it includes a provision that the department of corrections and human services may spend funds appropriated for personal services in other categories, then [section 17 of this act] is void.

Section 22. **Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1993.

CHAPTER NO. 580

[HB 688]

AN ACT PROVIDING THAT THE EXTENDED DEPTH AUGER METHOD OF MINING COAL IS A DISTINCT METHOD OF MINING FOR PURPOSES OF TAXATION; DEFINING THE EXTENDED DEPTH AUGER METHOD OF MINING FOR TAXATION PURPOSES; ESTABLISHING SEVERANCE TAX RATES FOR EXTENDED DEPTH AUGER MINING; AMENDING SECTIONS 15-35-102 AND 15-35-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-102, MCA, is amended to read:

"**15-35-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Agreement" means a signed contract that is valid under Montana law between a coal mine operator and a purchaser or broker for the sale of coal that is produced in Montana.

(2) (a) "Base consumption level" for a purchaser, except as provided in subsection (2)(b), applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the volume of coal purchased during calendar year 1986 from all Montana coal mine operators; or

(ii) the greater of:

(A) the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators; or

(B) 90% of the maximum tonnage provided for in any agreement executed prior to January 1, 1985, for which the highest scheduled minimum quantity of coal stipulated by the terms of the agreement as they existed on January 1, 1985, has not been purchased at any time during the term of the agreement, plus the arithmetic average volume of coal purchased during calendar years 1983 and 1984 from all Montana coal mine operators under all other agreements.

(b) If the volume calculated in subsection (2)(a)(i) is less than one-third of the volume calculated in subsection (2)(a)(ii), the base consumption level is the volume calculated in subsection (2)(a)(ii).

(3) (a) Except as provided in subsection (3)(b), "base production level" for a coal mine operator applies only for the term of an agreement in effect as of December 31, 1984, and means the lesser of:

(i) the arithmetic average volume of coal produced in Montana and sold to a purchaser in calendar years 1983 and 1984; or

(ii) the volume of coal produced in Montana and sold to a purchaser in 1986.

(b) If the amount calculated in subsection (3)(a)(ii) is less than one-third of the amount calculated in subsection (3)(a)(i), the base production level is the amount calculated in subsection (3)(a)(i).

(4) "Broker" means any person who resells Montana coal.

(5) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 15-35-107. Contract sales price includes all royalties paid on production, no matter how such royalties are calculated. However, with respect to royalties paid to the government of the United States, the state of Montana, or a federally recognized Indian tribe, the contract sales price includes only:

(a) for quarterly periods ending on and after September 30, 1984, 15 cents per ton plus 75% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(b) for quarterly periods ending on and after September 30, 1985, 15 cents per ton plus 50% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid;

(c) for quarterly periods ending on and after September 30, 1986, 15 cents per ton plus 25% of the difference between 15 cents per ton and the amount of such federal, state, and tribal government royalties actually paid; and

(d) for quarterly periods ending on and after September 30, 1987, 15 cents per ton.

(6) "Department" means the department of revenue.

(7) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(8) "Extended depth auger method" means a method of mining that penetrates a coal deposit and removes the coal through a series of circular openings with bored shafts averaging at least 300 feet in depth.

~~(8)~~*(9)* "Incremental production" means that quantity of coal produced annually by a coal mine operator and sold to a qualified purchaser that exceeds the base production level of the coal mine operator for that purchaser, but only to the extent the quantity of coal exceeds that purchaser's base consumption level from all Montana producers.

~~(9)~~*(10)* "Produced" means severed from the earth.

~~(10)~~*(11)* "Purchaser" means a person who purchases or contracts to purchase Montana coal directly from a coal mine operator or indirectly from a broker and who utilizes that coal in any industrial, commercial, or energy conversion process. A coal broker or any other third party intermediary is not a purchaser under the provisions of this chapter.

~~(11)~~*(12)* "Qualified purchaser" means a purchaser whose purchases of Montana coal in any given year exceed ~~his~~ *the purchaser's* base consumption level. A purchaser of Montana coal who enters into a coal agreement with another purchaser or a broker that causes a reduction in the base consumption level of a purchaser is not a qualified purchaser.

~~(12)~~*(13)* "Strip mining" is defined in 82-4-203 and includes "surface mining" *but does not include the extended depth auger method of mining.*

~~(13)~~*(14)* "Taxes paid on production" includes any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and does not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee.

~~(14)~~*(15)* "Ton" means 2,000 pounds.

~~(15)~~*(16)* "Underground mining" means a coal mining method utilizing shafts and tunnels and as further defined in 82-4-203."

Section 2. Section 15-35-103, MCA, is amended to read:

"**15-35-103. Severance tax — rates imposed.** (1) Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit, a severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

(a) After June 30, 1988, and before July 1, 1990:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	17% of value	3% of value
7,000 and over	25% of value	4% of value

(b) After June 30, 1990, and before July 1, 1991:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	13% of value	3% of value
7,000 and over	20% of value	4% of value

(c) After June 30, 1991:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining	*Extended Depth Auger Mining*
Under 7,000	10% of value	3% of value	*7.5% of value*
7,000 and over	15% of value	4% of value	*7.5% of value*

(2) "Value" means the contract sales price.

(3) The formula which yields the greater amount of tax in a particular case shall be used at each point on these schedules.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal he produces in a calendar year, except that if he produces more than 50,000 tons of coal in a calendar year, he will be liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(5) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Section 4. **Termination.** [This act] terminates June 30, 1997.

Approved April 28, 1993.

CHAPTER NO. 581

[HB 689]

AN ACT CREATING SPECIAL REVENUE ACCOUNTS FOR THE ADMINISTRATION OF INCOME TAX CHECKOFF PROGRAMS; ELIMINATING THE PUBLIC CAMPAIGN FUND; AMENDING SECTIONS 15-30-150, 15-30-152, 15-30-155, 15-30-158, AND 17-7-502, MCA; REPEALING SECTIONS 13-37-301, 13-37-302, 13-37-303, 13-37-304, 13-37-305, 13-37-306, 13-37-307, AND 13-37-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION PROVISION RELATING TO CERTAIN VOLUNTARY INCOME TAX CHECKOFFS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Funding for administration of special revenue accounts.** (1) The department shall charge any special revenue account created after January 1, 1993, that is funded by means of an income tax checkoff the actual and necessary cost to create the special revenue account and to place the checkoff on the income tax return.

(2) In addition to the charges in subsection (1), the department shall charge each special revenue account funded by means of an income tax checkoff the actual expenses necessary to administer the account. The department's charges may not exceed $3,000 for a tax year.

Section 2. **Special revenue account for tax checkoff administration.** (1) There are special revenue accounts in the state treasury for the administration of income tax checkoffs.

(2) All charges collected pursuant to [section 1] must be deposited in a tax checkoff administration account.

(3) The money in a tax checkoff administration account, subject to appropriation, must be expended to administer the income tax checkoff for which the account was created.

Section 3. Section 15-30-150, MCA, is amended to read:

"**15-30-150. Voluntary checkoff for nongame wildlife programs.** (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the funding of nongame wildlife programs in Montana by marking the appropriate box on the state income tax return.

(2) The department ~~of revenue~~ shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to nongame wildlife programs. The provision ~~shall~~ *must* be in substantially the following form:

Montana nongame wildlife funding. Check the appropriate blank if you wish to contribute, in addition to your existing tax liability, ___$5, ___$10, or ___(specify an amount) to fund nongame wildlife programs in Montana. If a joint return, check the appropriate blank if your spouse wishes to contribute, in addition to your existing tax liability, ___$5, ___$10, or ___(specify an amount) for the same purpose.

(3) Money received under this section, *after the department has deducted the administrative charge provided for in [section 1],* must be deposited in the nongame wildlife account established by 87-5-121."

Section 4. Section 15-30-152, MCA, is amended to read:

"**15-30-152. Voluntary checkoff for agriculture in Montana schools program.** (1) Each individual taxpayer who is required to file an income tax return under Title 15, chapter 30, may contribute to the funding of the agriculture in Montana schools program by marking an appropriate box on the state income tax return.

(2) The department ~~of revenue~~ shall include on each Montana state individual income tax return form a clear and conspicuous provision by which the taxpayer may indicate a contribution to the agriculture in Montana schools program. The contribution may be made from the amount to be refunded to the taxpayer or, if no refund is due, must be in addition to the amount of tax required to be paid. The provision must be in substantially the following form:

Check the appropriate blank if you wish to contribute ___ $5, ___ $10, ___ $20, or ___ (specify an amount) of your tax refund, or add such amount to your tax payment, to fund the agriculture in Montana schools program. If a joint return, check the appropriate blank if your spouse wishes to designate ___ $5, ___ $10, ___ $20, or ___ (specify an amount) for the same purpose.

(3) Money received under this section must be deposited in the agriculture in Montana schools program account established by 15-30-151 after the department ~~of revenue~~ has deducted the amount necessary for the department to administer this section *as provided in [section 1]*."

Section 5. Section 15-30-155, MCA, is amended to read:

"**15-30-155. Voluntary checkoff for child abuse and neglect prevention program.** (1) Each individual taxpayer who is required to file an income tax return under this chapter and who is entitled to a refund may contribute to the child abuse and neglect prevention program provided for in 41-3-701, by marking the appropriate box on ~~his~~ *the* state income tax return.

(2) Each Montana state individual income tax return form must contain a provision for indicating a contribution to the child abuse and neglect prevention program in substantially the following form:

Child abuse and neglect prevention program. Check this box if you wish to designate $5 ..., $10 ..., or more ... (indicate amount) of your tax refund to help fund the child abuse and neglect prevention program in Montana. On a joint return, check the corresponding box for your spouse if your spouse wishes to contribute $5 ..., $10 ..., or more ... (indicate amount) of the refund for the same purpose.

(3) Money received under this section must be deposited in the children's trust fund account, created under 41-3-702, after the department ~~of revenue~~ has deducted the amount necessary for the department to administer this section *as provided in [section 1].*"

Section 6. Section 15-30-158, MCA, is amended to read:

"**15-30-158. Voluntary checkoff for the Montana drug abuse resistance education program.** (1) Each individual taxpayer who is required to file an income tax return under this chapter and who is entitled to a refund may contribute to the Montana drug abuse resistance education program, provided for in 44-2-702, by marking the appropriate box on ~~his~~ *the* state income tax return.

(2) Each state individual income tax return must contain a provision for indicating a contribution to the Montana drug abuse resistance education program in substantially the following form:

"Montana Drug Abuse Resistance Education (D.A.R.E.) Program. Check this box if you wish to designate $5 ..., $10 ..., or more ... (indicate amount) of your tax refund to help fund the Drug Abuse Resistance Education Program in Montana. On a joint return, check the corresponding box for your spouse if your spouse wishes to contribute $5 ..., $10 ..., or more ... (indicate amount) of the refund for the same purpose."

(3) Money received under this section must be deposited in the Montana drug abuse resistance education trust fund account, created under 44-2-701, after the department has deducted the amount necessary for the department to administer this section *as provided in [section 1]. (Terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)* "

Section 7. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; ~~13-37-304;~~ 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 8. **Repealer.** Sections 13-37-301, 13-37-302, 13-37-303, 13-37-304, 13-37-305, 13-37-306, 13-37-307, and 13-37-308, MCA, are repealed.

Section 9. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [sections 1 and 2].

Section 10. **Effective date.** [This act] is effective on passage and approval.

Section 11. **Retroactive applicability.** [Sections 1 through 6] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

Section 12. **Contingent termination.** A voluntary income tax checkoff created in 15-30-150, 15-30-152, or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than $20,000 in each of those 2 tax years.

Approved April 28, 1993.

CHAPTER NO. 582

[SB 15]

AN ACT REQUIRING MANDATORY GRIEVANCE PROCEDURES IN SCHOOL COLLECTIVE BARGAINING AGREEMENTS; PROVIDING FOR AN ELECTION OF REMEDIES; AMENDING SECTION 39-31-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-31-306, MCA, is amended to read:

"**39-31-306. Collective bargaining agreements.** (1) ~~Any~~ *An* agreement reached by the public employer and the exclusive representative ~~shall~~ *must* be reduced to writing and ~~shall~~ *must* be executed by both parties.

(2) ~~An~~ *Except as provided in subsection (5), an* agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization ~~shall~~ *must* be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or ~~his~~ *by a* representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

(5) An agreement to which a school is a party must contain a grievance procedure culminating in final and binding arbitration of unresolved and disputed interpretations of agreements. The aggrieved party may have the grievance or disputed interpretation of the agreement resolved either by final and binding arbitration or by any other available legal method and forum, but not by both. After a grievance has been submitted to arbitration, the grievant and the exclusive representative waive any right to pursue against the school an action or complaint that seeks the same remedy. If a grievant or the exclusive representative files a complaint or other action against the school, arbitration seeking the same remedy may not be filed or pursued under this section."

Section 2. **Effective date — applicability.** [This act] is effective on passage and approval and applies to agreements entered into on or after [the effective date of this act], except that subsection (5) of 39-31-306 applies to agreements for school years that begin on or after July 1, 1996.

Approved April 28, 1993.

CHAPTER NO. 583

[SB 87]

AN ACT PROVIDING SPECIFIC PROCEDURES FOR THE SPECIAL ELECTION ON SENATE BILL NO. 235; PROVIDING THAT THE PROVISIONS OF TITLE 13, CHAPTER 27, MCA, AND CERTAIN OTHER LAWS RELATING TO ELECTIONS DO NOT APPLY TO THE SPECIAL ELECTION; PROVIDING FOR THE PURCHASE OF PRINTING AND DISTRIBUTION SERVICES AND MATERIALS ASSOCIATED WITH THE PRINTING AND DISTRIBUTION OF A VOTER INFORMATION PAMPHLET AND BALLOTS FOR THE SPECIAL ELECTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Suspension of election laws — purpose — notice.** (1) Due to the severity of Montana's fiscal problems and due to the need to deal with comprehensive tax reform as soon as possible, the legislature and the governor find that it is in the best interests of the citizens of the state of Montana to conduct a special election on the question of whether or not comprehensive tax reform, as represented by Senate Bill No. 235, should be adopted. The legislature and the governor also find that statutes covering ballot measures and the election on ballot measures, generally found in Title 13, chapter 27, are insufficient to accommodate the pressing need to dispose of the question of comprehensive tax reform. Consequently, procedures expediting the election, specified in [sections 1 through 19], are enacted to protect and further the interests of the electorate and Montana's citizens.

(2) For purposes of the special election to be held on Senate Bill No. 235:

(a) the provisions of 13-1-108, 13-2-301(1)(b), 13-12-201, 13-13-205, and Title 13, chapter 27, do not apply;

(b) notice of the special election must be published at least once a week for the 2 successive weeks before the election on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held; and

(c) the secretary of state shall publish a notice specifying the day registration will close in a newspaper of general circulation in each county at least 1 week before the close of registration.

Section 2. **Procedures for special election.** (1) For the special election required in Senate Bill No. 235, the procedures set forth in [sections 1 through 19] apply.

(2) In [sections 1 through 19], wherever the word "ballot issue", "issue", "ballot measure", "ballot form", or "ballot" appears, the word applies to Senate Bill No. 235.

Section 3. **Transmittal of ballot issue to attorney general.** (1) The secretary of state shall transmit a copy of the ballot issue and a copy of the form in which the issue will appear on the ballot to the attorney general no later than 40 days before the election at which the issue will be voted on by the people.

(2) If the ballot form is not approved by the attorney general pursuant to [section 5], the secretary of state shall immediately submit a new ballot form to the attorney general.

Section 4. **Review by attorney general — preparation of statements — fiscal note.** (1) Upon receipt of a ballot issue from the office of the secretary of state pursuant to [section 3], the attorney general shall examine the issue as to form and, if it has an effect on the revenue, expenditures, or fiscal liability of the state, shall order a fiscal note incorporating an estimate of the effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected or knowledgeable, is responsible for preparing the fiscal note and shall return it within 2 days. If a fiscal note was prepared for the issue for consideration by the 53rd Montana legislature, the secretary of state shall provide to the attorney general the fiscal note prepared for the legislature at the same time the ballot issue is transmitted and the budget director need not prepare a new fiscal note.

(2) The attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general, within 3 days of receipt of the ballot issue, shall prepare:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(3) Within 3 days of receipt of a fiscal note, if one is necessary, the attorney general shall prepare a fiscal statement of no more than 50 words, using the fiscal note prepared for the ballot issue if one was prepared. The statement must be used on the ballot.

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure. The statement of purpose, statements of implication, and fiscal statement must be transmitted to the secretary of state no later than 1 day following completion of the statements.

(5) The statement of purpose, unless altered by a court under [section 6], shall appear on the ballot in addition to the language included in Senate Bill No. 235.

(6) The statements of implication must be placed beside the diagram provided for marking of the ballot in a manner similar to but not limited to the following example:

☐ FOR extending the right to vote to persons 18 years of age.

☐ AGAINST extending the right to vote to persons 18 years of age.

Section 5. **Review of ballot form by attorney general.** The attorney general shall examine the ballot form submitted pursuant to [section 3] and within 2 days of receipt of the ballot form shall notify the secretary of state of approval or rejection of the ballot form. If the ballot form is rejected, the attorney general shall approve or reject a new ballot form submitted by the secretary of state pursuant to [section 3] within 1 day of receiving the new form.

Section 6. **Court review of attorney general statements.** (1) If a majority of the 53rd Montana legislature, by roll call vote, believes that the statement of purpose, a statement of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to [section 4] does not satisfy the requirements of [section 4], a representative of the majority may, within 2 days of the roll call vote, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement and requesting the court to alter the statement.

(2) On the same day on which an action is filed under subsection (1), the person filing the action shall serve notice of the action upon the secretary of state and upon the attorney general.

(3) An action filed under subsection (1) takes precedence over all other cases and matters in the district court. The court shall examine the proposed measure and the challenged statement and shall as soon as possible render a decision and certify to the secretary of state a statement that the court determines will meet the requirements of [section 4].

(4) A statement certified by the court must be placed on the official ballot.

(5) A copy of the statement certified by the court, in final form, must be filed in the office of the secretary of state by the person filing the action.

(6) A party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 2 days of the date of the order of the district court.

(7) An action filed under subsection (6) takes precedence over all other cases and matters in the Montana supreme court. The court shall examine the proposed measure and the challenged statement and shall as soon as possible render a decision and certify to the secretary of state a statement that the court determines will meet the requirements of [section 4]. A decision by the supreme court is final.

(8) A statement certified by the supreme court must be placed on the official ballot.

(9) A copy of the statement certified by the supreme court, in final form, must be filed in the office of the secretary of state by the person filing the action.

Section 7. **Voter information pamphlet.** (1) The secretary of state shall prepare for printing a voter information pamphlet containing the following information for the ballot issue to be voted on at the June 8, 1993, special election, as applicable:

(a) ballot title, fiscal statement, if applicable, and complete text of the issue;

(b) the form in which the issue will appear on the ballot;

(c) arguments advocating approval and rejection of the issue; and

(d) rebuttal arguments.

(2) The pamphlet must also contain a notice advising the recipient as to where additional copies of the pamphlet may be obtained.

(3) The secretary of state may publish a single pamphlet for all of the ballot issues to be voted on at the June 8, 1993, special election. The secretary of state may arrange the information in the order that seems most appropriate, but the information for all issues in the pamphlet must be presented in the same order.

Section 8. **Committees to prepare arguments for and against ballot issue.** (1) The arguments advocating approval or rejection of a ballot issue and rebuttal arguments must be submitted to the secretary of state by committees appointed as provided in this section.

(2) (a) Within 3 days following adoption by the legislature of Senate Bill No. 235, a committee advocating the approval of the ballot issue must be appointed. The committee must be composed of one senator known to favor the issue, who must be appointed by the president of the senate and serve as the presiding officer; one representative known to favor the issue, who must be appointed by the speaker of the house of representatives; and one individual, who need not be a member of the legislature but who must be appointed by the first two members.

(b) If any member of the committee is not appointed within the time provided in subsection (2)(a), the chief justice of the Montana supreme court shall make the appointment within 2 days following expiration of the time allowed in subsection (2)(a).

(3) (a) Within 3 days following adoption by the legislature of Senate Bill No. 235, a committee advocating rejection of the ballot issue must be appointed. The committee advocating rejection of an issue must be composed of one senator, who must be appointed by the president of the senate and serve as the presiding officer; one representative, who must be appointed by the speaker of the house of representatives; and one individual, who need not be a member of the legislature but who must be appointed by the first two members. Whenever possible, the members must be known to oppose the issue.

(b) If any member of the committee is not appointed within the time provided in subsection (3)(a), the chief justice of the Montana supreme court shall make the appointment within 2 days following expiration of the time allowed in subsection (3)(a).

(4) (a) A person may not be required to serve on a committee under this section, and the person making an appointment must receive written acceptance of appointment from the appointee.

(b) The speaker of the house of representatives and the president of the senate shall notify the secretary of state of each person appointed to the committees in subsections (2) and (3) immediately upon receipt of written acceptance of appointment by the appointee.

Section 9. **Notice of appointment to committee.** All appointees to a committee pursuant to [section 8] must be notified by the secretary of state by certified mail, return receipt requested, no later than 1 day after the deadline set for appointment of committee members, of the deadlines for submission of the committee's arguments.

Section 10. **Committee expenses.** Each committee appointed under [section 8] is entitled to receive funds for the preparation of arguments and expenses of members not to exceed $100. Itemized claims for actual expenses incurred, approved by a majority of the committee, must be submitted to the secretary of state for payment from funds appropriated for that purpose.

Section 11. **Limitation on length of argument — time of filing.** An argument advocating approval or rejection of a ballot measure is limited to 500 words or less and must be filed, in typewritten form, with the secretary of state no later than 30 days before the election at which the issue will be voted on by the people. A majority of the committee responsible for preparation shall approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline.

Section 12. **Rebuttal arguments.** The secretary of state shall provide copies of the arguments advocating approval or rejection of a ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue in the office of the secretary of state. The committees may prepare rebuttal arguments, limited to 250 words or less that must be filed, in typewritten form, with the secretary of state no later than 3 days after the deadline for filing the original arguments. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument must be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments.

Section 13. **Rejection of improper arguments.** The secretary of state shall reject, with the approval of the attorney general, an argument or other matter held to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter; any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward or that tends to cast ridicule or shame upon a group of persons by reason of race, color, religion, or sex; or any matter not allowed to be sent through the mail. Rejected arguments may not be filed or printed in the voter information pamphlet.

Section 14. **Liability for contents of argument.** Nothing in [sections 1 through 19] relieves an author of any argument from civil or criminal responsibility for statements contained in an argument printed in the voter information pamphlet.

Section 15. **Printing and distribution of voter information pamphlet — public exigencies.** (1) As soon as possible, the secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for the ballot measure. The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to every voter in each county, except that two or more voters

with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) (a) The provisions of 18-4-133(2) apply to the purchase of or a contract for services or materials associated with the printing, delivery, or distribution of the voter information pamphlet and the ballots for the special election on Senate Bill No. 235.

(b) The department of administration may call for bids and shall contract for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by no later than 21 days before the election at which the ballot issue will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing must take place as soon as is possible after the pamphlets are received from the printer.

(5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on Senate Bill No. 235.

Section 16. **Secretary of state to certify ballot form.** (1) Within 5 days after receiving approval of the ballot form from the attorney general under [section 5], the secretary of state shall furnish to the official of each county responsible for preparing and printing the ballots a certified copy of the form in which the ballot issue is to appear on the ballot.

(2) The secretary of state shall list for the issue:

(a) the number;

(b) the method of placement on the ballot;

(c) the title;

(d) the attorney general's explanatory statement, if applicable;

(e) the fiscal statement, if applicable; and

(f) the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot.

(3) The secretary of state shall use, for the ballot issue, the title of the legislative act and language as may be specifically required in Senate Bill No. 235. Following the number of the ballot issue, the secretary of state shall state that the issue has been placed on the ballot as an act referred by the legislature.

Section 17. **Preparation of ballots by county officials — absentee ballots.** (1) Each of the county officials responsible for the preparation and printing of the ballots shall print or have printed the ballot issue on the official ballot in the form and order certified by the secretary of state pursuant to [section 16].

(2) The county election administrator shall ensure that sufficient ballots are printed and available for absentee voting at least 14 days prior to the election.

Section 18. **Determination of result of special election.** The votes on the ballot issue must be counted, canvassed, and returned by the regular boards of judges, clerks, and officers in the manner that votes for candidates are counted, canvassed, and returned. The abstract of the votes on the ballot issue must be prepared and returned to the secretary of state in the manner provided by 13-15-501 for abstracts of votes for state officers, except that the county election administrator shall provide the required information and shall send the abstract of votes to the secretary of state by certified mail in an envelope marked "special election returns", which envelope must be received by the secretary of state no later than 5 p.m. on the sixth day following the election. The board of state canvassers shall proceed within 7 days after the special election at which the ballot issue is voted upon to canvass the votes given for the ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in the office of the secretary of state a statement of the canvass, giving the number and title of the ballot issue, the whole number of votes cast in the state for and against the ballot issue, and the effective date of the ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor within 10 days following the special election.

Section 19. **Copy of approved issues to be sent to legislative council.** The secretary of state shall send a certified copy of the ballot issue approved by a majority of those voting on the issue and a copy of the statement of the canvass to the executive director of the legislative council at the same time the certified copy of the statement of the canvass is transmitted to the governor under [section 18].

Section 20. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1993.

CHAPTER NO. 584

[SB 121]

AN ACT AMENDING THE NURSING PRACTICE ACT; PROVIDING DEFINITIONS; AUTHORIZING REGISTERED PROFESSIONAL NURSES AND LICENSED PRACTICAL NURSES TO TAKE ORDERS FROM AN ADVANCED PRACTICE REGISTERED NURSE WHO HAS PRESCRIPTIVE AUTHORITY; AUTHORIZING THE BOARD OF NURSING TO ADOPT RULES FOR DELEGATION OF NURSING TASKS TO UNLICENSED PERSONS; CHANGING THE TITLE OF THE BOARD SECRETARY TO EXECUTIVE DIRECTOR; PROVIDING FOR TERMINATION OF LICENSES THAT

HAVE NOT BEEN RENEWED FOR 3 YEARS; AND AMENDING SECTIONS 37-8-102, 37-8-103, 37-8-202, AND 37-8-204, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because it delegates to the board of nursing the authority to adopt rules regarding the delegation of nursing tasks to unlicensed persons.

The legislature intends that the board of nursing adopt rules that would regulate the situations in which a licensed nurse may delegate tasks to an unlicensed person. This rulemaking authority is necessary in order to distinguish between situations in the nursing practice when it is appropriate to delegate tasks, on the one hand, and situations when delegation is inappropriate due to the nature of the task under consideration. It is not intended that the board of nursing regulate the unlicensed individuals themselves.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-8-102, MCA, is amended to read:

"**37-8-102. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advanced practice registered nurse" means a registered professional nurse who has completed educational requirements related to the nurse's specific practice role, in addition to basic nursing education, as specified by the board pursuant to 37-8-202(5)(a).

~~(1)~~*(2)* "Board" means the board of nursing provided for in 2-15-1844.

~~(2)~~*(3)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(3)~~*(4)* "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical center or junior college.

~~(4)~~*(5)* "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice utilizes standardized procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, *advanced practice registered nurse,* dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(b) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, *advanced practice registered nurses,* dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection ~~(4)(b)~~ *(5)(b)*:

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals."

Section 2. Section 37-8-103, MCA, is amended to read:

"**37-8-103. Exemptions — limitations on authority conferred.** (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent ~~or hold herself or himself out to be~~ *to the public that the person is* a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian; ~~and~~

(i) the execution of a death sentence pursuant to 46-19-103*; and*

(j) nursing tasks delegated by licensed nurses to unlicensed persons according to rules adopted by the board.

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana."

Section 3. Section 37-8-202, MCA, is amended to read:

"**37-8-202. Organization — meetings — powers and duties.** (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges that may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to ensure interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to ~~specialty areas of nursing~~ *advanced practice registered nurses.* ~~Specialty areas of nursing~~ *Advanced practice registered nurses* are ~~those that require~~ *nurses who must have* additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified by a ~~specialty area~~ certifying body *for advanced practice registered nurses.* ~~Specialty areas of nursing~~ *Advanced practice registered nurses* include nurse practitioners, nurse-midwives, ~~and~~ nurse-anesthetists, *and clinical nurse specialists.*

(b) The board of nursing and the board of medical examiners, acting jointly, shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the board for authorization, prescriptive authority must be granted.

(6) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

(7) The board may adopt rules for delegation of nursing tasks by licensed nurses to unlicensed persons.

(8) The board may fund additional staff, hired by the department, to administer the provisions of this chapter."

Section 4. Section 37-8-204, MCA, is amended to read:

"**37-8-204.** ~~**Qualifications of secretary.**~~ ***Executive director — qualifications.*** ~~Any secretary hired by the department~~ *(1) The department shall hire an executive director* to provide services to the board in connection with the board's duties of*:*

(a) prescribing curricula and standards for nursing schools~~;~~ *and* making surveys of and approving schools and courses~~;~~*;*

(b) evaluating and approving courses for affiliation of student nurses~~;~~*;* and

(c) reviewing qualifications of applicants for licensure ~~for the board shall be:~~*.*

(2) The executive director must be:

~~(1)~~*(a)* a citizen of the United States;

~~(2)~~*(b)* a graduate of an approved school of nursing;

~~(3)~~*(c)* a holder of at least a master's degree with postgraduate courses in nursing;

~~(4)~~*(d)* a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing."

Section 5. **Nonrenewal of lapsed licenses — termination.** A lapsed license to practice nursing that is not renewed within 3 years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new license must be obtained by filing an application as a new applicant, paying the appropriate fee, and passing an examination.

Section 6. **Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 37, chapter 8, part 4, and the provisions of Title 37, chapter 8, part 4, apply to [section 5].

Approved April 28, 1993.

CHAPTER NO. 585

[SB 362]

AN ACT ESTABLISHING A 20-DAY LIMIT WITHIN WHICH A COURT IS REQUIRED TO HEAR A LANDLORD'S ACTION FOR POSSESSION; SETTING A 5-DAY LIMIT WITHIN WHICH THE COURT IS REQUIRED TO RULE ON AN ACTION FOR POSSESSION; AMENDING SECTION 70-24-427, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-427, MCA, is amended to read:

"**70-24-427. Landlord's remedies after termination** — ***action for possession.*** *(1)* If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or answer date stated in the summons. If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing."

Section 2. **Coordination instruction.** The code commissioner shall remove references to specific courts of original jurisdiction in new material enacted to be codified as part of Title 70, chapter 24 or 25.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved April 28, 1993.

CHAPTER NO. 586

[SB 424]

AN ACT REQUIRING THE BOARD OF LAND COMMISSIONERS TO ATTAIN FULL MARKET VALUE FOR LEASES ON STATE SCHOOL TRUST LANDS; ELIMINATING THE RECREATIONAL USE LICENSE ADMINISTRATIVE SURCHARGE; REQUIRING THE VALUE OF IMPROVEMENTS TO BE BASED ON ACTUAL COSTS; REQUIRING THE BOARD OF LAND COMMISSIONERS TO COMPLY WITH THE MONTANA ADMINISTRATIVE PROCEDURE ACT IN SETTING RATES AND FEES; ESTABLISHING AN ADVISORY COUNCIL TO ASSIST THE BOARD OF LAND COMMISSIONERS IN SETTING RATES AND FEES; AMENDING SECTIONS 77-1-208, 77-1-209, 77-1-802, 77-6-202, 77-6-205, 77-6-302, 77-6-305, 77-6-306, 77-6-502, 77-6-507, AND 77-6-508, MCA; AND PROVIDING AN EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-1-208, MCA, is amended to read:

"**77-1-208. Cabin site licenses and leases — method of establishing value.** (1) The board shall*[, taking into account recommendations of the state land board advisory council,]* set the annual fee *based on full market value* for each cabin site ~~subject to a license or lease in effect on January 1, 1988,~~ *and* for each licensee or lessee who at any time wishes to continue or assign ~~his~~ *the* license or lease. The fee must ~~be 3.5% of the~~ *attain full market value based on* appraisal of the cabin site value as determined by the department of revenue ~~or $150, whichever is greater~~. The licensee or lessee has the option to pay the entire fee on March 1 or to divide the fee into two equal payments due March 1 and September 1. The value may be increased or decreased as a result of the statewide periodic revaluation of property pursuant to 15-7-111. An appeal of a cabin site value determined by the department of revenue ~~shall~~ *must* be conducted pursuant to Title 15, chapter 2.

(2) The board shall set the fee of each initial cabin site license or lease or each current cabin site license or lease of a person who does not choose to retain the license or lease. The initial fee must be based upon a system of competitive bidding. The fee for a person who wishes to retain that license or lease must be determined under the method provided for in subsection (1).

(3) The board shall follow the procedures set forth in 77-6-302 through 77-6-306 for the disposal or valuation of any fixtures or improvements placed upon the property by the then-current licensee or lessee and shall require the subsequent licensee or lessee whose bid is accepted by the board to purchase those fixtures or improvements in the manner required by the board.

~~(4) Nothing in this section may be construed as a delegation of rulemaking authority to the board.~~"

Section 2. Section 77-1-802, MCA, is amended to read:

"**77-1-802. Recreational use license — fee.** (1) The fee for a recreational use license ~~is $5. The fee is~~ *must[, taking into account recommendations of the state land board advisory council,] attain full market value* ~~based upon:~~

~~(a) a $3 charge as the value of 1 year of recreational use of state lands; and~~

~~(b) a $2 surcharge for the administrative costs of providing recreational access to state lands and the maintenance of a state lands recreational use account pursuant to 77-1-808~~.

(2) Money received by the department from the sale of recreational use licenses must be credited as follows:

(a) Except as provided in subsection (2)(b), license fees

~~(a) proceeds collected under subsection (1)(a)~~ must be apportioned on a pro rata basis to the land trusts, in proportion to the respective trust's percentage contribution to the total acreage of all state land trusts;~~ and~~

~~(b) proceeds collected under the surcharge of subsection (1)(b), less 50 cents for each license to be returned as a commission to license dealers, must be deposited in the state lands recreational use account established by 77-1-808~~

~~for use by the department in the management of state lands open to general recreational use~~.

(b) Two dollars from the fee for each license, less 50 cents to be returned to the license dealer as a commission, must be deposited in the state lands recreational use account established by 77-1-808.

(3) The department may contract with the department of fish, wildlife, and parks for the distribution and sale of recreational use licenses through the license agents appointed by and the administrative offices of the department of fish, wildlife, and parks and in accordance with the provisions of Title 87, chapter 2, part 9."

Section 3. Section 77-6-202, MCA, is amended to read:

"**77-6-202. Lease by competitive bidding — *full market value required.*** When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract. The tract ~~shall~~ *must* be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in 77-6-205(2). *The board may not accept a bid that is below full market value determined by taking into account recommendations of the state land board advisory council.* If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease ~~shall then~~ *may* be issued, at a rental to be determined by the board, to the first bidder willing to pay the board determined rental whose name is selected through a random selection process from all bidders on the tract."

Section 4. Section 77-6-205, MCA, is amended to read:

"**77-6-205. Renewal leases.** (1) A lessee of state land classed as agricultural, grazing, town lot, city lot, or land valuable for commercial development who has paid all rentals due ~~from him to~~ the state or who has voluntarily terminated a lease under 77-6-116 is entitled to have ~~his~~ *the* lease renewed for a period not to exceed the maximum lease period provided in 77-6-109 at any time within 30 days prior to its expiration or within 30 days following voluntary termination if no other applications for lease of the land have been received 30 days prior to the expiration of ~~his~~ *the* lease or within 30 days following voluntary termination. The renewal must be at the *full market* rental rate ~~provided by law~~ *established by the board[, taking into account recommendations of the state land board advisory council,]* for the renewal period and subject to any other conditions at the time of the renewal imposed by law as terms of the lease. Except as provided in 77-6-212, if other applications have been received, the holder of the lease has the preference right to lease the land covered by ~~his~~ *the* former lease by meeting the highest bid made by any other applicant. Applications for lease of lands in this section must be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, ~~he~~ *the lessee* may request an administrative hearing. The request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the

lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of the land, would cause damage to the tract, or would impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and inform the lessee and competitive bidder of the reduction. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

(3) A renewal lease may be canceled pursuant to 77-6-113, 77-6-208, 77-6-209, or 77-6-210 for a violation by the lessee that occurred during the previous lease term but no more than 3 years prior to the date on which the notice of cancellation required by 77-6-211 is issued. Cancellation procedures instituted but not completed before renewal are applicable to the renewal lease.

(4) A renewal lease may be voluntarily terminated pursuant to 77-6-116."

Section 5. Section 77-6-302, MCA, is amended to read:

"**77-6-302. Compensation for improvements — *actual costs.*** (1) When another person becomes the lessee of ~~such~~ *the* lands, ~~he~~ *the person* shall pay to the former lessee the reasonable value of these improvements at the time the new lessee takes possession. *The reasonable value may not be less than the full market value of the improvements.*

(2) If the former lessee *is unable to produce records establishing the reasonable value or if the former lessee* and the new lessee are unable to agree on the reasonable value of the improvements, the value ~~shall~~ *must* be ascertained and fixed as provided in 77-6-306."

Section 6. Section 77-6-305, MCA, is amended to read:

"**77-6-305. Settlement regarding improvements prerequisite to issuance of new lease.** Before a lease is issued to the new lessee, ~~he~~ *the lessee* shall show that ~~he has paid~~ the former lessee *has been paid* the value of the improvements ~~as agreed upon by them~~ *pursuant to 77-6-302* or as ~~fixed and~~ determined under 77-6-306 ~~or that he has offered to pay the value of the improvements as so fixed and determined~~ or that the former lessee elects to remove the improvements."

Section 7. Section 77-6-306, MCA, is amended to read:

"**77-6-306. Arbitrators to fix value of improvements.** (1) If the owner of any improvements on state lands of the type authorized by law at the time they were placed ~~thereon~~ *on state lands* desires to sell these improvements to the new lessee and they are unable to agree on the value ~~thereof~~ *of the improvements pursuant to 77-6-302,* the value ~~shall~~ *must* be ascertained and fixed by three arbitrators, one of whom ~~shall be~~ *is* appointed by the owner of the improvements, one by the new lessee, and the third by the two arbitrators so appointed. If any party refuses to appoint an arbitrator within 15 days of being requested to do so by the commissioner, the commissioner may appoint an arbitrator for that party. An arbitrator appointed by the commissioner has the same duties and powers as if appointed by one of the parties. The value of the improvements ~~shall~~ *must* be ascertained and fixed ~~as this part provides~~ *pursuant to 77-6-302.*

(2) The reasonable compensation that the arbitrators may fix for their services ~~shall~~ *must* be paid in equal shares by the owner of the improvements and the new lessee.

(3) The value of the improvements ~~so~~ ascertained and fixed is binding on both parties~~; however, if~~. *If* either party is dissatisfied with the valuation ~~so fixed~~, ~~he~~ *the party* may within 10 days appeal from the decision to the department, which shall examine the *records pertaining to the costs of the* improvements, and~~,~~ except as provided in subsection (4), its decision ~~shall be~~ *is* final. The department shall charge and collect the actual cost of the reexamination to the owner and the new lessee in ~~such~~ *the* proportion as, in its judgment, justice may demand.

(4) If either party is dissatisfied with the valuation fixed by the department, ~~he~~ *the party* may within 30 days after receipt of the department's decision petition the district court in the county in which the majority of the state land is located or the district court of Lewis and Clark County for judicial review of the decision."

Section 8. Section 77-6-502, MCA, is amended to read:

"**77-6-502. Grazing leases.** (1) The rental rate for leasing all state grazing lands ~~shall be~~ *must[, taking into account recommendations of the state land board advisory council,] attain full market value* based upon the appraised animal-unit-month carrying capacity of the land as provided in 77-6-507.

(2) If the ~~legislature~~ *board* raises the rentals for state grazing lands during the term of any leases of grazing land ~~which~~ *that* are not issued as a result of competitive bidding, the lessee shall, for the years after the increase becomes effective, pay the increased rental, and the terms of grazing leases ~~shall so~~ *must* provide *for the increase.*"

Section 9. Section 77-6-508, MCA, is amended to read:

"**77-6-508. Effect of competitive bidding.** Whenever competitive bidding ~~shall establish~~ *establishes* a rental price higher than the rental price established by the ~~above formula~~ *board,* the board in leasing ~~such~~ *the* lands shall incorporate in ~~said~~ *the* lease ~~such~~ conservation requirements as are ~~deemed~~ *considered* necessary for the protection of ~~such~~ *the* grass or forage crops."

Section 10. **Rules required to set rates and fees.** The board shall comply with Title 2, chapter 4, part 3, in setting rental rates and license fees pursuant to 77-1-208, 77-1-802, 77-6-202, 77-6-501, 77-6-502, and 77-6-507.

Section 11. Section 77-1-209, MCA, is amended to read:

"**77-1-209. Leasing rules.** The board may prescribe rules relating to the leasing of state lands as it considers necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they are granted to the state of Montana. *The rules should prescribe a procedure for setting all fees and rental rates for the use of state lands for any purpose. The procedure should establish provisions for notice, public comment, public hearings, and appeal.*"

Section 12. Section 77-6-507, MCA, is amended to read:

"**77-6-507. Formula for fixing annual rental.** (1) In this section:

(a) "animal unit" means one cow, one horse, five sheep, or five goats;

(b) "animal-unit-month carrying capacity" means that amount of natural feed necessary for the complete subsistence of one animal unit for 1 month.

(2) The board shall establish the ~~minimum~~ per annum rental rate per section of all grazing lands that are the property of the state by multiplying ~~six~~ *a factor established by the board pursuant to 77-6-502* times the average price per pound of beef cattle on the farm in Montana for the previous year times the animal-unit-month carrying capacity of the land.

(3) The carrying capacity of the land to be used in the above formula must be in accordance with the determinations of the department made under 77-6-201.

(4) The average price per pound of beef cattle on the farm in Montana must be taken from statistics published by the United States department of agriculture current at the time of computation of the rental or from other reliable sources current at that time.

(5) In establishing the rental rate described in subsection (2), the board shall consider applicable elements that include but are not limited to those set forth in [section 13]."

Section 13. **Setting of rates or fees.** (1) In setting the lease rental rates or fees for the use of state lands and cabin sites, the board shall consider the impact of the uses on the school trust asset, lessee expenses for management, water development, weed control, fire control, the term of the lease, the production capabilities, the conditions on the lease payment, and any other required expenses reasonably borne by the lessee. In setting cabin site lease rates, the board shall consider expenses that are commonly incurred by the lessees to preserve the value of the state land or to provide services commonly provided by private lessors in the area.

(2) All lease rental rates and fees established by the board under 77-1-208, 77-1-802, 77-6-202, 77-6-501, 77-6-502, and 77-6-507 must consider the trust asset and be in the best interests of the state with regard to the long-term productivity of the school trust lands, while optimizing the return to the school trust.

Section 14. **State land board advisory council.** (1) There is a state land board advisory council. The council shall gather information, provide advice, make recommendations, and perform other activities as may be necessary in the setting of all fees or rental rates for state lands.

(2) The state land board advisory council must be appointed by the governor with the concurrence of the majority of the board of land commissioners. The advisory council must be broadly representative of the users and beneficiaries of the state trust lands.

(3) The state land board advisory council shall make recommendations for fees and rental rates to the state land board.

Section 15. **Codification instruction.** [Sections 13 and 14] are intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [sections 13 and 14].

Section 16. **Applicability.** (1) [Section 1] applies to leases entered into or renewed on or after [the effective date of this act] and, for leases in effect on [the effective date of this act], to rentals due after rental adjustments made pursuant to adjustment provisions in the lease.

(2) [Section 2] applies to licenses sold after February 28, 1994.

(3) [Sections 8 and 12] apply to leases issued or renewed after July 1, 1993.

Section 17. **Termination.** [Section 14] and the bracketed references to the state land board advisory council in 77-1-208, 77-1-802, 77-6-205, and 77-6-502 terminate March 1, 1996.

Section 18. **Effective date.** [This act] is effective July 1, 1993.

Approved April 28, 1993.

CHAPTER NO. 587

[SB 438]

AN ACT REVISING THE TAXATION OF MIGRATORY PERSONAL PROPERTY BY PRORATING THE TAX TO THE TIME THAT THE PERSONAL PROPERTY IS LOCATED IN MONTANA; AMENDING SECTIONS 15-16-613 AND 15-24-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-613, MCA, is amended to read:

"**15-16-613. Refund of certain taxes paid on migratory property.** (1) Subject to the provisions of 15-16-601 and upon proof that a tax was paid in another state on the same property, a taxpayer whose property is assessed under 15-24-303 for a period longer than the actual number of months that the property ~~has taxable situs~~ *is located* in the state is entitled to a refund, as provided in this section.

(2) To obtain a refund, a taxpayer shall file an application for refund with the county treasurer in the county where the property was originally taxed. A taxpayer shall apply for a refund allowed under this section by January 31 following the year of assessment, and the county shall make the refund within the first quarter of the following fiscal year. The application must be made on a form provided by the department of revenue and may require information as prescribed by rule of the department.

(3) The amount of the refund is the difference between the amount of tax paid under 15-24-303 and the tax owed based upon the number of months the property ~~had taxable situs~~ *was located* in the state for the year. The refund may not exceed the amount of the tax paid.

(4) For the purposes of this section, "month" means any part of a calendar month."

Section 2. Section 15-24-303, MCA, is amended to read:

"**15-24-303. Proration of tax on personal property** — *refund.* *(1)* The tax on personal property brought, driven, ~~or~~ coming into, *or otherwise located in* ~~any county~~ *the state on or* after the assessment date must be prorated according to the ratio ~~which~~ *that* the remaining number of months in the year bears to the total number of months in the year. *This section does not apply to motor vehicles taxed under Title 61, chapter 3, part 5.*

(2) If property upon which taxes have been paid is removed from the state, the taxpayer may obtain a refund of a prorated portion of the taxes, subject to the requirements of 15-16-613."

Section 3. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

Approved April 28, 1993.

CHAPTER NO. 588

[SB 11]

AN ACT REVISING THE INTEREST RATE ALLOWED BY AGREEMENT FOR CREDIT TRANSACTIONS; AMENDING SECTION 31-1-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-1-107, MCA, is amended to read:

"**31-1-107. Interest rate allowed by agreement.** (1) Parties may agree in writing for the payment of any rate of interest ~~not more than~~ *that does not exceed the greater of 15% or an amount that is* 6 percentage points per annum above the prime rate of major New York banks, as published in the Wall Street Journal edition dated 3 business days prior to the execution of the agreement~~,~~ ~~and such interest shall~~. *Interest must* be allowed according to the terms of the agreement.

(2) A loan that is not usurious when made is lawful for the duration of the loan, provided the loan agreement is not substantially changed. This subsection does not apply to loan renewals.

(3) The provisions of this section do not apply to regulated lenders as defined in 31-1-111."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved April 29, 1993.

CHAPTER NO. 589

[SB 58]

AN ACT GENERALLY REVISING THE HUNTING AND FISHING LAWS OF MONTANA; CLARIFYING RESTRICTIONS ON HUNTING WITH SPECIFIED ARMS; REVISING PROVISIONS REGARDING RESIDENCY OF MINORS AND CERTAIN MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS; CLARIFYING OWNERSHIP OF TAGGED GAME; INCREASING CERTAIN PENALTIES; AMENDING SECTIONS 87-1-304, 87-2-102, 87-2-509, AND 87-3-143, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-304, MCA, is amended to read:

"**87-1-304. Fixing of seasons and bag and possession limits.** (1) The commission may fix seasons, bag limits, possession limits, and season limits; open or close or shorten or lengthen seasons on any species of game, bird, fish, or fur-bearing animal as defined by 87-2-101; and declare areas open to the hunting of deer, antelope, elk, moose, sheep, and goat by bow and arrow permit holders and designate times when only bows and arrows may be used to hunt deer, antelope, elk, moose, sheep, and goat in those areas. ~~It may declare areas open to deer or elk or both deer and elk hunting where only bow and arrow or shotguns or both may be used to hunt or kill deer or elk. In areas where deer or elk or both deer and elk hunting is open to the use of shotguns, the commission shall authorize the use of muzzleloaders with restrictions as necessary for safety.~~ *The commission may restrict areas and species to hunting with only specified hunting arms, including bow and arrow, for the reasons of safety or of providing diverse hunting opportunities and experiences.* It may declare areas open to special license holders only and issue special licenses in a limited number when it determines, after proper investigation, that such a season is necessary to assure the maintenance of an adequate supply of game birds, fish, or animals or fur-bearing animals. It may declare a special season and issue special licenses when game birds or animals or fur-bearing animals are causing damage to private property or when *a* written complaint of ~~such~~ damage has been filed with the commission by the owner of that property. In determining to whom those licenses ~~shall~~ *must* be issued, it may, when more applications are received than the number of animals to be killed, award permits to those chosen under a drawing system. The procedures used for awarding the permits from the drawing system ~~shall~~ *must* be determined by the commission.

(2) The commission may adopt rules governing the use of livestock and vehicles by archers during special archery seasons.

(3) It may divide the state into fish and game districts and create fish, game, or fur-bearing animal districts throughout the state. It may declare closed season for hunting, fishing, or trapping in any of those districts and later may open those districts to hunting, fishing, or trapping.

(4) It may declare a closed season on any species of game, fish, game birds, or fur-bearing animals threatened with undue depletion from any cause. It may close any area or district of any stream, public lake, or public water or portions thereof to hunting, trapping, or fishing for limited periods of time, when

necessary to protect a recently stocked area, district, water, spawning waters, spawn-taking waters, or spawn-taking stations or to prevent the undue depletion of fish, game and fur-bearing animals, and game and nongame birds. It later may open the area or district upon consent of a majority of the property owners affected.

(5) The commission may authorize the director to open or close any special season upon 12 hours' notice to the public.

(6) It may declare certain fishing waters closed to fishing except by persons under 13 years of age. The purpose of this subsection is to provide suitable fishing waters for the exclusive use and enjoyment of juveniles under 13 years of age, at times and in areas the commission in its discretion considers advisable and consistent with its policies relating to fishing."

Section 2. Section 87-2-102, MCA, is amended to read:

"**87-2-102. Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions apply:

(1) ~~Members of the regular armed forces of the United States or members of the armed forces of foreign governments attached to the armed forces of the United States who are assigned to active duty in Montana and their dependents, as defined in 15-30-113, who reside in their Montana household with them, after a period of 30 days within Montana, upon presenting assignment orders emanating from the proper unit commander, are considered residents for the purpose of this chapter. The 30-day residence requirement is waived in time of war.~~ *A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-113, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:*

(a) the member was a resident of Montana under the provisions of subsection (2) at the time the member entered the armed forces and continues to meet residency criteria of subsection (2); or

(b) the member is currently assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders. The 30-day residence requirement is waived in time of war.

(2) A person who has been a resident of the state of Montana for a period of 6 months immediately prior to making application for a license is eligible to receive a resident hunting, fishing, or trapping license. A person is considered a resident if the person meets the following criteria:

(a) the person lives in Montana or has a fixed intent to return to this state when ~~he~~ *the person* leaves it;

(b) the person files Montana state income tax returns if required to file as a resident;

(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;

(d) the person does not use any resident hunting, fishing, or trapping privileges in another state or country during the time the resident Montana license is valid; and

(e) if the person registers to vote, the person registers only in Montana.

(3) Any enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(4) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-time basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (4).

(5) An unmarried minor ~~whose~~ *is considered a resident for the purposes of this section if the minor's* parents, legal guardian, or ~~custodial~~ parent *with joint custody, sole custody, or visitation rights* is a resident for purposes of this section. *The minor* is ~~also~~ considered a resident for purposes of this section *regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.*"

Section 3. Section 87-2-509, MCA, is amended to read:

"**87-2-509. Tagging of carcasses of game animals.** (1) ~~Every~~ *Each* license issued by the department authorizing the holder ~~thereof~~ *of the license* to pursue, shoot, kill, capture, take, or possess game animals, whether issued to a resident or a nonresident, ~~shall~~ *must* provide ~~such~~ *any* tags, coupons, or markers as the department prescribes. When any person takes or kills any game animal under the license, the person shall immediately ~~thereafter~~ cut out from the tag, coupon, or other marker the date the animal was killed or taken and attach the tag, coupon, or other marker to the animal, completely filled out with the name of the license holder, ~~his~~ *the license holder's* address, and any other information requested on the tag, coupon, or other marker. ~~Such~~ *The* tag, coupon, or other marker ~~shall~~ *must* be kept attached to the carcass ~~so~~ *as* long as any considerable portion of the carcass remains unconsumed, and when the proper tag, coupon, or other marker is attached to the game animal ~~so~~ *that was* killed, the ~~same~~ *game animal becomes the property of the person who tagged the animal and* may be possessed, used, stored, *donated to another or to a charity,* ~~and~~ *or* transported.

(2) It is unlawful for a person~~,~~ who kills any game animal by authority of any license issued for the killing of the game animal~~,~~ to fail or neglect to cut out

the day and month of the kill or provide ~~such~~ *any* other information ~~as~~ *that* is required and attach ~~his~~ *the* tag, coupon, or other marker ~~so~~ provided with the license issued to the carcass of the game animal or portion ~~thereof~~ *of the game animal.* It is unlawful for a person to fail to keep the tag, coupon, or other marker attached to the game animal or portion ~~thereof~~ *of the game animal* while the ~~same~~ *animal* is possessed by ~~him~~ *the person.*"

Section 4. Section 87-3-143, MCA, is amended to read:

"**87-3-143. Penalty.** A person convicted of a violation of 87-3-142 is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or imprisonment not to exceed 30 days, or both. *A person convicted of a second or subsequent violation of 87-3-142 is punishable by a fine not to exceed $1,000 or imprisonment for a term not to exceed 1 year, or both.*"

Section 5. **Effective date.** [This act] is effective on passage and approval.

Approved April 29, 1993.

CHAPTER NO. 590

[SB 118]

AN ACT CHANGING THE LICENSING CATEGORIES AND CONDITIONS FOR PERSONAL-CARE FACILITIES; ELIMINATING PERSONAL-CARE FACILITIES FROM CERTIFICATE OF NEED REQUIREMENTS; PROHIBITING SUPPLEMENTARY PAYMENTS FOR RESIDENTS OF CERTAIN PERSONAL-CARE FACILITIES; PROHIBITING MEDICAID PAYMENT TO PERSONAL-CARE FACILITIES; AMENDING SECTIONS 50-5-101, 50-5-226, 50-5-227, 50-5-301, 52-1-104, AND 53-6-101, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because 50-5-226 requires the department of health and environmental sciences to adopt standards governing personal-care facilities and because 50-5-227 requires the department to adopt rules implementing two categories of personal-care facilities.

The legislature intends that the standards to be adopted under 50-5-226 involve only those basic aspects of care that are not already part of local ordinances and that the rules do not overregulate or require more than absolutely necessary for the safety of the residents because, in many instances, the facilities in which residents will live are the homes of those persons managing them.

The legislature recognizes a preference by many senior citizens and their relatives for seniors to live in a home setting in a private home or residence rather than in a nursing home. The legislature further recognizes that there are a number of persons in this state who are willing to care for seniors in their own homes or in homes operated by them in which the home setting is preserved. The legislature further recognizes that the quality of care given in these homes or residences may be preferable under many circumstances because the patient-to-staff ratio is considerably lower than in a nursing home and the home setting avoids the institutional atmosphere and associated problems.

Finally, the legislature recognizes that these homes can be considerably less expensive than nursing homes. Therefore, the legislature specifically finds that the use of private homes or residences in which the home setting is preserved is to be recognized as the preferred treatment for all persons who can receive adequate care in such a facility.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"**50-5-101. Definitions.** As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, ~~which~~ *that* provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency ~~which~~ *that* establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency ~~which~~ *that* plans or assists in planning for ~~such~~ *health care* facilities.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, ~~which~~ *that* provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which ~~any~~ *a* person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, ~~which~~ *that* creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(12) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(13) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications ~~which~~ *that* are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage ~~thereof~~ *of the physical erection*, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(17) "Federal acts" means federal statutes for the construction of health care facilities.

(18) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(19) "Health care facility" or "facility" means ~~any~~ *all or a portion of an* institution, building, or agency ~~or portion thereof~~, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any ~~person or persons~~ *individual*. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

(20) "Health maintenance organization" means a public or private organization ~~which~~ *that* provides or arranges for health care services to enrollees on a

prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(21) "Home health agency" means a public agency or private organization or subdivision ~~thereof which~~ *of the agency or organization that* is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and ~~his~~ *the patient's* family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick ~~persons~~ *individuals*. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff ~~which~~ *that* is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to ~~any~~ *a* health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility ~~which~~ *that* specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part ~~thereof which~~ *of a facility that* provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more ~~persons~~ *individuals* or *that provides* personal care ~~to more than four persons who are not related to the owner or administrator by blood or marriage~~. The term does not include adult foster care licensed under 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for ~~persons~~ *individuals* with severe disabilities licensed under 52-4-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or

~~persons~~ *individuals* not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or ~~persons~~ *individuals* with related problems.

(e) "Personal care" means the provision of services and care ~~which do not require nursing skills to~~ *for* residents needing some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured ~~persons~~ *individuals* prior to their transportation to a hospital or provides inpatient medical care to ~~persons~~ *individuals* needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of ~~such persons~~ *mentally ill individuals*, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(33) "Offer" means the holding out by a health care facility that it can provide specific health services.

(34) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(35) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(36) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility ~~which~~ *that* is operated for the primary purpose of assisting in the rehabilitation of disabled ~~persons~~ *individuals* by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means ~~a person~~ *an individual* who is in a long-term care facility for intermediate or personal care.

(40) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(41) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to ~~persons~~ *individuals* under 21 years of age.

(42) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor."

Section 2. Section 50-5-226, MCA, is amended to read:

"**50-5-226. Placement in personal-care facilities.** (1) A personal-care facility may ~~not have as a resident a person who is:~~

~~(a) in need of medical or physical restraints;~~

~~(b) nonambulatory or bedridden;~~

~~(c) totally incontinent; or~~

~~(d) less than 18 years of age~~ *provide personal-care services to a resident who is 18 years of age or older and in need of the personal care for which the facility is licensed under 50-5-227.*

(2) A resident of a personal-care facility licensed as a category A facility under 50-5-227 may obtain third-party provider services for skilled nursing care for no more than 20 consecutive days at a time.

(3) A resident of a personal-care facility licensed as a category B facility under 50-5-227 must have a signed statement from a physician agreeing to the resident's admission to the facility if the resident is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

(4) A resident of a personal-care facility who needs skilled nursing care must have a signed statement, renewed on an annual basis for a category A facility and on a quarterly basis for a category B facility, from a physician, a physician assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the facility and who:

(a) actually visited the facility within the year covered by the statement for a category A facility and within the calendar quarter covered by the statement for a category B facility;

(b) has certified that the particular needs of the resident can be adequately met in the facility; and

(c) has certified that there has been no significant change in health care status that would require another level of care.

~~(2)~~*(5)* The department shall, in consultation with the department of social and rehabilitation services, provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, ~~his~~ *the resident's* physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by ~~persons prohibited by~~ *individuals referred to in* subsection ~~(1)~~ *(3)*;

(c) a method by which the results of any screening decision made pursuant to rules established under subsection ~~(2)(b)~~ *(5)(b)* may be appealed by the facility operator or by or on behalf of a resident or prospective resident;

(d) standards for operating a category A personal-care facility, including standards for the physical, structural, environmental, sanitary, infection control, dietary, social, staffing, and recordkeeping components of a facility; and

(e) standards for operating a category B personal-care facility, which must include the standards for a category A personal-care facility and additional standards for assessment of residents, care planning, qualifications and training of staff, restraint use and reduction, prevention and care of pressure sores, incontinence care, and the storage and administration of drugs."

Section 3. Section 50-5-227, MCA, is amended to read:

"**50-5-227. Licensing personal-care facilities.** (1) The department shall, in consultation with the department of social and rehabilitation services, by rule adopt standards for licensing and operation of personal-care facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The following licensing categories must be used by the department in adopting rules under subsection (1):

(a) category A—a facility providing personal care to six or more residents who may not be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications; or

(b) category B—a facility providing personal care to five or fewer residents who may be:

(i) in need of skilled nursing care;

(ii) in need of medical, chemical, or physical restraint;

(iii) nonambulatory or bedridden;

(iv) incontinent to the extent that bowel or bladder control is absent; or

(v) unable to self-administer medications.

~~(2)~~*(3)* The department may by rule establish license fees, inspection fees, and fees for patient screening. ~~Such fees~~ *Fees* must be reasonably related to service costs."

Section 4. Section 50-5-301, MCA, is amended to read:

"**50-5-301. When certificate of need is required — definitions.** (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, ~~he~~ *the person* may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility ~~which~~ *that* was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and ~~which~~ *that* will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the acquisition by any person of major medical equipment, provided ~~such~~ *the* acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility ~~which~~ *that* is being replaced or ~~which~~ *that* did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency;

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(i) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, *or* inpatient rehabilitation~~, or personal care~~.

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, *or* residential treatment facility~~, or personal care facility~~. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

(b) (i) "Long-term care facility" means an entity ~~which~~ *that* provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more ~~persons~~ *individuals.*

(ii) The term does not include adult foster care, licensed under 52-3-303; community homes for the developmentally disabled, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or ~~persons~~ *individuals* not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

~~(d) "Personal care facility" means an entity which provides services and care which do not require nursing skills to more than four persons who are not related to the owner or administrator by blood or marriage and who need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection (3)(b).~~

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000."

Section 5. Section 52-1-104, MCA, is amended to read:

"**52-1-104. Department authorized to provide and set standards for supplementary payments.** (1) ~~The~~ *Except as provided in this section, the* department shall have the authority to provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind, or disabled under Title XVI of the Social Security Act of the United States or any future amendments thereto.

(2) The department shall have the authority to establish standards of assistance and apply them uniformly throughout the state and to determine

individuals eligible for and the amount of such supplementary payments under federal and state guidelines.

(3) The department may not provide supplementary payments under subsection (1) for persons who are residents of category B personal-care facilities licensed pursuant to 50-5-227."

Section 6. Section 53-6-101, MCA, is amended to read:

"**53-6-101. Montana medicaid program — authorization of services.** (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill but limited to services provided in crisis intervention programs;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost-effective.

(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder.

(11) Medicaid payment for personal-care facilities may not be made unless the department certifies to the director of the governor's office of budget and program planning that payment to this type of provider would, in the aggregate, be a cost-effective alternative to services otherwise provided."

Section 7. **Applicability.** [Sections 1 through 4] and the rules of the department of health and environmental sciences adopted pursuant to [sections 2 and 3] apply to licenses for personal-care facilities issued or renewed after July 1, 1994.

Section 8. **Effective date.** [This act] is effective July 1, 1994.

Approved April 29, 1993.

CHAPTER NO. 591

[SB 145]

AN ACT DEFINING TRAUMATIC BRAIN INJURY; ESTABLISHING A TRAUMATIC BRAIN INJURY TRUST FUND; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Traumatic brain injury defined.** (1) (a) As used in [sections 1 and 2], "traumatic brain injury" means:

(i) an injury to the brain caused by an external physical force, including but not limited to a motor vehicle accident, a fall, an assault, a sports injury, or a recreational or work-related accident; or

(ii) brain damage caused by an internal occurrence including but not limited to:

(A) disease, such as a benign or malignant tumor, meningitis, or encephalitis; or

(B) a cerebrovascular accident, such as stroke, atherosclerosis, aneurysm, or arteriovenous malformation; or

(C) anoxia, including but not limited to anoxia caused by near drowning, drug overdose, kidney or heart failure, chemical exposure, or electrical shock.

(b) The term "traumatic brain injury" does not include injuries of a degenerative or congenital nature.

(2) Traumatic brain injury as defined in this section may produce a diminished or altered state of consciousness that results in a temporary or permanent impairment of cognitive or mental abilities, physical functioning, or behavioral or emotional functioning.

Section 2. **Traumatic brain injury trust fund established — source of funds — uses.** (1) There is an account in the state special revenue fund to be used to establish a traumatic brain injury trust fund.

(2) The trust fund consists of donations or grants received for the purpose of providing services for persons suffering from traumatic brain injury.

(3) The money in this account must be used solely for planning, coordinating, and providing services to persons suffering from traumatic brain injury.

Section 3. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 53, and the provisions of Title 53 apply to [sections 1 and 2].

Section 4. **Effective date.** [This act] is effective July 1, 1993.

Approved April 29, 1993.

CHAPTER NO. 592

[SB 374]

AN ACT INCREASING THE TAX INCENTIVE FOR THE PRODUCTION OF ALCOHOL; PROVIDING FOR A PROPORTIONATE REDUCTION IN THE TAX INCENTIVE FOR ALCOHOL PRODUCED FROM OUT-OF-STATE AGRICULTURAL OR WOOD PRODUCTS; AMENDING SECTION 15-70-522, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-522, MCA, is amended to read:

"15-70-522. Tax incentive for production of alcohol — written plan required — reservation of incentives — rules. (1) (a) If the alcohol was produced in Montana from Montana agricultural products, including Montana wood or wood products, or if the alcohol was produced from non-Montana agricultural products when Montana products are not available, there is a tax incentive payable to alcohol distributors for distilling alcohol that:

(i) was blended with gasoline for sale as gasohol in Montana;

(ii) was exported from Montana and has been blended with gasoline for sale as gasohol; or

(iii) was used in the production of ethyl *tertiary* butyl ether for use in reformulated gasoline.

(b) Payment must be made by the department out of the amount collected under 15-70-204.

(2) *(a)* Except as provided in subsections (3) and (4), the tax incentive on each gallon of alcohol distilled in accordance with subsection (1) is~~:~~

~~(a) beginning July 1, 1983, 70 cents per gallon;~~

~~(b) beginning April 1, 1985, 50 cents per gallon;~~

~~(c) beginning April 1, 1987,~~ 30 cents per gallon *for each gallon that is 100% produced from Montana products, with the amount of the tax incentive per gallon reduced proportionately, based upon the amount of agricultural or wood products used in the production of the alcohol that are not produced in Montana*~~; and~~.

~~(d)~~*(b)* ~~beginning~~ *Beginning* July 1, 2001, ~~and thereafter,~~ there is no tax incentive.

(3) Regardless of the alcohol tax incentive provided in subsection (2), the total payments made for the incentive under this part may not exceed $6 million in any consecutive 12-month period beginning April 1, 1985.

(4) An alcohol distributor may not receive tax incentive payments under subsection (2) that exceed ~~$1.5~~ *$3* million in any consecutive 12-month period beginning April 1, 1985.

(5) An alcohol distributor who begins production after July 1, 1991, may not receive tax incentive payments under subsection (2) unless ~~he~~ *the distributor* has provided a written plan to the department of transportation at least 18 months before ~~his~~ *the distributor's* anticipated collection of the tax incentives. The plan must contain the following information:

(a) the source or sources of financing for the acquisition of the plant, land, and equipment used for the production of ~~gasohol~~ *alcohol*;

(b) the anticipated source of agricultural products used in the production of ~~gasohol~~ *alcohol*; and

(c) the anticipated time, quantity, and duration of production of ~~gasohol~~ *alcohol*.

(6) An alcohol distributor in production before July 1, 1991, is entitled to apply for the maximum tax incentive payment allowed under subsection (4) without providing a written plan as required in subsection (5).

(7) (a) Except as provided in subsection (7)(b), the department shall reserve, in the order that written plans required under subsection (5) are received by the department, alcohol tax incentives based on the anticipated time, quantity, and duration of production. Payment of the alcohol tax incentives must be based on actual production.

(b) No later than 1 year after the written plan is received under subsection (5), the department shall determine whether an alcohol distributor is complying with the written plan. The department may reduce or cancel the reservation of the tax incentive provided in this subsection if the department determines that the alcohol distributor has not materially complied with the written plan.

(8) A new tax incentive payment may not be made if the total tax incentive established in subsection (3) has been reserved or paid. If an alcohol tax incentive has been reduced or canceled, the amount by which the tax incentive has been reduced or canceled is available for reservation as provided in subsection (7)(a).

(9) The department shall prescribe rules necessary to carry out the provisions of this section."

Section 2. **Termination.** [This act] terminates July 1, 1997.

Approved April 29, 1993.

CHAPTER NO. 593

[SB 378]

AN ACT ELIMINATING CERTAIN DEDICATIONS OF REVENUE; PROVIDING FOR THE REVIEW AND FUTURE ELIMINATION OF SPECIAL REVENUE ACCOUNTS AND STATUTORY APPROPRIATIONS; PROVIDING THAT APPROPRIATIONS FROM FORMER SPECIAL REVENUE ACCOUNTS ARE FROM THE GENERAL FUND; AMENDING SECTIONS 15-1-501, 20-9-343, AND 31-1-602, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative findings.** (1) The legislature finds that provisions for dedicating state revenue have increased in number, reduce legislative control over state spending, complicate the state funding structure, and increase the effort required to budget, appropriate, and monitor public funds. The dedication of funds results in the inability of the legislature to practically and systematically conduct reasoned prioritization of programs or funds.

(2) It is the intent of the legislature, by establishing a system for the review and evaluation of revenue dedication provisions, to ensure that provisions for revenue dedication:

(a) are based on sound principles of revenue dedication;

(b) reflect present circumstances and legislative priorities for state spending; and

(c) are terminated when they no longer are necessary or appropriate.

Section 2. **Definitions.** As used in [sections 1 through 6], unless the context requires otherwise, the following definitions apply:

(1) "Dedicated revenue provision" means an administrative or legislative action that allocates the revenue from a tax, fee, assessment, or other source to an account in the state special revenue fund.

(2) "State special revenue fund" means a fund in the state treasury consisting of money from state sources that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government, as provided in 17-2-102.

Section 3. **Transfer of fund balances to general fund.** On [the effective date of this act], the balance remaining in each special revenue account terminated pursuant to legislative review must be deposited in the general fund.

Section 4. **Effect of termination.** (1) If the legislature has appropriated the revenue from an account provided for in [sections 7 through 9], the appropriation is considered to have been made from the general fund.

(2) All assets, liabilities, and fund balances of accounts terminated by [sections 7 through 9] accrue to the general fund.

Section 5. **Legislative review and report.** (1) Each interim, the legislative finance committee shall review each dedicated revenue provision not exempted under subsection (3) and review statutory appropriations assigned by the legislature.

(2) The review conducted by the committee must include an evaluation of the dedicated revenue provision, based on whether it:

(a) provides direct benefits for those who pay the dedicated tax, fee, or assessment;

(b) provides special information or other advantages that could not be obtained if the revenue were allocated to the general fund;

(c) provides program funding at a level equivalent to the expenditures established by the legislature;

(d) involves collection and allocation formulas that are appropriate to the present circumstances in state government;

(e) impairs the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending;

(f) results in an inappropriate ending fund balance;

(g) fulfills a continuing, legislatively recognized need; and

(h) results in accounting or auditing inefficiency.

(3) The committee shall establish procedures to facilitate the review and evaluation required by this section. Each interim, the committee shall attempt to propose measures that will reduce dedicated revenue to an amount that is less than one-third of all state revenue. If the review determines that the revenue dedication is constitutionally mandated, is for debt service, funds emergency services, or is a user fee that is designed to provide direct benefits for those who pay the dedicated tax, fee, or assessment in an amount commensurate with the benefits provided, the revenue dedication does not need a future review.

(4) Upon completion of the review, the committee shall report a summary of its findings to the legislature, including its recommendation of termination or extension, with or without modification, of the dedicated revenue provision. The summary must include the purpose of the revenue dedication, the source of funding, the activity funded, the number of personnel associated with the activity, and any balance in the dedicated revenue fund. The summary must state the reason why the revenue dedication is exempt from future review.

(5) 'The committee shall review statutory appropriations to determine if the appropriation should be made by a legislative appropriation. During the 1995

biennium, the committee shall review the statutory appropriation of administrative costs in 75-11-313.

Section 6. **Review of legislation.** The office of budget and program planning shall, consistent with the review provisions in [section 5], review each piece of legislation that proposes to dedicate revenue. The office shall submit its findings concerning the dedication of revenue on the fiscal notes accompanying that legislation.

Section 7. Section 15-1-501, MCA, is amended to read:

"**15-1-501.** *(Temporary)* **Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund all money received ~~by him~~ from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must be deposited as follows:

(a) ~~62.8%~~ *91.3%* of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; *and*

(c) ~~28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and~~

~~(d)~~ all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must be deposited as follows:

(a) ~~61%~~ *89.5%* of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; *and*

(c) ~~28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and~~

~~(d)~~ all interest and penalties to the credit of the state general fund.

(4) The state treasurer shall also deposit to the credit of the state general fund all money received ~~by him~~ from the collection of license taxes, fees, and all

net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.

(6) All refunds of taxes must be attributed to the funds in which the taxes are deposited. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are deposited.

15-1-501. *(Effective July 1, 1993)* **Disposition of money from certain designated license and other taxes.** (1) The state treasurer shall deposit to the credit of the state general fund all money received ~~by him~~ from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) severance taxes allocated to the general fund under chapter 36;

(d) liquor license taxes under Title 16;

(e) telephone company license taxes under chapter 53; and

(f) inheritance and estate taxes under Title 72, chapter 16.

(2) All money received from the collection of income taxes under chapter 30 of this title must be deposited as follows:

(a) ~~59.5%~~ *91.3%* of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; *and*

(c) ~~31.8% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and~~

~~(d)~~ all interest and penalties to the credit of the state general fund.

(3) All money received from the collection of corporation license and income taxes under chapter 31 of this title, except as provided in 15-31-702, must be deposited as follows:

(a) ~~61%~~ *89.5%* of the taxes to the credit of the state general fund;

(b) 10.5% of the taxes to the credit of the debt service account for long-range building program bonds as described in 17-5-408; *and*

(c) ~~28.5% of the taxes to the credit of the state special revenue fund for state equalization aid to the public schools of Montana as described in 20-9-343; and~~

~~(d)~~ all interest and penalties to the credit of the state general fund.

(4) The state treasurer shall also deposit to the credit of the state general fund all money received ~~by him~~ from the collection of license taxes, fees, and all

net revenues and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(5) After the distribution provided for in 15-36-112, the remainder of the oil severance tax collections must be deposited in the general fund.

(6) All refunds of taxes must be attributed to the funds in which the taxes are deposited. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are deposited."

Section 8. Section 20-9-343, MCA, is amended to read:

"**20-9-343.** *(Temporary)* **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the payment of guaranteed tax base aid and for equalization of the foundation program;

(b) the Montana educational telecommunications network as provided in 20-32-101; and

(c) filing fees for school district audits as required by 2-7-514(2).

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid, as required by subsections (1)(a) and (1)(b), throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) ~~money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;~~

~~(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;~~

~~(c)~~ money allocated to state equalization from the collection of the severance tax on coal;

~~(d)~~*(b)* money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

~~(e)~~*(c)* interest and income money described in 20-9-341 and 20-9-342;

~~(f)~~*(d)* money received from the state equalization aid levy under 20-9-360;

~~(g)~~*(e)* income from the lottery, as provided in 23-7-402;

~~(h)~~*(f)* the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333; *and*

~~(i)~~*(g)* investment income earned by investing money in the state equalization aid account in the state special revenue fund; ~~and~~

~~(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704~~.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium. *(Terminates June 30, 1993—sec. 5, Ch. 729, L. 1991.)*

20-9-343. *(Effective July 1, 1993)* **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the purposes of payment of guaranteed tax base aid and equalization of the foundation program and for the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid as required for the purposes of guaranteed tax base aid, the foundation program, and the Montana educational telecommunications network, throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) ~~money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;~~

~~(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;~~

~~(c)~~ money allocated to state equalization from the collection of the severance tax on coal;

~~(d)~~*(b)* money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

~~(e)~~*(c)* interest and income money described in 20-9-341 and 20-9-342;

~~(f)~~*(d)* money received from the state equalization aid levy under 20-9-360;

~~(g)~~*(e)* income from the lottery, as provided in 23-7-402;

~~(h)~~*(f)* the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333; *and*

~~(i)~~*(g)* investment income earned by investing money in the state equalization aid account in the state special revenue fund~~; and~~

~~(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704~~.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium."

Section 9. Section 31-1-602, MCA, is amended to read:

"**31-1-602. State-sponsored credit card — distribution of proceeds.** (1) The department of revenue is authorized to participate in a financial institution credit card program for the benefit of the state. ~~Within 180 days of April 28, 1989, the~~ *The* department shall ~~contact each financial institution to~~ determine if:

(a) ~~the~~ *a* financial institution or its holding company or affiliate currently administers a credit card program;

(b) the credit card program provides a fee or commission on retail sales to the sponsoring entity for the issuance and use of the credit card; and

(c) the credit card program would accept the state as a sponsoring entity.

(2) If the department determines that the state may be a sponsoring entity for a financial institution credit card, the department shall negotiate the most favorable rate for the state's fee by a credit card issuer. The state may not offer a more favorable rate to any credit card issuer. The rate must be expressed as a percentage of the gross sales from the use of the credit card. The proceeds of the fee must be deposited ~~one-half~~ in the general fund ~~and one-half in the state special revenue fund for state equalization aid to public schools~~."

Section 10. **Effective dates.** (1) [Sections 1 through 6 and this section] are effective on passage and approval.

(2) [Sections 7 through 9] are effective July 1, 1994.

Approved April 29, 1993.

CHAPTER NO. 594

[SB 379]

AN ACT SIMPLIFYING TAX APPEAL PROCEDURES BEFORE THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 15-1-402, 15-1-406, 15-1-408, 15-2-301, 15-2-302, 15-2-303, 15-2-306, 15-7-102, AND 15-15-101, MCA; AND REPEALING SECTIONS 15-2-307, 15-2-308, 15-2-309, AND 15-2-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-402, MCA, is amended to read:

"**15-1-402. Payment of taxes under protest ~~— action to recover.~~** (1) The person upon whom a *property* tax or ~~license~~ fee is being imposed *under this title* may ~~proceed under 15-1-406 or may~~, before the *property* tax or ~~license~~ fee becomes delinquent, pay under written protest that portion of the *property* tax or ~~license~~ fee protested. The *protested* payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which ~~grounds~~ may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) ~~After having exhausted the administrative appeals available under Title 15, chapters 2 and 15, a person or his legal representative may bring an action in any court of competent jurisdiction against the officers to whom said tax or license fee was paid or against the county or municipality in whose behalf the same was collected and the department of revenue.~~ *A person appealing a property tax or fee pursuant to chapter 2 or 15 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.*

~~(3) Both the officers to whom the tax or license fee was paid or the county or municipality in whose behalf the same was collected and the department of revenue must be served with timely summons and complaint within the time prescribed.~~

~~(4) An action instituted to recover any such portions of tax or license fee paid under protest must be commenced and summons timely served within 60 days after the date of the final decision of the state tax appeal board.~~

~~(5)~~*(3)* If a protested *property* tax or ~~license~~ fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and ~~no~~ *an* action or suit need *not* be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying ~~such~~ *the* subsequent installment to have ~~the same~~ *it* or any part ~~thereof~~ *of it* refunded to ~~him~~ *the party* or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

~~(6)~~*(4)* All *property* taxes and ~~license~~ fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover ~~the same~~ *the taxes and fees* unless *they are* released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection ~~(7)~~ *(5)*. ~~Nothing contained herein prohibits~~ *This section does not prohibit* the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

~~(7)~~*(5)* The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

~~(8)~~*(6)* (a) If ~~no~~ action *before the county tax appeal board, state tax appeal board, or district court* is *not* commenced within the time ~~herein~~ specified or if ~~such~~ *the* action is commenced and finally determined in favor of the *department of revenue,* county, ~~or~~ municipality, or treasurer ~~thereof~~ *of the county or the municipality,* the amount of the protested portions of the *property* tax or ~~license~~ fee must be taken from the protest fund and deposited to the credit of the fund or funds to which the ~~same~~ property *tax* belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged the local government units.

(b) If ~~such~~ *the* action is finally determined adversely to *the department of revenue,* a county, ~~or~~ *a* municipality, or the treasurer ~~thereof~~ *of a county or a municipality,* then the treasurer shall, upon receiving a certified copy of the final judgment in ~~said~~ *the* action from the state tax appeal board~~;~~ or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor ~~such~~ *the* judgment is rendered the amount of ~~such~~ *the* protested portions of the *property* tax or ~~license~~ fee deposited in the protest fund, and not released pursuant to subsection ~~(7)~~ *(5),* as the person holding ~~such~~ *the* judgment is entitled to recover, together with interest ~~thereon~~ from the date of payment under protest, at the greater of:

(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or

(ii) 6% a year.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then interest owed, and lastly to costs.

(d) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably responsible.

(e) In satisfying the requirements of subsection ~~(8)(d)~~ *(6)(d),* the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the greater of the rates referred to in subsections ~~(8)(b)(i)~~ *(6)(b)(i)* and ~~(8)(b)(ii)~~ *(6)(b)(ii)* from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus four percentage points, from the date of final resolution of the protest until refund is made.

~~(9)~~*(7)* A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund, except that amount generated by the all-purpose mill levy, or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is ~~hereby~~ authorized to issue ~~such~~ *the* bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds."

Section 2. Section 15-1-406, MCA, is amended to read:

"**15-1-406. ~~Alternative remedy — declaratory~~ *Declaratory* judgment.** (1) An aggrieved taxpayer may~~, in lieu of proceeding under 15-1-402 or 15-1-211,~~ bring a declaratory judgment action in the district court seeking a declaration that*:*

(a) an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the department of revenue is illegal or improper; or

(b) a tax ~~levied~~ *authorized* by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the ~~imposition of the tax~~ *date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform tax review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision.* The court shall consolidate all actions brought under subsection (1) ~~which~~ *that* challenge the same tax ~~levy~~. The decision of the court ~~shall apply~~ *applies* to all similarly situated taxpayers except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid when due as a condition of continuing the action. *Property taxes may be paid under protest as provided in 15-1-402.*

(4) The remedy authorized by this section may not be used to challenge the:

(a) market value of property under a property tax unless the challenge is to the legality of a particular methodology that is being applied to similarly situated taxpayers; or

(b) legality of a tax other than a property tax, inheritance tax, or estate tax unless the review pursuant to 15-1-211 has been completed.

(5) The remedy authorized by this section is the exclusive method of obtaining a declaratory judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this section supersedes the Uniform

Declaratory Judgments Act established in Title 27, chapter 8. This section does not affect actions for declaratory judgments under 2-4-506."

Section 3. Section 15-1-408, MCA, is amended to read:

"**15-1-408. Alternative remedy — judgment.** If the district court determines that the tax was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax, the judgment may direct:

(1) that the revenue collected under the illegal tax be directly refunded to the taxpayers who have paid the illegal tax and who have not been excluded from the action;

(2) that the revenue collected under the illegal tax be used to reduce a similar levy in the ensuing tax year; ~~or~~

(3) *that the assessment be changed for the taxpayer or taxpayers who brought the action as well as for all similarly situated taxpayers; or*

(4) ~~such~~ *any* other remedy as the court considers appropriate."

Section 4. Section 15-2-301, MCA, is amended to read:

"**15-2-301. Appeal of county tax appeal board decisions.** (1) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. Any person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county board. The notice must specify the action complained of and the reasons assigned for the complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax appeal board. The state board shall set the appeal for hearing either in its office in the capital or the county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.

(2) At the time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the state board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearing officer. The board member or hearing officer may exercise all the powers of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together with a transcript or a tape recording of the hearing, to the board. The state board shall determine the appeal on the record.

(3) On all hearings at county seats throughout the state, the state board or the member or hearing officer designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the

testimony received. The cost of taking and transcribing testimony may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. ~~The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review.~~ To the extent this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. The state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless the board finds a rule arbitrary, capricious, or otherwise unlawful.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303."

Section 5. Section 15-2-302, MCA, is amended to read:

"**15-2-302. Direct appeal from department decision to state tax appeal board — hearing.** (1) A person may appeal to the state tax appeal board any *final* action of the department of revenue involving:

(a) property centrally assessed under chapter 23 of this title;

(b) classification of property as new industrial property;

(c) any other tax (other than the property tax) imposed under this title; or

(d) any other matter in which ~~such~~ *the* appeal is provided by law.

(2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department action. The complaint ~~shall~~ *must* set forth the grounds for relief and nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(3) The department shall file with the board an answer within 30 days following filing of a complaint and at ~~such~~ *that* time mail a copy to the complainant. The answer ~~shall~~ *must* set forth the department's response to each ground for and type of relief demanded in the complaint.

(4) The board shall ~~thereafter~~ hear the parties in accordance with the contested case provisions of the Montana Administrative Procedure Act.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303."

Section 6. Section 15-2-303, MCA, is amended to read:

"**15-2-303. Judicial review ~~of contested cases~~.** (1) Any party to an appeal before the state tax appeal board who is aggrieved by a final decision ~~in a contested case~~ is entitled to judicial review under this part.

(2) Proceedings for review ~~shall~~ *must* be instituted by filing a petition in district court in the county ~~wherein~~ *in which* the taxable property or some portion ~~thereof~~ *of it* is located (except the taxpayer ~~may, at his~~ *has the* option~~,~~ *to* file in the district court of the first judicial district). ~~and serving a copy of the petition on the department of revenue or taxpayer~~ *A petition for judicial review must be filed* within 60 days after service of the final decision of the state tax appeal board or, if a rehearing is requested, within 60 days after *service of* the *final* decision ~~thereon~~. *Copies of the petition must be promptly served on all parties of record.* The department of revenue shall promptly notify the state tax appeal board, in writing, of any judicial review, but failure to do so ~~shall have no~~ *has no* effect on the judicial review. The department of revenue shall, on request, submit to the state tax appeal board a copy of all pleadings and documents.

(3) If the judicial review involves a taxpayer who is seeking a refund of taxes paid under protest, the appealing party shall provide a copy of the petition to the treasurer of the county in which the taxable property or some portion of it is located, but failure to do so has no effect on the judicial review.

~~(3)~~*(4)* ~~Notwithstanding any other provision, proceedings~~ *Proceedings* for review of a decision by the state tax appeal board by a company under the jurisdiction of the public service commission ~~shall~~ *must* be instituted in the district court of the first judicial district.

~~(4)~~*(5)* Notwithstanding the provisions of 2-4-704(1), the court may, for good cause shown, permit additional evidence to be introduced."

Section 7. Section 15-2-306, MCA, is amended to read:

"**15-2-306. Board may order refund.** (1) In any appeal before the state tax appeal board when a taxpayer has paid *property* taxes or ~~license~~ fees under written protest and the taxes or ~~license~~ fees are held by the treasurer of a unit of local government in a protest fund, the state tax appeal board shall enter judgment, exclusive of costs, if the board finds that the *property* taxes or ~~license~~ fees should be refunded.

(2) The state tax appeal board's judgment issued pursuant to subsection (1) ~~shall~~ *must* be held in abeyance:

(a) until the time period for appeal ~~specified in 15-1-402(4)~~ has passed; or

(b) if the final decision of the state tax appeal board has been appealed in accordance with 15-2-303."

Section 8. Section 15-7-102, MCA, is amended to read:

"**15-7-102. Notice of classification and appraisal to owners — appeals.** (1) It ~~shall be~~ *is* the duty of the department of revenue, through its agent as specified in subsection (2), to cause to be mailed to each owner and purchaser under contract for deed a notice of the classification of the land owned or being purchased ~~by him~~ and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(a) change in ownership;

(b) change in classification;

(c) change in valuation; or

(d) addition or subtraction of personal property affixed to the land.

(2) *(a)* The county assessor shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of ~~his~~ *the* property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of his land or improvements, ~~he~~ *the owner* may submit ~~his~~ *an* objection in writing to the department's agent. In an objection to the appraisal of the property, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of hearing and hear any testimony or other evidence that the taxpayer may desire to produce at that time and afford the opportunity to other interested persons to produce evidence at the hearing. After the hearing, the department shall determine the true and correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department ~~must~~ *shall* state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land ~~shall~~ *must* be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a hearing as provided in subsection (3) is held or not, the department or its agent may not adjust an appraisal or classification upon taxpayer's objection unless:

(a) the taxpayer has submitted ~~his~~ *an* objection in writing; and

(b) the department or its agent has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. Each county appraiser shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved at the classification and/or the appraisal made by the department, ~~he~~ ~~shall have~~ *the owner has* the right to

appeal to the county tax appeal board and then to the state tax appeal board, whose findings ~~shall be~~ *are* final subject to the right of review in the courts. The property owner may appeal the base valuation and the classification determination. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 9. Section 15-15-101, MCA, is amended to read:

"15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board shall be residents of the county in which they serve. They shall receive compensation of $45 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, ~~as amended,~~ only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation ~~shall~~ *must* be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards ~~shall~~ *must* be furnished by the county. All other incidental expenses ~~shall~~ *must* be paid from the appropriation of the state tax appeal board.

(2) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled. It must continue in session from time to time to hear protests concerning assessments made by the department of revenue until the business of hearing protests is disposed of, but, except as provided in 15-2-201, not later than 60 days after the department of revenue or its agent:

(a) has mailed notice of classification and appraisal to all property owners and purchasers under contracts for deed as required in 15-7-102; and

(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners and purchasers under contracts for deed.

(3) In connection with ~~any such~~ *an* appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. The county clerk shall publish a notice to taxpayers, giving the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for ~~such~~ *the* hearings. The notice ~~shall~~ *must* be published in a newspaper if any is printed in the county or, if none, then in ~~such~~ *the* manner ~~as~~ *that* the *county tax appeal* board ~~may direct~~ *directs*. The notice ~~shall~~ *must* be published at least 7 days prior to the first meeting of the county tax appeal board.

(4) Challenges to a department of revenue rule governing the assessment of property or to an assessment procedure ~~shall~~ apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers

unless an action is brought in the district court as provided in ~~15-2-307 through 15-2-310~~ *15-1-406.*"

Section 10. **Repealer.** Sections 15-2-307, 15-2-308, 15-2-309, and 15-2-310, MCA, are repealed.

Approved April 29, 1993.

CHAPTER NO. 595

[SB 401]

AN ACT AMENDING THE WATER QUALITY LAWS; DEFINING "DEGRADATION" AND CERTAIN OTHER TERMS; TRANSFERRING AUTHORITY FROM THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO AUTHORIZE DEGRADATION OF STATE WATERS; ALLOWING APPEAL OF THE DEPARTMENT'S FINAL DECISION TO THE BOARD; REQUIRING THE BOARD TO ADOPT RULES REGARDING MIXING ZONES AND THE NONDEGRADATION POLICY; CLARIFYING THAT IT IS UNLAWFUL TO CAUSE DEGRADATION OF STATE WATERS WITHOUT AUTHORIZATION; ESTABLISHING FEES; AMENDING SECTIONS 75-5-103, 75-5-301, 75-5-303, AND 75-5-605, MCA; AND PROVIDING AN APPLICABILITY DATE AND AN IMMEDIATE EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill requires the board of health and environmental sciences to adopt administrative rules. The legislature clearly intends that the nondegradation policy protect and maintain existing quality of state waters from any loss in the quality of those waters. The nondegradation policy is intended to apply to any activity that has the potential to affect existing water quality and requires department review of all such activities to ensure that degradation does not occur.

In recognition that certain activities promote general welfare and may justify lower water quality in a particular water segment, the legislature intends that degradation be allowed in limited circumstances and under certain conditions. For example, if there is no alternative to a proposed project that does not result in degradation and the project is found to be in the best interests of the state, degradation may be allowed provided that water quality protection practices are implemented that limit degradation to the extent determined to be economically and technologically feasible.

To promote the goal of maintaining existing high-quality water, the board is to develop rules specifying the level of protection or treatment required if degradation is allowed. Rules are to be developed that provide procedures for department review of applications to degrade state waters, that provide guidance or standards for the level of treatment required, and that establish criteria that allow the department to weigh the social and economic benefit to the public of allowing the proposed project against the loss of water quality. It is the intent of the legislature that the department's decision involve public and governmental agencies' comment prior to a final decision.

It is further the intent of the legislature that the board develop rules that will provide guidance to the department in the use and creation of mixing zones. The rules are to ensure that water quality impacts from the use of mixing zones are minimized.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-103, MCA, is amended to read:

"**75-5-103. Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

(3) "Council" means the water pollution control advisory council provided for in 2-15-2107.

(4) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(4)~~*(5)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(5)~~*(6)* "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(6)~~*(7)* "Effluent standard" means ~~any~~ *a* restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into state waters.

(8) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

(9) "High-quality waters" means state waters whose quality for a parameter is better than standards established pursuant to 75-5-301. All waters are high-quality water unless classified by the board within a classification for waters that are not suitable for human consumption or not suitable for growth and propagation of fish and associated aquatic life.

~~(7)~~*(10)* "Industrial waste" means ~~any~~ *a* waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(11) "Interested person" means a person who has submitted oral or written comments on the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(8)~~*(12)* "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(13) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(9)~~*(14)* "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(10)~~*(15)* "Owner or operator" means ~~any~~ *a* person who owns, leases, operates, controls, or supervises a point source.

(16) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(11)~~*(17)* "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(12)~~*(18)* "Point source" means ~~any~~ *a* discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(13)~~*(19)* "Pollution" means contamination or other alteration of the physical, chemical, or biological properties of ~~any~~ state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or the discharge, seepage, drainage, infiltration, or flow of ~~any~~ liquid, gaseous, solid, radioactive, or other substance into ~~any~~ state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, seepage, drainage, infiltration or flow which is authorized under the pollution discharge permit rules of the board is not pollution under this chapter.

~~(14)~~*(20)* "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(15)~~*(21)* "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(16)~~*(22)* "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

~~(17)~~*(23)* "State waters" means ~~any~~ *a* body of water, irrigation system, or drainage system, either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

~~(18)~~*(24)* "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes.

(25) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage."

Section 2. Section 75-5-301, MCA, is amended to read:

"**75-5-301. Classification and standards for state waters.** Consistent with the provisions of *75-5-302 through 75-5-307 and* 80-15-201, the board shall:

(1) establish and modify the classification of all waters in accordance with their present and future most beneficial uses;

(2) formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention;

(3) review, from time to time at intervals of not more than 3 years, established classifications of waters and standards of water purity and classification~~.~~*;*

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified, and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality; and

(c) establish criteria for determining whether a proposed activity or class of activities will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur; and

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent; and

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3)."

Section 3. Section 75-5-303, MCA, is amended to read:

"**75-5-303. Nondegradation policy.** ~~The board shall require:~~

~~(1) that any state waters whose existing quality is higher than the established water quality standards be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and~~

~~(2) any industrial, public, or private project or development which would constitute a new source of pollution or an increased source of pollution to high-quality waters, referred to in subsection (1), to provide the degree of waste treatment necessary to maintain that existing high water quality.~~ *(1) Existing uses of state waters and the level of water quality necessary to protect those uses must be maintained and protected.*

(2) Unless authorized by the department under subsection (3), the quality of high-quality waters must be maintained.

(3) The department may not authorize degradation of high-quality waters unless it has been affirmatively demonstrated by a preponderance of evidence to the department that:

(a) degradation is necessary because there are no economically, environmentally, and technologically feasible alternatives to the proposed project that would result in no degradation;

(b) the proposed project will result in important economic or social development that exceeds the benefit to society of maintaining existing high-quality waters and exceeds the costs to society of allowing degradation of high-quality waters;

(c) existing and anticipated use of state waters will be fully protected; and

(d) the least degrading water quality protection practices determined by the department to be economically, environmentally, and technologically feasible

will be fully implemented by the applicant prior to and during the proposed activity.

(4) The department shall issue a preliminary decision either denying or authorizing degradation and shall provide public notice and a 30-day comment period prior to issuing a final decision. The department's preliminary and final decisions must include:

(a) a statement of the basis for the decision; and

(b) a detailed description of all conditions applied to any authorization to degrade state waters, including, when applicable, monitoring requirements, required water protection practices, reporting requirements, effluent limits, designation of the mixing zones, the limits of degradation authorized, and methods of determining compliance with the authorization for degradation.

(5) An interested person wishing to challenge a final department decision may request a hearing before the board within 30 days of the final department decision. The contested case procedures of Title 2, chapter 4, part 6, apply to a hearing under this section.

(6) Every 5 years, the department shall review authorizations to degrade state waters. To enable the department to adequately review authorizations as required under this section, the authorization holder shall revise the initial authorization application no sooner than 3 ½ years and no later than 4 years after the date of the authorization or the date of the latest department review. The specific revised information required must be determined by the department. If, based on the review, the department determines that the standards and objectives of 75-5-303 or the rules adopted pursuant to 75-5-303 are not being met, it shall revoke or modify the authorization. A decision by the department to revoke or modify an authorization may be appealed to the board."

Section 4. Section 75-5-605, MCA, is amended to read:

"75-5-605. Prohibited activity. (1) It is unlawful to:

(a) cause pollution as defined in 75-5-103 of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained therein;

(c) cause degradation of state waters without authorization pursuant to 75-5-303;

~~(c)~~*(d)* violate any order issued pursuant to this chapter; or

~~(d)~~*(e)* violate any provision of this chapter.

(2) It is unlawful to carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges into any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes into any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters."

Section 5. **Rulemaking authority.** The board shall adopt rules to implement 75-5-301 and 75-5-303.

Section 6. **Fees required for nondegradation application, monitoring, and enforcement.** (1) Application fees for authorization to degrade state waters and fees for authorization review under 75-5-303(6) may not exceed the following:

(a) $2,500 for domestic sewage treatment plant discharges;

(b) $5,000 for industrial discharges; and

(c) $200 per lot for subdivisions reviewed under Title 76, chapter 4.

(2) The minimum annual monitoring and enforcement fee for degradation authorizations is $250 and may not exceed $2,500 per million gallons discharged per day.

Section 7. **Codification instruction.** [Sections 5 and 6] are intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [sections 5 and 6].

Section 8. **Coordination instruction.** If House Bill No. 388 is passed and approved and if it requires the department of health and environmental sciences to impose and collect fees for authorizations to degrade state waters, then [section 6 of this act] is void.

Section 9. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Applicability.** [This act] applies to all requests to degrade state waters filed with the department after [the effective date of this act].

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved April 29, 1993.

CHAPTER NO. 596

[SB 430]

AN ACT GENERALLY REVISING THE LAWS RELATING TO INSURERS; PROVIDING REGULATION OF BUSINESS TRANSACTED WITH PRODUCER-CONTROLLED INSURERS; PROVIDING CREDIT FOR REINSURANCE; REGULATING MANAGING GENERAL AGENTS; PROVIDING FOR INTERSTATE EXCHANGE OF INSURER REGULATORY INFORMATION; REGULATING REINSURANCE INTERMEDIARIES; REVISING THE

LAWS REGULATING INSURANCE HOLDING COMPANIES, LIFE AND HEALTH AND CASUALTY AND PROPERTY INSURANCE GUARANTY ASSOCIATIONS, INSURER FINANCIAL EXAMINATIONS, RISK RETENTION GROUPS, AND INSURER SUPERVISION, REHABILITATION, AND LIQUIDATION; PROVIDING FOR AN ANNUAL ACCREDITATION FEE; AMENDING SECTIONS 33-1-401, 33-2-501, 33-2-532, 33-2-533, 33-2-701, 33-2-708, 33-2-1111, 33-2-1114, 33-2-1115, 33-2-1201, 33-2-1331, 33-2-1342, 33-2-1346, 33-10-105, 33-10-111, 33-10-114, 33-10-201, 33-10-202, 33-10-203, 33-10-210, 33-10-217, 33-10-218, 33-10-224, 33-10-227, 33-10-230, 33-11-103, 33-11-104, 33-11-105, 33-11-108, 33-11-109, AND 33-22-804, MCA; AND REPEALING SECTIONS 33-1-403, 33-1-412, 33-2-1205, AND 33-10-229, MCA.

STATEMENT OF INTENT

A statement of intent is required for this bill because the department of insurance is granted authority to adopt rules for the administration and enforcement of laws regulating reinsurance intermediaries, managing general agents, holding company systems, insurer financial audits, and examinations and standards for companies considered to be in hazardous financial condition.

The legislature contemplates that rules adopted by the department should, at a minimum, endeavor to create an insurer regulatory structure in Montana that is reasonable and effective, that substantially resembles the model regulatory structure developed by the national association of insurance commissioners, that is eligible for national accreditation to enable insurers domiciled in Montana to do business in this state and other states with a maximum of financial stability and a minimum of regulatory difficulty, and that encourages the startup and expansion of insurance companies domiciled in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in [sections 1 through 27]:

(1) "Accredited state" means a state in which the department of insurance or regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the national association of insurance commissioners.

(2) "Actuary" means a person who is a member in good standing of the American academy of actuaries.

(3) "Captive insurer" means:

(a) an insurer that is owned by another entity and whose exclusive purpose is to insure risks of the parent entity and its affiliates; or

(b) in the case of a group or association, an insurer that is owned by the member insureds and whose exclusive purpose is to insure risks to member insureds and their affiliates.

(4) "Control" or "controlled" has the meaning defined in 33-2-1101.

(5) "Controlled insurer" means an authorized insurer that is controlled, directly or indirectly, by a producer.

(6) "Controlling person" means a person, firm, association, or corporation that has the power to direct or cause to be directed the management, control, or activities of a reinsurance intermediary.

(7) "Controlling producer" means a producer who, directly or indirectly, controls an insurer.

(8) (a) "Insurer" means any person, firm, association, or corporation authorized, under Title 33, chapter 2, part 1, to transact insurance business in this state.

(b) The following are not insurers:

(i) risk retention groups as defined in:

(A) the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

(B) the Liability Risk Retention Act of 1986, 15 U.S.C. 3901, et seq.; or

(C) Title 33, chapter 11, part 1;

(ii) residual market pools and joint underwriting authorities or associations; or

(iii) captive insurers.

(9) "Licensed producer" means a producer or reinsurance intermediary licensed pursuant to this title.

(10) (a) "Managing general agent" means a person who:

(i) manages all or part of the insurance business of an insurer and acts as an agent for the insurer;

(ii) either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross written premiums equal to or more than 5% of the policyholder surplus in any quarter or year; and

(iii) engages in one or more of the following activities on the business produced:

(A) adjustment or payment of claims in excess of an amount determined by the commissioner; or

(B) negotiation of reinsurance on behalf of the insurer.

(b) Notwithstanding the provisions of subsection (10)(a), the following persons are not considered managing general agents:

(i) an employee of the insurer;

(ii) a manager of the United States branch of an alien insurer;

(iii) an underwriting manager who, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based solely on the value of premiums written; or

(iv) the attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or an interinsurance exchange under powers of attorney.

(11) "NAIC" means the national association of insurance commissioners.

(12) "Producer" means an insurance producer or reinsurance intermediary authorized or licensed pursuant to this title.

(13) (a) "Qualified United States financial institution" means a financial institution that:

(i) is organized or licensed under the laws of the United States or any state;

(ii) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies and that either:

(A) is determined by the commissioner to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the commissioner; or

(B) is eligible to act as a fiduciary of a trust or has been granted authority to operate with fiduciary powers.

(b) For purposes of this definition, the commissioner may by rule adopt standards of financial condition and standing that may be developed from time to time by the securities valuation office of the NAIC.

(14) "Reinsurance intermediary" means a reinsurance intermediary-broker or a reinsurance intermediary-manager.

(15) "Reinsurance intermediary-broker" means a person, other than an officer or employee of the ceding insurer, who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer.

(16) (a) "Reinsurance intermediary-manager" means a person who:

(i) has authority to bind or who manages all or part of the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office; and

(ii) acts as an agent for the reinsurer, whether known as a reinsurance intermediary-manager, manager, or other similar term.

(b) The following persons are not considered reinsurance intermediary-managers with respect to the reinsurer:

(i) an employee of the reinsurer;

(ii) a manager of the United States branch of an alien reinsurer;

(iii) an underwriting manager who, pursuant to contract, manages all of the reinsurance operations of the reinsurer, is under common control with the reinsurer, is subject to Title 33, chapter 2, part 11, and whose compensation is not based on the volume of premiums written; or

(iv) a person who manages groups, associations, pools, or organizations of insurers that engage in joint underwriting or joint reinsurance and that are subject to examination by the insurance commissioner of the state in which the manager's principal business office is located.

(17) "Reinsurer" means a person, firm, association, or corporation licensed in this state under this title as an insurer with authority to assume reinsurance.

(18) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

Section 2. **Filing requirements.** (1) Each domestic, foreign, and alien insurer authorized to transact insurance in this state shall, on or before March 1 of each year, file with the NAIC a copy of its annual statement convention form, along with any additional filings for the preceding year as prescribed by the commissioner. The information filed with the NAIC must be in the same format and scope as that required by the commissioner and must include the signed jurat page and the actuarial certification. Amendments to the annual statement filing that are subsequently filed with the commissioner must also be filed with the NAIC.

(2) Foreign insurers domiciled in a state that has a law substantially similar to this section are considered to be in compliance with this section.

Section 3. **Immunity of NAIC.** In the absence of actual malice, members of the NAIC; their authorized committees, subcommittees, task forces, delegates, and employees; and all others charged with the responsibility of collecting and processing the information developed from the filing of the annual statement convention forms are considered to act under the authority of [sections 2 through 4]. They are not subject to civil liability for libel, slander, or any other cause of action arising from their collection, review, analysis, or dissemination of information collected from the filings required by [sections 1 through 38].

Section 4. **Confidentiality.** All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the department by the NAIC insurance regulatory information systems are confidential and may not be disclosed by the department.

Section 5. **Applicability of minimum standards.** (1) The provisions of [section 6] apply if, in any calendar year, the aggregate amount of gross written premiums on business placed with a controlled insurer by a controlling producer is equal to or greater than 5% of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the prior year.

(2) Notwithstanding the provisions of subsection (1), the provisions of [section 6] do not apply if:

(a) the controlling producer:

(i) does not receive compensation based upon the amount of premiums written in connection with the insurance and places insurance only with:

(A) the controlled insurer; or

(B) the controlled insurer and a member or members of the controlled insurer's holding company system or the controlled insurer's parent, affiliate, or subsidiary; and

(ii) accepts insurance placements only from nonaffiliated subproducers and not directly from insureds; and

(b) except for insurance business written through a residual market facility, the controlled insurer accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.

Section 6. **Minimum standards.** Unless there is a written contract between a controlling producer and a controlled insurer specifying the responsibilities of each party, the controlled insurer may not accept business from the controlling producer and the controlling producer may not place business with the controlled insurer. The contract must be approved by the board of directors of the controlled insurer and must contain the following minimum provisions:

(1) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for the termination.

(2) The controlling producer shall render to the controlled insurer accounts detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the controlling producer.

(3) On at least a monthly basis, the controlling producer shall remit to the controlled insurer all funds due under the terms of the contract. The due date must be fixed so that premiums or installments of premiums collected must be remitted no later than 90 days after the effective date of any policy placed with the controlled insurer under the contract.

(4) In accordance with the provisions of this title, all funds collected for the controlled insurer's account must be held by the controlling producer in a fiduciary capacity, in one or more appropriately identified bank accounts in banks that are members of the federal reserve system. However, funds of a controlling producer not required to be licensed in this state must be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction.

(5) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer.

(6) The contract may not be assigned in whole or in part by the controlling producer.

(7) The controlled insurer shall provide the controlling producer with its underwriting standards, rules, procedures, manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions must be the

same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer.

(8) The rates of the commissions, charges, and other fees may not be greater than those applicable to comparable business placed with the controlled insurer by producers other than controlling producers. For purposes of subsection (7) and this subsection, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business.

(9) If the contract provides that on insurance business placed with the controlled insurer, the controlling producer is to be compensated contingent upon the controlled insurer's profits on that business, then the compensation may not be determined and paid until at least 5 years after the premiums on liability insurance are earned and at least 1 year after the premiums are earned on any other insurance. The commissions may not be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to [section 8].

(10) The controlled insurer may establish a different limit for each line or subline of business. The controlled insurer shall notify the controlling producer when the applicable limit is approached and may not accept business from the controlling producer if the limit is reached. The controlling producer may not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached.

(11) The controlling producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on business that the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the controlled insurer contains underwriting guidelines. For reinsurance assumed and ceded, the guidelines must include a list of reinsurers with which the automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.

Section 7. **Audit committee.** Each controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually review the adequacy of the controlled insurer's loss reserves and meet with management, the controlled insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner.

Section 8. **Annual report by independent actuary.** In addition to any other required loss reserve certification, the controlled insurer shall, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary or other independent loss reserve specialist acceptable to the commissioner. The opinion must report the loss ratios for each line of business written and must attest to the adequacy of loss reserves established for losses incurred and outstanding as of the yearend, including losses incurred but not reported, on business placed by the producer.

Section 9. **Annual report to commissioner.** The controlled insurer shall annually report to the commissioner:

(1) the amount of commissions paid to the producer;

(2) the percentage the amount represents of the net premiums written; and

(3) comparable amounts and the percentage paid to noncontrolling producers for placements of the same kinds of insurance.

Section 10. **Disclosure.** (1) Except as provided in subsection (2), the producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured, disclosing the relationship between the producer and the controlled insurer.

(2) If the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the controlling producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the controlled insurer and the producer and that the subproducer has notified or will notify the insured.

Section 11. **Penalties.** (1) (a) If the commissioner believes that a controlling producer or any other person has not materially complied with [sections 5 through 10] or any regulation or order promulgated under [sections 5 through 10], the commissioner, after notice and opportunity to be heard, may order the controlling producer to cease placing business with the controlled insurer.

(b) If it is found that because of the material noncompliance with [sections 5 through 10], the controlled insurer or any policyholder of the controlled insurer has suffered any loss or damage, the commissioner may maintain a civil action or intervene in an action brought by or on behalf of the controlled insurer or policyholder for recovery of compensatory damages for the benefit of the controlled insurer or policyholder or other appropriate relief.

(2) The receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer if:

(a) an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Title 33, chapter 2, part 13;

(b) the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with [sections 5 through 10] or any regulation or order promulgated under [sections 5 through 10]; and

(c) the controlled insurer suffered any loss or damage from the noncompliance.

(3) This section does not affect the right of the commissioner to impose any other penalties provided for in this title.

(4) This section may not be construed to alter or affect the rights of policyholders, claimants, creditors, or other third parties.

Section 12. **Compliance — applicability.** (1) Controlled insurers and controlling producers who are not in compliance with [section 6] on October 1, 1993, have 60 days to come into compliance and shall comply with [section 10] in all policies written or renewed on or after December 1, 1993.

(2) [Sections 5 through 10] apply to insurers that are domiciled in this state or domiciled in a state that is not an accredited state that has in effect a substantially similar law.

(3) The provisions of Title 33, chapter 2, part 11, to the extent they are not superseded by [sections 5 through 10], continue to apply to all entities within holding company systems subject to [sections 5 through 10].

(4) An insurer may not continue to use the services of a managing general agent after December 1, 1993, unless the use complies with [sections 14 through 18].

(5) An insurer or reinsurer may not continue to use the services of a reinsurance intermediary after December 1, 1993, unless the use complies with [sections 19 through 27].

Section 13. **Rulemaking authority.** (1) The commissioner may adopt rules implementing the provisions of [sections 1 through 38].

(2) The authority of the commissioner to adopt rules is specifically extended, without limitation, to establish standards for companies considered to be in hazardous financial condition, to require annual audited financial reports, to regulate life and health reinsurance agreements, to provide for reports to the commissioner by holding company systems, and to establish accounting practices and procedures to be used by insurers in their annual statements.

Section 14. **Licensure of managing general agent.** (1) A person, firm, association, or corporation may not act in the capacity of a managing general agent with respect to risks located in this state for an insurer licensed in this state unless the person is a licensed producer in this state.

(2) A person, firm, association, or corporation may not act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless the person is licensed as a resident or nonresident producer in this state pursuant to the provisions of [sections 14 through 18].

(3) The commissioner may require a bond in an amount acceptable to the commissioner for the protection of the insurer.

(4) The commissioner may require the managing general agent to maintain a policy on errors and omissions.

Section 15. **Managing general agent — required contract provisions.** A person acting in the capacity of a managing general agent may not place business with an insurer unless there is in force a written contract between the parties that sets forth the responsibilities of each party. Whenever both parties share responsibility for a particular function, the written contract must specify the division of responsibilities. The contract must provide at least the following:

(1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination.

(2) The managing general agent shall render accounts to the insurer, detailing all transactions, and shall remit all funds due under the contract to the insurer on not less than a monthly basis.

(3) All funds collected for the account of an insurer must be held by the managing general agent in a fiduciary capacity in a bank that is a member of the federal reserve system. This account must be used for all payments on behalf of the insurer. The managing general agent may not retain more than 3 months' estimated claims payments and allocated loss adjustment expenses.

(4) Separate records of business written by the managing general agent must be maintained. The insurer has access to and may copy all accounts and records that are related to its business, in a form usable by the insurer. The commissioner has access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. The records must be retained pursuant to 33-3-401.

(5) The contract may not be assigned in whole or in part by the managing general agent.

(6) The contract must contain appropriate underwriting guidelines, including:

(a) the maximum annual premium volume;

(b) the basis of the rates to be charged;

(c) the types of risks that may be written;

(d) maximum limits of liability;

(e) any applicable exclusions;

(f) the territorial limitations;

(g) policy cancellation provisions; and

(h) the maximum policy period.

(7) The insurer may cancel or decline to renew any policy of insurance, as provided by law.

(8) If the contract permits the managing general agent to settle claims on behalf of the insurer:

(a) all claims must be reported to the company in a timely manner;

(b) a copy of the claims file must be sent to the insurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed an amount determined by the commissioner or actually exceeds the limit set by the company, whichever is less;

(ii) involves a coverage dispute;

(iii) may exceed the managing general agent's claims settlement authority;

(iv) is open for more than 6 months; or

(v) is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less;

(c) all claims files are the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files become the sole property of the insurer or its estate. The managing general agent has reasonable access to and may copy the files on a timely basis.

(d) any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

(9) When electronic claims files are in existence, the contract must address the timely transmission of the data.

(10) If the contract provides for a sharing of interim profits by the managing general agent and the managing general agent has the authority to determine the amount of the interim profits, whether by establishing loss reserves or controlling claim payments or in any other manner, interim profits may not be paid to the managing general agent until:

(a) 1 year after they are earned for property insurance business;

(b) 5 years after they are earned on casualty business; and

(c) the profits have been verified.

(11) The managing general agent may not:

(a) bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines, including for reinsurance assumed and ceded:

(i) a list of reinsurers with which automatic agreements are in effect;

(ii) the coverages and amounts or percentages that may be reinsured; and

(iii) commission schedules;

(b) commit the insurer to participate in insurance or reinsurance syndicates;

(c) appoint any producer without ensuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;

(d) without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which may not exceed 1% of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(e) collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without the prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer.

(f) permit its subproducer to serve on the insurer's board of directors;

(g) jointly employ an individual who is employed with the insurer; or

(h) appoint a submanaging general agent.

Section 16. **Duties of insurers.** (1) The insurer must have on file an independent financial examination, in a form acceptable to the commissioner, of each managing general agent with which it has done business.

(2) If a managing general agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the managing general agent. This is in addition to any other required loss reserve certification.

(3) At least semiannually, the insurer shall conduct an onsite review of the underwriting and claims processing operations of the managing general agent.

(4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates rests with an officer of the insurer who is not affiliated with the managing general agent.

(5) Within 30 days of entering into or termination of a contract with a managing general agent, the insurer shall provide the commissioner with written notification of the appointment or termination. Notices of appointment of a managing general agent must include a statement of duties that the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

(6) An insurer shall review its books and records each quarter to determine if any producer has become a managing general agent. If the insurer determines that a producer has become a managing general agent, the insurer shall promptly notify the producer and the commissioner of the determination and the insurer and the producer shall comply with [sections 14 through 18] within 30 days.

(7) An insurer may not appoint to its board of directors an officer, director, employee, subproducer, or controlling shareholder of its managing general agent. This subsection does not apply to relationships governed by Title 33, chapter 2, part 11, or [sections 5 through 10].

Section 17. **Examination authority.** The acts of the managing general agent are considered to be the acts of the insurer on whose behalf it is acting. A managing general agent may be examined as if it were the insurer.

Section 18. **Penalties and liabilities.** (1) If, after a hearing conducted in accordance with Title 33, chapter 1, part 7, the commissioner finds that a person has violated any provision of [sections 14 through 18], the commissioner may order:

(a) a penalty in an amount of $5,000 for each separate violation;

(b) revocation or suspension of the producer's license; and

(c) the managing general agent to reimburse the insurer, the rehabilitator, or a liquidator of the insurer for any losses incurred by the insurer caused by a violation of [sections 14 through 18] committed by the managing general agent.

(2) An order of the commissioner pursuant to subsection (1) is subject to judicial review pursuant to 33-1-711.

(3) This section does not limit the power of the commissioner to impose any other penalty provided in this title.

(4) [Sections 14 through 18] do not limit the rights of policyholders, claimants, or auditors.

Section 19. **Licensure of reinsurance intermediaries.** (1) A person, firm, association, or corporation may not act as a reinsurance intermediary-broker in this state if the reinsurance intermediary-broker maintains an office directly, as a member or employee of a firm or association, or as an officer, director, or employee of a corporation:

(a) in this state, unless the reinsurance intermediary-broker is a licensed producer in this state; or

(b) in another state, unless the reinsurance intermediary-broker is a licensed producer in this state or another state that has a law substantially similar to this law or unless the reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:

(a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state;

(b) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state; or

(c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state that has a law substantially similar to this law or unless the person is licensed in this state as a nonresident insurance intermediary.

(3) Subject to subsection (2), the commissioner may require a reinsurance intermediary-manager to:

(a) file a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) maintain a policy on errors and omissions in an amount acceptable to the commissioner.

(4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of [sections 19 through 27]. A license issued to a firm or association authorizes all the members of the firm or association and any designated

employees to act as reinsurance intermediaries under the license. All authorized persons must be named in the application and in any supplements to the application. A license issued to a corporation must authorize all of the officers and any designated employees and directors to act as reinsurance intermediaries on behalf of the corporation. All authorized persons must be named in the application and in any supplements to the application.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as the agent for service of process in the manner provided for by this title for designation of service of process upon unauthorized insurers. The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of each change in its designated agent for service of process, and the change may not become effective until acknowledged by the commissioner.

(5) (a) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment:

(i) the applicant, a person named on the application, or a member, principal, officer, or director of the applicant is not trustworthy;

(ii) a controlling person of the applicant is not trustworthy to act as a reinsurance intermediary; or

(iii) any of the persons listed in subsection (5)(a)(i) or (5)(a)(ii) has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

(b) Upon written request, the commissioner shall furnish a summary of the basis for refusal to issue a license. The document is privileged and is not subject to public disclosure under Title 2, chapter 6, part 1.

(6) Licensed attorneys of this state, when acting in their professional capacity, are exempt from this section.

Section 20. **Required contract provisions — reinsurance intermediary-brokers.** Transactions between a reinsurance intermediary-broker and the insurer it represents must be entered into pursuant to a written authorization, specifying the responsibilities of each party. The authorization must, at a minimum, contain the following provisions:

(1) The insurer may terminate the reinsurance intermediary-broker's authority at any time.

(2) The reinsurance intermediary-broker shall render to the insurer accounts accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owing to the reinsurance intermediary-broker. The reinsurance intermediary-broker shall remit all funds due to the insurer within 30 days of receipt.

(3) All funds collected for the insurer's account must be held by the reinsurance intermediary-broker in a fiduciary capacity in a bank that is a qualified United States financial institution.

(4) The reinsurance intermediary-broker shall comply with the requirements of [section 21].

(5) The reinsurance intermediary-broker shall comply with the written standards established by the insurer for the cession or retrocession of all risks.

(6) The reinsurance intermediary-broker shall disclose to the insurer any relationship with any reinsurer to which business will be ceded or retroceded.

Section 21. **Books and records — reinsurance intermediary-brokers.** (1) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-broker, the reinsurance intermediary-broker shall keep a complete record for each transaction, showing:

(a) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

(b) the period of coverage, including the effective and expiration dates, cancellation provisions, and notice required for cancellation;

(c) the reporting and settlement requirements of balances;

(d) the rate used to compute the reinsurance premium;

(e) the names and addresses of assuming reinsurers;

(f) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-broker;

(g) any related correspondence and memorandums;

(h) the proof of placement;

(i) the details regarding retrocessions handled by the reinsurance intermediary-broker, including the identity of the party making the retrocession and the percentage of each contract assumed or ceded;

(j) the financial records, including but not limited to premium and loss accounts; and

(k) when the reinsurance intermediary-broker procures a reinsurance contract on behalf of a licensed ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative.

(2) The insurer has access to and may copy and audit all accounts and records maintained by the reinsurance intermediary-broker that are related to the insurer's business, in a form usable by the insurer.

Section 22. **Duties of insurers utilizing the services of a reinsurance intermediary-broker.** (1) An insurer may not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary-broker on its behalf unless the person is licensed as required by [section 19].

(2) An insurer may not employ an individual who is employed by a reinsurance intermediary-broker with which it transacts business unless the reinsurance intermediary-broker is under common control with the insurer and is subject to the provisions of Title 33, chapter 2, part 11.

(3) The insurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-broker with which it transacts business.

Section 23. **Required contract provisions — reinsurance intermediary-managers.** Transactions between a reinsurance intermediary-manager and the reinsurer it represents in that capacity may only be entered into pursuant to a written contract specifying the responsibilities of each party. The contract must be approved by the reinsurer's board of directors. At least 30 days before the reinsurer assumes or cedes business through a producer, a true copy of the approved contract must be filed with the commissioner for approval. The contract must, at a minimum, include the following provisions:

(1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary-manager. The reinsurer may immediately suspend the authority of the reinsurance intermediary-manager to assume or cede business during the pendency of any dispute regarding the cause for termination.

(2) The reinsurance intermediary-manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by or owed to the reinsurance intermediary-manager, and shall remit all funds due under the contract to the reinsurer on not less than a monthly basis.

(3) All funds collected for the reinsurer's account will be held by the reinsurance intermediary-manager in a fiduciary capacity in a bank that is a qualified United States financial institution. The reinsurance intermediary-manager may not retain more than 3 months' estimated claims payments and allocated loss adjustment expenses. The reinsurance intermediary-manager shall maintain a separate bank account for each reinsurer that it represents.

(4) For at least 10 years after expiration of each contract of reinsurance transacted by the reinsurance intermediary-manager, the reinsurance intermediary-manager shall keep a complete record for each transaction showing:

(a) the type of contract, limits, underwriting restrictions, classes or risks, and territory;

(b) the period of coverage, including effective and expiration dates, cancellation provisions, notice required for cancellation, and disposition of outstanding reserves on covered risks;

(c) the reporting and settlement requirements of balances;

(d) the rate used to compute the reinsurance premium;

(e) the names and addresses of reinsurers;

(f) the rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary-manager;

(g) related correspondence and memorandums;

(h) proof of placement;

(i) details regarding retrocessions handled by the reinsurance intermediary-manager, as permitted by [section 25], including the identity of persons making the retrocessions and the percentage of each contract assumed or ceded;

(j) financial records, including but not limited to premium and loss accounts; and

(k) when the reinsurance intermediary-manager places a reinsurance contract on behalf of a ceding insurer:

(i) directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; or

(ii) if placed through a representative of the assuming reinsurer, other than an employee, written evidence that the assuming reinsurer has delegated binding authority to the representative.

(5) The reinsurer will have access to and the right to copy all accounts and records maintained by the reinsurance intermediary-manager related to its business in a form usable by the reinsurer.

(6) The contract may not be assigned in whole or in part by the reinsurance intermediary-manager.

(7) The reinsurance intermediary-manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks.

(8) The rates, terms, and purposes of commissions, charges, and other fees that the reinsurance intermediary-manager may levy against the reinsurer must be set forth.

(9) If the contract permits the reinsurance intermediary-manager to settle claims on behalf of the reinsurer:

(a) all claims must be reported to the reinsurer in a timely manner;

(b) a copy of the claim file must be sent to the reinsurer at its request or as soon as it becomes known that the claim:

(i) has the potential to exceed the lesser of an amount determined by the commissioner or the limit set by the reinsurer;

(ii) involves a coverage dispute;

(iii) may exceed the reinsurance intermediary-manager's claims settlement authority;

(iv) is open for more than 6 months; or

(v) is closed by payment of the lesser of an amount set by the commissioner or an amount set by the reinsurer;

(c) all claim files must be the joint property of the reinsurer and the reinsurance intermediary-manager. However, upon an order of liquidation of the reinsurer, the files become the sole property of the reinsurer or its estate. The reinsurance intermediary-manager must have reasonable access to and the right to copy the files on a timely basis.

(d) any settlement authority granted to the reinsurance intermediary-manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary-manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination.

(10) If the contract provides for a sharing of interim profits by the reinsurance intermediary-manager, the interim profits may not be paid until:

(a) 1 year after the end of each underwriting period for property business;

(b) 5 years after the end of each underwriting period for casualty business;

(c) a later period set by the commissioner for specified lines of insurance; and

(d) the adequacy of reserves on remaining claims has been verified pursuant to [section 25].

(11) The reinsurance intermediary-manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant.

(12) The reinsurer shall, at least semiannually, conduct an onsite review of the underwriting and claims processing operations of the reinsurance intermediary-manager.

(13) The reinsurance intermediary-manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with the insurer pursuant to the contract.

(14) Within the scope of its actual or apparent authority, the acts of the reinsurance intermediary-manager are considered to be the acts of the reinsurer on whose behalf it is acting.

Section 24. **Prohibited acts.** A reinsurance intermediary-manager may not:

(1) bind retrocessions on behalf of the reinsurer, except that the reinsurance intermediary-manager may bind facultative retrocessions pursuant to obligatory facultative agreements if the contract with the reinsurer contains reinsurance underwriting guidelines for retrocessions. The guidelines must

include a list of reinsurers with which automatic agreements are in effect and, for each reinsurer, must include the coverages, amounts of percentages that may be reinsured, and commission schedules.

(2) commit the reinsurer to participate in reinsurance syndicates;

(3) appoint any producer without ensuring that the producer is licensed to transact the type of reinsurance for which the producer is appointed;

(4) without prior approval of the reinsurer, pay or commit the reinsurer to pay a claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or 1% of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar year;

(5) collect any payment from a party making a retrocession, or commit the reinsurer to any claim settlement with a party making a retrocession, without prior approval of the reinsurer. If prior approval is given, a report must be promptly forwarded to the reinsurer.

(6) jointly employ an individual who is employed by the reinsurer unless the reinsurance intermediary-manager is under common control with the reinsurer subject to Title 33, chapter 2, part 11;

(7) appoint a subreinsurance intermediary-manager.

Section 25. **Duties of reinsurers using services of reinsurance intermediary-manager.** (1) A reinsurer may not engage the services of any person, firm, association, or corporation as a reinsurance intermediary-manager on its behalf unless the person is licensed as required by [section 19].

(2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary-manager that the reinsurer has engaged, prepared by an independent certified accountant, in a form acceptable to the commissioner.

(3) If a reinsurance intermediary-manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary-manager. The opinion is in addition to any other required loss reserve certification.

(4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates must rest with an officer of the reinsurer who may not be affiliated with the reinsurance intermediary-manager.

(5) Within 30 days of termination of a contract with a reinsurance intermediary-manager, the reinsurer shall provide written notification of the termination to the commissioner.

(6) A reinsurer may not appoint to its board of directors any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary-manager. This subsection does not apply to relationships governed by Title 33, chapter 2, part 11, or, if applicable, [sections 19 through 23].

Section 26. **Examination authority.** (1) A reinsurance intermediary is subject to examination by the commissioner. The commissioner must have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the commissioner.

(2) A reinsurance intermediary-manager may be examined as if it were the reinsurer.

Section 27. **Penalties and liabilities.** (1) (a) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a hearing conducted in accordance with Title 33, chapter 1, part 7, to be in violation of any provision of [sections 19 through 26]:

(i) shall, for each separate violation, pay a penalty in an amount not to exceed $5,000; and

(ii) is subject to revocation or suspension of its license.

(b) If a violation was committed by the reinsurance intermediary, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the violation.

(2) The order of the commissioner pursuant to subsection (1) is subject to judicial review pursuant to Title 33, chapter 1, part 7.

(3) This section does not limit the authority of the commissioner to impose any other penalties provided in the insurance law.

(4) [Sections 19 through 26] do not limit or restrict the rights of policyholders, claimants, creditors, or other third parties or confer any rights upon those persons.

Section 28. **Credit allowed domestic ceding insurer.** (1) Credit for reinsurance is allowed to a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of subsection (2), (3), (4), (5), or (6). If the requirements of subsection (4) or (5) are met, the requirements of subsection (7) must also be met.

(2) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(3) Credit must be allowed when the reinsurance is ceded to an assuming insurer that is accredited as a reinsurer in this state. Credit may not be allowed a domestic ceding insurer if the assuming insurer's accreditation has been revoked by the commissioner after notice and hearing. An accredited reinsurer is one that:

(a) files with the commissioner evidence of its submission to this state's jurisdiction;

(b) submits to this state's authority to examine its books and records;

(c) is licensed to transact insurance or reinsurance in at least one state or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(d) files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement and either:

(i) maintains a surplus with regard to policyholders in an amount that is not less than $20 million and whose accreditation has not been denied by the commissioner within 90 days of its submission; or

(ii) maintains a surplus with regard to policyholders in an amount less than $20 million and whose accreditation has been approved by the commissioner.

(4) (a) Subject to subsection (4)(b), credit must be allowed when:

(i) the reinsurance is ceded to an assuming insurer that is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute; and

(ii) the assuming insurer or the United States branch of an alien assuming insurer:

(A) maintains a surplus with regard to policyholders in an amount not less than $20 million; and

(B) submits to the authority of this state to examine its books and records.

(b) The requirement of subsection (4)(a)(i) does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(5) (a) Credit must be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers and their assigns and successors in interest. The assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the NAIC annual statement form by licensed insurers to enable the commissioner to determine the sufficiency of the trust fund.

(b) (i) In the case of a single assuming insurer, the trust must consist of a trusteed account representing the assuming insurer's liabilities attributable to business written in the United States, and in addition, the assuming insurer shall maintain a surplus with the trustee of not less than $20 million.

(ii) In the case of a group of individual unincorporated underwriters, the trust must consist of a trusteed account representing the group's liabilities attributable to business written in the United States, and in addition, the group shall maintain a surplus with the trustee of which $100 million must be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall make available to the commissioner an annual certification of the solvency of each underwriter by the group's domiciliary regulator and its independent public accountants.

(iii) In the case of a group of incorporated insurers under common administration:

(A) the provisions of subsection (5)(b)(iii)(B) apply, to the group that:

(I) complies with the reporting requirements contained in subsection (5)(a);

(II) has continuously transacted an insurance business outside the United States for at least 3 years immediately prior to making application for accreditation;

(III) submits to this state's authority to examine its books and records and bears the expense of the examination; and

(IV) has aggregate policyholders' surplus of $10 billion;

(B) (I) the trust must be in an amount equal to the group's several liabilities attributable to business ceded by United States ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(II) the group shall maintain a joint surplus with a trustee of which $100 million is held jointly for the benefit of United States ceding insurers of any member of the group as additional security for any liabilities; and

(III) each member of the group shall make available to the commissioner an annual certification of the member's solvency by the member's domiciliary regulator and its independent public accountant.

(c) The trust must be established in a form approved by the commissioner. The trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust must vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers and their assigns and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner. The trust described in this subsection (c) must remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust.

(d) No later than February 28 of each year, the trustees of the trust shall report to the commissioner in writing setting forth the balance of the trust and listing the trust's investments at the end of the preceding year. The trustees shall certify the date of termination of the trust, if planned, or certify that the trust may not expire prior to the following December 31.

(6) Credit must be allowed when the reinsurance is ceded to an assuming insurer that does not meet the requirements of subsection (2), (3), (4), or (5) but only with respect to the insurance of risks located in a jurisdiction in which the reinsurance is required by applicable law or regulation of that jurisdiction.

(7) (a) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by subsections (4) and (5) may not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(i) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, will:

(A) submit to the jurisdiction of any court of competent jurisdiction in any state of the United States;

(B) comply with all requirements necessary to give the court jurisdiction; and

(C) abide by the final decision of the court or of any appellate court in the event of an appeal; and

(ii) to designate the commissioner or a designated attorney as its attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding company.

(b) Subsection (7)(a)(i) is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes if an obligation is created in the agreement.

Section 29. **Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer.** A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of [section 28] must be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

(1) under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract if the security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer; or

(2) in the case of a trust, in a qualified United States financial institution. This security may be in the form of:

(a) cash;

(b) securities listed by the securities valuation office of the NAIC and qualifying as admitted assets;

(c) clean, irrevocable, unconditional letters of credit that are issued or confirmed by a qualified United States financial institution no later than December 31 of the year for which filing is being made and that are in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first.

(d) any other form of security acceptable to the commissioner.

Section 30. **Reinsurance agreements affected.** [Sections 28 and 29] apply to all cessions after October 1, 1993, under reinsurance agreements that have had an inception, anniversary, or renewal date on or before April 1, 1993.

Section 31. **Conduct of examinations — records — correction of accounts — appraisals.** (1) Upon determining that an examination should be conducted, the commissioner or the commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe the guidelines and procedures set forth in the examiners' handbook adopted by the NAIC. The commissioner may also employ other guidelines or procedures as the commissioner considers appropriate.

(2) Every company or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiners appointed under subsection (1) timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, and any or all computer or other recordings relating to the property, assets, business, and affairs of the company being examined. The officers, directors, employees, and agents of the company or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the examiners is grounds for suspension, refusal, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner's jurisdiction. A proceeding for suspension, revocation, or refusal of any license or authority must be conducted pursuant to 33-1-318.

(3) The commissioner or any examiner has the power to issue subpoenas, administer oaths, and examine under oath any person concerning any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or to produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

(4) When making an examination under this part, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The cost of retaining the personnel must be borne by the company that is the subject of the examination.

(5) This part may not be construed to limit the commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action pursuant to this title. Findings of fact and conclusions made pursuant to an examination are prima facie evidence in any legal or regulatory action.

(6) This part may not be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the commissioner may consider appropriate.

Section 32. **Examination reports — hearings — confidentiality — publication.** (1) All examination reports must be composed only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

(b) rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, information, or testimony and of refiling pursuant to subsection (2); or

(c) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional data, documentation, information, and testimony.

(4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. An order must be considered a final administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized representative must be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, the commissioner shall enter an order pursuant to subsection (3)(a).

(ii) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents considered relevant to the investigation, whether under the control of the department, the company, or other persons. The documents produced must be included in the record, and testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record. This section does not require the department to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

(iii) The hearing must proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. The company and the department may present testimony relevant to the investigation. Cross-examination must be conducted only by the commissioner or the commissioner's representative. The company and the department must be permitted to make closing statements and may be represented by counsel of their choice.

(5) (a) Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days except to the extent provided in subsection (2). After 30 days, the commissioner may open the report for public inspection as long as a court of competent jurisdiction has not stayed its publication.

(b) This title does not prevent and may not be construed as prohibiting the commissioner from disclosing the content of an examination report or preliminary examination report, the results of an examination, or any matter relating to a report or results to the insurance department of this state or of any other state or country, to law enforcement officials of this state or of any other state, or to an agency of the federal government at any time as long as the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with this part.

(c) If the commissioner determines that regulatory action is appropriate as a result of any examination, the commissioner may initiate any proceedings or actions as provided by law.

(6) All working papers, recorded information, documents, and copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this part must be given confidential treatment, are not subject to subpoena, and may not be made public by the commissioner or any other person, except to the extent provided in subsection (5). Access may also be granted to the NAIC. The persons given access shall agree in writing, prior to receiving the information, to treat the information in the confidential manner required by this section unless the prior written consent of the company to which it pertains has been obtained.

Section 33. **Conflict of interest.** (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest with, is affiliated with the management of, or owns a pecuniary interest in any person subject to examination under this part. This section may not be construed to automatically preclude an examiner from being:

(a) a policyholder or claimant under an insurance policy;

(b) a grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;

(c) an investment owner in shares of regulated diversified investment companies; or

(d) a settlor or beneficiary of a blind trust into which any otherwise impermissible holdings have been placed.

(2) Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other individuals who are independently practicing their professions, even though the persons may from time to time be similarly employed or retained by persons subject to examination under this part.

Section 34. **Taxation of purchasing group.** Premium taxes and taxes on premiums paid for coverage of risks resident or located in this state by a purchasing group or any members of the purchasing group must be:

(1) imposed at the same rate and subject to the same interest, fines, and penalties as those applicable to premium taxes and taxes on premiums paid to surplus lines insurers and authorized insurers, pursuant to 33-2-311 and 33-2-705, respectively; and

(2) paid by the authorized or surplus lines insurers and, if not paid by them, paid by the insurance producer for the purchasing group and, if not paid by the insurance producer, paid by the purchasing group and, if not paid by the purchasing group, paid by each of its members.

Section 35. **Condition on release from delinquency proceedings.** An insurer that is subject to any delinquency proceeding, whether formal, informal, administrative, or judicial, may not:

(1) be released from the proceeding, unless the proceeding is converted to a judicial rehabilitation or liquidation proceeding;

(2) be permitted to solicit or accept new business or request or accept the restoration of any suspended or revoked license or certificate of authority;

(3) be returned to the control of its shareholders or private management; or

(4) have any of its assets returned to the control of its shareholders or private management until all payments of or on account of the insurer's contractual obligations by all guaranty associations, along with all expenses of the guaranty associations and interest on all payments and expenses, have been repaid to the guaranty associations or a plan of repayment by the insurer has been approved by the guaranty association.

Section 36. **Indemnification of rehabilitator, liquidator, and employees — persons covered.** (1) The persons entitled to protection under [sections 37 and 38] are:

(a) all rehabilitators and liquidators responsible for the conduct of a delinquency proceeding under Title 33, chapter 2, including present and former rehabilitators and liquidators; and

(b) the employees of the rehabilitators and liquidators, including all present and former special deputies and assistant special deputies appointed by the commissioner, and all persons whom the commissioner, special deputies, or assistant special deputies have employed to assist in a delinquency proceeding under Title 33, chapter 2.

(2) Attorneys, accountants, auditors, and other professional persons or firms, who are retained by the rehabilitator or liquidator as independent contractors, and their employees are not considered employees of the rehabilitator or liquidator for purposes of any cause of action initiated by the rehabilitator or liquidator against the independent contractor in the name of the rehabilitation or liquidation estate.

Section 37. **Indemnification of rehabilitator, liquidator, and employees.** (1) If any legal action is commenced against the rehabilitator or liquidator or any employee of the rehabilitator or liquidator, whether against the rehabilitator, liquidator, or employee personally or in an official capacity, alleging property damage, property loss, personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the rehabilitator, liquidator, or employee arising out of or by reason of duties or employment, the rehabilitator, liquidator, or employee is indemnified from the assets of the insurer for all expenses, attorney fees, judgments, settlements, decrees, surety bond premiums, or amounts due and owing or paid in satisfaction of or incurred in the defense of the legal action unless it is determined upon a final adjudication on the merits that the alleged act, error, or omission of the rehabilitator, liquidator, or employee that gave rise to the claim did not arise out of or by reason of the rehabilitator's, liquidator's, or employee's duties or employment or was caused by intentional or willful and wanton misconduct.

(2) Attorney fees and related expenses incurred in defending a legal action for which indemnity is available under this section must be paid from the assets of the insurer, as the expenses are incurred and in advance of the final disposition of the action, upon receipt of an undertaking by or on behalf of the rehabilitator, liquidator, or employee to repay the attorney fees and expenses. If, upon a final adjudication on the merits, it is determined that the rehabilitator, liquidator, or employee is not entitled to indemnity under this section, the payment must be made from the undertaking.

(3) An indemnification for expenses, attorney fees, judgments, settlements, decrees, surety bond premiums, or other amounts paid or to be paid from the insurer's assets pursuant to this section are an administrative expense of the insurer.

(4) If actual or threatened litigation against a rehabilitator, liquidator, or employee for which indemnity may be available under this section occurs, a reasonable amount of funds that in the judgment of the commissioner may be

needed to provide indemnity must be segregated and reserved from the assets of the insurer as security for the payment of indemnity until all applicable statutes of limitation have run, all actual or threatened actions against the rehabilitator, liquidator, or employee have been completely and finally resolved, and all obligations of the insurer and the commissioner under this section have been satisfied.

(5) In lieu of segregation and reservation of funds, the commissioner may obtain a surety bond or make other arrangements that will enable the commissioner to fully secure the payment of all obligations under this section.

Section 38. **Settlement of actions against rehabilitator, liquidator, and employees — court approval — applicability.** (1) If any legal action against an employee for which indemnity may be available under this section is settled prior to final adjudication on the merits, the insurer shall pay the settlement amount on behalf of the employee or indemnify the employee for the settlement amount unless the commissioner determines:

(a) that the claim did not arise out of or by reason of the employee's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the employee.

(2) In a legal action in which the rehabilitator or liquidator is a defendant, that portion of any settlement relating to the alleged act, error, or omission of the rehabilitator or liquidator is subject to the approval of the court before which the delinquency proceeding is pending. The court may not approve that portion of the settlement if it determines:

(a) that the claim did not arise out of or by reason of the rehabilitator's or liquidator's duties or employment; or

(b) that the claim was caused by the intentional or willful and wanton misconduct of the rehabilitator or liquidator.

(3) This section may not be construed to deprive the rehabilitator, liquidator, or employee of immunity, indemnity, benefit of law, right, or defense available under any provision of law, including, without limitation, the provisions of Title 2, chapter 9.

(4) (a) A legal action does not lie against the rehabilitator, liquidator, or employee based in whole or in part on any alleged act, error, or omission that took place prior to October 1, 1993, unless suit is filed and valid service of process is obtained by October 1, 1994.

(b) Subsections (1) through (3) apply to any suit that is pending on or filed after October 1, 1993, without regard to when the alleged act, error, or omission took place.

Section 39. Section 33-1-401, MCA, is amended to read:

"**33-1-401. Examination of insurers.** (1) The commissioner shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as ~~he deems~~ *the commissioner considers* advisable. ~~He~~ *The commissioner* shall ~~so~~ examine each ~~domestic~~ *authorized* insurer not less frequently than every ~~3~~ *5* years. ~~Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney-in-fact insofar as the transactions of the attorney-in-fact relate to the insurer.~~

(2) The commissioner shall in like manner examine each insurer applying for an initial certificate of authority to do business in this state.

(3) In lieu of making ~~his own~~ *an* examination *under this part of any foreign or alien insurer licensed in this state*, the commissioner may~~, in his discretion,~~ accept ~~a full~~ *an examination* report ~~of the last recent examination of a foreign or alien insurer, certified to~~ *on the company prepared* by the insurance ~~supervisory official~~ *department* ~~of another~~ *for the company's* state~~, territory, commonwealth, or district~~ of ~~the United States~~ *domicile or port-of-entry state until January 1, 1994. After January 1, 1994, the reports may only be accepted if:*

(a) the insurance department was at the time of the examination accredited under the national association of insurance commissioners' financial regulation standards and accreditation program; or

(b) the examination is performed under the supervision of an accredited state insurance department or with the participation of one or more examiners who are employed by such an accredited state insurance department and who, after a review of the examination workpapers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

(4) For purposes of completing an examination of any company under this part, the commissioner may examine or investigate any person or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company."

Section 40. Section 33-2-501, MCA, is amended to read:

"**33-2-501. Assets allowed.** In any determination of the financial condition of an insurer, there ~~shall~~ *must* be allowed as assets only ~~such~~ assets ~~as~~ *that* are owned by the insurer and ~~which~~ *that* consist of:

(1) cash in the possession of the insurer or in transit under its control and including the true balance of any deposit in a solvent bank or trust company;

(2) investments, securities, properties, and loans acquired or held in accordance with this code and in connection therewith the following items:

(a) interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest;

(b) declared and unpaid dividends on stock and shares unless ~~such~~ *the* amount has otherwise been allowed as an asset;

(c) interest due or accrued upon a collateral loan in an amount not to exceed 1 year's interest ~~thereon~~ *on the loan*;

(d) interest due or accrued on deposits in solvent banks and trust companies and interest due or accrued on other assets, if ~~such~~ *the* interest is in the judgment of the commissioner a collectible asset;

(e) interest due or accrued on a mortgage loan in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes ~~thereon~~ *on the property* over the unpaid principal. ~~In no event shall interest~~ *Interest* accrued for a period in excess of 18 months *may not* be allowed as an asset.

(f) rent due or accrued on real property if ~~such~~ *the* rent is not in arrears for more than 3 months and rent more than 3 months in arrears if the payment of ~~such~~ *the* rent ~~be~~ *is* adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral;

(g) the unaccrued portion of taxes paid prior to the due date on real property;

(3) premium notes, policy loans, and other policy assets and liens on policies and certificates of life insurance and annuity contracts and accrued interest ~~thereon~~, in an amount not exceeding the legal reserve and other policy liabilities carried on each individual policy;

(4) the net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer;

(5) premiums in the course of collection, other than for life insurance, not more than 3 months past due, less commissions payable ~~thereon~~ *on the premiums*. The ~~foregoing~~ limitation ~~shall~~ *in this subsection does* not apply to premiums payable directly or indirectly by the United States government or by any of its instrumentalities.

(6) installment premiums other than life insurance premiums to the extent of the unearned premium reserve carried on the policy to which premiums apply;

(7) notes and like written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to be issued on ~~such~~ *that* basis, to the extent of the unearned premium reserves carried ~~thereon~~ *on the policies*;

(8) the full amount of reinsurance recoverable by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under ~~33-2-1205~~ *chapter 2, part 12*;

(9) amounts receivable by an assuming insurer representing funds withheld by a solvent ceding insurer under a reinsurance treaty;

(10) deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds or from any suspended banking institution, to the extent ~~deemed~~ *considered* by the commissioner available for the payment of losses and claims and at values to be determined by ~~him~~ *the commissioner*;

(11) electronic data processing equipment if the cost of ~~such~~ *the* equipment is at least $100,000, which cost ~~shall~~ *must* be amortized in full over a period of not to exceed 10 calendar years. However, with regard to life insurers, ~~such~~ *the* equipment ~~shall~~ *must* be allowed as an asset if the cost of ~~such~~ *the* equipment is at least $25,000, which cost ~~shall~~ *must* be amortized in full over a period of not to exceed 5 calendar years, and the amount of ~~such~~ *the* asset allowed may not exceed 1% of the total of the other allowable assets of the insurer.

(12) all assets, whether or not consistent with the provisions of this section, as may be allowed pursuant to the annual statement form approved by the commissioner for the kinds of insurance to be reported upon ~~therein~~ *in the annual statement*;

(13) other assets, not inconsistent with the provisions of this section, ~~deemed~~ *considered* by the commissioner to be available for the payment of losses and claims, at values to be determined by ~~him~~ *the commissioner*."

Section 41. Section 33-2-532, MCA, is amended to read:

"33-2-532. **Valuation of bonds.** (1) (a) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

(i) if purchased at par, at the par value;

(ii) if purchased above or below par, on the basis of the purchase price adjusted ~~so as~~ to bring the value to par at maturity and ~~so as~~ to yield in the meantime the effective rate of interest at which the purchase was made~~,~~ or, in lieu of ~~such~~ *this* method, according to ~~such~~ *an* accepted method of valuation as is approved by the commissioner *by rule*.

(b) Purchase price ~~shall in no case~~ *may not* be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage, or express charges paid in the acquisition of ~~such~~ *the* securities.

(c) Unless otherwise provided by valuation established or approved by the commissioner, ~~no such~~ *a* security ~~shall~~ *may not* be carried at above the call price for the entire issue during any period within which the security may be so called.

(2) The commissioner ~~shall have~~ *has* full discretion in determining the method of calculating values according to the rules set forth in this section."

Section 42. Section 33-2-533, MCA, is amended to read:

"33-2-533. **Valuation of other securities.** (1) Securities, other than those referred to in 33-2-532, held by an insurer ~~shall~~ *must* be valued, in the discretion of the commissioner, at their market value, at their appraised value, or at prices determined by ~~him~~ *the commissioner* as representing their fair market value *as established by rule*.

(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the commissioner and in accordance with ~~such~~ *the* method of computation ~~as he~~ *that the commissioner* may approve."

Section 43. Section 33-2-701, MCA, is amended to read:

"33-2-701. **Annual statement — revocation or fine for failure to file — penalty for perjury.** (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the December 31 preceding. The statement ~~shall~~ *must* be in ~~such~~ *the* general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. *The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves.* The statement ~~shall~~ *must* be verified by the oath of the insurer's president or vice-president and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may~~, in his discretion,~~ waive ~~any such~~ *the* verification under oath.

(2) The statement of an alien insurer ~~shall~~ *must* relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file ~~such~~ *the* statement with the commissioner as soon as reasonably possible. The statement ~~shall~~ *must* be verified by the insurer's United States manager or other *authorized* officer ~~duly authorized~~.

(3) The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-2-117, or may ~~in his discretion~~ suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due *or within an extension of time that the commissioner may grant.*

(4) Any director, officer or insurance producer, or employee of any company who subscribes to, makes, or concurs in making or publishing any annual statement or any other statement required by law knowing the same to contain any material statement which is false shall be punished by a fine of not more than $1,000.

(5) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708.

(6) The commissioner may impose a fine not to exceed $100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). ~~Such~~ *The* fine may not exceed a maximum of $1,000."

Section 44. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers	$ 600.00
(B) foreign insurers	600.00

(ii) annual continuation of certificate of authority 600.00

(iii) reinstatement of certificate of authority 25.00

(iv) amendment of certificate of authority 50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 25.00

(c) filing bylaws or amendment to bylaws where required 10.00

(d) filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) insurance producer's license:

(i) application for original license, including issuance of license, if issued 15.00

(ii) appointment of insurance producer, each insurer 10.00

(iii) temporary license 15.00

(iv) amendment of license (excluding additions to license) or reissuance of master license 15.00

(f) nonresident insurance producer's license:

(i) application for original license, including issuance of license, if issued 100.00

(ii) appointment of insurance producer, each insurer 10.00

(iii) annual renewal of license 10.00

(iv) amendment of license (excluding additions to license) or reissuance of master license 15.00

(g) examination, if administered by the commissioner, for license as insurance producer, each examination 15.00

(h) surplus lines insurance producer license:

(i) application for original license and for issuance of license, if issued 50.00

(ii) annual renewal of license 50.00

(i) adjuster's license:

(i) application for original license and for issuance of license, if issued 15.00

(ii) annual renewal of license	15.00
(j) insurance vending machine license, each machine, each year	10.00
(k) commissioner's certificate under seal (except when on certificates of authority or licenses)	10.00
(l) copies of documents on file in the commissioner's office, per page	.50
(m) policy forms:	
(i) filing each policy form	25.00
(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks	10.00
(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days	100.00
(n) applications for approval of prelicensing education courses:	
(i) reviewing initial application	150.00
(ii) periodic review	50.00

(2) The commissioner shall establish by rule an annual accreditation fee to be paid by each domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority.

~~(2)~~*(3) (a)* ~~The~~ *Except as provided in subsection (3)(b), the* commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected by ~~him~~ *the commissioner* pursuant to Title 33 and the rules adopted under Title 33.

(b) The accreditation fee required by subsection (2) must be turned over promptly to the state treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in discharging the administrative and regulatory duties that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money. The commissioner is responsible for the proper expenditure of the accreditation money.

~~(3)~~*(4)* All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 45. Section 33-2-1111, MCA, is amended to read:

"33-2-1111. Registration of insurers — requisites — termination. (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. Any insurer which is subject to registration under this section shall register within ~~60 days after July 1, 1971, or~~ 15 days after it becomes subject to registration~~, whichever is later~~, unless the commissioner for good cause shown extends the time for registration, and then within ~~such~~ *the* extended time. The commissioner may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by ~~such~~ *the* insurance company with the insurance regulatory authority of domiciliary jurisdiction.

(2) Every insurer subject to registration shall file with the commissioner, on or before April 30 each year, a registration statement on a form provided by the commissioner, which must contain current information about:

(a) the capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;

(b) the identity of every member of the insurance holding company system;

(c) the following agreements in force, relationships subsisting, and transactions currently outstanding between ~~such~~ *the* insurer and its affiliates:

(i) loans, other investments, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(ii) purchases, sales, or exchanges of assets;

(iii) transactions not in the ordinary course of business;

(iv) guaranties or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(v) all management and service contracts and all cost-sharing arrangements, other than cost allocation arrangements based upon generally accepted accounting principles;

(vi) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(vii) dividends and other distributions to shareholders; and

(viii) consolidated tax allocation agreements;

(d) any pledge of the insurer's stock, including stock of a subsidiary or controlling affiliate for a loan made to a member of the insurance holding company system;

(e) all matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the commissioner.

(3) A registration statement must contain a summary outlining each item in the current registration statement that represents a change from the prior registration statement.

(4) ~~No information~~ *Information* need *not* be disclosed on the registration statement filed pursuant to subsection (2) if ~~such~~ *the* information is not material for the purposes of this section. Unless the commissioner by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments involving 1/2 of 1% or less of an insurer's admitted assets as of December 31 next preceding ~~may~~ *are* not ~~be deemed~~ material for purposes of this section.

(5) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer if the information is reasonably necessary to enable the insurer to comply with Title 33, chapter 2, part 11.

(6) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the commissioner within 15 days after the end of the month in which it learns of each ~~such~~ change or addition. ~~Except as provided in 33-2-1114, each registered insurer shall report all dividends and other distributions to shareholders within 2 business days following the declaration thereof.~~

(7) The commissioner shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.

(8) The commissioner may require or allow two or more affiliated insurers subject to registration ~~hereunder~~ *under this section* to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(9) The commissioner may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section."

Section 46. Section 33-2-1114, MCA, is amended to read:

"**33-2-1114. Dividends and other distributions — commissioner approval.** (1) An insurer subject to registration under 33-2-1111 and 33-2-1112 may not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration ~~thereof~~ *of the dividend or distribution* and has not within ~~such~~ *the* period disapproved ~~such~~ *the* payment or the commissioner ~~shall have~~ *has* approved ~~such~~ payment within ~~such~~ *the* 30-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds 10% of ~~such~~ *the* insurer's surplus as regards policyholders as of December 31 next preceding, but ~~shall~~ *may* not include pro rata distributions of any class of the insurer's own securities.

(3) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the

commissioner's approval ~~thereof~~, and ~~such a~~ *the* declaration ~~shall~~ *may not* confer ~~no~~ rights upon shareholders until the commissioner has approved the payment of ~~such~~ *the* dividend or distribution or the commissioner has not disapproved ~~such~~ *the* payment within the 30-day period referred to ~~above~~ *in subsection (1).*

(4) An insurer subject to subsection (1) may not pay any other dividend or make any other distribution to its shareholders unless the insurer has notified the commissioner of the payment 15 days prior to the payment date. The notice must be kept confidential until the payment date of the dividend. The commissioner may order that a dividend not be paid if the commissioner finds that the insurer's surplus as regards policyholders, following the payment to shareholders, would be inadequate or could lead the insurer to a hazardous financial condition."

Section 47. Section 33-2-1115, MCA, is amended to read:

"**33-2-1115. Examination.** (1) ~~Subject to the limitation contained in this section and in~~ *In* addition to the powers which the commissioner has under chapter 1, part 4, relating to the examination of insurers, the commissioner ~~shall~~ also ~~have~~ *has* the power to order any insurer registered under 33-2-1111 to produce ~~such~~ *the* records, books, or other information papers in the possession of the insurer or its affiliates as ~~shall be~~ *are* necessary to ascertain the financial condition or legality of conduct of ~~such~~ *the* insurer. ~~In the event such~~ *If the* insurer fails to comply with ~~such~~ *the* order, the commissioner ~~shall have the power to~~ *may* examine ~~such~~ *the* affiliates to obtain ~~such~~ *the* information.

(2) ~~The commissioner shall exercise his power under subsection (1) only if the examination of the insurer is inadequate or the interests of the policyholders of such insurer may be adversely affected.~~

~~(3)~~ The commissioner may retain at the registered insurer's expense ~~such~~ attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as ~~shall be~~ *are* reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons ~~so~~ retained ~~shall be~~ *are* under the direction and control of the commissioner and shall act in a purely advisory capacity.

~~(4)~~*(3)* Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) ~~shall be~~ *is* liable for and shall pay the expense of ~~such~~ *the* examination."

Section 48. **Recovery of dividends.** (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer:

(a) from any parent corporation or holding company or person or affiliate who otherwise controlled the insurer, the amount of distributions, other than distributions of shares of the same class of stock, paid by the insurer on its capital stock; or

(b) any payment in the form of a bonus, termination settlement, or extraordinary lump-sum salary adjustment made by the insurer or its subsidiary to a director, officer, or employee, when the distribution or payment pursuant to subsection (1)(a) or this subsection is made at any time during the year preceding the petition for liquidation, conservation, or rehabilitation, as the case may be, subject to the limitations of subsections (2) through (4).

(2) A distribution is not recoverable if the parent or affiliate shows that when paid the distribution was lawful and reasonable and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the insurer or affiliate at the time that the distributions were paid is liable up to the amount of distributions or payments that the person received. Any person who otherwise controlled the insurer at the time that the distributions were declared is liable up to the amount of distributions the person would have received if the person had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent insurer to pay the contractual obligations of the impaired or insolvent insurer and to reimburse any guaranty funds.

(5) To the extent that any person liable under subsection (3) is insolvent or otherwise fails to pay claims due from it, its parent corporation or holding company or person who otherwise controlled it at the time the distribution was paid is jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled it.

Section 49. Section 33-2-1201, MCA, is amended to read:

"**33-2-1201. Limit of risk.** (1) ~~No~~ *An* insurer ~~shall~~ *may not* retain any risk on any one subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding 10% of its surplus to policyholders.

(2) A "subject of insurance" for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake, or other catastrophe hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of ~~such~~ *the* other hazard insured against.

(3) Reinsurance ceded as authorized by ~~33-2-1205 shall~~ *this part must* be deducted in determining risk retained. As to surety risks, deduction ~~shall~~ *must* also be made of the amount assumed by any established incorporated cosurety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.

(4) As to alien insurers, this section ~~shall relate~~ only *relates* to risks and surplus to policyholders of the insurer's United States branch.

(5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, ~~shall be deemed~~ *is considered* to include any voluntary reserves which are not required pursuant to law and ~~shall be~~ *are* determined from the last sworn statement of the insurer on file with the

commissioner or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.

(6) This section ~~shall~~ *does* not apply to life or disability insurance, title insurance, insurance of wet marine and transportation risks, workers' compensation insurance, employer's liability coverages, sprinklered risks, or any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy."

Section 50. Section 33-2-1331, MCA, is amended to read:

"**33-2-1331. Grounds for rehabilitation.** The commissioner may apply by petition to a district court for an order authorizing ~~him~~ *the commissioner* to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one or more of the following grounds:

(1) The insurer is in such condition that the further transaction of business would be financially hazardous to its policyholders, creditors, or the public.

(2) There is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that if established would endanger assets in an amount threatening the solvency of the insurer.

(3) The insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general insurance producer, employee, or other person, if the person has been found after notice and hearing by the commissioner to be dishonest or untrustworthy in a way affecting the insurer's business.

(4) Control of the insurer, whether by stock ownership or otherwise and whether direct or indirect, is in a person found after notice and hearing to be untrustworthy.

(5) Any person who in fact has executive authority in the insurer, whether an officer, manager, general insurance producer, director or trustee, employee, or other person, has refused to be examined under oath by the commissioner concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and ~~his~~ *the person's* influence on management.

(6) After demand by the commissioner under ~~33-1-403~~ *[section 31]* or under this part, the insurer has failed to promptly make available for examination any of its own property, books, accounts, documents, or other records or those of any subsidiary or related company within the control of the insurer or those of any person having executive authority in the insurer so far as they pertain to the insurer.

(7) Without first obtaining the written consent of the commissioner, the insurer has transferred or attempted to transfer, in a manner contrary to chapter 2, part 11, or chapter 2, part 12, of Title 33, substantially its entire property or business or has entered into any transaction the effect of which is

to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.

(8) The insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under the insurance laws of this state, and ~~such~~ *the* appointment has been made or is imminent, and ~~such~~ *the* appointment might oust the courts of this state of jurisdiction or might prejudice orderly delinquency proceedings under this part.

(9) Within the previous 4 years the insurer has willfully violated its charter or articles of incorporation, its bylaws, any insurance law of this state, or any valid order of the commissioner under 33-2-1321.

(10) The insurer has failed to pay within 60 days after *the* due date any obligation to any state or any subdivision ~~thereof~~ *of the state* or any judgment entered in any state, if the court in which ~~such~~ *the* judgment was entered had jurisdiction over ~~such~~ *the* subject matter, except that ~~such~~ nonpayment ~~shall~~ *may* not be a ground until 60 days after any good faith effort by the insurer to contest the obligation has been terminated, whether it is before the commissioner or in the courts, or the insurer has systematically attempted to compromise or renegotiate previously agreed settlements with its creditors on the ground that it is financially unable to pay its obligations in full.

(11) The insurer has failed to file its annual report or other financial report required by statute within the time allowed by law and, after written demand by the commissioner, has failed to give an adequate explanation immediately.

(12) The board of directors or the holders of a majority of the shares entitled to vote request or consent to rehabilitation under this part."

Section 51. Section 33-2-1342, MCA, is amended to read:

"**33-2-1342. Liquidation orders.** (1) An order to liquidate the business of a domestic insurer ~~shall~~ *must* appoint the commissioner and ~~his~~ *the commissioner's* successors in office liquidator and shall direct the liquidator ~~forthwith~~ to take possession of the assets of the insurer and to administer them under the general supervision of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the entry of the final order of liquidation. The filing or recording of the order with the clerk of the district court and the clerk and recorder of the county in which its principal office or place of business is located or, in the case of real estate, with the clerk and recorder of the county where the property is located shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that clerk and recorder would have imparted.

(2) Upon issuance of the order, the rights and liabilities of any ~~such~~ insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate ~~shall~~ become fixed as of the date of entry of the order of liquidation, except as provided in 33-2-1343 and 33-2-1366.

(3) An order to liquidate the business of an alien insurer domiciled in this state ~~shall~~ *must* be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States ~~shall be~~ *are* the only assets and business included ~~therein~~ *in the order.*

(4) At the time of petitioning for an order of liquidation or at any time ~~thereafter~~ *after petitioning,* the commissioner, after making appropriate findings of an insurer's insolvency, may petition the court for a judicial declaration of ~~such~~ insolvency. After providing ~~such~~ notice and hearing as it considers proper, the court may make the declaration.

(5) Any order issued under this section ~~shall~~ *must* require accounting to the court by the liquidator. Accountings ~~shall~~ *must* be at ~~such~~ intervals as the court specifies in its order.

(6) (a) Within 5 days after the initiation of an appeal of an order of liquidation that has not been stayed, the commissioner shall present for the court's approval a plan for the continued performance of the defendant company's policy claims obligations, including the duty to defend insureds under liability insurance policies, during the pendency of an appeal. The plan must provide for the continued performance and payment of policy claims obligations in the normal course of events, notwithstanding the grounds alleged in support of the order of liquidation, including the ground of insolvency. In the event that the defendant company's financial condition will not, in the judgment of the commissioner, support the full performance of all policy claims obligations during the appeal pendency period, the plan may prefer the claims of certain policyholders and claimants over creditors and interested parties, as well as other policyholders and claimants, as the commissioner finds to be fair and equitable, considering the relative circumstances of the policyholders and claimants. The court shall examine the plan submitted by the commissioner, and if it finds the plan to be in the best interests of the parties, the court shall approve the plan. An action does not lie against the commissioner or any of the commissioner's deputies, agents, clerks, assistants, or attorneys by any party based on preference in an appeal pendency plan approved by the court.

(b) The appeal pendency plan may not supersede or affect the obligations of any insurance guaranty association.

(c) A plan must provide for equitable adjustments to be made by the liquidator to any distributions of assets to guaranty associations, in the event that the liquidator pays claims from assets of the estate, which would otherwise be the obligations of any particular guaranty association but for the appeal of the order of liquidation, so that all guaranty associations equally benefit on a pro rata basis from the assets of the estate. If an order of liquidation is set aside upon any appeal, the company may not be released from delinquency proceedings unless all funds advanced by any guaranty association, including reasonable administrative expenses that relate to obligations of the company, have been repaid in full, together with interest at the judgment rate of interest, or unless an arrangement for repayment has been made with the consent of all applicable guaranty associations."

Section 52. Section 33-2-1346, MCA, is amended to read:

"**33-2-1346. Notice to creditors and others.** (1) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible:

(a) by first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is doing business;

(b) by first-class mail to any guaranty association or foreign guaranty association which is or may become obligated as a result of the liquidation;

(c) by first-class mail to all insurance producers of the insurer;

(d) by first-class mail to all persons known or reasonably expected to have claims against the insurer, including all policyholders, at their last-known address as indicated by the records of the insurer; and

(e) by publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in ~~such~~ other locations ~~as~~ *that* the liquidator considers appropriate.

(2) Notice to potential claimants under subsection (1) ~~shall require~~ *requires* claimants to file with the liquidator their claims together with proper proofs ~~thereof~~ *of the claims* under 33-2-1365, on or before a date the liquidator ~~shall specify~~ *specifies* in the notice. The liquidator need not require persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. All claimants have a duty to keep the liquidator informed of any changes of address.

(3) (a) Notice under subsection (1) to insurance producers of the insurer and to potential claimants who are policyholders must include, when applicable, notice that coverage by state guaranty associations may be available for all or part of policy benefits in accordance with applicable state guaranty laws.

(b) The liquidator shall promptly provide to the guaranty associations information concerning the identities and addresses of the policyholders and their policy coverages as is within the liquidator's possession or control and shall otherwise cooperate with guaranty associations to assist them in providing to the policyholders timely notice of the guaranty associations' coverage of policy benefits, including coverage of claims and continuation or termination of coverages.

~~(3)~~*(4)* If notice is given in accordance with this section, the distribution of assets of the insurer under this part ~~shall be~~ *is* conclusive with respect to all claimants, whether or not they received notice."

Section 53. Section 33-10-105, MCA, is amended to read:

"**33-10-105. General powers and duties.** (1) The association ~~shall~~:

(a) *(i) is* ~~be~~ obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency or before the policy expiration date if less than 30 days after the determination or before the insured replaces the policy or causes its cancellation if ~~he~~ *the insured* does so within 30 days of the determination~~,~~*;*

(ii) ~~but such obligation shall include~~ *is obligated under subsection (1)(a)(i)* only *for* that amount of each covered claim ~~which~~ *that* is in excess of $100 and is less than $300,000, except that*:*

(A) the association shall pay *an amount not exceeding $10,000 per policy for a covered claim for the return of unearned premium; and*

(B) the association shall pay the full amount of any covered claim arising out of a workers' compensation policy~~,~~*; and*

(iii) ~~In no event shall the association be~~ *is not* obligated to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises~~,~~*;*

(b) ~~be deemed~~ *is considered* the insurer to the extent of its obligation on the covered claims and to ~~such~~ *that* extent ~~shall have~~ *has* all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(c) *shall* investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which ~~such~~ *the* settlements, releases, and judgments may be properly contested;

(d) *shall* notify ~~such~~ persons as the commissioner directs under 33-10-109(2)(a);

(e) *shall* handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but ~~such~~ *the* designation may be declined by a member insurer.

(f) *shall* reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this part.

(2) The association may:

(a) employ or retain ~~such~~ persons as are necessary to handle claims and perform other duties of the association;

(b) borrow funds necessary to effect the purposes of this part in accord with the plan of operation;

(c) sue or be sued;

(d) negotiate and become a party to ~~such~~ contracts as are necessary to carry out the purpose of this part;

(e) perform ~~such~~ other acts as are necessary or proper to effectuate the purpose of this part;

(f) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year."

Section 54. Section 33-10-111, MCA, is amended to read:

"**33-10-111. Stay of proceedings — reopening of default judgments.** (1) All proceedings in which the insolvent insurer is a party or is obligated to defend a party in any court in this state ~~shall~~ *must* be stayed for ~~60 days~~ *6 months* from the date the insolvency is determined *or an ancillary proceeding is instituted in the state, whichever is later, or must be stayed for any additional time as may be determined by the court in order* to permit proper defense by the association of all pending causes of action.

(2) As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association either on its own behalf or on behalf of ~~such~~ *the* insured may apply to have ~~such~~ *the* judgment, order, decision, verdict, or finding set aside by the same court or administrator that made ~~such~~ *the* judgment, order, decision, verdict, or finding and ~~shall~~ *must* be permitted to defend against ~~such~~ *the* claim on the merits."

Section 55. Section 33-10-114, MCA, is amended to read:

"**33-10-114. Claims — effect as to insured and receiver.** (1) Any person recovering under this part ~~shall be deemed~~ *is considered* to have assigned ~~his~~ *the person's* rights under the policy to the association to the extent of ~~his~~ *the person's* recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent ~~as such~~ *that the* person would have been required to cooperate with the insolvent insurer. The association ~~shall~~ *does not* have ~~no~~ *a* cause of action against the insured of the insolvent insurer for any sums it has paid out except ~~such~~ causes of action ~~as~~ *that* the insolvent insurer would have had if ~~such~~ *the* sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association ~~shall~~ *may* not operate to reduce the liability of ~~insured's~~ *insureds* to the receiver, liquidator, or statutory successor for unpaid assessments.

(2) The association has the right to recover from the following persons the amount of any "covered claim" paid on behalf of the person pursuant to this part:

(a) any insured whose net worth, on December 31 of the year preceding the date the insurer becomes an insolvent insurer, exceeds $50 million and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part; and

(b) any person who is an affiliate of the insolvent insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this part.

~~(2)~~*(3)* The receiver, liquidator, or statutory successor of an insolvent insurer ~~shall be~~ *is* bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant ~~such~~ *the* claims priority equal to that which the claimant would have been entitled in the absence of this part against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims ~~shall~~ *must* be accorded the same priority as the liquidator's expenses.

~~(3)~~*(4)* The association shall periodically file with the receiver or liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer."

Section 56. Section 33-10-201, MCA, is amended to read:

"**33-10-201. Short title, purpose, scope, and construction.** (1) This part shall be known and may be cited as the "Montana Life and Health Insurance Guaranty Association Act".

(2) The purpose of this part is to protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against failure in the performance of contractual obligations due to the impairment of the insurer issuing ~~such~~ *the* policies or contracts.

(3) To provide this protection:

(a) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages;

(b) members of the association are subject to assessment to provide funds to carry out the purpose of this part; and

(c) the association is authorized to assist the commissioner, in the prescribed manner, in the detection and prevention of insurer impairments.

(4) This part ~~shall apply~~ *applies* to direct ~~life insurance policies, health insurance policies, annuity contracts, and contracts supplemental to life and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this state at any time~~, *nongroup life, health, annuity, and supplemental policies or contracts, to certificates under direct group policies and contracts, and to unallocated annuity contracts issued by member insurers, except as limited by this part. Annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.*

(5) This part ~~shall provide~~ *provides* coverage for covered policies:

(a) to persons who are owners of or certificate holders under ~~such~~ covered policies, and who:

(i) are residents; or

(ii) are not residents, but only under all of the following conditions:

(A) the insurers that issued the policies are domiciled in this state;

(B) the insurers have not held a license or certificate of authority in the state in which the persons reside;

(C) the state has an association similar to the association created under this part; and

(D) the persons are not eligible for coverage by that association; and

(b) to persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subsection (5)(a).

(6) This part ~~shall~~ *does* not apply to:

(a) any ~~such~~ policies or contracts or any part of ~~such~~ *the* policies or contracts under which the risk is borne by the policyholder;

(b) any ~~such~~ policy or contract or part ~~thereof~~ *of the policy or contract* assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued~~.~~*;*

(c) any portion of a policy or contract to the extent that the rate of interest on which it is based:

(i) averaged over the period of 4 years prior to the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting 2 percentage points from Moody's corporate bond yield average averaged for that same 4-year period or for the lesser period if the policy or contract was issued less than 4 years before the association became obligated; and

(ii) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting 3 percentage points from Moody's corporate bond yield average as is most recently available;

(d) any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:

(i) a multiple employer welfare arrangement, as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;

(ii) a minimum premium group insurance plan;

(iii) a stop-loss group insurance plan; or

(iv) an administrative services only contract;

(e) any portion of a policy or contract to the extent that it provides dividends or experience rating credits or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(f) any policy or contract issued in this state by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue the policy or contract in this state;

(g) any unallocated annuity contract issued to an employee benefit plan that is protected under the federal pension benefit guaranty corporation; and

(h) any portion of any unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery.

(7) This part ~~shall~~ *must* be liberally construed to effect the purpose under subsections (2) and (3), which ~~shall~~ constitute an aid and guide to interpretation.

(8) ~~Nothing in this~~ *This* part ~~shall~~ *may not* be construed to reduce the liability for unpaid assessments of the insureds of an impaired insurer operating under a plan with assessment liability."

Section 57. Section 33-10-202, MCA, is amended to read:

"**33-10-202. Definitions.** As used in this part, the following definitions apply:

(1) "Account" means any of the three accounts created under 33-10-203.

(2) "Association" means the Montana life and health insurance guaranty association created under 33-10-203.

(3) "Contractual obligation" means any obligation under covered policies.

(4) "Covered policy" means any policy or contract within the scope of this part under subsections (4) through (6) of 33-10-201.

(5) "Impaired insurer" means:

(a) an insurer which after July 1, 1974, becomes insolvent and is placed under a final order of liquidation, rehabilitation, or supervision by a court of competent jurisdiction; or

(b) an insurer ~~deemed~~ *considered* by the commissioner after July 1, 1974, to be unable or potentially unable to fulfill its contractual obligations.

(6) "Member insurer" means any person authorized to transact in this state any kind of insurance to which this part applies under subsections (4) and (6) of 33-10-201.

(7) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(8) "Premiums" means direct gross insurance premiums and annuity considerations written on covered policies, less return premiums and considerations ~~thereon~~ *on premiums* and dividends paid or credited to policyholders on ~~such~~ *the* direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers. As used in 33-10-227, "premiums" are those for the calendar year preceding the determination of impairment.

(9) "Resident" means any person who resides in this state at the time the impairment is determined and to whom contractual obligations are owed.

(10) "Unallocated annuity contract" means an annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of annuity benefits guaranteed to an individual by the insurer under the contract or certificate."

Section 58. Section 33-10-203, MCA, is amended to read:

"**33-10-203. Creation of the association — accounts — supervision by commissioner.** (1) There is created a nonprofit legal entity to be known as the Montana life and health insurance guaranty association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under 33-10-216 and shall exercise its powers through a board of directors established under 33-10-204.

(2) For purposes of administration and assessment, the association shall maintain ~~three~~ *two* accounts:

(a) the health insurance account; *and*

(b) the life insurance *and annuity* account *that includes the following subaccounts* ~~; and~~

~~(c) the annuity account.~~*:*

(i) the life insurance account;

(ii) the annuity account; and

(iii) the unallocated annuity account that must include unallocated annuity contracts qualified under section 403(b) of the Internal Revenue Code.

(3) The association ~~shall come~~ *is* under the immediate supervision of the commissioner and ~~shall be~~ *is* subject to the applicable provisions of the insurance laws of this state. *Meetings or records of the association may be opened to the public upon majority vote of the board of directors of the association."*

Section 59. Section 33-10-210, MCA, is amended to read:

"**33-10-210. Unfair trade practice — *notice to policyholders.*** *(1)* It ~~shall be~~ *is* a prohibited unfair trade practice for any person to make use in any manner of the protection afforded by this part in the sale of insurance.

(2) Within 180 days after October 1, 1993, the association shall prepare a summary document, complying with subsection (3) and describing the general purposes and current limitations of this part. The document must be submitted to the commissioner for approval. Sixty days after receiving approval, an insurer may not deliver a policy or contract described in 33-10-201(4) to a policy or contract holder unless the document is delivered to the policy or contract holder prior to or at the time of delivery of the policy or contract, unless subsection (4) applies. The document must be available upon request by a policyholder. The distribution, delivery, contents, or interpretation of this document does not mean that either the policy or the contract or the holder of the policy or contract would be covered in the event of the impairment or insolvency of a member insurer. The description document must be revised by the association as amendments to this

part may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder, or insured any greater rights than those stated in this part.

(3) The document prepared under subsection (2) must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer must:

(a) state the name and address of the life and health insurance guaranty association and insurance department;

(b) prominently warn the policy or contract holder that the life and health insurance guaranty association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(c) state that the insurer and its insurance producers are prohibited by law from using the existence of the life and health insurance guaranty association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(d) emphasize that the policy or contract holder should not rely on coverage under the life and health insurance guaranty association when selecting an insurer;

(e) provide other information as directed by the commissioner.

(4) An insurer or insurance producer may not deliver a policy or contract described in 33-10-201(4) and excluded under 33-10-201(6)(a) from coverage under this part unless the insurer or insurance producer, prior to or at the time of delivery, gives the policy or contract holder a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the life and health insurance guaranty association.

(5) The commissioner shall by rule specify the form and content of the notice required under subsection (4)."

Section 60. Section 33-10-217, MCA, is amended to read:

"**33-10-217. Prevention of *insolvencies or* impairments.** *(1)* To aid in the detection and prevention of insurer *insolvencies or* impairments ~~the board of directors is given the following powers and duties~~, *the commissioner shall:*

(a) (i) notify the commissioners of all the other states, the territories of the United States, and the District of Columbia when the commissioner takes any of the following actions against a member insurer:

(A) the revocation of a license;

(B) the suspension of a license; or

(C) the issuance of any formal order that the company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors;

(ii) mail the notice to all commissioners within 30 days following the action taken or the date on which the action occurs;

(b) report to the board of directors when the commissioner has taken any of the actions set forth in subsection (1)(a) or has received a report from any other commissioner indicating that an action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from another commissioner.

(c) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process, of any member company that the company may be an impaired or insolvent insurer; and

(d) furnish to the board of directors the national association of insurance commissioners' insurance regulatory information system (IRIS) ratios and listings of companies not included in the ratios developed by the national association of insurance commissioners. The board of directors may use the information contained in the ratios and listings in carrying out its duties and responsibilities under this section. The report and the information contained in the ratios and listings must be kept confidential by the board of directors until the time it is made public by the commissioner or other lawful authority.

(2) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

~~(1)~~*(3)* The board *of directors* shall, upon majority vote, notify the commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations.

~~(2)~~*(4)* The board *of directors* may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be unable or potentially unable to fulfill its contractual obligations.

~~(3)~~*(5)* The board *of directors* may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or supervision of any member insurer. ~~Such~~ *The* reports and recommendations ~~shall~~ *are* not ~~be~~ considered public documents.

~~(4)~~*(6)* The board *of directors* may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer impairments.

~~(5)~~*(7)* The board *of directors* shall, at the conclusion of any insurer impairment in which the association carried out its duties under this part or exercised any of its powers under this part, prepare a report on the history and causes of ~~such~~ *the* impairment, based on the information available to the association, and submit ~~such~~ *the* report to the commissioner. *The board of directors shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer and may adopt by reference any report prepared by other associations."*

Section 61. Section 33-10-218, MCA, is amended to read:

"**33-10-218. Examination by commissioner — cost.** (1) The commissioner may conduct the examination requested by the board pursuant to 33-10-217~~(2)~~*(4)*. The examination may be conducted as a national association of insurance commissioners examination or may be conducted by ~~such~~ persons ~~as~~ *whom* the commissioner designates. The cost of ~~such~~ *the* examination ~~shall~~ *must* be paid by the association, and the examination report ~~shall~~ *must* be treated as are other examination reports.

(2) ~~In no event shall such~~ *The* examination report *may not* be released to the board of directors of the association prior to its release to the public, but this ~~shall~~ *may* not excuse the commissioner from ~~his~~ *the* obligation to comply with subsection (4). The commissioner shall notify the board of directors when the examination is completed.

(3) The request for an examination ~~shall~~ *must* be kept on file by the commissioner, but it ~~shall~~ *may* not be open to public inspection prior to the release of the examination report to the public and ~~shall~~ *must* be released at that time only if the examination discloses that the examined insurer is unable or potentially unable to meet its contractual obligations.

(4) The commissioner shall report to the board of directors when ~~he~~ *the commissioner* has reasonable cause to believe that any member insurer examined at the request of the board of directors may be unable or potentially unable to fulfill its contractual obligations."

Section 62. Section 33-10-224, MCA, is amended to read:

"**33-10-224. Extent of liability.** The *benefits for which the association may become liable may not exceed the lesser of:*

(1) the contractual obligations of the impaired insurer for which the ~~association~~ *insurer* becomes or ~~may~~ *would have* become liable ~~shall be as great as but no greater than the contractual obligations of the impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by 33-10-220(3), but the association shall have no liability~~ *if it were not an impaired or insolvent insurer; or*

(2) (a) with respect to any ~~portion of a covered policy to the extent that the death benefit coverage on any~~ one life, *regardless of the number of policies or contracts:*

(i) ~~exceeds an aggregate of~~ $300,000 *in life insurance death benefits, but not more than $100,000 in net cash surrender and net cash withdrawal values for life insurance;*

(ii) $100,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values;

(iii) $100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values;

(b) with respect to each individual participating in a governmental retirement plan established under section 401, 403(b), or 457 of the Internal Revenue Code and covered by an unallocated annuity contract or with respect to the

beneficiaries of each individual, if deceased, in the aggregate, $100,000 in present value annuity benefits, including net cash surrender and net cash withdrawal values. However, the association is not liable to expend more than $300,000 in the aggregate with respect to any one individual under subsection (2)(a) and this subsection.

(c) with respect to any one contract holder covered by any unallocated annuity contract not included in subsection (2)(b), $5 million in benefits, irrespective of the number of contracts held by that contract holder."

Section 63. Section 33-11-103, MCA, is amended to read:

"**33-11-103. Chartering — licensing — plan of operation.** *(1)* A risk retention group seeking to be chartered in this state must be chartered and licensed *to write only* ~~as a~~ casualty ~~insurer~~ *insurance* pursuant to the insurance laws of this state and, except as provided in this part, ~~must~~ *shall* comply with all of the laws, rules, regulations, and requirements applicable to ~~such~~ *the* insurers chartered and authorized in this state, including 33-11-104, to the extent ~~such~~ *that the* requirements are not a limitation on laws, rules, regulations, or requirements of this state. Before it may offer insurance in any state, the risk retention group shall also submit for approval to the commissioner a plan of operation or a feasibility study and revisions of ~~such~~ *the* plan or study if the group intends to offer any additional lines of liability insurance.

(2) At the time of filing its application for charter, the risk retention group shall provide to the commissioner in summary form the following information:

(a) the identity of the initial members of the risk retention group;

(b) the identity of those individuals who organized the risk retention group or who will provide administrative services or otherwise influence or control the activities of the risk retention group;

(c) the amount and nature of initial capitalization;

(d) the coverages to be afforded; and

(e) the states in which the risk retention group intends to operate.

(3) Upon receipt of the information required under subsection (2), the commissioner shall forward the information to the national association of insurance commissioners. Providing this information to the national association of insurance commissioners does not satisfy the requirements of 33-11-104 or any other section of this chapter.

(4) All risk retention groups chartered in this state shall file with the department and the national association of insurance commissioners an annual statement in a form prescribed by the national association of insurance commissioners and in diskette form, if required by the commissioner, and completed in accordance with its instructions and the national association of insurance commissioners' accounting practices and procedures manual."

Section 64. Section 33-11-104, MCA, is amended to read:

"**33-11-104. Risk retention groups not chartered in this state.** A risk retention group chartered in a state other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the commissioner:

(a) a statement identifying the state or states where the risk retention group is chartered and authorized as a casualty insurer, date of chartering, its principal place of business, and ~~such~~ other information, including information on its membership, as the commissioner requires to verify that the risk retention group is qualified under 33-11-102(7);

(b) a copy of its plan of operation or a feasibility study and revisions of ~~such~~ *the* plan or study submitted to its state of domicile. However, this provision relating to the submission of a plan of operation or a feasibility study does not apply with respect to any line or classification of liability insurance that was defined in the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986, and that was offered before that date by a risk retention group that had been chartered and operated for not less than 3 years before that date; and

(c) a statement of registration that designates the commissioner as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the commissioner:

(a) a copy of the group's financial statement submitted to its state of domicile, which must be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American academy of actuaries or by a qualified loss reserve specialist under criteria established by the national association of insurance commissioners;

(b) a copy of each examination of the risk retention group as certified by the insurance regulatory official of the state in which the examination was conducted or public official conducting the examination;

(c) upon request by the commissioner, a copy of any audit performed with respect to the risk retention group; and

(d) ~~such~~ information as may be required to verify the group's continuing qualification as a risk retention group under 33-11-102(7).

(3) (a) ~~All premiums paid for coverage within this state to~~ *Each* risk retention ~~groups are subject to taxation at the same rate and to the same~~ *group is liable for the payment of premium taxes and taxes on premiums of direct business for risks resident or located within this state and shall report to the commissioner the net premiums written for risks resident or located within this state. The risk retention group is subject to taxation and any applicable* interest, fines, and penalties for nonpayment that apply to foreign admitted insurers.

(b) To the extent that an insurance producer is used, ~~he~~ *the insurance producer* shall report ~~and pay the taxes for the premiums for risks that he has~~ *to the commissioner the premiums of direct business for risks resident or located* *within this state that the licensees have* placed with or on behalf of a risk retention group not chartered in this state.

(c) To the extent that an insurance producer is ~~not~~ used ~~or fails to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state~~, *the insurance producer shall keep a complete and separate record of all policies procured from each risk retention group. The record is open to examination by the commissioner, as provided in 33-1-403. The records must, for each policy and each kind of insurance provided under the policy, include the limit of liability, the time period covered, the effective date, the name of the risk retention group that issued the policy, the gross premium charged, and the amount of return premiums, if any.*

(4) Each risk retention group, its insurance producers, and its representatives shall comply with Title 33, chapter 18, part 2.

(5) Each risk retention group shall comply with the provisions of Title 33, chapter 18, part 2, regarding deceptive, false, or fraudulent acts or practices. However, if the commissioner seeks an injunction regarding ~~such~~ *the risk retention group's* conduct, the injunction must be obtained from a court of competent jurisdiction.

(6) Each risk retention group shall submit to an examination by the commissioner to determine its financial condition if the insurance regulatory official of the jurisdiction where the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the commissioner. The examination must be coordinated to avoid unjustified repetition and be conducted in an expeditious manner in accordance with the national association of insurance commissioners examiners handbook.

(7) Each policy issued by a risk retention group must contain, in 10-point type on the front page and the declaration page, the following notice:

"NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group."

(8) The following acts by a risk retention group are prohibited:

(a) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in the group; and

(b) the solicitation or sale of insurance by or operation of a risk retention group that is in a hazardous financial condition or is financially impaired.

(9) A risk retention group is not allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than in the case of a risk retention group all of whose members are insurers.

(10) A risk retention group may not offer insurance policy coverage declared unlawful by the Montana supreme court.

(11) A risk retention group not chartered in this state and doing business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance regulatory official of any state if there has been a finding of financial impairment after an examination under subsection (6)."

Section 65. Section 33-11-105, MCA, is amended to read:

"**33-11-105. Compulsory associations.** (1) A risk retention group may not join or contribute financially to any insurance insolvency guaranty fund or similar mechanism in this state. In addition, a risk retention group or its insureds may not receive any benefit from any ~~such~~ *guaranty* fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations, mandatory liability pools, and similar mechanisms ~~as provided by Title 33, chapter 8 (now terminated)~~.

(3) When a purchasing group obtains insurance covering its members' risks from an insurer not authorized in this state or from a risk retention group, the risks, wherever resident or located, may not be covered by any insurance guaranty fund or similar mechanism in this state.

(4) When a purchasing group obtains insurance covering its members' risks from an authorized insurer, only risks resident or located in this state may be covered by the state guaranty fund, subject to Title 33, chapter 10, part 1."

Section 66. Section 33-11-108, MCA, is amended to read:

"**33-11-108. Notice and registration requirements of purchasing groups.** (1) A purchasing group that intends to do business in this state shall furnish notice to the commissioner that:

(a) identifies the state where the group is domiciled *and all other states in which the group intends to do business*;

(b) specifies the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) identifies the insurer from which the purchasing group intends to purchase its insurance and the domicile of the insurer;

(d) identifies the Montana-licensed insurance producer or Montana-licensed surplus insurance lines producer through which the purchasing group intends to place its business;

(e) identifies the principal place of business of the purchasing group; and

(f) provides information required by the commissioner to verify that the purchasing group is qualified under 33-11-102(6).

(2) The purchasing group shall register with and designate the commissioner as its agent solely for the purpose of receiving service of legal documents or process. However, ~~such~~ *the* requirements do not apply in the case of a purchasing group:

(a) (i) that was domiciled before April 2, 1986, in any state of the United States; and

(ii) that was domiciled on and after October 27, 1986, in any state of the United States;

(b) (i) that, before October 27, 1986, purchased insurance from an insurer licensed in any state; and

(ii) that, since October 27, 1986, purchased its insurance from an insurer licensed in any state;

(c) that was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981 (15 U.S.C. 3901 through 3904) before it was amended by P.L. 99-563, approved on October 27, 1986; and

(d) that does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986."

Section 67. Section 33-11-109, MCA, is amended to read:

"**33-11-109. Restriction on insurance purchased by purchasing groups.** (1) A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not authorized in the state where the purchasing group is located, unless the purchase is effected through a licensed insurance producer ~~or broker~~ acting pursuant to the surplus lines laws and regulations of that state.

(2) For purposes of subsection (1), the state where a purchasing group is located is each state where a member of the purchasing group has a risk resident, located, or to be performed.

(3) A purchasing group that obtains liability insurance from an insurer not admitted in this state or from a risk retention group shall inform each of the members of the group who have a risk resident or located in this state that the risk is not protected by an insurance insolvency guaranty fund in this state and that the insurer or risk retention group may not be subject to all insurance laws and regulations of this state.

(4) A purchasing group may not purchase insurance that provides for a deductible or self-insured retention applicable to the group as a whole. Coverage may provide for a deductible or self-insured retention applicable to individual members.

(5) Purchases of insurance by purchasing groups are subject to the same standards regarding aggregate limits that are applicable to all purchases of group insurance."

Section 68. Section 33-22-804, MCA, is amended to read:

"**33-22-804. Corporate powers of association — examination of books.** (1) Any association formed for the purposes of this part may hold title to property, may enter into contracts, and may limit the liability of its members to their respective pro rata shares of the liability of ~~such~~ *the* association. ~~Any such~~ *An* association may sue and be sued in its associate name and for ~~such~~ *that* purpose only ~~shall~~ *must* be treated as a domestic corporation. Service of process against ~~such~~ *the* association made upon a managing insurance producer, any member ~~thereof~~ *of the association*, or any insurance producer authorized by appointment to receive service of process ~~shall have~~ *has* the same force and effect as if ~~such~~ service had been made upon all members of the association.

(2) ~~Such~~ *The* association's books and records ~~shall~~ *must* also be subject to examination under the provisions of 33-1-315, 33-1-316, ~~and~~ 33-1-401, *33-1-402, 33-1-411,* ~~through~~ 33-1-413, *and [section 32],* either separately or concurrently with examination of any of its member insurers."

Section 69. Section 33-10-227, MCA, is amended to read:

"**33-10-227. Assessments — abatement — basis for ratesetting.** (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at ~~such~~ *the* times and for ~~such~~ *the* amounts as the board finds necessary. The board shall collect the assessments after 30 days' written notice to the member insurers before payment is due.

(2) There ~~shall be~~ *are* two classes of assessments, as follows:

(a) Class A assessments ~~shall~~ *must* be made for the purpose of meeting administrative costs and other general expenses not related to a particular impaired insurer.

(b) Class B assessments ~~shall~~ *must* be made to the extent necessary to carry out the powers and duties of the association under 33-10-219 and 33-10-220(1) with regard to an impaired insurer.

(3) (a) The amount of any Class A assessment for each account ~~shall~~ *must* be determined by the board. The amount of any Class B assessment ~~shall~~ *must* be divided among the accounts in the proportion that the premiums received by the impaired insurer on the policies covered by each account bear to the premiums received by ~~such~~ *the* insurer on all covered policies.

(b) Class B assessments against member insurers for each account ~~shall~~ *must* be in the proportion that the premiums received on business in this state by each assessed member insurer on policies covered by each account bear to ~~such~~ *the* premiums received on business in this state by all assessed member insurers.

(c) Assessments for funds to meet the requirements of the association with respect to an impaired insurer ~~shall~~ *may* not be made until necessary to implement the purposes of this part. Classification of assessments under subsection (2) and computation of assessments under this subsection ~~shall~~ *must* be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account ~~shall~~ *may* not in any one calendar year exceed 2% of ~~such~~ *the* insurer's premiums in this state on the policies covered by the account.

(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in subsection (4), the amount by which ~~such~~ *the* assessment is abated or deferred ~~shall~~ *must* be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. If the maximum assessment, together with the other assets of the association in either account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds ~~shall~~ *must* be assessed as soon thereafter as permitted by this part.

(6) If a 1% assessment for any subaccount of the life insurance account and the annuity account in any 1 year does not provide an amount sufficient to carry out the responsibilities of the association, then pursuant to subsection (3)(b), the board shall assess all subaccounts of the life insurance account and the annuity account for the necessary additional amount, subject to the maximum assessment stated in subsection (4).

~~(6)~~*(7)* The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

~~(7)~~*(8)* It ~~shall be~~ *is* proper for any member insurer, in determining its premium rates and policyowner dividends as to any kind of insurance within the scope of this part, to consider the amount reasonably necessary to meet its assessment obligations under this part.

~~(8)~~*(9)* The association shall issue to each insurer paying an assessment under this part a certificate of contribution, in a form prescribed by the commissioner, for the amount ~~so~~ paid. All outstanding certificates ~~shall~~ *must* be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in ~~such~~ *that* form and for ~~such~~ *the* amount, if any, and period of time ~~as~~ *that* the commissioner may approve."

Section 70. Section 33-10-230, MCA, is amended to read:

"**33-10-230. Tax — writeoffs of certificates of contribution.** (1) Unless a longer period has been allowed by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution for a Class B assessment only as an asset in the form approved by the commissioner pursuant to 33-10-227~~(8)~~*(9)*, at percentages of the original face amount approved by the commissioner, for calendar years as follows:

(a) 100% for calendar year of issuance;

(b) 80% for the first calendar year after year of issuance;

(c) 60% for second calendar year after year of issuance;

(d) 40% for third calendar year after year of issuance;

(e) 20% for fourth calendar year after year of issuance.

(2) The insurer may offset the amount written off by it in the calendar year under subsection (1) above against its premium tax liability to this state accrued with respect to business transacted in ~~such~~ *the calendar* year.

(3) Any sums acquired by refund, pursuant to 33-10-227~~(6)~~*(7)*, from the association which have therefore been written off by contributing insurers and offset against premium taxes as provided in subsection (2) above and are not then needed for purposes of this part ~~shall~~ *must* be paid by the association to the commissioner and ~~by him~~ deposited *by the commissioner* with the state treasurer for credit to the general fund of this state."

Section 71. **Repealer.** Sections 33-1-403, 33-1-412, 33-2-1205, and 33-10-229, MCA, are repealed.

Section 72. **Codification instruction.** (1) [Sections 1 through 27] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 27].

(2) [Sections 28 through 30] are intended to be codified as an integral part of Title 33, chapter 2, part 12, and the provisions of Title 33, chapter 2, part 12, apply to [sections 28 through 30].

(3) [Sections 31 through 33] are intended to be codified as an integral part of Title 33, chapter 1, part 4, and the provisions of Title 33, chapter 1, part 4, apply to [sections 31 through 33].

(4) [Section 34] is intended to be codified as an integral part of Title 33, chapter 11, and the provisions of Title 33, chapter 11, apply to [section 34].

(5) [Sections 35 through 38] are intended to be codified as an integral part of Title 33, chapter 2, part 13, and the provisions of Title 33, chapter 2, part 13, apply to [sections 35 through 38].

(6) [Section 48] is intended to be codified as an integral part of Title 33, chapter 2, part 11, and the provisions of Title 33, chapter 2, part 11, apply to [section 48].

Approved April 29, 1993.

CHAPTER NO. 597

[HB 301]

AN ACT INCREASING THE MAXIMUM PENALTY FOR VIOLATION OF A MUNICIPAL OR LOCAL GOVERNMENT ORDINANCE RELATING TO LOCAL OR FEDERAL WASTEWATER PRETREATMENT STANDARDS FROM $500 TO $1,000; AND AMENDING SECTIONS 7-5-109 AND 7-5-4207, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-109, MCA, is amended to read:

"**7-5-109. Penalty for violation of ordinance.** ~~A~~ *(1) Except as provided in subsection (2), a* local government may fix penalties for the violation of an ordinance ~~which~~ *that* do not exceed a fine of $500 or 6 months' imprisonment or both the fine and imprisonment.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed $1,000 per day for each violation or 6 months' imprisonment, or both."

Section 2. Section 7-5-4207, MCA, is amended to read:

"**7-5-4207. Penalties for violation of municipal ordinances.** ~~The~~ *(1) Except as provided in subsection (2), the* city or town council ~~has power to~~ *may* impose fines and penalties for the violation of any city ordinance, but ~~no~~ *a* fine or penalty may *not* exceed $500 and ~~no~~ imprisonment may *not* exceed 6 months for any one offense.

(2) A local government may fix penalties for the violation of an ordinance relating to local or federal wastewater pretreatment standards implementing the Federal Water Pollution Control Act, 33 U.S.C. 1251 through 1387, if the penalties do not exceed $1,000 per day for each violation or 6 months' imprisonment, or both."

Approved May 4, 1993.

CHAPTER NO. 598

[HB 442]

AN ACT GENERALLY REVISING THE MONTANA METAL MINE RECLAMATION LAWS; PROVIDING A PROCESS FOR AMENDMENT OF OPERATING PERMITS; REVISING THE INITIAL REVIEW PERIOD FOR APPLICATIONS FOR OPERATING PERMITS; STRENGTHENING ENFORCEMENT AND BONDING MECHANISMS; AND AMENDING SECTIONS 82-4-305, 82-4-331, 82-4-335, 82-4-337, 82-4-338, AND 82-4-362, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-305, MCA, is amended to read:

"**82-4-305. Exemption — small miners — written agreement.** (1) Except as provided in subsections (3) through (9), the provisions of this part do not apply to any small miner if the small miner annually agrees in writing:

(a) that ~~he~~ *the small miner* will not pollute or contaminate any stream;

(b) that ~~he~~ *the small miner* will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that ~~he~~ *the small miner* will provide a map locating ~~his~~ *the miner's* mining operations. The map must be of a size and scale determined by the department.

(d) if the small miner's operations are placer or dredge mining, that ~~he~~ *the small miner* shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless ~~he~~ *the small miner* annually certifies in writing:

(a) if the small miner is a natural person, that:

(i) no business association or partnership of which ~~he~~ *the small miner* is a member or partner has a small-miner exemption; and

(ii) no corporation of which ~~he~~ *the small miner* is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's actual cost of reclaiming the disturbed land, although the bond may not exceed $5,000 per operation. However, if the small miner has posted a bond for reclamation with another government agency, ~~he~~ *the small miner* is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, ~~he~~ *the small miner* is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and

diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs it ~~deems~~ *considers* reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of ~~his~~ *the small miner's* operation where the cyanide ore-processing reagent will be used or disposed of.

(8) The exemption provided in this section does not apply to*:*

(a) a person whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360~~.~~*;*

(b) a person who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) a person who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) a person who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) The exemption provided in this section does not apply to an area under permit pursuant to 82-4-335 or to an area that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency."

Section 2. Section 82-4-331, MCA, is amended to read:

"82-4-331. **Exploration license required — employees included — limitation.** (1) A person may not engage in exploration in the state without first obtaining an exploration license from the board. A license must be issued for a period of 1 year from date of issue and is renewable from year to year on application. An application for renewal must be filed within 30 days preceding the expiration of the current license and be accompanied by payment of a fee as required for a new license. A license may not be renewed if the applicant for renewal is in violation of any provision of this part. A license is subject to suspension and revocation as provided by this part.

(2) Employees of persons holding a valid license under this part are included in and covered by the license.

(3) A person may not be issued an exploration license if*:*

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360~~.~~*;*

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement."

Section 3. Section 82-4-335, MCA, is amended to read:

"82-4-335. **Operating permit — limitation — fees.** (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the board. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent shall obtain an operating permit for that part of ~~his~~ *the small miner's* operation where the cyanide ore-processing reagent will be used or disposed of.

(3) Prior to receiving an operating permit from the board, a person shall pay the basic permit fee of $25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The department may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant

that a fee must be paid and submit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(4) The person shall submit an application on a form provided by the board, which must contain the following information and any other pertinent data required by rule:

(a) name and address of the operator and, if a corporation or other business entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) minerals expected to be mined;

(c) a proposed reclamation plan;

(d) expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land ~~which~~ *that* will be disturbed, topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected by the permit, provided that the department is not required to verify this information;

(i) types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan which will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, the board, upon receipt of written notice from the hard-rock mining impact board, shall suspend the permit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(6) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the board with proof that ~~he~~ *the permittee* has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that ~~he~~ *the permittee* has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the board that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the board shall suspend the permit until the permittee files the required proof or until the hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(7) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(8) A person may not be issued an operating permit if*:*

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360~~.~~*;*

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 4. Section 82-4-337, MCA, is amended to read:

"**82-4-337. Inspection — issuance of operating permit — modification.** (1) (a) The board shall cause all applications for operating permits to be reviewed for completeness within *60 days of receipt of the initial application and within* 30 days of receipt *of responses to notices of deficiencies*. The board shall notify the applicant concerning completeness as soon as possible. An application is considered complete unless the applicant is notified of any deficiencies within ~~30 days of receipt~~ *the appropriate review period.*

(b) Unless the review period is extended as provided in this section, the board shall review the adequacy of the proposed reclamation plan and plan of operation within 30 days of the determination that the application is complete or within 60 days of receipt of the application if the board does not notify the applicant of any deficiencies in the application. If the applicant is not notified of deficiencies or inadequacies in the proposed reclamation plan and plan of operation within ~~such~~ *the* time period, the operating permit ~~shall be~~ *is* issued upon receipt of the bond as required in 82-4-338 and pursuant to the requirements of subsection (1)(c). The department shall promptly notify the applicant of the form and amount of bond which will be required.

(c) ~~No~~ *A* permit may *not* be issued until:

(i) sufficient bond has been submitted pursuant to 82-4-338;

(ii) the information and certification have been submitted pursuant to 82-4-335(9); and

(iii) the department has found that permit issuance is not prohibited by 82-4-335(8) or 82-4-341(6).

(d) (i) Prior to issuance of a permit, the department shall inspect the site unless the department has failed to act on the application within the time prescribed in subsection (1)(b). If the site is not accessible due to extended adverse weather conditions, the department may extend the time period prescribed in subsection (1)(b) by not more than 180 days to allow inspection of the site and reasonable review. The department ~~must~~ *shall* serve written notice of extension upon the applicant in person or by certified mail, and any ~~such~~

extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the period prescribed in subsection (1)(b) by not more than 365 days in order to permit reasonable review.

(iii) Failure of the board to act upon a complete application within the extension period constitutes approval of the application, and the permit ~~shall~~ *must* be issued promptly upon receipt of the bond as required in 82-4-338.

(2) The operating permit ~~shall~~ *must* be granted for the period required to complete the operation and ~~shall be~~ *is* valid until the operation authorized by the permit is completed or abandoned unless the permit is suspended or revoked by the board as provided in this part.

(3) The operating permit ~~shall~~ *must* provide that the reclamation plan may be modified by the board, upon proper application of the permittee or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) to modify the requirements so they will not conflict with existing laws;

(b) when the previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) when significant environmental problem situations are revealed by field inspection."

Section 5. **Amendment or revision of operating permits.** (1) During the term of an operating permit, an operator may apply for an amendment or revision to the permit. The operator may not apply for an amendment to delete disturbed acreage from the permit.

(2) Applications for major amendments must be processed in the same manner as applications for new permits.

(3) Major amendments are those that may significantly affect the environment. Minor amendments are those that will not significantly affect the environment. The department may by rule establish criteria for classification of amendments as major or minor. The rules must establish requirements for the content of applications for amendments and revisions and procedures for processing of minor amendments.

(4) If the department demonstrates that a revision may result in a significant environmental impact that was not previously and substantially evaluated in an environmental impact statement, the application must be processed in the same manner as is provided for new permits. Applications for minor amendments and other revisions must be processed within 30 days of receipt of an application.

Section 6. Section 82-4-338, MCA, is amended to read:

"**82-4-338. Performance bond.** (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 or more than $2,500 for each acre or fraction ~~thereof~~ *of an acre* of the disturbed area, conditioned upon the faithful performance of the requirements of this part, ~~and~~ the rules of the board, *and the permit*. In lieu of ~~such~~ *a* bond, the applicant may file with the board a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the board. Regardless of the ~~above~~ limits *in this subsection*, the bond ~~shall~~ *may* not be less than the estimated cost to the state to ~~complete the reclamation of the disturbed land~~ *ensure compliance with this part, the rules, and the permit*. A public or governmental agency ~~shall~~ *may* not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the board. ~~Such~~ *A* blanket bond ~~shall~~ *must* adequately secure the estimated total number of acres of disturbed land.

(2) The department shall review the amount of each bond at least every 5 years and shall consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of ~~reclamation~~ *compliance with this part, the rules, and the permit*, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.

(3) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and ~~this reclamation plan~~ *the permit* have been fulfilled.

(4) ~~No~~ *A* bond filed for an operating permit obtained under 82-4-335 may *not* be released until the public has been provided an opportunity for a hearing."

Section 7. Section 82-4-362, MCA, is amended to read:

"**82-4-362. Suspension of permits — hearing.** (1) If any of the requirements of this part, the rules adopted under this part, or a license, permit, or reclamation plan has not been complied with ~~within the time limits set by the department or board or by this part~~, the department shall serve a notice of noncompliance on the licensee or permittee or, if necessary, the commissioner shall order the suspension of the permit. The commissioner may order immediate suspension of a permit whenever ~~he~~ *the commissioner* makes a finding that a violation of this part, the rules adopted under this part, or a license or permit, including the reclamation plan, is creating an imminent danger to the health or safety of persons outside the permit area. The notice or order must be handed to the licensee or permittee in person or served by certified ~~or registered~~ mail addressed to the permanent address shown on the application for a license or permit. The notice of noncompliance *or order of suspension* must specify in what respects the operator has failed to comply with this part, the rules adopted under this part, *the permit*, or the reclamation plan *and must, if the violation has not been abated, order abatement within a specified time period.*

(2) If the licensee or permittee has not complied with the requirements set forth in the notice of noncompliance or order of suspension within the time limits set ~~therein~~ *in the notice or order*, the permit may be revoked by order of the board and the performance bond forfeited to the department. The licensee or permittee is entitled to a hearing before the department on the revocation of a permit or license or the forfeiture of a performance bond if a hearing is requested within 30 days after service of notice as provided in subsection (1). The notice must state when those measures may be undertaken and must give notice of opportunity for a hearing. If a hearing is requested within the 30-day period, the permit or license may not be revoked and the bond may not be forfeited until a final decision is made by the department.

(3) If a permittee fails to pay the fee or file the report required under 82-4-339, the department shall serve notice of this failure, by certified mail or personal delivery, on the permittee. If the permittee does not comply within 30 days of receipt of the notice, the commissioner shall suspend the permit. The commissioner shall reinstate the permit upon compliance."

Section 8. **Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 82, chapter 4, part 3, and the provisions of Title 82, chapter 4, part 3, apply to [section 5].

Approved May 3, 1993.

CHAPTER NO. 599

[HB 495]

AN ACT AUTHORIZING CATERING ENDORSEMENTS TO BEER RETAIL LICENSES FOR ON-PREMISES CONSUMPTION AND TO BEER AND WINE RETAIL LICENSES FOR ON-PREMISES CONSUMPTION; REQUIRING THAT ALL LICENSEES CATERING AN EVENT PAY A FEE TO THE LOCAL LAW ENFORCEMENT AGENCY; AMENDING SECTIONS 16-3-103, 16-4-204, AND 16-4-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Catering endorsement for beer and wine licensees.** (1) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer and wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of $200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of $35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

(7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

Section 2. Section 16-4-204, MCA, is amended to read:

"**16-4-204. Transfer — catering endorsement.** (1) (a) Except as provided in subsection (1)(b), a license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502;

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its corporate limits by more than 43%; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license within an incorporated quota area may be transferred to a new ownership and to a new unincorporated location within the same county on application to and with consent of the department when the quota of the all-beverages licenses in the original quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(c) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.

(d) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred to another quota area or back to the original quota area.

(e) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(2) (a) Any all-beverages licensee is, upon the approval and in the discretion of the liquor division, entitled to a catering endorsement to ~~his~~ *the licensee's* all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages *for on-premise consumption.*~~, such~~ *The alcoholic* beverages ~~to~~ *must* be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of $250 must be submitted to the department for its approval.

(c) ~~A written application for each event for which the licensee intends to provide catering services, the written approval of the catering application by the sponsor of the special event, and a fee of $35 must be filed with the department at least 3 days prior to the event and shall describe the location of the premises where the event is to be held, the nature of the event, and the period during which the event is to be held.~~ An all-beverages licensee who holds an endorsement granted under this subsection (2) may not ~~receive approval to~~ cater an event ~~of~~ *in* which ~~he~~ *the licensee* is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business. ~~If obtained, the licensee shall display in a prominent place on those premises, the written approval from the department for each event which is catered pursuant to this subsection.~~

(d) The licensee shall ~~file with each application for an event to be catered a written statement of approval of the premises where the event is to be held, issued by~~ *notify* the local law enforcement agency that has jurisdiction over the premises where the *catered* event is to be held. *A fee of $35 must accompany the notice.*

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises."

Section 3. Section 16-3-103, MCA, is amended to read:

"**16-3-103. Unlawful sales solicitation or advertising — exceptions.** (1) No person within the state shall:

(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or ~~hold himself out~~ *be represented* as ~~such~~ *an* agent or intermediary unless permitted to do so under rules that shall be promulgated by the department to govern such activities;

(b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with such rules.

(2) This section ~~shall~~ *does* not apply to:

(a) the department, any act of the department, any state liquor store;

(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-office employee in the ordinary course of ~~his~~ employment as such agent, operator, or employee; or

(c) the sale and serving of beer in the grandstand and bleacher area of a county fairground or public sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant to 16-4-204 *or [section 1]*."

Section 4. Section 16-4-402, MCA, is amended to read:

"**16-4-402. Application — investigation.** (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application in writing, signed by the applicant and containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department. The application must be verified by the affidavit of the person making it before a person authorized to administer oaths.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall within 30 days make a thorough investigation of all matters relating to the application. The department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) ~~his~~ *the applicant's* premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-204(2) *or [section 1]* or a special permit provided in 16-4-301.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked."

Section 5. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 1, and the provisions of Title 16, chapter 4, part 1, apply to [section 1].

Section 6. **Effective date.** [This act] is effective on passage and approval.

Approved May 4, 1993.

CHAPTER NO. 600

[SB 14]

AN ACT REVISING THE LAW REGARDING THE USE OF FIREARMS BY CHILDREN UNDER 14 YEARS OF AGE TO ALLOW THOSE CHILDREN TO USE A FIREARM WHEN ACCOMPANIED BY AN ADULT AUTHORIZED BY A PARENT OR GUARDIAN; AND AMENDING SECTION 45-8-344, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-344, MCA, is amended to read:

"**45-8-344. Use of firearms by children under fourteen prohibited — *exceptions.*** It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms ~~of any description loaded with powder and lead~~, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor *or an adult* who has been authorized by the parent or guardian."

Approved May 3, 1993.

CHAPTER NO. 601

[SB 71]

AN ACT ALLOWING DEPARTMENT HEADS TO ELIMINATE POSITIONS WITHIN A DEPARTMENT; PROVIDING A FISCAL INCENTIVE TO THE DEPARTMENT HEAD TO REDUCE POSITIONS WITHIN A DEPARTMENT; AMENDING SECTION 2-15-112, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-112, MCA, is amended to read:

"**2-15-112. Duties and powers of department heads.** (1) Except as otherwise provided by law, each department head shall:

(a) supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this chapter or other law;

(b) establish the policy to be followed by the department and employees;

(c) compile and submit reports and budgets for the department as required by law or requested by the governor;

(d) provide the governor with any information that ~~he~~ *the governor* requests at any time on the operation of the department;

(e) represent the department in communications with the governor;

(f) prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) subject to the approval of the governor, establish the internal organizational structure of the department and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department ~~shall~~ *must* be established in accordance with 2-15-104(2).

(h) subject to law, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) maintain a central office in Helena for the department and ~~such~~ *maintain* other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) subject to law, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) delegate any of the functions vested in the department head to subordinate employees;

(c) apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) enter into agreements with federal, state, and local agencies necessary to carry out the department's functions*; and*

(e) eliminate positions within the department. The office of budget and program planning shall increase the department's appropriation in the second year of the biennium by an amount equal to one-half of the savings resulting from the elimination of a position. The increased appropriation in the second year of the biennium may be expended at the discretion of the department head, provided

that the expenditure is consistent with the goals and objectives of the department. The remaining one-half must revert to the original funding source. This subsection (e) does not apply to an agency allocated to a department in either year of the 2 years of the biennium for administrative purposes, as provided in 2-15-121. Section 17-7-138 does not apply to this subsection (e)."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved May 3, 1993.

CHAPTER NO. 602

[SB 98]

AN ACT REVISING SEED DEALER PENALTIES; CREATING A SEED ACCOUNT IN THE STATE SPECIAL REVENUE FUND FOR DEPOSIT OF SEED FEE REVENUE; AMENDING SECTIONS 80-5-207 AND 80-5-208, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because rulemaking authority is granted in 80-5-207 to the department of agriculture to adopt rules regarding administrative civil penalties for violations of the agricultural seed laws. It is intended that the department establish a penalty matrix that sets out the kinds of administrative penalties applicable to violations of the agricultural seed laws and delineate the degrees of penalty that may be assessed for initial and subsequent administrative violations.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-5-207, MCA, is amended to read:

"**80-5-207. Violation — cancellation of license — enforcement proceedings.** (1) Distribution of seeds that are not legally labeled or failure to comply with this chapter or rules issued under its authority constitutes sufficient grounds for the department to cancel or deny a license to a licensee, provided that the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(2) *A person who violates or aids in the violation of any provision of this chapter or rules adopted under this chapter is subject to one or both of the following penalties:*

(a) an administrative civil penalty of not more than $1,000 for each offense. Assessment of a penalty under this subsection (a) may be made in conjunction with any other warning, order, or administrative action by the department under the authority of this part.

(b) ~~Any person convicted of violating the provisions of this part or rules promulgated under the authority of this part is guilty of~~ a misdemeanor ~~and shall be fined~~ *punishable by a fine of* not less than $100 or more than $300 for the first violation and not less than $500 or more than $1,000 for each subsequent violation.

(3) The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (2)(a). The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

~~(3)~~*(4)* Nothing in this part ~~shall~~ *may* be construed as requiring the department or its representatives to report violations of this part when it believes that the public interest will be best served by a suitable notice of warning.

~~(4)~~*(5)* It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

~~(5)~~*(6)* The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this part or any rule promulgated under this part notwithstanding the existence of other remedies at law. An injunction is issued without bond.

~~(6)~~*(7)* Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this part may within 30 days bring action in the district court of the county or any county where the alleged violation occurred for trial of the issues bearing upon ~~such~~ *the* act."

Section 2. Section 80-5-208, MCA, is amended to read:

"**80-5-208. Deposit of funds — *seed account.*** ~~All money collected under the provisions of this part shall be deposited to the general fund.~~ *(1) There is an account in the state special revenue fund to be known as the seed account. All inspection, license, and penalty fee revenue collected under this chapter must be deposited in the seed account.*

(2) Money received as revenue under this chapter not immediately required for the purposes of this chapter must be invested under the provisions of the unified investment program established in Title 17, chapter 6, part 2. All interest earned on the seed account must be deposited in the seed account."

Section 3. **Effective date.** [This act] is effective July 1, 1993.

Approved May 3, 1993.

CHAPTER NO. 603

[SB 108]

AN ACT GENERALLY REVISING LAWS RELATING TO CRIMINAL JUSTICE INFORMATION; ALLOWING THE DEPARTMENT OF JUSTICE TO USE JUVENILES' FINGERPRINTS AND PHOTOGRAPHS FOR INVESTIGATIVE PURPOSES; ALLOWING THE DEPARTMENT TO ASSIGN AUDITS OF CRIMINAL HISTORY RECORD INFORMATION SYSTEMS FOR COMPLIANCE WITH THE LAW TO SUBAGENCIES THAT CONTROL CRIMINAL JUSTICE INFORMATION; ALLOWING THE DEPARTMENT TO CHARGE FOR COSTS ASSOCIATED WITH RECORDS REQUESTS; AND AMENDING SECTIONS 41-5-304, 44-5-105, AND 44-5-214, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-304, MCA, is amended to read:

"**41-5-304. Investigation, fingerprints, and photographs.** (1) All law enforcement investigations relating to a delinquent youth or youth in need of supervision must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

(a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;

(b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or

(c) upon the order of the youth court judge, after a petition alleging delinquency has been filed in which the unlawful act alleged would constitute a felony if the act had been committed by an adult.

(3) Fingerprint records and photographs may be used by *the department of justice or* any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation."

Section 2. Section 44-5-105, MCA, is amended to read:

"**44-5-105. Department of justice — powers.** The department of justice may:

(1) adopt rules necessary to carry out the purposes of this chapter;

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of this chapter. ~~The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.~~"

Section 3. Section 44-5-214, MCA, is amended to read:

"**44-5-214. Inspection or transfer of criminal history records.** (1) An individual or ~~his~~ *the individual's* agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from ~~his~~ *the agent's* principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or ~~his~~ *the individual's* agent. A local agency shall honor a verified affidavit accompanying a request by an

individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with this chapter.

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or ~~his~~ *the individual's* authorized agent. If a machine for making copies is not reasonably available, the individual or ~~his~~ *the individual's* agent may make handwritten copies. A charge~~, not to exceed the cost of labor and materials,~~ may be made by the agency for ~~machine-produced copies~~ *the cost of supplying the copies*. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained."

Approved May 3, 1993.

CHAPTER NO. 604

[SB 252]

AN ACT EXEMPTING A PROFESSIONAL LAND SURVEYOR OR OTHER QUALIFIED PERSON FROM THE CRIMINAL TRESPASS LAW WHEN ENTRY TO LAND IS FOR SURVEY PURPOSES; PROVIDING FOR NOTICE TO THE LANDOWNER OF A PENDING SURVEY; ESTABLISHING NOTICE CONDITIONS AND PROVISIONS FOR ENTRY TO THE LAND; CREATING A REBUTTABLE PRESUMPTION REGARDING A LANDOWNER'S LIABILITY TO A SURVEYOR ON LAND FOR SURVEYING PURPOSES; AND AMENDING SECTION 45-6-203, MCA.

WHEREAS, the Legislature finds that in the interest of the public health, safety, and welfare, the entry onto private property by a professional land surveyor in the performance of the surveyor's legal duties and obligations should not be considered criminal trespass.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-203, MCA, is amended to read:

"**45-6-203. Criminal trespass to property.** (1) ~~A~~ *Except as provided in [section 2], a* person commits the offense of criminal trespass to property if ~~he~~ *the person* knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 2. **Entry to property by professional land surveyor or other qualified person — trespass exception — notice — liability.** (1) Subject to the conditions and restrictions of this section, the provisions of 45-6-203 do not apply to a person who is licensed or registered under Title 37, chapter 67, part 3, as a professional land surveyor, as defined in 37-67-101, or to a person acting under the direct supervision of a professional land surveyor as an employee, agent, or representative.

(2) A person qualified under subsection (1) may enter public or private land to investigate and use boundary evidence and perform boundary surveys if the notice requirements of subsection (3) are met.

(3) (a) At least 15 days before the desired date of entry to land, a professional land surveyor shall give notice to the owner of the land, by certified mail, return receipt requested. The notice must contain the following information:

(i) the identity of the person for whom the survey is being performed;

(ii) the purpose for which the survey is being performed;

(iii) the name of the employer of the professional land surveyor;

(iv) the identity of the professional land surveyor;

(v) the dates, times, and location of entry to the land, including the estimated number of entries;

(vi) a timetable for completion of the survey, including an estimated completion date; and

(vii) a statement requesting the landowner to provide the surveyor with the name of each person who occupies the land as a tenant or lessee.

(b) A landowner may waive the notice requirement of this subsection (3), either orally or in writing.

(c) This section does not impose liability upon a landowner who fails or refuses to provide the requested entry.

(4) (a) If a landowner does not acknowledge receipt of the notice within 15 days, a person qualified under subsection (1) may enter the land pursuant to the specifications given in the notice.

(b) If a landowner acknowledges receipt of the notice within 15 days, the landowner may modify the access provisions of the notice, as long as the modifications do not unreasonably restrict completion of the survey.

(5) Persons qualified under subsection (1) who enter land pursuant to this section shall carry on their person identification sufficient to identify themselves and their employer or principal and shall present the identification upon request.

(6) Vehicular access to perform surveys is limited to established roads and trails, unless approval for other vehicular access is granted by the landowner.

(7) Approval of the landowner is required for the clearing of trees, brush, or other vegetation.

(8) A landowner may request a person qualified under subsection (1) who enters land pursuant to this section to wash any vehicle prior to entry in order to remove mud and debris that might carry noxious weeds or noxious weed seeds. The person may request that the landowner be present at the time of any entry to inspect the vehicle under the terms of this subsection.

(9) Entry upon land for survey purposes by a person qualified under subsection (1) creates a rebuttable presumption that the landowner or lessee properly protected the person against personal injury or property damage while the person was on the land.

(10) As an act of good will and in order to keep the landowner informed, a professional land surveyor shall supply the landowner with information on located, established, or reestablished corners that lie on the land or that may affect the boundaries of the land. Upon request, the professional land surveyor shall provide the landowner with a copy of any relevant survey filed or recorded.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 70, chapter 16, and the provisions of Title 70, chapter 16, apply to [section 2].

Approved May 3, 1993.

CHAPTER NO. 605

[SB 257]

AN ACT INCREASING THE GASOLINE LICENSE TAX AND THE TAX ON DIESEL FUEL AND VOLATILE LIQUIDS BY 4 CENTS BEGINNING JULY 1, 1993, AND BY 3 CENTS BEGINNING JULY 1, 1994; PROVIDING AN INCREASED ALLOCATION OF FUEL TAXES TO CITIES AND TOWNS; AMENDING SECTIONS 15-70-101, 15-70-204, 15-70-321, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-101, MCA, is amended to read:

"**15-70-101. Disposition of funds.** All taxes, interest, and penalties collected under this chapter, except those collected by a justice's court, must be turned over promptly to the state treasurer, who shall place the money in the state special revenue fund to the credit of the department of transportation. Those funds allocated to cities, towns, and counties in this section must be paid by the department of transportation from the state special revenue fund to the cities, towns, and counties.

(1) ~~$14,000,000~~ *$16,766,000* of the funds collected under this chapter, except those collected by a justice's court, ~~is statutorily appropriated, as provided in 17-7-502, to the department of transportation and~~ must be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (1)(a) through (1)(c):

(a) $54,000 must be designated for the purposes and functions of the Montana rural technical assistance transportation program in Bozeman;

(b) $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(c) ~~$7,623,000~~ *$10,389,000* must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

(2) All funds allocated by this section to counties, cities, and towns must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the federal-aid primary or secondary highway system or urban extensions to those systems, except that the governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(3) All funds allocated by this section to counties, cities, and towns must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(4) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined by the last preceding official federal census.

(5) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, and counties to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable

to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(6) Except by a town or third-class city as provided in subsection (2), the funds authorized by this section may not be used for the purchase of capital equipment.

(7) Funds authorized by this section must be used for construction and maintenance programs only."

Section 2. Section 15-70-204, MCA, is amended to read:

"**15-70-204. Gasoline license tax — rate.** (1) Every distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to*:*

(a) 1 cent for each gallon of aviation gasoline, which ~~shall~~ *must* be allocated to the department of transportation as provided by 67-1-301, as amended~~,~~*;* and

(b) ~~20 cents~~ for each gallon of all other gasoline distributed by ~~him~~ *the distributor* within the state and upon which the gasoline license tax has not been paid by any other distributor*:*

(i) 24 cents per gallon beginning July 1, 1993; and

(ii) 27 cents per gallon beginning July 1, 1994.

(2) Gasoline exported ~~shall~~ *may* not be included in the measure of the distributor's license tax.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 3. Section 15-70-321, MCA, is amended to read:

"**15-70-321. Tax on diesel fuel and volatile liquids.** *(1)* The department shall, under the provisions of rules issued by it, collect or cause to be collected from the owners or operators of motor vehicles a tax ~~in an amount equal to 20 cents~~, *as provided in subsection (2),* for each gallon of diesel fuel or other volatile liquid, except liquid petroleum gas, of less than 46 degrees A.P.I. (American petroleum institute) gravity test when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state or used in motor vehicles, motorized equipment, and the internal combustion of any ~~and all~~ engines, including stationary engines, used in connection with any ~~and all~~ work performed under any ~~and all~~ contracts pertaining to the construction, reconstruction, or improvement of any highway or street and their appurtenances awarded by any ~~and all~~ public agencies, including federal, state, county, municipal, or other political subdivisions.

(2) The tax imposed in subsection (1) is:

(a) 24 cents per gallon beginning July 1, 1993; and

(b) 27 cents per gallon beginning July 1, 1994."

Section 4. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; ~~15-70-101;~~ 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 5. **Effective date.** [This act] is effective July 1, 1993.

Approved May 3, 1993.

CHAPTER NO. 606

[SB 285]

AN ACT PROVIDING FOR UNIVERSAL HEALTH CARE ACCESS, HEALTH CARE PLANNING, AND COST CONTAINMENT; CREATING THE MONTANA HEALTH CARE AUTHORITY; PROVIDING FOR THE POWERS AND DUTIES OF THE AUTHORITY; REQUIRING A STATEWIDE UNIVERSAL HEALTH CARE ACCESS PLAN; REQUIRING A HEALTH CARE RESOURCE

MANAGEMENT PLAN; PROVIDING FOR SIMPLIFICATION OF HEALTH CARE EXPENSES BILLING; REQUIRING DEVELOPMENT OF UNIFORM CLAIM FORMS AND PROCEDURES; REQUIRING THE AUTHORITY TO CONDUCT STUDIES CONCERNING PRESCRIPTION DRUGS, LONG-TERM CARE, AND THE CERTIFICATE OF NEED PROCESS; CREATING HEALTH CARE PLANNING REGIONS; REQUIRING ESTABLISHMENT OF REGIONAL HEALTH CARE PLANNING BOARDS; PROVIDING FOR THE POWERS AND DUTIES OF REGIONAL BOARDS; REQUIRING THE ESTABLISHMENT OF A UNIFIED HEALTH CARE DATA BASE; REQUIRING HEALTH INSURER COST MANAGEMENT PLANS; TRANSFERRING TO THE AUTHORITY CERTAIN FUNCTIONS OF THE DEPARTMENT AND BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES RELATING TO STATE HEALTH PLANNING; PROVIDING A SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT; ALLOWING HEALTH CARE FACILITIES TO ENTER INTO COOPERATIVE AGREEMENTS WITH THE APPROVAL AND SUPERVISION OF THE AUTHORITY; AMENDING SECTION 50-1-201, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

(1) A statement of legislative intent is required for this bill because:

(a) [section 4] authorizes the Montana health care authority to adopt rules necessary to implement [sections 1 through 20]. In addition to those rulemaking matters addressed below, the authority may adopt rules governing such matters as its meetings, public hearings, and rules of procedure and rules of ethical conduct governing its members.

(b) [section 17] requires the Montana health care authority to adopt rules to establish regional health care planning boards within the health care planning regions established in [section 17] and to establish a procedure for selection of regional board members. The rules establishing the boards must specify the number of members, any relevant qualifications, and the operations and duties of the boards and must provide for a funding mechanism by grant from the authority. In addition, the rules must provide for consideration of a balance between rural and urban interests in the selection of regional board members. The procedure for selection of the board members must provide for public notice of the selection process.

(c) [section 10] grants the commissioner of insurance the authority to adopt rules specifying uniform health insurance claim forms and procedures. The forms should be based upon existing formats, be as short as possible, and be compatible with electronic data transmission.

(d) [section 19] requires the authority to adopt rules relating to the unified health care data base. The authority's rules must specify in comprehensive detail what information is required to be provided by health care providers and the times at which the information is to be provided. The rules must also provide for audit procedures to determine the accuracy of the filed data. The confidentiality provisions must be consistent with other state laws governing the confidentiality of public records, including medical records, and must apply to employees of the authority and to others receiving or using records in the data base.

(e) [sections 23, 26, 27, 30, 31, and 34 through 36] require the commissioner of insurance to adopt rules governing small employer group health plans. In determining the basic benefits package, the commissioner shall make objective determinations, supported by available data, concerning the type of benefits required and shall determine that the benefits to be required are cost-effective pursuant to the Small Employer Health Insurance Availability Act. The commissioner may adopt rules providing for a transition period to allow small employer carriers to comply with certain provisions of the act. The commissioner may approve the establishment of additional classes of businesses only if the commissioner determines that the additional classes would enhance the efficiency and fairness of the small employer health insurance market. The commissioner is required under the act to adopt rules to implement and administer the act.

(f) [section 44] requires the authority to adopt rules implementing [sections 37 through 44]. The rules adopted by the authority must specify the form and content of applications for certificates of public advantage; details of the reconsideration, revocation, hearing, and appeal processes; and other matters as the authority determines necessary. The rules that are adopted by the authority must also provide the authority with direct supervision and control over the implementation of cooperative agreements between facilities.

(2) In preparing the plan required by [section 5], the authority shall consider the following matters for the following features of the plan:

(a) a unified health care budget. The authority shall consider the development of a state health care budget based upon the budgets submitted by the regional health care planning boards.

(b) caps for provider expenditures. The authority shall consider a process for adopting mandatory limits on provider expenses, including fees and salaries.

(c) global budgeting for all health care spending. The authority shall consider adopting a budgeting process, with public involvement, by which a unified health care budget is determined.

(d) controlled capital expenditures. The authority shall consider adopting a system to control capital expenditures.

(e) binding cap on overall expenditures. The authority shall consider adopting mandatory limits on all types of expenditures of health care providers, including capital expenditures, small equipment purchases, personnel costs, and all other types of operating costs.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State health care policy.** (1) It is the policy of the state of Montana to ensure that all residents have access to quality health services at costs that are affordable. To achieve this policy, it is necessary to develop a health care system that is integrated and subject to the direction and oversight of a single state agency. Comprehensive health planning through the application of a statewide health care resource management plan that is linked to a unified health care budget for Montana is essential.

(2) It is further the policy of the state of Montana that the health care system should:

(a) maintain and improve the quality of health care services offered to Montanans;

(b) contain or reduce increases in the cost of delivering services so that health care costs do not consume a disproportionate share of Montanans' income or the money available for other services required to ensure the health, safety, and welfare of Montanans;

(c) avoid unnecessary duplication in the development and offering of health care facilities and services;

(d) encourage regional and local participation in decisions about health care delivery, financing, and provider supply;

(e) facilitate universal access to health sciences information;

(f) promote rational allocation of health care resources in the state; and

(g) facilitate universal access to preventive and medically necessary health care.

(3) It is further the policy of the state of Montana that regardless of whether or what form of a health care access plan is adopted by the legislature, the health care authority, health care providers, and other persons involved in the delivery of health care services need to increase their emphasis on the education of consumers of health care services. Consumers should be educated concerning the health care system, payment for services, ultimate costs of health care services, and the benefit to consumers generally of providing only services to the consumer that are reasonable and necessary.

Section 2. **Definitions.** For the purposes of [sections 1 through 20 and 37 through 44], the following definitions apply:

(1) "Authority" means the Montana health care authority created by [section 3].

(2) "Board" means one of the regional health care planning boards created pursuant to [section 17].

(3) "Certificate of public advantage" or "certificate" means a written certificate issued by the authority as evidence of the authority's intention that the implementation of a cooperative agreement, when actively supervised by the authority, receive state action immunity from prosecution as a violation of state or federal antitrust laws.

(4) "Cooperative agreement" or "agreement" means a written agreement between two or more health care facilities for the sharing, allocation, or referral of patients; personnel; instructional programs; emergency medical services; support services and facilities; medical, diagnostic, or laboratory facilities or procedures; or other services customarily offered by health care facilities.

(5) "Data base" means the unified health care data base created pursuant to [section 19].

(6) "Health care" includes both physical health care and mental health care.

(7) "Health care facility" means all facilities and institutions, whether public or private, proprietary or nonprofit, that offer diagnosis, treatment, and inpatient or ambulatory care to two or more unrelated persons. The term includes all facilities and institutions included in 50-5-101(19). The term does not apply to a facility operated by religious groups relying solely on spiritual means, through prayer, for healing.

(8) "Health insurer" means any health insurance company, health service corporation, health maintenance organization, insurer providing disability insurance as described in 33-1-207, and, to the extent permitted under federal law, any administrator of an insured, self-insured, or publicly funded health care benefit plan offered by public and private entities.

(9) "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession.

(10) "Management plan" means the health care resource management plan required by [section 8].

(11) "Region" means one of the health care planning regions created pursuant to [section 17].

(12) "Statewide plan" means one of the statewide universal health care access plans for access to health care required by [section 5].

Section 3. **Montana health care authority — allocation — membership.** (1) There is a Montana health care authority.

(2) The authority is allocated to the department of health and environmental sciences for administrative purposes as provided in 2-15-121.

(3) The authority consists of five voting members appointed by the governor. At least one member must represent consumer organizations. Members of the authority must be appointed as follows:

(a) Within 30 days of [the effective date of this section], the speaker and minority leader of the house of representatives shall select an individual with recognized expertise or interest, or both, in health care. The speaker and minority leader and the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

(b) Within 30 days of [the effective date of this section], the president and minority leader of the senate shall select an individual with recognized expertise or interest, or both, in health care. The president and minority leader and the person selected by them shall nominate by majority vote five individuals for appointment to the authority.

(c) Within 90 days of [the effective date of this section], the governor shall appoint from those nominated under subsections (3)(a) and (3)(b) five individuals to the authority.

(4) A vacancy must be filled in the same manner as original appointments under subsection (3), except that one individual must be selected under subsection (3)(a) and one under subsection (3)(b). The governor shall appoint from those nominated the individual to fill the vacancy.

(5) The presiding officer of the authority must be elected by majority vote of the voting members. The initial presiding officer must serve a 4-year term.

(6) Members serve terms of 4 years, except that of the members initially appointed, two members serve 4-year terms, two members serve 3-year terms, and one member serves a 2-year term, to be determined by lot.

(7) The directors of the department of social and rehabilitation services and the department of health and environmental sciences and the commissioner of insurance are nonvoting, ex officio members of the authority.

(8) The attorney general is an ex officio, nonvoting member of the authority only for the purpose of the authority's approval or denial of certificates of public advantage, supervision of cooperative agreements, and revocation of certificates of public advantage pursuant to [sections 37 through 44].

(9) A member shall acknowledge a direct conflict of interest in a proceeding in which the member has a personal or financial interest.

Section 4. **Administration of health care authority — reports — compensation.** (1) The authority shall employ a full-time executive director who shall conduct or direct the daily operation of the authority. The executive director is exempt from the application of 2-18-204, 2-18-205, 2-18-207, and 2-18-1011 through 2-18-1013 and serves at the pleasure of the authority. The executive director is the chief administrative officer of the authority. The executive director has the power of a department head pursuant to 2-15-112, subject to the policies and procedures established by the authority.

(2) The authority may delegate its powers and assign the duties of the authority to the executive director as it may consider appropriate and necessary for the proper administration of the authority. However, the authority may not delegate its rulemaking powers under [sections 1 through 20].

(3) The authority may:

(a) employ professional and support staff necessary to carry out the functions of the authority; and

(b) employ consultants and contract with individuals and entities for the provision of services.

(4) The authority may:

(a) apply for and accept gifts, grants, or contributions from any person for purposes consistent with 50-1-201 and [sections 1 through 20];

(b) adopt rules necessary to implement [sections 1 through 20]; and

(c) enter into contracts necessary to accomplish the purposes of [sections 1 through 20].

(5) The authority shall report to the legislature and the governor at least twice a year on its progress since the last report in fulfilling the requirements of [sections 1 through 20]. Reports may be provided in a manner similar to 5-11-210 or in another manner determined by the authority.

(6) Members of the authority must be paid and reimbursed as provided in 2-15-124.

(7) The authority shall make grants to the boards for the operation of the boards. The authority shall provide for uniform procedures for grant applications and budgets of the boards.

Section 5. **Statewide universal access plans required.** (1) On or before October 1, 1994, the authority shall submit a report to the legislature that contains the authority's recommendation for a statewide universal health care access plan based on a single payor system and a recommendation for a statewide universal access plan based on a regulated multiple payor system. Each statewide plan must contain recommendations that, if implemented, would provide for universally accessible, medically necessary, and preventive health care by October 1, 1995. Both plans must be voted on by the 1995 legislature. The legislature may return one or both plans to the authority for further development.

(2) For purposes of this section:

(a) a single payor system is a method of financing health care services predominantly through public funds so that each resident of Montana receives a uniform set of benefits as established through statute or administrative rule. Policies governing all aspects of the management of the single payor system would reside with state government, and benefits must be administered by a single entity.

(b) a regulated multiple payor system is a method of financing health care services through a mix of public and private funds so that each resident of Montana receives a uniform set of benefits as established by statute or administrative rule. State government has responsibility for regulating the multiple entities that provide benefits to residents, including regulations for enrollment, change in premium rates, payment rates to providers, and aggregate health expenditures.

Section 6. **Features of statewide plans.** (1) Each statewide plan under [section 5] must contain the features required by [sections 7 through 9 and 11] and this section.

(2) Each statewide plan must include:

(a) guaranteed access to health care services for all residents of Montana;

(b) a uniform system of health care benefits;

(c) a unified health care budget;

(d) portability of coverage, regardless of job status;

(e) a broad-based, public or private financing mechanism to fund health care services;

(f) consideration of the limitations of public funding;

(g) a system capped for provider expenditures;

(h) global budgeting for all health care spending;

(i) controlled capital expenditures;

(j) a binding cap on overall expenditures;

(k) policymaking for the system as a whole and accountability within state government;

(l) incentives to be used to contain costs and direct resources;

(m) administrative efficiencies;

(n) the appropriate use of midlevel practitioners, such as physician's assistants and nurse practitioners;

(o) mechanisms for reducing the cost of prescription drugs, both as part of and as separate from the uniform benefit plan;

(p) integration, to the extent possible under federal and state law, of benefits provided under the health care system with benefits provided by the Indian health service and the United States department of veteran affairs and benefits provided by the medicare and medicaid programs; and

(q) an actuarially sound estimate of the costs of implementing the plan through the year 2005.

(3) Nothing in [sections 7 through 9 and 11] or this section may be interpreted to prevent Montana residents from seeking health care services not provided in either or both statewide plans.

Section 7. **Cost containment.** (1) The statewide plans must contain a cost containment component, including annual cost containment targets. Except as otherwise provided in this section, each statewide plan must establish targets for cost containment so that by 1999, the annual average percentage increase in statewide health care costs does not exceed the average annual percentage increase in the gross domestic product, as determined by the U.S. department of commerce, for the 5 preceding years.

(2) The authority shall adopt processes and criteria for responding to exceptional and unforeseen circumstances that affect the health care system and the targets required in subsection (1), including such factors as population increases or decreases, demographic changes, costs beyond the control of health care providers, and other factors that the authority considers significant.

(3) The authority shall, at a minimum, include the following features in the cost containment component:

(a) global budgeting for all health care spending;

(b) a system for limiting demand of health care services and controlling unnecessary and inappropriate health care. The system may include prioritization of services that allows for consideration of an individual patient's prognosis.

(c) a system for reimbursing health care providers for services and health care items. The reimbursement system must provide that all payors, public or private, pay the same rate for the same health care services and items and that reimbursement for services is based predominantly upon the health care service provided rather than upon the discipline of the health care provider.

(d) a method of monitoring compliance with the targets required in subsection (1);

(e) expenditure targets for health care providers and facilities;

(f) disincentives for exceeding the targets established pursuant to subsection (3)(e), including reduction of reimbursement levels in subsequent years;

(g) reimbursement of health care providers and health care facilities that is based upon negotiated annual budgets or fees for services; and

(h) a plan by the authority, health care providers, health insurers, and health care facilities to educate the public concerning the purpose and content of the statewide plans.

Section 8. **Health care resource management plan.** (1) Each statewide plan must contain a health care resource management plan that takes into account the provisions of [section 7]. The management plan must provide for the distribution of health care resources within the regions established pursuant to [section 17] and within the state as a whole, consistent with the principles provided in subsection (2).

(2) The management plan must include:

(a) a statement of principles used in the allocation of resources and in establishing priorities for health services;

(b) identification of the current supply and distribution of:

(i) hospital, nursing home, and other inpatient services;

(ii) home health and mental health services;

(iii) treatment services for alcohol and drug abuse;

(iv) emergency care;

(v) ambulatory care services, including primary care resources;

(vi) nutrition benefits, prenatal benefits, and maternity care;

(vii) human resources;

(viii) health sciences library resources and services;

(ix) major medical equipment; and

(x) health screening and early intervention services;

(c) a determination of the appropriate supply and distribution of the resources and services identified in subsection (2)(b) and of the mechanisms that will encourage the appropriate integration of these services on a local or regional basis. To arrive at a determination, the authority shall consider the following factors:

(i) the needs of the statewide population, with special consideration given to the development of health care services in underserved areas of the state;

(ii) the needs of particular geographic areas of the state;

(iii) the use of Montana facilities by out-of-state residents;

(iv) the use of out-of-state facilities by Montana residents;

(v) the needs of populations with special health care needs;

(vi) the desirability of providing high-quality services in an economical and efficient manner, including the appropriate use of midlevel practitioners; and

(vii) the cost impact of these resource requirements on health care expenditures;

(d) a component that addresses health promotion and disease prevention and that is prepared by the department of health and environmental sciences in a format established by the authority;

(e) incentives to improve access to and use of preventive care; primary care services, including mental health services; and community-based care;

(f) incentives for healthy lifestyles;

(g) incentives to improve access to health care in underserved areas, including:

(i) a system by which the authority may identify persons with an interest in becoming health care professionals and provide or assist in providing health care education for those persons; and

(ii) tax credits and other financial incentives to attract and retain health care professionals in underserved areas; and

(h) a component that addresses integration of the plan, to the extent allowed by state and federal law, with services provided by the Indian health service and by the United States department of veterans affairs and by the medicare and medicaid programs.

(3) In adopting the management plan, the authority shall consider the regional health resource plans recommended by regional panels.

(4) The management plan must be revised annually in a manner determined by the authority.

(5) Prior to adoption of the management plan, the authority shall hold one or more public hearings for the purpose of receiving oral and written comment on a draft plan. After hearings have been concluded, the authority shall adopt the management plan, taking comments into consideration.

Section 9. **Health care billing simplification.** (1) Each statewide plan must contain a component providing for simplification and reduction of the costs associated with health care billing. In designing this component, the authority may consider:

(a) conversion from paper health care claims to standardized electronic billing; and

(b) creating a claims clearinghouse, consisting of a state agency or private entity, to receive claims from all health care providers for compiling, editing, and submitting the claims to payors.

(2) The health care billing component must include a method to educate and assist health care providers and payors who will use any health care billing simplification system recommended by the authority.

(3) The billing component must provide a schedule for a phasein of any health care billing simplification system recommended by the authority. The schedule must relieve health care providers, payors, and consumers of undue burdens in using the system.

Section 10. **Uniform claim forms and procedures.** (1) The commissioner of insurance, after consultation with the authority, may adopt by rule uniform health insurance claim forms and uniform standards and procedures for the use of the forms and processing of claims, including the submission of claims by means of an electronic claims processing system.

(2) The commissioner may contract with a private or public entity to administer and operate an electronic claims processing system. If the commissioner elects to contract for administration and operation of the system, the commissioner shall award a contract according to Title 18, chapter 4.

Section 11. **Other matters to be included in statewide plans.** (1) The statewide plans recommended by the authority must include:

(a) stable financing methods, including sharing of the costs of health care by health care consumers on an ability-to-pay basis through such mechanisms as copayments or payment of premiums;

(b) a procedure for evaluating the quality of health care services;

(c) public education concerning the statewide plans recommended by the authority; and

(d) phasein of the various components of the plans.

(2) (a) In order to reduce the costs of defensive medicine, the authority shall:

(i) conduct a study of a system for reducing the use of defensive medicine by adopting practice protocols that would give providers guidelines to follow for specific procedures;

(ii) conduct a study of tort reform measures, including limitations on the amount of noneconomic damages, mandated periodic payments of future damages, and reverse sliding scale limits on contingency fees; and

(iii) propose any changes, including legislation, that it considers necessary, including measures for compensating victims of tortious injuries.

(b) As part of its study under subsection (2)(a)(ii), the authority may consider changes in the Montana Medical Legal Panel Act.

(c) The recommendations of the authority must be included in its report containing the statewide plans.

(3) The authority shall conduct a study of the impacts of federal and state antitrust laws on health care services in the state and make recommendations, including legislation, to address those laws and impacts. The authority may include in its plans legislation in addition to [sections 37 through 44] that will enable health care providers and payors, including health insurers and consumers, to negotiate and enter into agreements when the agreements are likely to result in lower costs or in greater access or quality than would otherwise occur in the competitive marketplace. In proposing appropriate legislation concerning antitrust laws, the authority shall provide appropriate conditions, supervision, and regulation to protect against private abuse of economic power.

(4) The authority shall apply for waivers from federal laws necessary to implement recommendations of the authority enacted by the legislature and to implement those recommendations not requiring legislation.

Section 12. **Availability of plans — hearings on statewide plans.** (1) The authority shall make copies of the draft statewide plans widely available at public expense to interested persons and groups.

(2) The authority shall seek public comment on the development of each statewide plan required under [section 5]. In seeking public comment on the development of the authority's recommendations for each plan, the authority shall provide extensive, multimedia notice to the public and hold at least one public hearing in each of the health care planning regions established by [section 17]. The hearings must take place before the authority's report is submitted to the legislature. The authority shall consult with health care providers in the development of its recommendations for each statewide plan.

(3) The authority shall consider oral and written public comments on the statewide plans before recommending them to the legislature.

Section 13. **State purchasing pool — reports required.** (1) On or before December 15, 1994, and December 15, 1996, the authority shall report to the legislature on establishment of a state purchasing pool, including the number and types of groups and group members participating in the pool, the costs of administering the pool, the savings attributable to participating groups from the operation of the pool, and any changes in legislation considered necessary by the authority.

(2) On or before December 15, 1996, the authority shall report to the legislature its recommendations concerning the feasibility and merits of authorizing the authority to act as an insurer in pooling risks and providing benefits, including a common benefits plan, to participants of the purchasing pool.

Section 14. **Study of prescription drug cost and distribution.** The authority shall conduct a study of the cost and distribution of prescription drugs in this state. The study must consider the feasibility of various methods of reducing the cost of purchasing and distributing prescription drugs to Montana residents. The study must include the feasibility of establishing a prescription drug purchasing pool for distribution of drugs through pharmacists in this state. The results of the study, including the authority's recommendations for any necessary legislation, must be reported to the legislature by December 1, 1996. If the authority determines that feasible methods are available without need for legislation or appropriations, the authority shall implement that part or those parts of its recommendations.

Section 15. **Long-term care study and recommendations.** (1) The authority shall conduct a study of the long-term care needs of state residents and report to the public and the legislature the authority's recommendations, including any necessary legislation, for meeting those long-term care needs. The report must be available to the public on or before September 1, 1996, after which the authority shall conduct public hearings on its report in each region established under [section 17]. The authority shall present its report to the legislature on or before January 1, 1997.

(2) This section does not preclude the authority from recommending cost-sharing arrangements for long-term care services or from recommending that the services be phased in over time. The authority's recommendations must support and may not supplant informal care giving by family and friends and must include cost containment recommendations for any long-term care service suggested for inclusion.

(3) The authority's report must estimate costs associated with each of the long-term care services recommended and may suggest independent financing mechanisms for those services. The report must also set forth the projected cost to Montana and its citizens over the next 20 years if there is no change in the present accessibility, affordability, or financing of long-term care services in this state.

(4) The authority shall consult with the department of social and rehabilitation services in developing its recommendations under this section.

Section 16. **Study of certificate of need process.** (1) The authority shall conduct a study of the certificate of need process established under Title 50, chapter 5, part 3. The study must determine whether changes in the certificate of need process are necessary or desirable in light of the authority's recommendation for a single payor health care system required by [section 5]. The study must include consideration of the role, effect, and desirability of:

(a) maintaining the exemptions from the certificate of need process for hospitals and for offices of private physicians, dentists, and other physical and mental health care professionals; and

(b) maintaining the dollar thresholds for health care services, equipment, and buildings and for construction of health care facilities.

(2) The results of the study, including any recommendations for legislation and changes in an agency's policies or rules, must be reported to the legislature no later than December 1, 1994.

Section 17. **Health care planning regions and regional planning boards created — selection — membership.** (1) There are five health care planning regions. Subject to subsection (2), the regions must consist of the following counties:

(a) region I: Sheridan, Daniels, Valley, Phillips, Roosevelt, Richland, McCone, Garfield, Dawson, Prairie, Wibaux, Fallon, Custer, Rosebud, Treasure, Powder River, and Carter;

(b) region II: Blaine, Hill, Liberty, Toole, Glacier, Pondera, Teton, Chouteau, and Cascade;

(c) region III: Judith Basin, Fergus, Petroleum, Musselshell, Golden Valley, Wheatland, Sweet Grass, Stillwater, Yellowstone, Carbon, and Big Horn;

(d) region IV: Lewis and Clark, Powell, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Park, Gallatin, Madison, and Beaverhead;

(e) region V: Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli.

(2) (a) A county may, by written request of the board of county commissioners, petition the authority at any time to be removed from a health care planning region and added to another region.

(b) The authority shall grant or deny the petition after a public hearing. The authority shall give notice as the authority determines appropriate. The authority shall grant the petition if it appears by a preponderance of the evidence that the petitioning county's health care interests are more strongly associated with the region that the county seeks to join than with the region in which the county is located. If the authority grants the petition, the county is considered for all purposes to be part of the health care planning region as approved by the authority.

(3) Within each region, the authority shall establish by rule a regional health care planning board. Each board must include one member from each county within the region. The members on each board shall represent a balance of individuals who are health care consumers and individuals who are recognized for their interest or expertise, or both, in health care. Each regional board should attempt to achieve gender balance.

(4) The authority shall, within 30 days of appointment of its members, propose by rule a procedure for selecting members of boards. The authority shall select the members for each board within 180 days of appointment of the authority, using the selection procedure adopted by rule under this subsection. Vacancies on a board must be filled by using the authority's selection process.

(5) Regional board members serve 4-year terms, except that of the board members initially selected, at least three members serve for 2 years, at least three members serve for 3 years, and at least three members serve for 4 years, to be determined by lot. A majority of each regional board shall select a presiding officer. The presiding officer initially selected must serve a 4-year term. Board members must be compensated and reimbursed in accordance with 2-15-124.

Section 18. **Powers and duties of boards.** (1) A board shall:

(a) meet at the time and place designated by the presiding officer, but not less than quarterly;

(b) submit an annual budget and grant application to the authority at the time and in the manner directed by the authority;

(c) adopt procedures governing its meetings and other aspects of its day-to-day operations as the board determines necessary;

(d) develop regional health resource plans in the format determined by the authority that must address the health care needs of the region and address the development of health care services in underserved areas of the region and other matters;

(e) revise the regional plan annually;

(f) hold at least one public hearing on the regional plan within the region at the time and in the manner determined by the regional board;

(g) transmit the regional plan to the authority at the time determined by the authority;

(h) apply to the authority for grant funds for operation of the regional board and account, in the manner specified by the authority, for grant funds provided by the authority; and

(i) seek from public and private sources money to supplement grant funds provided by the authority.

(2) Regional boards may:

(a) recommend that the authority sanction voluntary agreements between health care providers and between health care consumers in the region that will improve the quality of, access to, or affordability of health care but that might constitute a violation of antitrust laws if undertaken without government direction;

(b) make recommendations to the authority regarding major capital expenditures or the introduction of expensive new technologies and medical practices that are being proposed or considered by health care providers;

(c) undertake voluntary activities to educate consumers, providers, and purchasers and promote voluntary, cooperative community cost containment, access, or quality of care projects; and

(d) make recommendations to the department of health and environmental sciences or to the authority, or both, regarding ways of improving affordability, accessibility, and quality of health care in the region and throughout the state.

(3) Each regional board may review and advise the authority on regional technical matters relating to the statewide plans required by [section 5], the common benefits package, procedures for developing and applying practice guidelines for use in the statewide plans, provider and facility contracts with the state, utilization review recommendations, expenditure targets, and uniform health care benefits and the impact of the benefits upon the provision of quality health care within the region.

Section 19. **Health care data base — information submitted — enforcement.** (1) The authority shall develop and maintain a unified health care data base that enables the authority, on a statewide basis, to:

(a) determine the distribution and capacity of health care resources, including health care facilities, providers, and health care services;

(b) identify health care needs and direct statewide and regional health care policy to ensure high-quality and cost-effective health care;

(c) conduct evaluations of health care procedures and health care protocols;

(d) compare costs of commonly performed health care procedures between providers and health care facilities within a region and make the data readily available to the public; and

(e) compare costs of various health care procedures in one location of providers and health care facilities with the costs of the same procedures in other locations of providers and health care facilities.

(2) The authority shall by rule require health care providers, health insurers, health care facilities, private entities, and entities of state and local governments to file with the authority the reports, data, schedules, statistics, and other information determined by the authority to be necessary to fulfill the purposes of the data base provided in subsection (1). Material to be filed with the authority may include health insurance claims and enrollment information used by health insurers.

(3) The authority may issue subpoenas for the production of information required under this section and may issue subpoenas for and administer oaths to any person. Noncompliance with a subpoena issued by the authority is, upon application by the authority, punishable by a district court as contempt pursuant to Title 3, chapter 1, part 5.

(4) The data base must:

(a) use unique patient and provider identifiers and a uniform coding system identifying health care services; and

(b) reflect all health care utilization, costs, and resources in the state and the health care utilization and costs of services provided to Montana residents in another state.

(5) Information in the data base required by law to be kept confidential must be maintained in a manner that does not disclose the identity of the person to whom the information applies. Information in the data base not required by law to be kept confidential must be made available by the authority upon request of any person.

(6) The authority shall adopt by rule a confidentiality code to ensure that information in the data base is maintained and used according to state law governing confidential health care information.

Section 20. **Health insurer cost management plans.** (1) (a) Except as provided in subsection (3), each health insurer shall:

(i) prepare a cost management plan that includes integrated systems for health care delivery; and

(ii) file the plan with the authority no later than January 1, 1994.

(b) The authority may use plans filed under this section in the development of a unified health care budget.

(2) The plans required by this section must be developed in accordance with standards and procedures established by the authority.

(3) The provisions of this section do not apply to dental insurance.

Section 21. Section 50-1-201, MCA, is amended to read:

"**50-1-201. Administration of state health plan.** The ~~department~~ *Montana health care authority created in [section 3]* is ~~hereby established as~~ the ~~sole and official~~ state agency to administer the state program for comprehensive health planning and ~~is hereby authorized to~~ *shall* prepare a plan for comprehensive state health planning. The ~~department~~ *authority* ~~is authorized to~~ *may* confer and cooperate with ~~any and all~~ other persons, organizations, or governmental agencies that have an interest in public health problems and needs. The ~~department~~ *authority,* while acting in this capacity as the ~~sole and official~~ state agency to administer and supervise the administration of the official comprehensive state health plan, is designated and authorized as the ~~sole and official~~ state agency to accept, receive, expend, and administer ~~any and all~~ funds ~~which are now available or which may be~~ donated, granted, bequeathed, or appropriated to it for the preparation, ~~and~~ administration, and ~~the~~ supervision of the preparation and administration of the comprehensive state health plan."

Section 22. **Short title.** [Sections 22 through 36] may be cited as the "Small Employer Health Insurance Availability Act".

Section 23. **Purpose.** (1) [Sections 22 through 36] must be interpreted and construed to effectuate the following express legislative purposes:

(a) to promote the availability of health insurance coverage to small employers regardless of health status or claims experience;

(b) to prevent abusive rating practices;

(c) to require disclosure of rating practices to purchasers;

(d) to establish rules regarding renewability of coverage;

(e) to establish limitations on the use of preexisting condition exclusions;

(f) to provide for the development of basic and standard health benefit plans to be offered to all small employers;

(g) to provide for the establishment of a reinsurance program; and

(h) to improve the overall fairness and efficiency of the small employer health insurance market.

(2) [Sections 22 through 36] are not intended to provide a comprehensive solution to the problem of affordability of health care or health insurance.

Section 24. **Definitions.** As used in [sections 22 through 36], the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of [section 27], based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all individual carriers of disability insurance and all carriers of group disability insurance, excluding the state group benefits plan provided for in Title 2, chapter 18, part 8, the Montana university system health plan, and any self-funded disability insurance plan provided by a political subdivision of the state.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a lower cost health benefit plan developed pursuant to [section 31].

(6) "Board" means the board of directors of the program established pursuant to [section 30].

(7) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, a health maintenance organization, and, to the extent permitted by the Employee Retirement Income Security Act of 1974, a multiple-employer welfare arrangement. For purposes of [sections 22 through 36], companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

(8) "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that claims experience, health status, and duration of coverage are not case characteristics for purposes of [sections 22 through 36].

(9) "Class of business" means all or a separate grouping of small employers established pursuant to [section 26].

(10) "Committee" means the health benefit plan committee created pursuant to [section 31].

(11) "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined to be a dependent in the health benefit plan covering the employee.

(12) "Eligible employee" means an employee who works on a full-time basis and who has a normal workweek of 30 hours or more. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.

(13) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(14) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include:

(a) accident-only, credit, dental, vision, specified disease, medicare supplement, long-term care, or disability income insurance;

(b) coverage issued as a supplement to liability insurance, workers' compensation insurance, or similar insurance; or

(c) automobile medical payment insurance.

(15) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(16) "Late enrollee" means an eligible employee or dependent who requests enrollment in a health benefit plan of a small employer following the initial enrollment period during which the individual was entitled to enroll under the terms of the health benefit plan, provided that the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent may not be considered a late enrollee if:

(a) the individual meets each of the following conditions:

(i) the individual was covered under qualifying previous coverage at the time of the initial enrollment;

(ii) the individual lost coverage under qualifying previous coverage as a result of termination of employment or eligibility, the involuntary termination of the qualifying previous coverage, the death of a spouse, or divorce; and

(iii) the individual requests enrollment within 30 days after termination of the qualifying previous coverage;

(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or

(c) a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(17) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(18) "Plan of operation" means the operation of the program established pursuant to [section 30].

(19) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(20) "Program" means the Montana small employer health reinsurance program created by [section 30].

(21) "Qualifying previous coverage" means benefits or coverage provided under:

(a) medicare or medicaid;

(b) an employer-based health insurance or health benefit arrangement that provides benefits similar to or exceeding benefits provided under the basic health benefit plan; or

(c) an individual health insurance policy, including coverage issued by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided under the basic health benefit plan, provided that the policy has been in effect for a period of at least 1 year.

(22) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(23) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to [section 30].

(24) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(25) "Small employer" means a person, firm, corporation, partnership, or association that is actively engaged in business and that, on at least 50% of its working days during the preceding calendar quarter, employed at least 3 but not more than 25 eligible employees, the majority of whom were employed within this state or were residents of this state. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of an association that:

(i) has been in existence for 1 year prior to [the effective date of sections 22 through 36];

(ii) provides a health benefit plan to employees of its members as a group; and

(iii) does not deny coverage to any member of its association or any employee of its members who applies for coverage as part of a group.

(26) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(27) "Standard health benefit plan" means a health benefit plan developed pursuant to [section 31].

Section 25. **Applicability and scope.** [Sections 22 through 35] apply to a health benefit plan marketed through a small employer that provides coverage to the employees of a small employer in this state if any of the following conditions are met:

(1) a portion of the premium or benefits is paid by or on behalf of the small employer;

(2) an eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium; or

(3) the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code.

Section 26. **Establishment of classes of business.** (1) A small employer carrier may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative costs that are related to the following reasons:

(a) The small employer carrier uses more than one type of system for the marketing and sale of health benefit plans to small employers.

(b) The small employer carrier has acquired a class of business from another small employer carrier.

(c) The small employer carrier provides coverage to one or more association groups that meet the requirements of 33-22-501(2).

(2) A small employer carrier may establish up to nine separate classes of business under subsection (1).

(3) The commissioner shall adopt rules to provide for a period of transition in order for a small employer carrier to come into compliance with subsection (2) in the case of acquisition of an additional class of business from another small employer carrier.

(4) The commissioner may approve the establishment of additional classes of business upon application to the commissioner and a finding by the commissioner that the action would enhance the fairness and efficiency of the small employer health insurance market.

Section 27. **Restrictions relating to premium rates.** (1) Premium rates for health benefit plans under [sections 22 through 36] are subject to the following provisions:

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For each class of business:

(i) the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate; or

(ii) if the Montana health care authority established by [section 3] certifies to the commissioner that the cost containment goal set forth in [section 7] is met on or before January 1, 1999, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage may not vary from the index by more than 20% of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for the class of business; and

(iii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate factors associated with all industry classifications by more than 15% of that coverage.

(f) In the case of health benefit plans delivered or issued for delivery prior to January 1, 1994, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (1)(b) until January 1, 1997. In that case, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and

(ii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(g) A small employer carrier shall:

(i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups.

(ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

(h) For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted network provision.

(i) The commissioner shall adopt rules to implement the provisions of this section and to ensure that rating practices used by small employer carriers are consistent with the purposes of [sections 22 through 36], including rules that ensure that differences in rates charged for health benefit plans by small employer carriers are reasonable and reflect objective differences in plan design, not including differences because of the nature of the groups.

(2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.

(3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:

(a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;

(b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;

(c) the provisions relating to renewability of policies and contracts; and

(d) the provisions relating to any preexisting condition.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with [sections 22 through 36] and that the rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by the small employer carrier at its principal place of business.

(c) A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of [sections 22 through 36] and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department.

Section 28. **Renewability of coverage.** (1) A health benefit plan subject to the provisions of [sections 22 through 36] is renewable with respect to all eligible employees or their dependents, at the option of the small employer, except in any of the following cases:

(a) nonpayment of the required premium;

(b) fraud or misrepresentation of the small employer or with respect to coverage of individual insureds or their representatives;

(c) noncompliance with the carrier's minimum participation requirements;

(d) noncompliance with the carrier's employer contribution requirements;

(e) repeated misuse of a restricted network provision;

(f) election by the small employer carrier to not renew all of its health benefit plans delivered or issued for delivery to small employers in this state, in which case the small employer carrier shall:

(i) provide advance notice of this decision under this subsection (1)(f) to the commissioner in each state in which it is licensed; and

(ii) at least 180 days prior to the nonrenewal of any health benefit plans by the carrier, provide notice of the decision not to renew coverage to all affected small employers and to the commissioner in each state in which an affected insured individual is known to reside. Notice to the commissioner under this subsection (1)(f) must be provided at least 3 working days prior to the notice to the affected small employers.

(g) the commissioner finds that the continuation of the coverage would:

(i) not be in the best interests of the policyholders or certificate holders; or

(ii) impair the carrier's ability to meet its contractual obligations.

(2) If the commissioner makes a finding under subsection (1)(g), the commissioner shall assist affected small employers in finding replacement coverage.

(3) A small employer carrier that elects not to renew a health benefit plan under subsection (1)(f) is prohibited from writing new business in the small employer market in this state for a period of 5 years from the date of notice to the commissioner.

(4) In the case of a small employer carrier doing business in one established geographic service area of the state, the rules set forth in this section apply only to the carrier's operations in that service area.

Section 29. **Availability of coverage — required plans.** (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier shall offer to small employers at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with [sections 22 through 36].

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to [section 26], the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a basic or standard health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) The provisions of this section are effective 180 days after the commissioner's approval of the basic health benefit plan and the standard health benefit plan developed pursuant to [section 31], provided that if the program created pursuant to [section 30] is not yet operative on that date, the provisions of this section are effective on the date that the program begins operation.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of [sections 22 through 36].

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not, because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit plan may not define a preexisting condition more restrictively than 33-22-216, except that the condition may be excluded for a maximum of 12 months.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to those services if the qualifying previous coverage was continuous to a date not less than 30 days prior to the submission of an application for new coverage. This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to a small employer when the small employer is not physically located in the carrier's established geographic service area;

(ii) to an employee when the employee does not work or reside within the carrier's established geographic service area; or

(iii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for any period of time for which the commissioner determines that requiring the acceptance of small employers in accordance with the provisions of subsection (1) would place the small employer carrier in a financially impaired condition.

Section 30. **Small employer carrier reinsurance program — board membership — plan of operation — criteria — exemption from taxation.** (1) There is a nonprofit entity to be known as the Montana small employer health reinsurance program.

(2) (a) The program must operate subject to the supervision and control of the board. The board consists of nine members appointed by the commissioner plus the commissioner or the commissioner's designated representative, who shall serve as an ex officio member of the board.

(b) (i) In selecting the members of the board, the commissioner shall include representatives of small employers, small employer carriers, and other qualified individuals, as determined by the commissioner. At least six of the members of the board must be representatives of small employer carriers, one from each of the five small employer carriers with the highest annual premium volume derived from health benefit plans issued to small employers in Montana in the previous calendar year and one from the remaining small employer carriers. One member of the board must be a person licensed, certified, or otherwise authorized by the laws of Montana to provide health care in the ordinary course of business or in the practice of a profession. One member of the board must be a small employer who is not active in the health care or insurance fields. One member of the board must be a representative of the general public who is employed by a small employer and is not employed in the health care or insurance fields.

(ii) The initial board members' terms are as follows: one-third of the members shall serve a term of 1 year; one-third of the members shall serve a term of 2 years; and one-third of the members shall serve a term of 3 years. Subsequent board members shall serve for a term of 3 years. A board member's term continues until that member's successor is appointed.

(iii) A vacancy on the board must be filled by the commissioner. The commissioner may remove a board member for cause.

(3) Within [60 days of the effective date of this section] and on or before March 1 of each year after that date, each assessable carrier shall file with the commissioner the carrier's net health insurance premium derived from health benefit plans issued in this state in the previous calendar year.

(4) Within 180 days after the appointment of the initial board, the board shall submit to the commissioner a plan of operation and may at any time submit amendments to the plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the program. The commissioner may, after notice and hearing, approve the plan of operation if the commissioner determines it to be suitable to ensure the fair, reasonable, and equitable administration of the program and if the plan of operation provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The plan of operation is effective upon written approval by the commissioner.

(5) If the board fails to submit a suitable plan of operation within 180 days after its appointment, the commissioner shall, after notice and hearing, promulgate and adopt a temporary plan of operation. The commissioner shall amend or rescind any temporary plan adopted under this subsection at the time a plan of operation is submitted by the board and approved by the commissioner.

(6) The plan of operation must:

(a) establish procedures for the handling and accounting of program assets and money and for an annual fiscal reporting to the commissioner;

(b) establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

(c) establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) establish procedures for collecting assessments from assessable carriers to fund claims incurred by the program;

(e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to fund administrative expenses incurred or to be incurred by the program; and

(f) provide for any additional matters necessary for the implementation and administration of the program.

(7) The program has the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition, the program may:

(a) enter into contracts as are necessary or proper to carry out the provisions and purposes of [sections 22 through 36], including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) take any legal action necessary to avoid the payment of improper claims against the program;

(d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance policies in accordance with the requirements of [sections 22 through 36];

(e) establish conditions and procedures for reinsuring risks under the program;

(f) establish actuarial functions as appropriate for the operation of the program;

(g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in operation of the program, policy and other contract design, and any other function within the authority of the program;

(h) to the extent permitted by federal law and in accordance with subsection (11)(c), make annual fiscal yearend assessments against assessable carriers and make interim assessments to fund claims incurred by the program; and

(i) borrow money to effect the purposes of the program. Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

(8) A reinsuring carrier may reinsure with the program as provided for in this subsection (8):

(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.

(b) A small employer carrier may reinsure an entire employer group within 60 days of the commencement of the group's coverage under a health benefit plan.

(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days following the commencement of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.

(d) (i) The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent until the carrier has incurred an initial level of claims for the employee or dependent of $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 20% of the next $100,000 of benefit payments during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subsection (d)(i) may not exceed a maximum limit of $25,000 in any calendar year with respect to any reinsured individual.

(ii) The board annually shall adjust the initial level of claims and maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

(e) A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan.

(f) A small employer group health benefit plan in effect before January 1, 1994, may not be reinsured by the program until January 1, 1997, and then only if the board determines that sufficient funding sources are available.

(g) A reinsuring carrier shall apply all managed care and claims-handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently with respect to reinsured and nonreinsured business.

(9) (a) As part of the plan of operation, the board shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The methodology must provide for the development of base reinsurance premium rates that must be multiplied by the factors set forth in subsection (9)(b) to determine the premium rates for the program. The base reinsurance premium rates must be established by the board, subject to the approval of the commissioner, and must be set at levels that reasonably approximate gross premiums charged to small employers by small employer carriers for health benefit plans with benefits similar to the standard health benefit plan, adjusted to reflect retention levels required under [sections 22 through 36].

(b) Premiums for the program are as follows:

(i) An entire small employer group may be reinsured for a rate that is one and one-half times the base reinsurance premium rate for the group established pursuant to this subsection (9).

(ii) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection (9).

(c) The board periodically shall review the methodology established under subsection (9)(a), including the system of classification and any rating factors, to ensure that it reasonably reflects the claims experience of the program. The board may propose changes to the methodology that are subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

(10) If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to the small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in [section 27].

(11) (a) Prior to March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and other appropriate gains and losses.

(b) To the extent permitted by federal law, each assessable carrier shall share in any net loss of the program for the year in an amount equal to the ratio of the total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery by each assessable carrier divided by the total premiums earned in the previous calendar year from health benefit plans delivered or issued for delivery by all assessable carriers in the state.

(c) The board shall make an annual determination in accordance with this section of each assessable carrier's liability for its share of the net loss of the program and, except as otherwise provided by this section, make an annual fiscal yearend assessment against each assessable carrier to the extent of that liability. If approved by the commissioner, the board may also make interim assessments against assessable carriers to fund claims incurred by the program. Any interim assessment must be credited against the amount of any fiscal yearend assessment due or to be due from an assessable carrier. Payment of a fiscal yearend or interim assessment is due within 30 days of receipt by the assessable carrier of written notice of the assessment. An assessable carrier that ceases doing business within the state is liable for assessments until the end of the calendar year in which the assessable carrier ceased doing business. The board may determine not to assess an assessable carrier if the assessable carrier's liability determined in accordance with this section does not exceed $10.

(12) The participation in the program as reinsuring carriers; the establishment of rates, forms, or procedures; or any other joint collective action required by [sections 22 through 36] may not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly or separately.

(13) The board, as part of the plan of operation, shall develop standards setting forth the minimum levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards, the board shall take into consideration the need to ensure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to small employers, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.

(14) The program is exempt from taxation.

(15) On or before March 1 of each year, the commissioner shall evaluate the operation of the program and report to the governor and the legislature in writing the results of the evaluation. The report must include an estimate of future costs of the program, assessments necessary to pay those costs, the

appropriateness of premiums charged by the program, the level of insurance retention under the program, the cost of coverage of small employers, and any recommendations for change to the plan of operation.

Section 31. **Health benefit plan committee — recommendations.** (1) The commissioner shall appoint a health benefit plan committee. The committee is composed of the following members:

(a) one health care provider;

(b) one representative of the health insurance industry;

(c) one employee of a small employer;

(d) one member of a labor union; and

(e) one representative of the general public who may not represent the persons or groups listed in subsections (1)(a) through (1)(d).

(2) The committee shall, after holding a public hearing, recommend the form and level of coverages to be made by small employer carriers pursuant to [section 29].

(3) (a) The committee shall recommend benefit levels, cost-sharing levels, exclusions, and limitations for the basic health benefit plan and the standard health benefit plan. The committee shall design a basic health benefit plan and a standard health benefit plan that contain benefit and cost-sharing levels that are consistent with the basic method of operation and the benefit plans of health maintenance organizations, including any restrictions imposed by federal law.

(b) The plans recommended by the committee must include cost containment features, such as:

(i) utilization review of health care services, including review of the medical necessity of hospital and physician services;

(ii) case management;

(iii) selective contracting with hospitals, physicians, and other health care providers;

(iv) reasonable benefit differentials applicable to providers that participate or do not participate in arrangements using restricted network provisions; and

(v) other managed care provisions.

(c) The committee shall submit the health benefit plans described in subsections (3)(a) and (3)(b) to the commissioner within 180 days after the appointment of the committee. The commissioner shall adopt as a rule pursuant to Title 2, chapter 4, part 3, the health benefit plans required by [section 29(1)] to be offered in this state.

Section 32. **Periodic market evaluation — report.** The board, in consultation with members of the committee, shall study and report at least every 3 years to the commissioner on the effectiveness of [sections 22 through 36]. The report must analyze the effectiveness of [sections 22 through 36] in promoting rate stability, product availability, and coverage affordability. The report may contain recommendations for actions to improve the overall effectiveness, efficiency, and fairness of the small employer health insurance markets. The report must address whether carriers and producers are fairly and actively marketing or issuing health benefit plans to small employers in fulfillment of the purposes of [sections 22 through 36]. The report may contain recommendations for market conduct or other regulatory standards or action.

Section 33. **Waiver of certain laws.** A law that requires the inclusion of a specific category of licensed health care practitioners and a law that requires the coverage of a health care service or benefit do not apply to a basic health benefit plan delivered or issued for delivery to small employers in this state pursuant to [sections 22 through 36] but do apply to a standard health benefit plan delivered or issued for delivery to small employers in this state pursuant to [sections 22 through 36].

Section 34. **Administrative procedure.** The commissioner shall adopt rules in accordance with the Montana Administrative Procedure Act to implement and administer [sections 22 through 36].

Section 35. **Standards to ensure fair marketing.** (1) Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state. If a small employer carrier denies coverage other than the basic or standard health benefit plans to a small employer on the basis of claims experience of the small employer or the health status or claims experience of its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan or a standard health benefit plan.

(2) (a) Except as provided in subsection (2)(b), a small employer carrier or producer may not directly or indirectly engage in the following activities:

(i) encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer;

(ii) encouraging or directing small employers to seek coverage from another carrier because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) The provisions of subsection (2)(a) do not apply with respect to information provided by a small employer carrier or producer to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(3) (a) Except as provided in subsection (3)(b), a small employer carrier may not, directly or indirectly, enter into any contract, agreement, or arrangement with a producer that provides for or results in the compensation paid to a producer for the sale of a health benefit plan to be varied because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) Subsection (3)(a) does not apply with respect to a compensation arrangement that provides compensation to a producer on the basis of the percentage of a premium, provided that the percentage may not vary because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic area of the small employer.

(4) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to a producer, if any, for the sale of a basic or standard health benefit plan.

(5) A small employer carrier may not terminate, fail to renew, or limit its contract or agreement of representation with a producer for any reason related to the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employers placed by the producer with the small employer carrier.

(6) A small employer carrier or producer may not induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(7) Denial by a small employer carrier of an application for coverage from a small employer must be in writing and must state the reason or reasons for the denial.

(8) The commissioner may adopt rules setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(9) (a) A violation of this section by a small employer carrier or a producer is an unfair trade practice under 33-18-102.

(b) If a small employer carrier enters into a contract, agreement, or other arrangement with an administrator who holds a certificate of registration pursuant to 33-17-603 to provide administrative, marketing, or other services related to the offering of health benefit plans to small employers in this state, the administrator is subject to this section as if the administrator were a small employer carrier.

Section 36. **Restoration of terminated coverage.** The commissioner may promulgate rules to require small employer carriers, as a condition of transacting business with small employers in this state after [the effective date of this section], to reissue a health benefit plan to any small employer whose health benefit plan has been terminated or not renewed by the carrier after [6 months prior to the effective date of this section]. The commissioner may prescribe the terms for the reissuance of coverage that the commissioner finds are reasonable and necessary to provide continuity of coverage to small employers.

Section 37. **Finding and purpose.** The legislature finds that the goals of controlling health care costs and improving the quality of and access to health care will be significantly enhanced in some cases by cooperative agreements among health care facilities. The purpose of [sections 37 through 44] is to provide the state, through the authority, with direct supervision and control over the implementation of cooperative agreements among health care facilities for which certificates of public advantage are granted. It is the intent of the legislature that supervision and control over the implementation of these agreements substitute state regulation of facilities for competition between facilities and that this regulation have the effect of granting the parties to the agreements state action immunity for actions that might otherwise be considered to be in violation of state or federal, or both, antitrust laws.

Section 38. **Cooperative agreements allowed.** A health care facility may enter into a cooperative agreement with one or more health care facilities.

Section 39. **Certificate of public advantage — standards for certification — time for action by authority.** (1) Parties to a cooperative agreement may apply to the authority for a certificate of public advantage. The application for a certificate must include a copy of the proposed or executed agreement, a description of the scope of the cooperation contemplated by the agreement, and the amount, nature, source, and recipient of any consideration passing to any person under the terms of the agreement.

(2) The authority shall hold a public hearing on the application for a certificate before acting upon the application. The authority may not issue a certificate unless the authority finds that the agreement is likely to result in lower health care costs or in greater access to or quality of health care than would occur without the agreement. If the authority denies an application for a certificate for an executed agreement, the agreement is void upon the decision of the authority not to issue the certificate. Parties to a void agreement may not implement or carry out the agreement.

(3) The authority shall deny the application for a certificate or issue a certificate within 90 days of receipt of a completed application.

Section 40. **Reconsideration by authority.** (1) If the authority denies an application and refuses to issue a certificate, a party to the agreement may request that the authority reconsider its decision. The authority shall reconsider its decision if the party applying for reconsideration submits the request to the authority in writing within 30 calendar days of the authority's decision to deny the initial application.

(2) The authority shall hold a public hearing on the application for reconsideration. The hearing must be held within 30 days of receipt of the request for reconsideration unless the party applying for reconsideration agrees to a hearing at a later time. The hearing must be held pursuant to 2-4-604.

(3) The authority shall make a decision to deny the application or to issue the certificate within 30 days of the conclusion of the hearing required by subsection (2). The decision of the authority must be part of written findings of fact and conclusions of law supporting the decision. The findings, conclusions, and decision must be served upon the applicant for reconsideration.

Section 41. **Revocation of certificate by authority.** (1) The authority shall revoke a certificate previously granted by it if the authority determines that the cooperative agreement is not resulting in lower health care costs or greater access to or quality of health care than would occur in absence of the agreement.

(2) A certificate may not be revoked by the authority without giving notice and an opportunity for a hearing before the authority as follows:

(a) Written notice of the proposed revocation must be given to the parties to the agreement for which the certificate was issued at least 120 days before the effective date of the proposed revocation.

(b) A hearing must be provided prior to revocation if a party to the agreement submits a written request for a hearing to the authority within 30 calendar days after notice is mailed to the party under subsection (2)(a).

(c) Within 30 calendar days of receipt of the request for a hearing, the authority shall hold a public hearing to determine whether or not to revoke the certificate. The hearing must be held in accordance with 2-4-604.

(3) The authority shall make its final decision and serve the parties with written findings of fact and conclusions of law in support of its decision within 30 days after the conclusion of the hearing or, if no hearing is requested, within 30 days of the date of expiration of the time to request a hearing.

(4) If a certificate of public advantage is revoked by the authority, the agreement for which the certificate was issued is terminated.

Section 42. **Appeal.** A party to a cooperative agreement may appeal, in the manner provided in Title 2, chapter 4, part 7, a final decision by the authority to deny an application for a certificate or a decision by the authority to revoke a certificate. A revocation of a certificate pursuant to [section 41] does not become final until the time for appeal has expired. If a decision to revoke a certificate is appealed, the decision is stayed pending resolution of the appeal by the courts.

Section 43. **Record of agreements to be kept.** The authority shall keep a copy of cooperative agreements for which a certificate is in effect pursuant to [sections 37 through 44]. A party to a cooperative agreement who terminates the agreement shall notify the authority in writing of the termination within 30 days after the termination.

Section 44. **Rulemaking.** The authority shall adopt rules to implement [sections 37 through 43]. The rules shall include rules:

(1) specifying the form and content of applications for a certificate;

(2) specifying necessary details for reconsideration of denial of certificates, revocations of certificates, hearings required or authorized by [sections 37 through 43], and appeals; and

(3) to effect the active supervision by the authority of agreements between health care facilities. These rules may include reporting requirements for parties to an agreement for which a certificate is in effect.

Section 45. **Codification instructions.** (1) [Sections 1 through 20 and 37 through 44] are intended to be codified as an integral part of Title 50, and the provisions of Title 50 apply to [sections 1 through 20 and 37 through 44].

(2) [Sections 22 through 36] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 22 through 36].

Section 46. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act]

is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 47. **Effective dates.** (1) [Sections 1 through 20 and 44 through 46 and this section] are effective on passage and approval.

(2) [Section 21] is effective July 1, 1996.

(3) [Sections 22 through 28, 35, and 36] are effective January 1, 1994.

(4) [Sections 30 through 34] are effective July 1, 1993.

Approved May 3, 1993.

CHAPTER NO. 607

[SB 311]

AN ACT DEFINING A DIVISION ORDER FOR THE DISTRIBUTION OF OIL OR GAS PROCEEDS; ESTABLISHING CERTAIN TERMS REQUIRED TO BE IN A DIVISION ORDER; AND PROVIDING THAT THE DIVISION ORDER MAY NOT ALTER OR AMEND THE TERMS OF THE UNDERLYING OIL OR GAS LEASE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Division order — definition — effect.** (1) As used in this section, the term "division order" is limited to mean an instrument executed by the lessor of an oil or gas lease to authorize the sale of and direct the distribution of proceeds from the sale of oil, gas, casinghead gas, or other related hydrocarbons.

(2) A division order may not alter or amend the terms of the underlying oil or gas lease. A division order does not relieve a lessee of any liabilities or obligations under the terms of the underlying oil or gas lease.

(3) A division order must be in writing and:

(a) must warrant the division of interest;

(b) must contain the name, address, and tax identification number of each interest owner to whom disbursements are made by the holder of the proceeds from the sale of oil, gas, casinghead gas, or other related hydrocarbons;

(c) must contain a provision requiring notice of change of ownership; and

(d) may contain any other terms that are necessary to facilitate the transaction.

Approved May 4, 1993.

CHAPTER NO. 608

[SB 332]

AN ACT REVISING THE URBAN TRANSPORTATION DISTRICT LAWS; ALLOWING FOR THE APPOINTMENT OF A TRANSPORTATION DIS-

TRICT BOARD; ALLOWING LOCAL GOVERNING BODIES TO DETERMINE THE NUMBER OF BOARD MEMBERS, THE TERM OF OFFICE, THE SELECTION OF INITIAL MEMBERS, AND THE PROCEDURE FOR FILLING VACANCIES; AMENDING SECTIONS 7-14-212 AND 7-14-214, MCA; REPEALING SECTIONS 7-14-213, 7-14-215, 7-14-216, AND 7-14-217, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-212, MCA, is amended to read:

"**7-14-212. District to be governed by ~~elected~~ transportation board.** *(1)* The district ~~shall~~ *must* be governed by a transportation board. ~~The board shall consist of three members. After expiration of the term of the individuals appointed to the initial board, the board members shall be elected~~ *The commissioners and the governing bodies of each city or town included or partially included in the district shall determine if the board is to be elected or appointed.*

(2) The commissioners and the governing body by resolution shall:

(a) determine the number of board members;

(b) set the term of office;

(c) determine the makeup of the board with respect to the number of appointed members that will represent each county, city, or town;

(d) establish a procedure for selecting the initial members of an elected board. The initial members shall serve until the first county general election after their appointment.

(e) determine the number of candidates for an elected board whose names must be placed on the ballot in the county general election, based on the results of the primary election; and

(f) establish a procedure for filling vacancies on the board, including a provision for public notice.

(3) The commissioners and the governing body may, at any time, adopt a resolution changing the method by which the members of the board are selected. The resolution must contain a provision that the term of office of the current members of the board may not be shortened."

Section 2. Section 7-14-214, MCA, is amended to read:

"**7-14-214. Election of members of transportation board.** ~~(1)~~ Any registered elector in the district may file a petition of candidacy with the election administrator of the county where the district is located. ~~No~~ *A* filing fee ~~shall~~ *may not* be required. All candidates shall file a nonpartisan petition for candidacy containing the signatures of not less than 25 registered electors of the district. Except for the number of petition signers required, the petition shall be filed as provided in 13-14-113.

~~(2) The names of the six candidates receiving the highest number of votes in the primary election shall be placed on the ballots in the county general election.~~"

Section 3. **Repealer.** Sections 7-14-213, 7-14-215, 7-14-216, and 7-14-217, MCA, are repealed.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved May 3, 1993.

CHAPTER NO. 609

[SB 342]

AN ACT REVISING THE LITTLE DAVIS-BACON ACT TO PROVIDE PENALTIES FOR WAGE VIOLATIONS ON PUBLIC CONTRACTS; REVISING PROCEDURES FOR WAGE CLAIMS; AMENDING SECTIONS 18-2-401, 18-2-403, 18-2-407, 18-2-411, 18-2-423, AND 18-2-432, MCA; REPEALING SECTION 18-2-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Method for payment of standard prevailing wage.** (1) To fulfill the obligation to pay the standard prevailing rate of wages under 18-2-403, a contractor or subcontractor may:

(a) pay the amount of fringe benefits and the basic hourly rate of pay that is part of the standard prevailing rate of wages directly to the worker or employee in cash;

(b) make an irrevocable contribution to a trustee or a third person pursuant to a fringe benefit fund, plan, or program that meets the requirements of the Employee Retirement Income Security Act of 1974 or that is a bona fide program approved by the United States department of labor; or

(c) make payments using any combination of methods set forth in subsections (1)(a) and (1)(b) so that the aggregate of payments and contributions is not less than the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions that meet the requirements of the Employee Retirement Income Security Act of 1974, travel, or other bona fide programs approved by the United States department of labor, that is applicable to the district for the particular type of work being performed.

(2) The fringe benefit fund, plan, or program described in subsection (1)(b) must provide benefits to workers or employees for health care, pensions on retirement or death, life insurance, disability and sickness insurance, or bona fide programs that meet the requirements of the Employee Retirement Income Security Act of 1974 or that are approved by the United States department of labor.

(3) A private contractor or subcontractor shall file a copy of the fringe benefit fund, plan, or program described in subsection (2) with the department.

Section 2. Section 18-2-401, MCA, is amended to read:

"**18-2-401. Definitions.** Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is ~~hereby declared to be~~ a person who, at the time of ~~his~~ employment and immediately prior ~~thereto~~ *to the time of employment,* has lived in this state in ~~such~~ a manner and for ~~such~~ *a* time ~~as~~ *that* is sufficient to clearly justify the conclusion that ~~his~~ *the person's* past habitation in this state has been coupled with *an* intention to make it ~~his~~ *the person's* home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform ~~such~~ labor ~~shall under no circumstance~~ *may not* be ~~deemed~~ *considered* to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) "Department" means the department of labor and industry provided for in 2-15-1701.

(4) "District" means a prevailing wage rate district established as provided in 18-2-411.

(5) "Heavy *and* highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, *that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor* and travel allowance ~~provisions,~~ *that are* determined and established statewide for heavy *and* highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(6) "Labor" ~~is hereby defined to be~~ *means* all services in excess of $25,000 performed in construction, maintenance, or remodeling *work* in ~~all~~ *a* state, county, municipal, ~~and~~ school ~~work~~ *district, or political subdivision project* and does not include engineering, superintendence, management, or office or clerical work.

(7) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy *and* highway construction wage rates applicable to heavy *and* highway construction projects; or

(ii) those wages, other than heavy *and* highway construction wages, including fringe benefits for health and welfare and pension contributions, *that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor* and travel allowance ~~provisions, which~~ *that* are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages is a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, *that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the*

United States department of labor and *the rate of* travel allowance ~~provisions,~~ ~~shall~~ *must* be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(8) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 3. Section 18-2-403, MCA, is amended to read:

"**18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception.** (1) In any contract let for state, county, municipal, school, or heavy *and* highway construction, services, repair, or maintenance work under any law of this state, there ~~shall~~ *must* be inserted in the bid specification and the contract a provision requiring the contractor to give preference to the employment of bona fide Montana residents in the performance of the work.

(2) All public works contracts under subsection (1), except those for heavy *and* highway construction, must contain a provision requiring the contractor to pay*:*

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions ~~and travel allowance provisions~~, *that:*

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every contract for heavy *and* highway construction, there must be inserted a provision to require the contractor to pay the heavy *and* highway construction wage rates established statewide for ~~such~~ *the* project.

(4) A contract let for a project costing more than $25,000 and financed in whole or in part by tax-exempt industrial revenue bonds must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed.

(5) ~~No~~ *A* contract may *not* be let to any person, firm, association, or corporation refusing to execute an agreement with the ~~above-mentioned~~ provisions *of subsections (1) through (4)* in it, provided that in contracts involving the expenditure of federal-aid funds this part may not be enforced in such a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

(6) Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from ~~his~~ *the contractor's* obligation to pay the

standard prevailing wage rate and places ~~such~~ *the* obligation on the public contracting agency."

Section 4. Section 18-2-407, MCA, is amended to read:

"**18-2-407. Forfeiture for failure to pay *standard* prevailing ~~wages~~ *wage*.** (1) Any contractor, subcontractor, or employer who ~~shall pay~~ *pays* workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the ~~contracting agency the sum of $25 a day for each worker underpaid~~ *department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the unemployment insurance administration account, as provided in 39-51-406, and must be used for enforcement. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.*

(2) Whenever it ~~shall appear~~ *appears* to the contracting agency or to the Montana commissioner of labor that there ~~are~~ *is* insufficient ~~moneys~~ *money* due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. ~~Nothing in this~~ *This* part ~~shall~~ *does not* prevent the individual worker who has been underpaid or the commissioner of labor on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, *except that appeal of the hearing officer's decision is made directly to district court rather than to the board of personnel appeals.*"

Section 5. Section 18-2-411, MCA, is amended to read:

"**18-2-411. Creation of prevailing wage rate districts.** (1) Without taking into consideration heavy *and* highway construction wage rates, the commissioner shall divide the state into at least 10 prevailing wage rate districts.

(2) In initially determining the districts, the commissioner must:

(a) follow the rulemaking procedures in the Montana Administrative Procedure Act; and

(b) publish the reasons supporting the creation of each district.

(3) A district boundary may not be changed except for good cause and in accordance with the rulemaking procedures in the Montana Administrative Procedure Act.

(4) The presence of collective bargaining agreements in a particular area may not be the sole basis for the creation of boundaries of a district, nor may the absence of collective bargaining agreements in a particular area be the sole basis for changing the boundaries of a district.

(5) For each prevailing wage rate district established under this section, the commissioner shall determine the standard prevailing rate of wages to be paid employees, as provided in 18-2-401 and 18-2-402."

Section 6. Section 18-2-423, MCA, is amended to read:

"**18-2-423. Submission of payroll records.** If a complaint is filed with the department alleging noncompliance with 18-2-422, the department may require the project to submit to it certified copies of the payroll records for workers employed on that project. *A contractor or a subcontractor shall pay employees receiving an hourly wage on a weekly basis. If a wage violation complaint is filed with the department, the contractor or subcontractor shall provide the employee's payroll records to the department within 5 days of receiving the payroll request from the department.*"

Section 7. Section 18-2-432, MCA, is amended to read:

"**18-2-432. Penalty for violation.** (1) If ~~any~~ *a* person, firm, or corporation ~~shall fail~~ *fails* to comply with the provisions of this part, the state, county, ~~municipal~~ *municipality,* ~~or~~ school ~~officers who have~~ *district, or officer of a political subdivision that* executed the contract shall retain $1,000 of the contract price as liquidated damages for the violation of the terms of the contract and ~~said~~ *the* money ~~shall~~ *must* be credited to the proper funds of the state, county, ~~municipal~~ *municipality,* ~~or~~ school ~~districts~~ *district, or political subdivision.*

(2) ~~Any firm or corporation violating the provisions of this part shall have his or its license suspended in the manner prescribed by 37-71-301 for a period of 1 year after the date of final judgment of said violation by any district court or the supreme court~~ *Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or subcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any contracts or subcontracts that are subject to the provisions of this chapter.*

(3) Whenever ~~any~~ *an* action ~~shall have~~ *has* been instituted in ~~any~~ *a* district court in this state against any person, firm, or corporation for the violation of this part, the court in which ~~said~~ *the* action is pending ~~shall be and it~~ is ~~hereby~~ authorized to issue an injunction to restrain ~~any such~~ *the* person, firm, or corporation from proceeding with ~~his or its~~ *a* contract with the state, county, ~~municipal~~ *municipality,* ~~or~~ school ~~districts~~ *district, or political subdivision,* pending the final determination of ~~said~~ *the instituted* action ~~so instituted~~."

Section 8. **Repealer.** Section 18-2-405, MCA, is repealed.

Section 9. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [section 1].

Section 10. **Applicability.** [This act] applies to all prevailing wage claims filed with the department of labor and industry on or after July 1, 1993.

Section 11. **Effective date.** [This act] is effective on passage and approval.

Approved May 3, 1993.

CHAPTER NO. 610

[SB 271]

AN ACT ESTABLISHING A PILOT PROGRAM FOR LOCAL CITIZEN REVIEW BOARDS FOR FOSTER CARE PLACEMENTS; AMENDING SECTIONS 41-3-205, 41-3-1115, AND 41-3-1122, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 14] may be cited as the "Local Citizen Review Board Pilot Program Act".

Section 2. **Establishment of pilot program.** (1) The office of the supreme court administrator shall solicit written indication of interest from each youth court judge interested in having a local citizen review board established pursuant to [sections 1 through 14] within the jurisdiction of the youth court.

(2) (a) There is a local citizen review board screening committee. The committee is composed of the following members:

(i) a member of the house of representatives, designated by the speaker of the house;

(ii) a member of the senate, designated by the president of the senate;

(iii) a representative of the Montana judges' association, designated by the association; and

(iv) a representative of the office of the supreme court administrator, designated by the chief justice of the supreme court.

(b) The members designated pursuant to subsections (2)(a)(i) and (2)(a)(ii) must be from different political parties.

(3) The committee shall meet at a time agreeable to its members, and the members shall serve without additional compensation.

(4) The committee shall review the responses of youth court judges received pursuant to subsection (1) and shall designate judicial districts to operate a local citizen review board pilot program from among those courts expressing an interest in the program.

Section 3. **Establishment of local citizen review board — membership.** (1) Subject to the availability of funds, the youth court judge of a district designated pursuant to [section 2] to operate a pilot program shall establish a local citizen review board in the judicial district to review the case of each child assigned to foster care by the youth court of the judicial district, as provided in Title 41, chapter 5.

(2) A local citizen review board is composed of at least three and not more than five members appointed by the youth court judge of a judicial district designated pursuant to [section 2]. Each member appointed must be sworn in by a judge of the judicial district to which the member is appointed to serve.

(3) The youth court judge of a judicial district designated pursuant to [section 2] shall appoint the local citizen review board according to the following guidelines:

(a) Members of a local citizen review board must be recruited from groups with special knowledge of or interest in foster care and child welfare, which may include but is not limited to adoptive parents and members of the professions of law, medicine, psychology, social work, and education.

(b) As far as practicable, members of a local citizen review board shall represent the various socioeconomic and ethnic groups of the area served.

(c) A person employed by the department of family services, by a private agency regulated, certified, directed, or licensed by or contracting with the department of family services, or by a youth court may not serve on a local citizen review board.

(d) A member of a local citizen review board must be a resident of one of the counties of the judicial district that the member is appointed to serve.

(4) The members of a local citizen review board must be willing to serve without compensation.

Section 4. **Administration — training — procedures.** (1) Subject to the availability of funds, the youth court of a judicial district designated pursuant to [section 2] shall:

(a) establish and approve policies and procedures that have the force of law for the operation of the local citizen review board;

(b) approve and provide training programs for local citizen review board members;

(c) provide consultation services on request to the local citizen review board; and

(d) employ staff and provide for support services for the local citizen review board.

(2) The youth court of a judicial district designated pursuant to [section 2] shall, at the time prescribed by 5-11-210, prepare a report to the governor, the legislature, and the public regarding:

(a) state laws, policies, and practices affecting permanence and appropriate care for children in the custody of the department of family services and other agencies; and

(b) the effectiveness of the local citizen review board in bringing about permanence and appropriate care for children in the custody of the department of family services and other agencies.

(3) The youth court of a judicial district designated pursuant to [section 2] shall adopt procedures that have the force of law for the administration of the local citizen review board pilot program regarding:

(a) the removal of members of the local citizen review board;

(b) the time, content, and manner in which case plans for and case progress reports on a child assigned to foster care must be provided to the local citizen review board by the department of family services, other agencies, or individuals directly responsible for the care of the child;

(c) the provision of written notice of the review to the department of family services, any other agency directly responsible for the care or placement of a child, the parents or their attorneys, foster parents, surrogate parents, mature children or their attorneys, a court-appointed attorney or special advocate of any child, any county attorney or attorney general actively involved in the case, and other interested persons. The notice must include a statement that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(d) securing or excusing the presence at the review of caseworkers and other employees of the department of family services or other agencies directly responsible for the care of the child; and

(e) the manner in which the local citizen review board may remove cases from review when review is not required under federal law.

Section 5. **Removal of members — grounds.** Grounds for removal of a member of a local citizen review board under [section 4(3)] may include but are not limited to the following:

(1) nonparticipation by a local citizen review board member;

(2) a member establishing residence in a judicial district other than the judicial district in which the court the person was appointed to serve is located;

(3) violation of the confidentiality of information established under [section 7]; or

(4) other cause or grounds as necessary for the administration of the program.

Section 6. **Terms — officers — meetings.** (1) A local citizen review board member shall serve at the pleasure of the appointing authority. However, if not otherwise released from service on a local citizen review board, the following provisions apply:

(a) A member shall serve a term of 2 years, except that if a vacancy occurs, a successor must be appointed to serve the unexpired term.

(b) A member may be reappointed and continue to serve until a successor is appointed.

(2) A local citizen review board shall:

(a) elect annually from its membership a presiding officer and vice presiding officer to serve in the absence of the presiding officer; and

(b) meet at the nearest department of family services office or another place mutually agreed to by a majority of the local citizen review board as often as it considers necessary to carry out the duties of the board.

Section 7. **Confidentiality of information — penalty.** (1) Before beginning to serve on a local citizen review board, each member shall swear or affirm to the court that the member will keep confidential the information reviewed by the board and its actions and recommendations in individual cases.

(2) A member of a local citizen review board who violates the duty imposed by subsection (1) is guilty of a misdemeanor punishable by a fine not to exceed $1,000.

Section 8. **Access to records.** (1) Notwithstanding the provisions of 41-3-205, a local citizen review board has access to:

(a) any records of the youth court that are pertinent to the case; and

(b) any records of the department of family services or other agencies that would be admissible in a dispositional review hearing conducted pursuant to 41-3-406, including school records and reports of private service providers contained in the records of the department of family services or other agencies.

(2) All requested records not already before the local citizen review board must be submitted by the department of family services within 5 working days after receipt of a request. A local citizen review board and any staff provided for the board shall return all records and copies received from the department of family services to the department within 7 working days after completion of the review.

(3) A local citizen review board may retain a reference copy of case material used by the board to make its recommendation if:

(a) the material is necessary for the ongoing work of the local citizen review board with regard to the particular case or to work of the board; and

(b) the confidentiality of the material is continued and protected in the same manner as other material received from the department of family services. Material retained by the local citizen review boards is not subject to disclosure under the public records law.

(4) If a local citizen review board is denied access to requested records, it may request a hearing. The court may require the organization in possession of the records to show cause why the records should not be made available as provided by this section.

Section 9. **Assignment of cases for review.** Within 10 days of entry of the order of disposition or within 30 days of placement, whichever comes first, the youth court shall assign the case of each child in foster care to a local citizen review board and forward to the board a copy of the petition and the order of disposition for each child who is within the jurisdiction of the youth court and who has been placed in foster care.

Section 10. **Review — scope — procedures — immunity.** (1) Except for cases removed from review under procedures established under [section 4], the local citizen review board shall review the case of each child in foster care that is assigned by the youth court.

(2) The review must take place at times set by the local citizen review board. The first review may not be more than 6 months after the child is placed in foster care. Subsequent reviews must take place at least once every 6 months until the child is no longer within the jurisdiction of the youth court or no longer in foster care.

(3) The youth court, by rule of the court or on an individual case basis, may relieve the local citizen review board of its responsibility to review a case if a complete judicial review has taken place within 60 days prior to the next scheduled board review.

(4) The local citizen review board shall review any case in which a petition to terminate parental rights has been denied as soon as practical but no later than 45 days after the denial.

(5) After reviewing each case, the local citizen review board shall prepare written findings and recommendations with respect to:

(a) whether reasonable efforts were made prior to the placement to prevent or to eliminate the need for removal of the child from the home and to make it possible for the child to be returned home;

(b) the continuing need for and appropriateness of the placement;

(c) compliance with the case plan;

(d) the progress that has been made toward alleviating the need for placement;

(e) a likely date by which the child may be returned home or placed for adoption;

(f) other problems, solutions, or alternatives that the local citizen review board determines should be explored; and

(g) whether the youth court should appoint an attorney or other person as special advocate to represent or appear on behalf of the child pursuant to 41-3-303.

(6) Whenever a member of a local citizen review board has a potential conflict of interest in a case being reviewed, the member shall declare to the board the nature of the potential conflict prior to participating in the case review. The following provisions apply:

(a) The declaration of the member must be recorded in the official records of the local citizen review board.

(b) If, in the judgment of the majority of the local citizen review board, the potential conflict of interest may prevent the member from fairly and objectively reviewing the case, the board may remove the member from participation in the review.

(7) The local citizen review board shall keep accurate records and retain the records on file. The local citizen review board shall send copies of its written findings and recommendations to the youth court, the department of family services, and other participants in the review.

(8) The local citizen review board may hold joint or separate reviews for groups of siblings.

(9) The local citizen review board may disclose to parents and their attorneys, foster parents, mature children and their attorneys, and other persons authorized by the board to participate in the case review the records disclosed to the board pursuant to [section 8]. Before participating in a local citizen review board case review, each participant, other than parents and children, shall swear or affirm to the board that the participant will keep confidential the information disclosed by the board in the case review and will disclose it only as authorized by law.

Section 11. **Recommendations by board.** In addition to reviewing individual cases of children in foster care, a local citizen review board may make recommendations to the youth court and to the department of family services concerning foster care services, policies, procedures, and laws.

Section 12. **Presence of certain employees at meetings of board.** (1) Unless excused from doing so by the local citizen review board, the department of family services and any other agency directly responsible for the care and placement of the child shall require the presence of any employees having knowledge of the case at board meetings.

(2) The local citizen review board may require the presence of specific employees of the department of family services or any other agency or other persons at board meetings. If an employee fails to be present at the meeting, the local citizen review board may request a court order. The court may require the employee to be present and show cause why the employee should not be compelled to appear before the local citizen review board.

(3) As used in this section, "presence" includes telephone participation, except that the caseworker on the case at the time of the meeting must be physically present if required.

Section 13. **Court review of findings and recommendations of board.** (1) Upon receipt of findings and recommendations from the local citizen review board, the youth court shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. If the youth court finds it appropriate, the youth court may on its own motion schedule a review hearing.

(b) cause the findings and recommendations of the local citizen review board to become part of the youth court file; and

(c) give the local citizen review board written notice if the youth court modifies, alters, or takes action on a case as a result of the board's recommendations or refuses to take action on the board's recommendations in any case.

(2) Upon receipt of findings and recommendations from the local citizen review board, the department of family services shall:

(a) review the findings and recommendations of the local citizen review board within 10 days. The recommendations must be implemented and the case plan modified as the department of family services considers appropriate and as resources permit.

(b) give the local citizen review board written notice as soon as practicable, but in no case later than 7 days after the review is completed, if the department of family services does not intend to implement the recommendations; and

(c) include the findings and recommendations of the local citizen review board as part of the case file of the department of family services.

(3) Upon its own motion or upon the request of the department of family services, the local citizen review board, or any interested party, the youth court may appoint an attorney or other person as special advocate to represent or appear on behalf of the child. Subject to the direction of the youth court, the court-appointed special advocate shall:

(a) investigate all relevant information about the case;

(b) advocate for the child, ensuring that all relevant facts are brought before the court;

(c) facilitate and negotiate to ensure that the youth court, the department of family services, and the child's attorney fulfill their obligations to the child in a timely fashion; and

(d) monitor all youth court orders to ensure compliance and to bring to the youth court's attention any change in circumstance that may require modification of the youth court's order.

Section 14. **Dispositional review hearing by youth court.** (1) The youth court shall conduct a dispositional review hearing within 18 months after the original placement and conduct a review hearing periodically during the continuation of foster care. Unless good cause otherwise is shown, the youth court shall conduct a dispositional review hearing at any time upon the request of the department of family services, an agency directly responsible for care or placement of the child, a parent whose parental rights have not been terminated, an attorney for the child, a court-appointed special advocate, or a local citizen review board. The youth court shall schedule the hearing as soon as possible after receiving a request.

(2) The court may order that the child or any other person be present during the hearing.

(3) The court shall notify the parties listed in subsection (1) and any other interested parties of the hearing. The notice must state the time and place of the hearing. Upon request of the youth court, the department of family services or other legal custodian of the child shall provide the youth court with information concerning the whereabouts and identity of the parties.

(4) The youth court shall enter an order within 20 days after the review hearing. If the child is in foster care, the order must include a determination of:

(a) whether the child should be returned to the parent;

(b) whether the child should be placed for adoption;

(c) whether the child should continue in foster care for a specified period; or

(d) whether, because of special needs or circumstances, the child should be placed in the permanent custody or guardianship of a responsible relative or other individual or should continue in foster care on a permanent or long-term basis.

(5) If the court determines that the child must be placed or must continue in foster care or must be placed in the custody or guardianship of a responsible relative or other individual, the youth court shall enter written findings specifying why placement with parents or adoption is not appropriate. If the current placement is not expected to be permanent, the youth court shall specify a projected timetable for return of the child to the child's home or for permanent placement. If the timetable set forth by the youth court is not met, the department of family services shall promptly notify the youth court and the parties.

(6) In the course of the dispositional review hearing, the youth court may determine the adequacy of and compliance with the case plan and case progress report. In addition to other orders, the youth court may:

(a) order the department of family services to develop or to expand a case plan or case progress report that must be submitted within 10 days after the hearing;

(b) set a court hearing at a specific later time;

(c) direct the local citizen review board to review the status of the child prior to its next review, as provided in [section 10];

(d) order the department of family services or other agency directly responsible for the child to modify the care, placement, or supervision of the child; and

(e) determine whether the department of family services or other agency directly responsible for the child has made reasonable efforts to reunify the family.

(7) The dispositional review hearing must be conducted in the manner provided in 41-3-406.

(8) Any decision of the youth court made pursuant to the dispositional review hearing is a final order for the purposes of 41-3-406.

Section 15. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department of social and rehabilitation services, the department of family services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect ~~shall~~ *must* be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds ~~such~~ disclosure to be necessary for the fair resolution of an issue before it.

(3) Records may also be disclosed to the following persons or entities in this state or any other state:

(a) a department, agency, or organization, including federal agencies, legally authorized to receive, inspect, or investigate reports of child abuse or neglect;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records;

(c) a licensed health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or ~~his~~ *the child's* guardian ad litem;

(f) the members of an interdisciplinary child protective team authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan;

(g) a department or agency investigating an applicant for a license to operate a youth care facility, day-care facility, or child-placing agency if the investigation is based on a substantiated report and the applicant is notified of the investigation;

(h) an employee of the department if disclosure of the records is necessary for administration of programs designed to benefit the child;

(i) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(j) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(k) a county attorney or peace officer if disclosure is necessary for the investigation or prosecution of a case involving child abuse or neglect;

(l) a foster care review committee established under 41-3-1115 *or, when applicable, a local citizen review board established under [sections 1 through 14]*;

(m) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer as provided in 41-3-202;

(n) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in subsection (3); or

(o) members of a local interagency staffing group provided for in 52-2-203.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in the records to anyone other than the persons described in subsection (3)(a).

(5) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies."

Section 16. Section 41-3-1115, MCA, is amended to read:

"**41-3-1115. Foster care review committee.** (1) ~~In~~ *Except as provided in [sections 1 through 14], in* every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than five or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court;

(d) a representative of a local school district;

(e) if the child whose care under review is an Indian, someone, preferably an Indian person, knowledgeable about Indian cultural and family matters who is appointed effective only for and during that review; and

(f) if there is one, the foster parent of the child whose care is under review. The foster parent's appointment is effective only for and during that review.

(2) When a child is in foster care under the supervision of the department or if payment for care is made pursuant to 41-3-1122, the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with ~~him~~ *the judge* on all matters pertaining to the foster care of a child before the youth court."

Section 17. Section 41-3-1122, MCA, is amended to read:

"**41-3-1122. Payment for support of youth in need of care, youth in need of supervision, or delinquent youth — reimbursement by county.** (1) Whenever a youth who is a youth in need of care, a youth in need of supervision, or a delinquent youth is placed by the department of family services in a youth care facility, the department shall pay, within the limits of the appropriation for that purpose, a foster care payment to the youth care facility at a rate established by the department for board, clothing, personal needs, treatment, and room of the youth.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of the youth for no more than one-half of the nonfederal share of the payments so made during the month. The county must make reimbursement to the department within 20 days after the claim is presented.

(3) Except as provided in subsection (4), when a county's level of expenditure for any year reaches the level of reimbursement for foster care in fiscal year 1987, the county has no further obligation for foster care expenditures.

(4) If a county's level of expenditure for foster care in fiscal year 1987 is $10,000 or less, the county's level of expenditure for purposes of determining the county's reimbursement specified in subsection (3) is the level of expenditures for fiscal year 1987 or the average of expenditures for fiscal years 1984 through 1987, whichever is less.

(5) The department shall conduct or arrange for the review required under 41-3-1115, *or when applicable, [section 10]* of a youth placed in a youth care facility if the youth is placed by the department."

Section 18. **Contingency provision.** [This act] is contingent upon the following appropriations being included in House Bill No. 2 or another appropriation bill passed and approved for the 1995 biennium:

(1) There is appropriated to the department of family services $10,513 from the general fund for the biennium ending June 30, 1995, for the purposes of implementing [this act]. There is appropriated to the Montana supreme court $113,232 from the general fund for the biennium ending June 30, 1995, for the purposes of implementing [this act].

(2) [This act] is void if subsection (1) is not included in an appropriation bill for the 1995 biennium that is passed and approved.

Section 19. **Effective date.** [This act] is effective July 1, 1993.

Approved May 5, 1993.

CHAPTER NO. 611

[SB 72]

AN ACT AMENDING THE ATMOSPHERIC WATER WEATHER MODIFICATION LAW BY INCLUDING IN THE APPLICATION REVIEW PROCESS REQUIREMENTS FOR CERTAIN ENVIRONMENTAL INFORMATION AND A PUBLIC MEETING; REVISING THE PERMIT ISSUANCE PROCESS TO INCLUDE PAYMENT OF COSTS, CRITERIA FOR DETERMINING WHAT CONSTITUTES THE GENERAL WELFARE AND THE PUBLIC GOOD AND PUBLIC HEARING PROCEDURES; PROVIDING A STATEMENT OF POLICY; SUSPENDING ACTION BY THE BOARD OF NATURAL RESOURCES AND CONSERVATION ON APPLICATIONS FOR WEATHER MODIFICATION ACTIVITY IF THE PRIMARY BENEFIT OF THE WEATHER MODIFICATION ACTIVITY IS OUTSIDE MONTANA; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO SUBMIT TO THE LEGISLATIVE WATER POLICY COMMITTEE A REPORT ON ANY SUSPENDED APPLICATIONS; AMENDING SECTIONS 85-3-202 AND 85-3-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-3-202, MCA, is amended to read:

"**85-3-202. Department to review applications.** *(1)* The department shall review all applications for weather modification activities~~, and the~~. *The department shall prepare a report and submit it to the board with an environmental impact statement prepared pursuant to Title 75, chapter 1, part 2. The report must contain information relative to all of the criteria applicable to issuance of a permit in 85-3-206. Prior to preparing the report, the department shall conduct at least one public meeting in the area affected by the proposed weather modification activity. The department's actual costs of conducting the public meeting, preparing the report, and preparing the environmental impact statement must be paid by the applicant.*

(2) The board may provide by rule for exempting from the license and permit requirements of this chapter:

~~(1)~~*(a)* research, development, and experiments by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations and their agents;

~~(2)~~*(b)* laboratory research and experiments;

~~(3)~~*(c)* activities of an emergency character for protection against fire, frost, sleet, or fog; and

~~(4)~~*(d)* activities normally engaged in for purposes other than those of inducing, increasing, decreasing, or preventing precipitation or hail."

Section 2. Section 85-3-206, MCA, is amended to read:

"**85-3-206. Permits — requirements and hearing.** (1) The permits ~~shall~~ *must* be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this chapter~~, only if:~~."

(2) Within 30 days after submission of the department's report required under 85-3-202, the board shall hold a hearing under Title 2, chapter 4, part 6, to determine whether to grant, conditionally grant, or deny the application for a permit. The board may not grant or conditionally grant an application unless all requirements of this section are satisfied and the applicant establishes by a preponderance of the evidence that the following criteria have been met:

(a) the applicant is licensed pursuant to this chapter;

(b) sufficient notice of intention ~~is~~ *has been* published;

(c) an applicant ~~furnishes~~ *has furnished* proof of financial responsibility in an amount to be determined by the board as required in 85-3-211~~;~~

(d) the fee for the permit ~~is~~ *has been* paid as required in 85-3-212 *and the department's costs incurred under 85-3-202 have been paid*;

(e) the weather modification and control activities to be conducted ~~are~~ *have been* determined by the board to be for the general welfare and the public good. *That determination must be based on a finding of whether the operation:*

(i) is reasonably conceived to improve water quantity or quality, reduce loss from weather hazards, provide economic benefits for the people of Montana, or advance scientific knowledge;

(ii) is designed to include adequate safeguards to minimize or avoid possible damage to the public health, safety, and welfare and to the environment; and

(iii) will adversely affect another operation for which a permit has been issued.

~~(2)~~*(3)* ~~If the board determines that a hearing is necessary, the department shall hold a public hearing in the area to be affected by the issuance of the permit. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing.~~ *The board may determine not to hold a public hearing only if after giving notice of a hearing, no person files a notice of intent to appear at the hearing to contest the issuance of a permit. If no hearing is held, the board may grant or conditionally grant a permit based on the information contained in the application and the department's report.*

(4) Costs incurred by the board in holding a hearing under subsection (2) must be paid by the applicant."

Section 3. **Statement of policy.** The legislature, pursuant to its mandate and authority under Article IX of the Montana constitution, declares that it is the policy of the state that before further development of certain atmospheric water resources within Montana may occur, the 1995 session of the legislature must be provided with information concerning the expected environmental impacts of any anticipated weather modification activities.

Section 4. **Suspension of action — report to legislature.** (1) Prior to April 30, 1995, the board may not grant an application for a proposed weather modification activity if the primary benefit of the weather modification activity is outside Montana.

(2) For any pending application or for any application filed after [the effective date of this act] for a permit to conduct weather modification activities suspended under subsection (1), the department of natural resources and conservation and the applicant shall, in consultation with the water policy committee, comply with the requirements of 85-3-202(1). The department shall submit the report and environmental impact statement to the water policy committee. The water policy committee shall consider the report and environmental impact statement and submit a final report to the legislature. The water policy committee need not file a weather modification report to the legislature if the department does not file a report and environmental impact statement with the water policy committee prior to October 1, 1994.

Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to applications currently pending with the department of natural resources and conservation on or after [the effective date of this act] and to applications currently pending with the department for which a commitment to a funding agreement exists for the preparation of an environmental impact statement.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved May 5, 1993.

CHAPTER NO. 612

[HB 121]

AN ACT EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; REPEALING SECTION 85-15-501, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-15-107, MCA, is amended to read:

"**85-15-107. Exemptions.** *(1)* The provisions of ~~85-15-105, 85-15-106,~~ 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, ~~85-15-501, and~~ 85-15-502, *and [section 4]* do not apply to*:*

(a) dams subject to a permit issued pursuant to 82-4-335 for the period during which the dam is subject to the permit~~.~~*;*

(b) ~~The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to~~ federal dams and reservoirs~~, to nonfederal dams and reservoirs located on~~

~~federal lands if they are subject to a dam safety review by a federal agency, or to~~*;*

(c) dams and reservoirs licensed and subject to inspection by the federal energy regulatory commission~~. The provisions of 85-15-105, 85-15-106, 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply to~~*; or*

(d) dams that are required to obtain a certificate of environmental compatibility and public need pursuant to 75-20-201 for the period during which the dam is subject to the certificate. ~~In addition, the provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-305, 85-15-401, 85-15-501, and 85-15-502 do not apply until July 1, 1990, to high-hazard dams that have been inspected by the U.S. army corps of engineers pursuant to P.L. 92-367 and for which resultant dam safety reports have been submitted to the owner.~~

(2) The provisions of 85-15-108 through 85-15-110, 85-15-209 through 85-15-216, 85-15-401, 85-15-502, and [section 4] do not apply to nonfederal dams and reservoirs located on federal lands if they are subject to a dam safety review by a federal agency.

(3) The provisions of 85-15-305 do not apply to dams and reservoirs at a national priority list site as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Public Law 96-510."

Section 2. **Purpose.** (1) The legislature finds that dams provide a variety of benefits to the state of Montana. These benefits include the regulation of streamflows for flood control; water storage for irrigation, for municipal, industrial, and stock water consumption, and for hydropower generation; improved opportunities for flatwater recreation; and improved fisheries. Additionally, dams play a crucial role in maintaining the vitality of Montana's economy. The state therefore has a legitimate and compelling interest in encouraging the construction of dams that conform to the water storage policy provided in 85-1-703.

(2) The legislature further finds that one impediment to the construction of new dams is the potential liability associated with dam construction and operation. The legislature understands the inherent risks to public safety associated with dam construction and operation but finds that compliance with the Montana Dam Safety Act reduces those risks to an acceptable level.

Section 3. Section 85-15-305, MCA, is amended to read:

"**85-15-305. Liability of owners for damage.** (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, nothing in this chapter relieves an owner of a dam or reservoir of any legal duty, obligation, or liability incident to its ownership or operation, including any damages resulting from leakage or overflow of water or floods caused by the failure ~~or rupture~~ of the dam or reservoir.

(2) The owner of a dam or reservoir that has been permitted by the department in accordance with this chapter *or that was designed and constructed under the supervision of an engineer and properly maintained* is, ~~not,~~ in the absence of negligence, *not* liable for damages *to persons or property*

resulting from flows of water from *failure of* the dam or reservoir. ~~which are of sufficient magnitude to exceed the limits of the 100-year floodplain as defined in 76-5-103.~~

(3) In addition, the owner of any dam or reservoir that has been permitted by the department in accordance with this chapter *or that was designed and constructed under the supervision of an engineer and properly maintained* may, without incurring liability, allow passage through the reservoir of inflows without diminution.

[(4) The limitation on liability provided in subsection (2) does not apply to a nonpermitted state-owned dam.]"

Section 4. **Civil penalty.** An owner of a dam with an impounding capacity of 50 acre-feet or greater measured at the maximum normal operating pool who fails to comply with a provision of this chapter or a rule or order of the department adopted or made pursuant to this chapter is subject to a civil penalty not to exceed $1,000. Each day of violation is a separate offense.

Section 5. **Repealer.** Section 85-15-501, MCA, is repealed.

Section 6. **Codification instruction.** [Section 4] is intended to be codified as an integral part of Title 85, chapter 15, part 5, and the provisions of Title 85, chapter 15, part 5, apply to [section 4].

Section 7. **Two-thirds vote required.** It is the intent of the legislature that the provisions of [section 3] apply to all qualifying state-owned dams as well as other dams. Because [section 3], when applied to state-owned dams, limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage. If [this act] fails to receive the required two-thirds vote, the bracketed language in [section 3(4)] is effective. If [this act] receives the required two-thirds vote, the bracketed language is void.

Section 8. **Applicability.** [This act] applies to causes of action accruing on or after October 1, 1993.

Approved May 5, 1993.

CHAPTER NO. 613

[HB 6]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS AND GRANTS UNDER THE WATER DEVELOPMENT PROGRAM AND THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM; AUTHORIZING LOANS FROM WATER DEVELOPMENT BOND PROCEEDS, RENEWABLE RESOURCE DEVELOPMENT BOND PROCEEDS, AND APPROPRIATE FUNDS FOR DEBT SERVICE; REAUTHORIZING GRANTS AND LOANS APPROVED BY THE 52ND LEGISLATURE; REALLOCATING CERTAIN RESOURCE INDEMNITY TRUST ACCOUNT INTEREST INCOME FOR WATER DEVELOPMENT PROGRAM GRANTS DURING THE BIENNIUM ENDING JUNE 30, 1995; APPROVING THE ISSUANCE OF COAL SEVERANCE TAX BONDS

TO PROVIDE FUNDS FOR LOANS TO POLITICAL SUBDIVISIONS AND LOCAL GOVERNMENTS FOR CERTAIN APPROVED WATER DEVELOPMENT PROJECTS; AUTHORIZING THE CREATION OF STATE DEBT; APPROPRIATING COAL SEVERANCE TAX INCOME FOR DEBT SERVICE; PLACING CONDITIONS UPON GRANTS AND LOANS; STATUTORILY APPROPRIATING FUNDS FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT TO THE ENVIRONMENTAL SCIENCE-WATER QUALITY INSTRUCTIONAL PROGRAMS AT NORTHERN MONTANA COLLEGE; AMENDING SECTIONS 15-38-202 AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations from water development and renewable resource development state special revenue accounts.** (1) The legislature finds that water development projects in this section meet the provisions of 17-5-702. The board of examiners may issue coal severance tax bonds in an amount not to exceed $3,855,242 for the purpose of making loans and financing state projects in the amount of $3,504,740, including the cost of issuance and establishing a reserve for the bonds in the amount of $350,477. Funds are appropriated for the cost of issuance, to a maximum of 4% of the amount of each bond sale.

(2) Because the legislature cannot appropriate individual grants to private entities, there is appropriated to the department of natural resources and conservation $100,000 during the 1995 biennium for grants to private persons. This appropriation is from money available in the water development state special revenue account and the renewable resource development account for grants for water development projects and activities under 85-1-604(3)(c). Grants must be awarded according to priorities established in subsections (4) and (5).

(3) There is appropriated to the department the interest earnings from the proceeds of water development bonds and renewable resource development bonds issued to finance loans authorized by [sections 1 through 11]. Interest earnings must be deposited in the water development debt service fund and the renewable resource development account, respectively.

(4) (a) There are appropriated to the department all other funds not appropriated under subsection (2) and available for grants to political subdivisions and local government entities up to the amount required to fund projects approved by [sections 1 through 11] from the water development state special revenue account and the renewable resource development account during the 1995 biennium. This appropriation is for grants and loans for:

(i) water development projects and activities under 85-1-604(3)(c);

(ii) renewable resource development projects under 90-2-111; and

(iii) projects under [sections 1 through 11].

(b) The funds appropriated in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (5), subject to the conditions set forth in [sections

1 through 11] and the contingencies described in the renewable resource and water development program January 1993 report to the 53rd legislature. The legislature, pursuant to 85-1-605 and 90-2-111, approves the grants listed in subsection (5), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted or used by higher-ranked projects and activities must be provided for projects and activities further down the priority list that would not otherwise receive funding. A grant funded by the reclamation and development grants program may not be funded under [sections 1 through 11].

(5) The following are the prioritized grant and loan projects and activities:

WATER DEVELOPMENT AND RENEWABLE RESOURCE DEVELOPMENTS PROGRAMS

	Recommended Funding	
Applicant/Project	Grant	Loan
MALTA IRRIGATION DISTRICT		
Water Use Efficiency Improvements	$ 50,000	$50,000
RICHLAND COUNTY		
Dam Evaluation and Design	60,300	
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION - WATER RESOURCES DIVISION		
Characteristics of Extreme Precip.	100,000	
TOWN OF RYEGATE		
Water System Improvement	50,000	150,000
YELLOWSTONE COUNTY		
Yellowstone River Project	50,000	
BUTTE-SILVER BOW LOCAL GOVERNMENT		
Municipal Compost Production	50,000	49,864
MONTANA DEPARTMENT OF STATE LANDS		
Reforestation Projects on State Lands	60,000	
HUNTLEY WATER AND SEWER DISTRICT		
Water System Rehabilitation	100,000	50,000
RUBY VALLEY CONSERVATION DISTRICT		
Upper Ruby Riparian Area Improvements	100,000	

TOWN OF WINNETT		
Sewer Reconstruction and Rehabilitation	50,000	50,000
FORT PECK RURAL WATER DISTRICT		
Water Engineering Study	40,000	
EAST GLACIER WATER AND SEWER DISTRICT		
Midvale Diversion Structure	25,905	76,537
TOWN OF NASHUA		
Water Storage System Improvements	50,000	
CARBON COUNTY		
Town of Roberts Water System Improvements	0	100,000
CHINOOK DIVISION IRRIGATION ASSOCIATION		
Irrigation Water Measuring Devices	34,217	65,783
CHINOOK DIVISION IRRIGATION ASSOCIATION		
Repair of Lohman Dam	36,173	63,827
CUSTER COUNTY		
County Recycling Project	4,725	
TOWN OF CIRCLE		
Water Quality Improvement Project	36,000	
EASTERN SANDERS CONSERVATION DISTRICT		
Accelerate Soil Survey on Forest Lands	99,000	
TOWN OF HOT SPRINGS		
Camas Therapy Center	150,000	
GLASGOW IRRIGATION DISTRICT		
Install Headgate Measuring Devices	50,000	50,000
HILGER COUNTY WATER AND SEWER DISTRICT		
Sewage and Collection Treatment Facilities	50,000	50,000
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION - WATER RESOURCES FIELD OFFICE		
Flathead Valley Coop. Ground Water Study	100,000	
LITTLE BEAVER CONSERVATION DISTRICT		
Water Reservations Implementation	47,318	

RAVALLI COUNTY		
Ground Water Vulnerability Assessment	70,672	
YELLOWSTONE COUNTY		
Shepherd Rural Water System Development	75,000	
If this project receives funding in House Bill No. 663, then this appropriation is void.		
This grant is contingent on the creation of a water district.		
HILL COUNTY		
Salinity Control Project	50,000	50,000
ROOSEVELT COUNTY CONSERVATION DISTRICT		
Recreational Enhancement of Missouri River	7,000	
DODSON IRRIGATION DISTRICT		
Water Use Efficiency Improvements	31,569	31,326
FLATHEAD JOINT BOARD OF CONTROL		
Fish Friendly Irrigation	44,500	54,500
TOWN OF ENNIS		
Water Storage & Distribution	100,000	
If this project receives funding in House Bill No. 663, then this appropriation is void.		

(6) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 1995 biennium pursuant to 17-7-302.

Section 2. **Opportunity to receive loans for projects not receiving grants.** A sponsor of a recommended project or activity on the prioritized list in [section 1] who is not a recipient of available grant funds must be offered the opportunity to receive loan funds for up to the total recommended project amount, subject to the conditions described in [sections 1 through 11]. The interest rate applicable to a loan must be the rate paid on bonds issued pursuant to [sections 1 through 11].

Section 3. **Approval of loans from bond proceeds.** The legislature, pursuant to 85-1-605, 85-1-606, and 90-2-107, approves loans to private sponsors approved by the department of natural resources and conservation during the 1995 biennium and the loans for projects and activities identified and described in [section 1] to public entities from coal severance tax bond proceeds authorized in [section 16].

Section 4. **Reauthorization of loans and grants approved.** The 52nd legislature, in Chapter 551, Laws of 1991, approved loans and grants from the water development bond account or the renewable resource development bond account for the town of Belt in the amount of a $100,000 loan; Sun Prairie Village water and sewer district, in the amount of a $250,000 loan; town of Chinook in the amount of a $200,000 loan; town of Ekalaka in the amount of a $49,975 grant and a $160,000 loan; town of Fairfield in the amount of a $14,169 loan; town of Neihart in the amount of a $150,000 loan; Stockett water and sewer district in the amount of a $50,000 grant and a $150,000 loan; Meagher County conservation district in the amount of a $37,500 grant and a $62,500 loan; and Fort Shaw irrigation district in the amount of a $50,000 grant and a $50,000 loan. Loans and grants for the entities described in this section are reauthorized. Loans for the reauthorized projects described in this section must be made from water development coal severance tax bonds authorized in [section 16].

Section 5. **Reallocation of resource indemnity trust account interest income.** Except for special departmental appropriation and notwithstanding any provisions of 85-1-604 to the contrary, all remaining interest income allocated to the water development state special revenue account from the resource indemnity trust fund by 15-38-202(2) during the 1995 biennium may be used only for the purposes set out in 85-1-604(3)(c).

Section 6. **Emergency grants.** There is appropriated to the department of natural resources and conservation up to $125,000 from the water development state special revenue account to be used for emergency projects. If these funds are not needed for emergencies, they may be used for grants approved in [section 1].

Section 7. **Conditions of loans and grants.** Disbursement of funds under [sections 1 through 11] for both loans and grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource and water development program project evaluations and recommendations report submitted to the 53rd legislature for the 1995 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a loan or grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan or grant as evidenced from the application to the department or from the proposal to the legislature.

Section 8. **Conditions for grants.** Grant funds must be disbursed in the order of priority listed in [section 1] as coal tax and resource indemnity trust account interest income revenue is received. A project approved by [sections 1 through 11] may not receive grant funds not collected and allocated to the water development state special revenue account or the renewable resource development account.

Section 9. **Conditions for loans.** Each sponsor authorized to receive a loan from water development bond proceeds or renewable resource development bond proceeds may be required to pay to the department of natural resources and conservation a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 10. **Private and discount purchase of loans.** A loan to a political subdivision or a local government entity and a bond, warrant, or note issued in evidence of a loan may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at private negotiated sale, notwithstanding the provisions of any other law applicable to a political subdivision or local government entity.

Section 11. **Other appropriations.** For an entity of state government that receives a grant or loan under [sections 1 through 11], there is appropriated the amount of the grant or loan upon award of the grant or loan by the department of natural resources and conservation. Grants to state entities from a previous biennium are reauthorized for completion of contract work.

Section 12. Section 15-38-202, MCA, is amended to read:

"**15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance.** (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-37-117, ~~shall~~ must be invested at the discretion of the board of investments. All the net earnings accruing to the resource indemnity trust fund ~~shall~~ must annually be added to the trust fund until it has reached the sum of $10 million. Thereafter, only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts ~~shall~~ must be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101; ~~and~~

(ii) beginning in fiscal year 1992, an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) beginning in fiscal year 1995, $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at northern Montana college to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs.

(b) The remainder of the interest income is allocated as follows:

(i) Beginning in fiscal year 1982, provided the amount in the resource indemnity trust fund is greater than $10 million, 30% of the interest income of the resource indemnity trust fund must be allocated to the water development state special revenue account created by 85-1-604.

(ii) Beginning in fiscal year 1988, 12% of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Beginning in fiscal year 1990, 8% of the interest income from the resource indemnity trust fund must be allocated to the renewable resource development account provided for in Title 90, chapter 2.

(iv) Beginning in fiscal year 1990, 46% of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(v) Beginning in fiscal year 1990, 4% of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds from the resource indemnity trust interest account other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 13. Section 17-7-502, mca, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101;

75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

Section 14. **Coordination instruction.** If House Bill No. 608 is not passed and approved, then [sections 12 and 13 of this act] are void.

Section 15. **Appropriation.** (1) There is appropriated from fiscal year 1993 ending fund balance in the water development and renewable resource development account $100,000 to the department of natural resources and conservation for the Missoula county linda vista sewer inceptor project.

(2) The remaining fiscal year 1993 reverted balance of the state water project appropriation for the department of natural resources and conservation is allocated to those projects in [section 1(5)] that may not receive funding due to limitations of 1995 biennium revenue.

Section 16. **Appropriation — creation of debt for coal severance tax bonds.** (1) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [sections 1 through 3] to be issued pursuant to Title 17, chapter 5, part 7, pursuant to the provisions of [sections 1 through 3], and pursuant to the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

(2) The legislature, through the enactment of this section, in accordance with Article VIII, section 8, of the Montana constitution, authorizes the creation of a state debt in an amount not to exceed $3,855,242 for loans to political subdivisions and local government entities for water development projects approved in [sections 1 through 3] and for funding a reserve for the coal severance tax bonds authorized to fund those projects.

(3) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and to secure the most advantageous financial arrangements for the state.

(4) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the water development state special revenue account and may be used for the purposes allowed under 85-1-604(3)(c).

(5) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 17. **Requirements for approval of state debt.** Because [section 16] authorizes the creation of a state debt and appropriation of coal severance tax bond fund deposits and appropriates money that would otherwise be deposited in the coal severance tax permanent fund, a vote of three-fourths of the members of each house of the legislature is required for passage of [section 16].

Section 18. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. **Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 12 and 13] are effective July 1, 1993.

Approved April 29, 1993.

CHAPTER NO. 614

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE MADE BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1993; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE TO FISCAL YEAR 1994; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Time limits.** The appropriations contained in [this act] are intended to provide for the cost of necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it was appropriated unless the appropriation is continued by [this act].

Section 2. **Totals not appropriations.** The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 3. **Appropriations.** The following money is appropriated, subject to the terms and conditions of [this act]:

Agency and Program	FY	Amount	Fund
DEPARTMENT OF JUSTICE			
Highway Patrol	1993	$175,000	Federal Special
Highway Patrol	1993	5,000	Federal Special
Law Enforcement	1993	19,682	Federal Special
Highway Patrol SFST Manuals	1993	1,000	Federal Special
DEPARTMENT OF TRANSPORTATION			
Federal Transit Administration (Pass-Through)		184,323	State Special
Federal Transit Administration Discretionary Grant		138,189 322,442	State Special Federal Special
Motor Pool	1993	593,500	Proprietary
DEPARTMENT OF REVENUE			
Director's Office	1994	9,108	Federal Special
CRIME CONTROL DIVISION			
D.A.R.E.	1993	3,800	State Special

All remaining fiscal year 1993 federal budget amendment authority for victim assistance, drug enforcement, drug education, and missing children is authorized to continue to fiscal year 1994.

Agency and Program	FY	Amount	Fund
STATE LIBRARY			
Literacy Resource Center	1994	14,915	Federal Special
LSCA VI Literacy Program	1994	17,360	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for the literacy resource center and for the LSCA VI literacy program is authorized to continue to fiscal year 1994.

Agency and Program	FY	Amount	Fund
DEPARTMENT OF ADMINISTRATION			
General Services-Central Mail	1993	220,000	Proprietary
Video Telecom Upgrade	1993	235,109	Proprietary
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Law Enforcement Division	1993	62,989	State Special
Wildlife Division	1993	37,390	State Special
Wildlife Division	1993	112,170	Federal Special

DEPARTMENT OF LIVESTOCK

Diagnostic Laboratory	1993	50,000	State Special

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Water Resources Division	1993	580,000	State Special

The unexpended fiscal year 1993 budget amendment authority for Broadwater power project escrow funds is authorized to continue for fiscal year 1994 in order to complete work related to construction defects.

Water Resources Division	1993	2,000,000	State Special

The unexpended fiscal year 1993 budget amendment authority for arbitration or settlement funds is authorized to continue for fiscal year 1994 to support activities pertinent to remedying construction defects of the Broadwater power project.

Energy Division	1993	9,000	State Special

DEPARTMENT OF COMMERCE

Local Government Services	1993	15,200	Federal Special
Financial Institutions	1993	79,933	State Special
Building Codes	1993	127,138	State Special

DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

Corrections-Prison Industries	1993	350,000	Proprietary
MSP-Adult Basic Ed	1993	3,396	Federal Special
MSP-Chapter I	1993	4,365	Federal Special
Prison Ranch	1993	70,000	Proprietary
Vocational Training Program	1993	20,000	Proprietary

MONTANA ARTS COUNCIL

NEA Local/Tech Assist to RAI	1993	45,449	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for NEA local technical assistance is authorized to continue for fiscal year 1994.

NEA/Tribal College AIE	1993	9,710	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for NEA/tribal college AIE is authorized to continue to fiscal year 1994.

AIS Community Match 93	1993	30,000	State Special
NEA/Folk Art Apprenticeships	1993	30,000	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for NEA/folk art apprenticeships is authorized to continue to fiscal year 1994.

MONTANA HISTORICAL SOCIETY

Spanish Creek Project	1993	75,000	State Special

All remaining fiscal year 1993 state special budget amendment authority for the Spanish Creek project is authorized to continue for fiscal year 1994.

National Preservation Grants	1993	175,220	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for national preservation grants is authorized to continue for fiscal year 1994.

Photo Archives	1993	4,000	Proprietary
IMS Conservation	1993	25,000	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for IMS conservation is authorized to continue for fiscal year 1994.

Publications/Press Desk Top	1993	15,000	Proprietary

DEPARTMENT OF FAMILY SERVICES

Management Support-Aging Unit	1994	31,802	Federal Special

DEPARTMENT OF LABOR AND INDUSTRY

All remaining fiscal year 1993 federal special budget amendment authority for the Native American vets outreach program is authorized to continue for fiscal year 1994.

Fair Housing-HUD	1993	138,150	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for fair housing-HUD is authorized to continue to fiscal year 1994.

Mine Safety	1993	50,538	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for mine safety is authorized to continue for fiscal year 1994.

Sec 503(b) Fed Mine Safety Grant	1993	50,000	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for sec 503(b) fed mine safety grant is authorized to continue to fiscal year 1994.

Fed Touch Screen Project Grant	1994	583,540	Federal Special
EUCA-UI Division	1994	191,134	Federal Special
EUCA Job Service Division	1994	391,724	Federal Special
JTPA Summer Youth Employment	1993	29,300	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for JTPA summer youth employment is authorized to continue to fiscal year 1994.

JTPA Summer Youth Employment Grants	1993	3,432,266	Federal Special

All remaining fiscal year 1993 federal special budget amendment authority for JTPA summer youth employment grants is authorized to continue to fiscal year 1994.

Jobs for MT Graduates Grants	1994	129,529	State Special
Dislocated Wrkrs-Health JSD	1993	14,986	Federal Special
Dislocated Wrkrs-Health RSTD	1993	3,046	Federal Special
Dislocated Wrkrs-Health Grants	1993	74,470	Federal Special
Dislocated Wrkrs-Asarco JSD	1993	19,068	Federal Special
Dislocated Wrkrs-Asarco RSTD	1993	3,046	Federal Special
Dislocated Wrkrs-Asarco Grants	1993	82,723	Federal Special

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

Stormwater	1993	32,673	Federal Special

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

DDPAC Grant	1993	116,892	Federal Special

MONTANA UNIVERSITY SYSTEM

Agricultural Experiment Station	1993	127,000	Federal Special
Agricultural Experiment Station	1993	11,873	State Special
University of Montana:			
Instruction (01)	1993	696,836	State Special
Research (02)	1993	5,530	State Special
Support (44)	1993	1,736,888	State Special
O&M of Plant (07)	1993	71,336	State Special
Scholarships & Fellowships (08)	1993	3,640	State Special
Montana State University:			
Instruction (01)	1993	996,510	State Special
Support (44)	1993	641,000	State Special
O&M of Plant (07)	1993	500,000	State Special
Montana College of Mineral Science & Technology:			
Instruction (01)	1993	151,893	State Special
Support (44)	1993	39,000	State Special

O&M of Plant (07)	1993	15,000	State Special
Eastern Montana College:			
Instruction (01)	1993	68,903	State Special
Western Montana College:			
Instruction (01)	1993	22,748	State Special
Northern Montana College:			
Instruction (01)	1993	6,214	State Special
Support (44)	1993	14,490	State Special
Billings Vocational-Technical Center:			
Instruction (01)	1993	53,000	State Special
Support (44)	1993	47,000	State Special
Great Falls Vocational-Technical Center:			
Instruction (01)	1993	33,700	State Special
Missoula Vocational-Technical Center:			
Instruction (01)	1993	33,122	State Special
Support (44)	1993	9,500	State Special
O&M of Plant (07)	1993	10,000	State Special

Any spending authority for fiscal year 1993 budget amendments for the Montana university system authorized in [this act] that is not used in fiscal year 1993 may be used in fiscal year 1994.

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved April 29, 1993.

CHAPTER NO. 615

[HB 70]

AN ACT ESTABLISHING WEIGHING DEVICE FEES; REQUIRING DEPOSIT OF THE FEES INTO A SPECIAL REVENUE ACCOUNT TO BE USED FOR ENFORCEMENT AND ADMINISTRATION OF LICENSING WEIGHING DEVICES; AMENDING SECTION 30-12-203, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-12-203, MCA, is amended to read:

"**30-12-203. Licensing of weighing devices.** (1) ~~No~~ *A* person ~~shall~~ *may not* knowingly operate or use ~~any~~ *an* unlicensed weighing ~~devices~~ *device* in trade or commerce for ascertaining the weight of any commodity.

(2) ~~Such~~ *A* license ~~shall~~ *must* be obtained by making application to the department upon blank forms to be provided by the division of weights and measures. Each license ~~should include~~ *must require* at least one inspection per year.

(3) ~~Every~~ *An* application ~~shall~~ *must* be accompanied by the proper fee as established by this section.

WEIGHING DEVICES

Capacity		Fees
499 pounds or less	~~$ 5.00~~	*$ 12.00*
500 pounds through 1,999 pounds	~~8.00~~	*20.00*
2,000 pounds through 7,999 pounds	~~15.00~~	*40.00*
8,000 pounds through 60,000 pounds	~~40.00~~	*100.00*
60,001 pounds or more	~~70.00~~	*175.00*

(4) The capacity of a weighing device ~~shall~~ *must* be determined by the manufacturer's rated capacity.

(5) All licenses ~~shall~~ *must* be annual and ~~shall~~ expire on December 31.

(6) A late renewal fee equal to 50% of the renewal license fee established in subsection (3) must be assessed if the fee is not paid before July 1 of the year in which the license fee is due. ~~In addition, any~~ *A* person failing to pay the renewal license fee before July 1 ~~shall forfeit~~ *forfeits* the right to use the weighing device, and it ~~shall~~ *must* be taken out of service by the division of weights and measures until the renewal fee and late renewal fee are paid.

(7) The fees must be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part."

Section 2. **Coordination instruction.** If House Bill No. 17, including provisions authorizing the department of commerce to establish petroleum dealer and liquefied petroleum dealer license fees by rule, is not passed and approved, then [this act] is void.

Section 3. **Applicability.** [This act] applies to licenses and fees imposed after December 31, 1993.

Approved May 6, 1993.

CHAPTER NO. 616

[HB 142]

AN ACT INCREASING TO $500 THE AMOUNT REQUIRED TO BE INVOLVED IN VARIOUS CRIMES BEFORE PENALTIES FOR THOSE CRIMES ARE INCREASED; AND AMENDING SECTIONS 45-2-101, 45-6-101, 45-6-301, 45-6-309, 45-6-311, 45-6-312, 45-6-316, 45-6-317, 45-6-325, AND 45-7-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"**45-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and ~~where~~ *when* relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare ~~he~~ *the beneficiary* is interested~~, but~~. *Benefit does* not *include* an advantage promised generally to a group or class of voters as a consequence of public measures ~~which~~ *that* a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan ~~which~~ *that* results in the repeated commission of the same offense or *that* affects the same person or the same persons or the property ~~thereof~~ *of the same person or persons.*

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to ~~such a~~ *that* device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression ~~which~~ *that* is false and ~~which~~ *that* the offender does not believe to be true;

(b) fail to correct a false impression ~~which~~ *that* the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property~~, failing to disclose~~ *without disclosing* a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether ~~such~~ *the* impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance ~~which~~ *that* the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything ~~which~~ *that* exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to ~~his~~ *the person's* or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony ~~which~~ *that* involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare ~~he~~ *the affected person* is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing ~~which~~ *that* is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. ~~The foregoing definition~~ *Intoxicating substance* does not ~~extend to~~ *include* dealcoholized wine or ~~to~~ any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(31) An "involuntary act" means any act ~~which~~ *that* is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when ~~he~~ *the person* is aware of ~~his~~ *the person's own* conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when ~~he~~ *the person* is aware that it is highly probable that ~~such~~ *the* result will be caused by ~~his~~ *that* conduct. When knowledge of the existence of a particular fact is an element of an offense, ~~such~~ knowledge is

established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect ~~which~~ *that* renders ~~him~~ *the person* incapable of appreciating the nature of ~~his~~ *the person's own* conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling ~~his~~ *the person's own* conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or *in which* the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when ~~he~~ *the person* consciously disregards a risk that the result will occur or that the circumstance exists or when ~~he~~ *the person* disregards a risk of which ~~he~~ *the person* should be aware that the result will occur or that the circumstance exists. The risk must be of ~~such~~ a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance ~~thereof~~ *of the labor or service.*

(39) "Obtains or exerts control" includes but is not limited to the taking, *the* carrying away, or *the* sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official

detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or ~~which~~ *that* may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though ~~such~~ *the* interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which ~~he~~ *the person* directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of ~~his~~ *the person's* office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of ~~his~~ *the person's* authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision ~~thereof~~ *of government.*

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments ~~which~~ *that* represent or embody rights concerning anything of value, including labor or services, or ~~which~~ *that* are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things ~~which~~ *that* are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish ~~which~~ *that* ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and *any* whole or partial copies, descriptions, photographs, prototypes, or models thereof ~~which~~ *that* constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest ~~which~~ *that* the offender has no authority to defeat or impair, even though the offender ~~himself~~ may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group ~~thereof~~ has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is ~~his~~ *the person's* conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although ~~such~~ *the* purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(59) "Serious bodily injury" means bodily injury ~~which~~ *that* creates a substantial risk of death or ~~which~~ *that* causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above ~~such~~ *the* land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in ~~his~~ *the peace officer's* presence.

(67) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause ~~such~~ *the* action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the *person making the threat demands or receives* property ~~is not demanded or received~~ *that is not* for the benefit of ~~the~~ groups ~~which he~~ *that the person* purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property at the time and place of the crime or, if ~~such~~ *the market value* cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value ~~shall~~ *must* be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, ~~shall be~~ *is* considered the amount due or collectible. ~~thereon or thereby, such~~ *The* figure *is* ordinarily ~~being~~ the face amount of the indebtedness less any portion ~~thereof which~~ *of the indebtedness that* has been satisfied.

(ii) The value of any other instrument ~~which~~ *that* creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation ~~shall be~~ *is* considered the amount of economic loss ~~which~~ *that* the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network ~~shall be~~ *is* considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of ~~such~~ economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than ~~$300~~ *$500* by the standards set forth in subsection (69)(a) ~~above~~, its value ~~shall be~~ *is* considered to be an amount less than ~~$300~~ *$500.*

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or *by* mobile equipment, with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance ~~which~~ *that,* regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Section 45-6-101, MCA, is amended to read:

"**45-6-101. Criminal mischief.** (1) A person commits the offense of criminal mischief if ~~he~~ *the person* knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which ~~he~~ *the person* has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief ~~shall~~ *must* be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the ~~same~~ *restitution*. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered ~~shall~~ *must* be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of ~~$300~~ *$500*, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, ~~he~~ *the offender* shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss."

Section 3. Section 45-6-301, MCA, is amended to read:

"**45-6-301. Theft.** (1) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in ~~such~~ *a* manner ~~as to deprive~~ *that deprives* the owner of the property; or

(c) uses, conceals, or abandons the property knowing ~~such~~ *that the* use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in ~~such~~ *a* manner ~~as to deprive~~ *that deprives* the owner of the property; or

(c) uses, conceals, or abandons the property knowing ~~such~~ *that the* use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in ~~such~~ *a* manner ~~as to deprive~~ *that deprives* the owner of the property; or

(c) uses, conceals, or abandons the property knowing ~~such~~ *that the* use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains or exerts unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person convicted of the offense of theft of property not exceeding ~~$300~~ *$500* in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding ~~$300~~ *$500* in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(7) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 4. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, ~~he~~ *the person* purposely and knowingly fails to return ~~such~~ *the* property within 48 hours after the time provided for ~~such~~ return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding ~~$300~~ *$500* in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding ~~$300~~ *$500* in value shall be imprisoned in the state prison for a term not to exceed 10 years."

Section 5. Section 45-6-311, MCA, is amended to read:

"**45-6-311. Unlawful use of a computer.** (1) A person commits the offense of unlawful use of a computer if ~~he~~ *the person* knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding ~~$300~~ *$500* in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding ~~$300~~ *$500* in value shall be fined not more than 2 ½ times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 6. Section 45-6-312, MCA, is amended to read:

"**45-6-312. Unauthorized acquisition or transfer of food stamps.** (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if ~~he~~ *the person* knowingly:

(a) acquires, purchases, possesses, or uses any food stamp or coupon that ~~he~~ *the person* is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food stamps exceeds ~~$150~~ *$500*, shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp or coupon" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7. U.S.C. 2011 through 2029, or any similar public assistance program."

Section 7. Section 45-6-316, MCA, is amended to read:

"**45-6-316. Issuing a bad check.** (1) A person commits the offense of issuing a bad check when ~~he~~ *the person* issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that ~~he~~ *the offender* knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks ~~which~~ *that* are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~$300~~ *$500*, ~~he~~ *the offender* shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 8. Section 45-6-317, MCA, is amended to read:

"**45-6-317. Deceptive practices.** (1) A person commits the offense of deceptive practices when ~~he~~ *the person* purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting ~~his~~ *the* financial condition *of the person making or directing another to make the statement* for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card ~~which~~ *that* has expired ~~provided~~ *when* the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~$300~~ *$500*, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 9. Section 45-6-325, MCA, is amended to read:

"**45-6-325. Forgery.** (1) A person commits the offense of forgery when with purpose to defraud ~~he~~ *the person* knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in ~~such~~ *a* manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers ~~such~~ *the* document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds ~~$300~~ *$500*, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both."

Section 10. Section 45-7-210, MCA, is amended to read:

"**45-7-210. False claims to public agencies.** (1) A person commits an offense under this section if ~~he~~ *the person* purposely and knowingly presents for allowance or for payment any false or fraudulent claim, bill, account, voucher, or writing to any public agency, public servant, or contractor authorized to allow or pay claims presented to public agencies if genuine.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds ~~$300~~ *$500*, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

Approved May 6, 1993

CHAPTER NO. 617

[HB 219]

AN ACT ALLOWING A TAX CREDIT FOR CONVERSION OF A MOTOR VEHICLE TO ALTERNATIVE FUEL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Credit for alternative fuel motor vehicle conversion.** (1) (a) Except as provided in subsection (1)(b), an individual, a corporation, a partnership, or a small business corporation as defined in 15-31-201 is allowed a tax credit against taxes imposed by 15-30-103 or 15-31-101 for equipment and labor costs incurred to convert a motor vehicle licensed in Montana to operate on alternative fuel.

(b) A seller of alternative fuel may not receive a credit for converting its own vehicles to the alternative fuel that it sells.

(2) The maximum credit a taxpayer may claim in a year under this section is an amount equal to 50% of the equipment and labor costs incurred but the credit may not exceed:

(a) $500 for conversion of a motor vehicle with a gross weight of 10,000 pounds or less; or

(b) $1,000 for conversion of a motor vehicle with a gross vehicle weight over 10,000 pounds.

(3) For the purposes of this section, "alternative fuel" means:

(a) natural gas;

(b) liquefied petroleum gas;

(c) liquefied natural gas;

(d) hydrogen;

(e) electricity; or

(f) any other fuel if at least 85% of the fuel is methanol, ethanol or other alcohol, ether, or any combination of them.

(4) (a) The credit allowed under this section may not exceed the taxpayer's income tax liability.

(b) There is no carryback or carryforward of the credit permitted under this section, and the credit must be applied in the year the conversion is made, as determined by the taxpayer's accounting method.

Section 2. **Small business corporation and partnership credit for alternative fuel conversion.** If equipment and labor costs incurred to convert a motor vehicle to operate on alternative fuel are claimed as a credit under [section 1] by a small business corporation, as defined in 15-31-201, or a partnership, the credit must be attributed to shareholders or partners using the same proportion used to report the corporation's or partnership's income or loss for Montana income tax purposes.

Section 3. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 2].

Section 4. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

Approved May 6, 1993.

CHAPTER NO. 618

[HB 453]

AN ACT CREATING CIVIL PENALTIES TO BE ASSESSED BY THE DEPARTMENT OF LABOR AND INDUSTRY AGAINST PERSONS CONVICTED OF THEFT FOR WORKERS' COMPENSATION FRAUD; DIRECTING THAT ANY EXCESS MONEY COLLECTED FROM PERSONS CONVICTED OF WORKERS' COMPENSATION FRAUD BE USED TO SUPPORT THE INVESTIGATION AND PROSECUTION OF WORKERS' COMPENSATION FRAUD; AND AMENDING SECTIONS 39-71-316 AND 45-6-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-316, MCA, is amended to read:

"**39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means.** (1) A person filing a claim under this chapter or chapter 72 of this title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) *(a)* A person who obtains or assists in obtaining benefits to which the person is not entitled *or who obtains or assists another person in obtaining benefits to which the other person is not entitled* under this chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person.

(b) As used in subsection (2)(a), "person" includes but is not limited to an employee, employer, insurer, or medical service provider.

(3) (a) The department may require a person convicted of theft under 45-6-301(5) to pay to the department an amount equal to 10 times the amount paid by an insurer on the false claim, provided that the amount does not exceed $50,000. If upon demand of the department the person refuses to pay the fine, the department may institute suit to collect the money owed.

(b) The department shall:

(i) use the money collected pursuant to subsection (3)(a) to administer and enforce the provisions of this section; and

(ii) forward any surplus money to the department of justice. The forwarded money must be used exclusively for the staffing and operation of the workers' compensation fraud investigation and prosecution office established in [section 1 of Senate Bill No. 164].

(c) This section does not limit an insurer's civil remedies to collect for money paid to a person convicted under 45-6-301(5)."

Section 2. Section 45-6-301, MCA, is amended to read:

"**45-6-301. Theft.** (1) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in ~~such~~ *a* manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing ~~such~~ *the* use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in ~~such~~ *a* manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing ~~such~~ *the* use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in ~~such~~ *a* manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing ~~such~~ *the* use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when ~~he~~ *the person* purposely or knowingly obtains or exerts *or helps another obtain or exert* unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person convicted of the offense of theft of property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding $300 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(7) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 3. **Coordination instruction.** If Senate Bill No. 164 is not passed and approved or does not establish a workers' compensation fraud investigation and prosecution office, then subsection (3)(b)(ii) of [section 1 of this act], amending 39-71-316, must read: "(ii) forward any surplus money to the state fund, as defined in 39-71-2312, to reduce the unfunded liability of claims arising before July 1, 1990".

Approved May 6, 1993.

CHAPTER NO. 619

[HB 622]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE LAWS; PROVIDING FOR SUSPENSION OF BENEFITS TO A WORKER WHO FAILS TO KEEP MEDICAL APPOINTMENTS; DESIGNATING LIABILITY FOR OCCUPATIONAL DISEASE BENEFITS IF THERE IS MORE THAN ONE INSURER; REVISING BENEFITS WHEN OCCUPATIONAL DISEASE IS AGGRAVATED BY NON-COMPENSABLE DISEASE OR INFIRMITY; CREATING TEMPORARY PARTIAL DISABILITY BENEFITS; REVISING ELIGIBILITY REQUIREMENTS TO SELF-INSURE; ALLOWING CERTAIN OPTIONAL DEDUCTIBLES TO POLICYHOLDERS; REQUIRING SUSPENSION, REVOCATION, OR DENIAL OF A PROFESSIONAL OR OCCUPATIONAL LICENSE FOR VIOLATION OF THE WORKERS' COMPENSATION LAW; REVISING THE DEFINITION OF UNPROFESSIONAL CONDUCT; PROHIBITING CERTAIN ACTIONS; PRECLUDING LIABILITY FOR REPORTING VIOLATIONS OF THE WORKERS' COMPENSATION LAW; ALLOWING AUGMENTATION OF TEMPORARY TOTAL DISABILITY BENEFITS WITH SICK LEAVE AND VACATION LEAVE; REQUIRING THE STATE FUND BOARD TO ADOPT AN ANNUAL BUSINESS PLAN; ALLOWING GROUP PURCHASE OF WORKERS' COMPENSATION INSURANCE; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENT USING INFORMATION PROVIDED BY THE DEPARTMENT; REQUIRING INSURERS TO NOTIFY EMPLOYERS OF REOPENED CLAIMS; ALLOWING INSURERS TO SUSPEND BENEFITS TO WORKERS RECEIVING SOCIAL SECURITY DISABILITY BENEFITS; AMENDING SECTIONS 37-1-131, 37-3-322, 37-6-310, 37-10-311, 37-12-321, 37-14-321, 39-71-116, 39-71-123, 39-71-307, 39-71-316, 39-71-407, 39-71-601, 39-71-605, 39-71-606, 39-71-607, 39-71-701, 39-71-702, 39-71-736, 39-71-2101, 39-71-2315, AND 39-72-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 21] requires the department by rule to adopt forms, criteria, and procedures for the issuance of certificates of approval for groups eligible to purchase group insurance. The rules adopted by the department must:

(1) be consistent with the provisions of Title 39, chapter 71, and [this act]; and

(2) address who may be in a group, how a member may be removed from the group, the criteria for certification, the apportionment of dividends or discounts, the requirements for a plan of operation, and any reporting requirements that may be necessary.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if ~~no~~ *a* beneficiary, as defined in subsections (3)(a) through (3)(d), ~~exists~~ *does not exist*; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when ~~no~~ *a* beneficiary, as defined in subsections (3)(a) through (3)(e), ~~exists~~ *does not exist.*

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, ~~salesmen~~ *salespersons*, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(7) "Days" means calendar days, unless otherwise specified.

(8) "Department" means the department of labor and industry.

(9) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(10) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(11) "Invalid" means one who is physically or mentally incapacitated.

(12) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(13) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(14) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer ~~shall~~ *has* not ~~have~~ operated a sufficient or any length of time during ~~such~~ *the* calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if ~~no~~ average payrolls are *not* available. This estimate ~~is to~~ *must* be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of ~~such~~ *the* current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(15) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in some capacity but the physical restriction impairs the worker's ability to work.

(16) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker ~~has no~~ *does not have a* reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(17) The term "physician" includes "surgeon" and in either case means one authorized by law to practice ~~his~~ *the person's* profession in this state.

(18) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over ~~such~~ *the* place of business

for the purpose of carrying on ~~his~~ *the employer's* usual trade, business, or occupation.

(19) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(20) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(21) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(22) "Temporary partial disability" means a condition resulting from an injury as defined in 39-71-119 in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

~~(22)~~*(23)* "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(23)~~*(24)* "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

~~(24)~~*(25)* "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

~~(25)~~*(26)* "Year", unless otherwise specified, means calendar year."

Section 2. Section 39-71-307, MCA, is amended to read:

"**39-71-307. Employers and insurers to file reports of accidents — penalty.** (1) Every employer and every insurer is required to file with the department, under department rules, a full and complete report of every accident to an employee arising out of or in the course of ~~his~~ employment and resulting in loss of life or injury to the employee. The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, ~~he~~ *the employer* shall state the reason ~~he is unable~~ *for the employer's inability* to answer.

(2) Every insurer transacting business under this chapter shall, at the time and in the manner prescribed by the department, make and file with the department the reports of accidents as the department requires.

(3) An employer, insurer, or adjuster who refuses or neglects to submit to the department reports necessary for the proper *filing and* review of a claim, as provided in subsection (1), ~~may~~ *shall* be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to department rules."

Section 3. Section 39-71-605, MCA, is amended to read:

"**39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost.** (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, ~~he~~ *the employee* shall, upon the written request of the insurer, submit from time to time to examination by a physician or panel of physicians, who ~~shall~~ *must* be provided and paid for by ~~such~~ *the* insurer, and shall likewise submit to examination from time to time by any physician or panel of physicians selected by the department.

(b) The request or order for ~~such~~ *an* examination ~~shall~~ *must* fix a time and place for the examination, with regard for the employee's convenience, ~~his~~ physical condition, and ~~his~~ ability to attend at the time and place that is as close to the employee's residence as is practical. The employee ~~shall be~~ *is* entitled to have a physician present at any ~~such~~ examination. ~~So long as~~ *If* the employee, after ~~such~~ written request, ~~shall fail~~ *fails* or ~~refuse~~ *refuses* to submit to ~~such~~ *the* examination or ~~shall~~ in any way ~~obstruct~~ *obstructs* the ~~same~~ *examination,* ~~his~~ *the employee's* right to compensation ~~shall~~ *must* be suspended *and is subject to the provisions of 39-71-607.* Any physician or panel of physicians employed by the insurer or the department who ~~shall make~~ *makes* or ~~be~~ *is* present at any ~~such~~ examination may be required to testify as to the results ~~thereof~~ *of the examination.*

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to ~~such~~ *an* examination as it ~~may deem~~ *considers* desirable by a physician or panel of physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician or panel of physicians making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician or panel of physicians for the examination.

(3) This section does not apply to impairment evaluations provided for in 39-71-711."

Section 4. Section 39-71-607, MCA, is amended to read:

"**39-71-607. Suspension of payments by insurer ~~up to thirty days~~ pending receipt of medical information.** Under rules adopted by the department ~~and in the discretion of the department~~, an insurer may suspend compensation payments ~~for not more than 30 days~~ pending the receipt of medical information *when an injured worker unreasonably fails to keep scheduled medical appointments. If, after a medical examination, the injured* *worker is released to return to work, the worker forfeits the right to any suspended benefits.*"

Section 5. Section 39-72-303, MCA, is amended to read:

"**39-72-303. Which employer liable.** (1) Where compensation is payable for an occupational disease, the only employer liable ~~shall be~~ *is* the employer in whose employment the employee was last injuriously exposed to the hazard of ~~such~~ *the* disease.

(2) When there is more than one insurer and only one employer at the time the employee was injuriously exposed to the hazard of the disease, the liability rests with the insurer providing coverage at the earlier of:

(a) the time the occupational disease was first diagnosed by a treating physician or medical panel; or

(b) the time the employee knew or should have known that the condition was the result of an occupational disease.

~~(2)~~*(3)* In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets ~~thereof~~ *of a mine* from a person who was an operator of ~~such~~ *the* mine on or after December 30, 1969, is liable for and ~~must~~ *shall* secure the payment of all benefits ~~which~~ *that* would have been payable by that person with respect to miners previously employed in ~~such~~ *the* mine if acquisition had not occurred and that person had continued to operate ~~such~~ *the* mine, and the prior operator of ~~such~~ *the* mine ~~shall~~ *is* not ~~be~~ relieved of any liability under this section."

Section 6. **Temporary partial disability benefits.** (1) If, prior to maximum healing, an injured worker has a physical restriction and is approved to return to a modified or alternative employment that the worker is able and qualified to perform and the worker suffers an actual wage loss as a result of a temporary work restriction, the worker qualifies for temporary partial disability benefits.

(2) An insurer's liability for temporary partial disability must be the difference between the injured worker's average weekly wage received at the time of the injury, subject to a maximum of 40 hours a week, and the actual weekly wages earned during the period that the claimant is temporarily partially disabled, not to exceed the injured worker's temporary total disability benefit rate.

(3) Temporary partial disability benefits are limited to a total of 26 weeks.

(4) A worker requalifies for temporary total disability benefits if the modified position is no longer available to the worker and the worker continues to be temporarily totally disabled as defined in 39-71-116.

(5) Temporary partial disability may not be considered an element of permanent partial disability and may not be credited against any permanent impairment or any permanent partial disability award or settlement achieved after the injured worker reaches maximum healing.

Section 7. Section 39-71-2101, MCA, is amended to read:

"39-71-2101. **General requirements for electing coverage under plan.** *(1)* An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department and the Montana self-insurers guaranty fund of ~~his~~ solvency and financial ability to pay the compensation and benefits *provided for* in this chapter ~~provided for~~ and to discharge all liabilities ~~which~~ *that* are reasonably likely to be incurred ~~by him~~ during the fiscal year for which ~~such~~ *the* election is effective. ~~and~~ *The employer* may, by order of the department and with the concurrence of the guaranty fund, make ~~such~~ *the* payments directly to ~~his~~ employees as they ~~may~~ become entitled to receive *payments* under the terms and conditions of this chapter.

(2) Employers who comply with the provisions of this chapter and who are participating in collectively bargained, jointly administered Taft-Hartley trust funds are eligible to provide self-insured workers' compensation benefits for their employees."

Section 8. **Workers' compensation and employers' liability insurance — optional deductibles.** (1) An insurer issuing a workers' compensation or an employer's liability insurance policy may offer to the policyholder, as part of the policy or by endorsement, optional deductibles for benefits payable under the policy consistent with the standards contained in subsection (3).

(2) A rating organization may develop and file a deductible plan or plans on behalf of its members consistent with the standards contained in subsection (3).

(3) The commissioner of insurance shall approve a deductible plan that is in accordance with the following standards:

(a) Claimants' rights are properly protected and claimants' benefits are paid without regard to the deductible.

(b) Premium reductions reflect the type and level of the deductible, consistent with accepted actuarial standards.

(c) Premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount.

(d) Recognition is given to policyholder characteristics, including but not limited to size, financial capabilities, nature of activities, and number of employees.

(e) The policyholder is liable to the insurer for the deductible amount in regard to benefits paid for compensable claims.

(f) The insurer pays all of the deductible amount applicable to a compensable claim to the person or provider entitled to benefits and then seeks reimbursement from the policyholder for the applicable deductible amount.

(g) Failure by the policyholder to reimburse deductible amounts to the insurer is treated under the policy as nonpayment of premium.

(h) Losses subject to the deductible must be reported and recorded as losses for purposes of calculating rates for a policyholder on the same basis as losses under policies providing first dollar coverage.

(4) The state compensation mutual insurance fund, plan No. 3, may adopt the plan filed by the rating organization or adopt an optional deductible plan that meets the requirements of this section.

(5) For purposes of 39-71-201, liability for assessments must be ascertained based on premiums collected, in the case of policies written under plan No. 2, or on the assessment levied, in the case of policies written under plan No. 3, for which the policyholder would have been obligated without the deductible. For all other taxes and assessments based on premium, the amount of premium or assessment must be determined after application of the deductible.

Section 9. Section 39-71-316, MCA, is amended to read:

"**39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means.** (1) A person filing a claim under this chapter or chapter 72 of this title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person.

(3) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of chapter 72 or this chapter."

Section 10. Section 37-1-131, MCA, is amended to read:

"**37-1-131. Duties of boards.** Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by legal counsel when required under 37-1-121(1).

(3) suspend, revoke, or deny a license of a person who the board determines, after a hearing as provided in subsection (2), is guilty of knowingly defrauding, abusing, or aiding in the defrauding or abusing of the workers' compensation system in violation of the provisions of Title 39, chapter 71 or 72;

~~(3)~~*(4)* pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6);

~~(4)~~*(5)* consult with the department before the board initiates a program expansion, under existing legislation, to determine if the board has adequate money and appropriation authority to fully pay all costs associated with the proposed program expansion. The board may not expand a program if the board does not have adequate money and appropriation authority available."

Section 11. Section 37-3-322, MCA, is amended to read:

"**37-3-322. Unprofessional conduct.** As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) employing abusive billing practices;

(5) directly or indirectly giving or receiving a fee, commission, rebate, or other compensation for professional services not actually rendered. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.

(6) willful disobedience of the rules of the board;

(7) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(9) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(10) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(11) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(12) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public as defined by rule of the board;

(13) conduct likely to deceive, defraud, or harm the public;

(14) making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(15) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, *including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72*;

(16) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;

(17) practicing medicine under a false or assumed name;

(18) testifying in court on a contingency basis;

(19) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(20) aiding or abetting in the practice of medicine by a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(21) allowing another person or organization to use the licensee's license to practice medicine;

(22) malpractice or negligent practice;

(23) except as provided in this subsection, practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit:

(a) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4;

(b) a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country; or

(c) practicing medicine as the partner, agent, or employee of or in joint venture with a hospital, medical assistance facility, or other licensed health care provider. However:

(i) the partnership, agency, employment, or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the physician's independent judgment in the practice of medicine;

(ii) the physician's independent judgment in the practice of medicine must in fact be unaffected by the relationship; and

(iii) the physician may not be required to refer any patient to a particular provider or supplier or take any other action the physician determines not to be in the patient's best interest.

(24) willfully or negligently violating the confidentiality between physician and patient, except as required by law;

(25) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(26) failing to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by the patient's legally designated representative;

(27) failing to furnish to the board or its investigators or representatives information legally requested by the board;

(28) failing to cooperate with a lawful investigation conducted by the board;

(29) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them;

(30) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct.

(31) any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct."

Section 12. Section 37-6-310, MCA, is amended to read:

"**37-6-310. Unprofessional conduct.** As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(3) willful disobedience of the rules of the board;

(4) final conviction of an offense involving moral turpitude;

(5) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(6) final conviction of a violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration;

(7) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(8) conduct unbecoming a person licensed to practice podiatry or detrimental to the best interest of the public;

(9) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company,

institution, or organization, *including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72*;

(10) testifying in court on a contingency basis;

(11) conspiring to misrepresent or willfully misrepresenting medical conditions to increase or decrease a settlement, award, verdict, or judgment;

(12) aiding or abetting in the practice of medicine a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(13) gross malpractice or negligent practice;

(14) practicing podiatry as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice podiatry within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice podiatry in another state or territory of the United States or foreign country;

(15) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by parts 1 through 3; or

(16) any other act, whether specifically enumerated or not, which in fact constitutes unprofessional conduct."

Section 13. Section 37-10-311, MCA, is amended to read:

"**37-10-311. Revocation — unprofessional conduct.** (1) The board may revoke a certificate of registration for:

(a) physical or mental incompetence;

(b) gross malpractice or repeated malpractice;

(c) a violation of any of the provisions of this chapter or rules or orders of the board; or

(d) unprofessional conduct.

(2) Unprofessional conduct includes:

(a) obtaining a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, a suspended or unlicensed optometrist to perform work covered by this chapter;

(c) directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;

(d) permitting another to use ~~his~~ *the optometrist's* certificate of registration;

(e) soliciting or sending a solicitor from house to house;

(f) treatment or advice in which untruthful or improbable statements are made;

(g) professing to cure nonocular disease;

(h) advertising in which ambiguous or misleading statements are made; ~~or~~

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist*; or*

(j) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, including fraud, misrepresentation, or a claim for benefits under Title 39, chapter 71 or 72.

(3) Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked a second time shall not be permitted to practice optometry in this state."

Section 14. Section 37-12-321, MCA, is amended to read:

"**37-12-321. Unprofessional conduct.** As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or securing a license or in taking the examination provided for in this chapter;

(2) obtaining any form of compensation, directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization, *including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72*;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public."

Section 15. Section 37-14-321, MCA, is amended to read:

"**37-14-321. Revocation or suspension of license or permit.** A license or permit may be suspended for a fixed period or may be revoked, or such technologist or technician may be censured, reprimanded, or otherwise disciplined as determined by the board if, after a hearing before the board, it is determined that the radiologic technologist or limited permit technician:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or limited permit technician or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical *or unprofessional* conduct, as defined by rules promulgated by the board, *including fraud, misrepresentation, or deception with regard to a claim for benefits under Title 39, chapter 71 or 72,* or has been guilty of incompetence or negligence in ~~his~~ activities as a radiologic technologist or limited permit technician;

(5) has continued to perform as a radiologic technologist or limited permit technician without obtaining a license or permit or renewal as required by this chapter."

Section 16. **Prohibited actions — penalty.** (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty.

Section 17. **No liability for reporting violation.** A person, including but not limited to an insurer or an employer, may not be held liable for civil damages as a result of reporting in good faith information that the person believes proves a violation of the provisions of chapter 72 or this chapter.

Section 18. Section 39-71-736, MCA, is amended to read:

"**39-71-736. Compensation — from what date paid.** (1) (a) No compensation may be paid for the first 48 hours or 6 days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation starting with the 7th day.

(b) However, separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, *except as provided in subsection (3),* an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period.

(3) Augmentation of temporary total disability benefits with sick leave by an employer pursuant to a collective bargaining agreement may not disqualify a worker from receiving temporary total disability benefits.

(4) Receipt of vacation leave by an injured worker may not affect the worker's eligibility for temporary total disability benefits."

Section 19. Section 39-71-2315, MCA, is amended to read:

"**39-71-2315. Management of state fund — powers and duties of the board — *business plan required.*** (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in general, maximize efficiency, economy, and equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targets. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan."

Section 20. **Definitions.** As used in [section 21], the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together with the approval of the department to purchase individual workers' compensation insurance policies covering each business entity that is part of a group.

Section 21. **Group purchase of workers' compensation insurance.** (1) On receiving approval of the department, two or more business entities may join together to form a group to purchase individual workers' compensation insurance policies covering each member of the group.

(2) To be eligible to join a group, the department shall determine that a business entity is engaged in a business pursuit that is the same as or similar to the business pursuits of the other entities participating in the group.

(3) The department shall establish a certification program for groups organized under this section and shall issue to eligible business entities certificates of approval that authorize formation and maintenance of a group.

(4) The department by rule shall adopt forms, criteria, and procedures for the issuance of certificates of approval to groups under this section.

(5) A group certified under this section may purchase individual workers' compensation insurance policies covering each member of the group from any insurer authorized to write workers' compensation insurance in this state, except that the state fund, as defined in 39-71-2312, has the right to refuse coverage of a group and its plan of operation but cannot refuse coverage to an individual employer. Under an individual policy, the group is entitled to a premium or volume discount that would be applicable to a policy of the combined premium amount of the individual policies.

(6) A group shall apportion any discount or policyholder dividend received on workers' compensation insurance coverage among the members of the group according to a formula adopted in the plan of operation for the group.

(7) A group shall adopt a plan of operation that must include the composition and selection of a governing board, the methods for administering the group, and guidelines for the workers' compensation insurance coverage obtained by the group, including the payment of premiums, the distribution of discounts, and the method for providing risk management. A group shall file a copy of its plan of operation with the department.

Section 22. Section 39-71-606, MCA, is amended to read:

"**39-71-606. Insurer to accept or deny claim within thirty days of receipt — *notice of benefits and entitlements to claimants* — notice of denial — *notice of reopening* — notice to employer.** (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

(2) *The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlement available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlement available by providing the claimant a copy of the document prepared by the department.*

(3) Each insurer under plan No. 2 or No. 3 for the payment of workers' compensation benefits shall notify the employer of the reopening of the claim within 14 days of the reopening of a claim for the purpose of paying compensation benefits.

(4) Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account."

Section 23. Section 39-71-123, MCA, is amended to read:

"**39-71-123. Wages defined.** (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee, *or income provided for in subsection (1)(d)*. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; ~~and~~

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement~~.~~*; and*

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration.

(2) Wages do not include:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in ~~his~~ *the volunteer's* regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which ~~he~~ *the volunteer* is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

(5) The compensation benefits and the payroll, for premium purposes, for a volunteer firefighter covered pursuant to 39-71-118(4) must be based upon a wage of not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter."

Section 24. Section 39-71-601, MCA, is amended to read:

"**39-71-601. Statute of limitation on presentment of claim — waiver.** (1) In case of personal injury or death, all claims must be forever barred unless *signed by the claimant or the claimant's representative and* presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act ~~for him in his~~ *on the claimant's* behalf.

(2) The department may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

(a) lack of knowledge of disability;

(b) latent injury; or

(c) equitable estoppel."

Section 25. Section 39-71-701, MCA, is amended to read:

"**39-71-701. Compensation for temporary total disability — exception.** (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing.

(2) The determination of temporary total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for injury producing temporary total disability ~~shall be~~ *are* 66 2/3% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) If the treating physician releases a worker to return to the same, a modified, or an alternative position that the individual is able and qualified to perform with the same employer at an equivalent or higher wage than ~~he~~ *the individual* received at the time of injury, the worker is no longer eligible for temporary total disability benefits even though ~~he~~ *the individual* has not reached maximum healing. A worker requalifies for temporary total disability benefits if the modified or alternative position is no longer available for any reason to the worker and the worker continues to be temporarily totally disabled, as defined in 39-71-116.

(5) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(6) If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan.

~~(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of $299 established July 1, 1986.~~"

Section 26. Section 39-71-407, MCA, is amended to read:

"**39-71-407. Liability of insurers — limitations.** (1) Every insurer is liable for the payment of compensation, in the manner and to the extent ~~hereinafter~~ provided *in this section*, to an employee of an employer *that* it insures who receives an injury arising out of and in the course of ~~his~~ employment or, in the case of ~~his~~ death from ~~such~~ *the* injury, to ~~his~~ *the employee's* beneficiaries, if any.

(2) (a) An insurer is liable for an injury as defined in 39-71-119 if the claimant establishes *that* it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that ~~such~~ *the* claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the ~~sole and exclusive~~ *major contributing* cause of the ~~injury or death~~ *accident.* However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

(6) As used in this section, "major contributing cause" means a cause that is the leading cause contributing to the result when compared to all other contributing causes."

Section 27. Section 39-71-702, MCA, is amended to read:

"**39-71-702. Compensation for permanent total disability.** (1) If a worker is no longer temporarily totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710.

(2) The determination of permanent total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for an injury resulting in permanent total disability ~~shall be~~ *are* 66 2/3% of the wages received at the time of the injury. The

maximum weekly compensation benefits ~~shall~~ *may* not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for ~~such~~ *the* week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 ~~such~~ adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) ~~Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of $299 established July 1, 1986.~~ *If the claimant is awarded social security benefits, the insurer may, upon notification of the claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from agreeing to a repayment plan."*

Section 28. **Codification instruction.** (1) [Section 6] is intended to be codified as an integral part of Title 39, chapter 71, part 7, and the provisions of Title 39, chapter 71, part 7, apply to [section 6].

(2) [Section 8] is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to [section 8].

(3) [Sections 16 and 17] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 16 and 17].

(4) [Sections 20 and 21] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 20 and 21].

Section 29. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 30. **Effective date.** [This act] is effective July 1, 1993.

Approved May 6, 1993.

CHAPTER NO. 620

[HB 431]

AN ACT REVISING THE BENEFIT PAID TO THE SURVIVING SPOUSE OF CERTAIN MEMBERS OF THE MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM; INCREASING EMPLOYER AND EMPLOYEE CONTRIBUTIONS TO FUND THE BENEFIT CHANGE; AMENDING SECTIONS 19-9-601, 19-9-703, 19-9-804, AND 19-9-911, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-601, MCA, is amended to read:

"**19-9-601. Member contributions.** (1) The normal contribution of each active member is ~~6%~~ *6.13%* of ~~his~~ *the member's* monthly compensation. In the case of a member first employed by an employer as a police officer after June 30, 1975, the contribution is ~~7.2%~~ *7.33%* of ~~his~~ *the member's* monthly compensation. In the case of a member first employed by an employer as a police officer after June 30, 1979, the contribution is ~~8.7%~~ *8.83%* of ~~his~~ *the member's* monthly compensation. Compensation excludes overtime payments, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for ~~his~~ services as a police officer.

(2) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions which would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(3) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(4) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and ~~his~~ *the member's* monthly compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 2. Section 19-9-703, MCA, is amended to read:

"**19-9-703. Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official out of ~~moneys~~ *money* available to the city for such purpose. The employer's contribution, which must be paid monthly to the administrator, is~~:~~

~~(1) 14.04% of the total monthly compensation paid to all active members during the preceding month before July 1, 1985;~~

~~(2) 13.02% of the total monthly compensation paid to all active members during the preceding month from July 1, 1985, through June 30, 1991; and~~

~~(3) 13.92%~~ *14.05%* of the total monthly compensation paid to all active members during the preceding month after July 1, ~~1991~~ *1993.*"

Section 3. Section 19-9-804, MCA, is amended to read:

"**19-9-804. Amount of service retirement allowance — continuation of allowance after death of member.** (1) A police officer with 20 years of qualified service who is eligible under 19-9-801 and does not elect to serve any additional years as an active police officer ~~shall~~ *must* receive a service retirement allowance equal to one-half ~~his~~ *of the officer's* final average salary.

(2) A police officer who is eligible for service retirement under 19-9-801 after 20 years of qualified service and who elects to serve additional years ~~shall~~ *must* receive the allowance provided for in subsection (1) plus an additional 1% of ~~his~~ *the officer's* final average salary for each year of additional qualified service, up to a maximum of 60% of ~~his~~ *the officer's* final average salary.

(3) A member who is eligible for service retirement under 19-9-801 with less than 20 years of qualified service ~~shall~~ *must* receive a retirement allowance equal to 2.5% of ~~his~~ *the officer's* final average salary for each year of qualified service.

(4) (a) Upon the death of a police officer receiving a service retirement allowance under subsection (1) ~~or~~, (2) *or (3)*, ~~his~~ *the member's* surviving spouse, if there is one, ~~shall~~ *must* receive from the fund a sum equal to ~~one-half of the officer's final average salary.~~

~~(b) Upon the death of a member receiving a service retirement allowance under subsection (3), his surviving spouse, if there is one, shall receive from the fund a sum equal to~~ the amount of the officer's allowance at the time of ~~his~~ death.

~~(c)~~*(b)* If the officer leaves one or more dependent children, then upon ~~his~~ *the member's* death, if ~~he leaves~~ *there is* no surviving spouse or upon the death of the surviving spouse, the officer's surviving dependent child, or children collectively if there are more than one, ~~shall~~ *must* receive the same monthly payments a surviving spouse would receive for as long as the child or one of the children remains dependent as defined in 19-9-104. The payments must be made to the child's appointed guardian for the child's use. If there is more than one dependent child, upon each child no longer qualifying as dependent under 19-9-104, the pro rata payments to that child must cease and be made to the remaining children until all the children are no longer dependent."

Section 4. Section 19-9-911, MCA, is amended to read:

"**19-9-911. Death benefits.** (1) Upon the death of a police officer before retirement, ~~his~~ *the member's* surviving spouse or dependent child is eligible for benefits ~~as~~ *equal to one-half of the member's final average salary as* provided in 19-9-804(4)*(b)*.

(2) Upon the death of a member who is no longer employed as a police officer and who did not attain the minimum retirement eligibility at the age of 50, ~~his~~ *the* surviving spouse or dependent child is eligible for a refund of the member's

contributions and accumulated interest on account with the retirement system on the date that the refund is made to the survivors."

Section 5. **Coordination instruction.** If both [this act] and House Bill No. 430 are passed and approved, then:

(1) subsection (1) of 19-9-601 must read:

"(1) The normal contribution of each active member is ~~6%~~ *7.8%* of ~~his~~ *the member's* monthly compensation. In the case of a member first employed by an employer as a police officer after June 30, 1975, the contribution is ~~7.2%~~ *9%* of ~~his~~ *the member's* monthly compensation. In the case of a member first employed by an employer as a police officer after June 30, 1979, the contribution is ~~8.7%~~ *10.5%* of ~~his~~ *the member's* monthly compensation. Compensation excludes overtime payments, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for ~~his~~ services as a police officer."; and

(2) 19-9-703 must read:

"**19-9-703. Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official out of ~~moneys~~ *money* available to the city for such purpose. The employer's contribution, which must be paid monthly to the administrator, is~~:~~

~~(1) 14.04% of the total monthly compensation paid to all active members during the preceding month before July 1, 1985;~~

~~(2) 13.02% of the total monthly compensation paid to all active members during the preceding month from July 1, 1985, through June 30, 1991; and~~

~~(3) 13.92%~~ *14.36%* of the total monthly compensation paid to all active members during the preceding month after July 1, ~~1991~~ *1993.*"

Section 6. **Retroactive applicability.** [Section 3] applies retroactively, within the meaning of 1-2-109, to benefits paid on or after July 1, 1975.

Section 7. **Effective date.** [This act] is effective on passage and approval.

Approved May 7, 1993.

CHAPTER NO. 621

[HB 530]

AN ACT ALLOWING THE DEPARTMENT OF TRANSPORTATION TO ISSUE SPECIAL PERMITS FOR CERTAIN TRUCK-TRAILER-TRAILER VEHICLE COMBINATIONS THAT ARE NOT MORE THAN 95 FEET IN LENGTH; AMENDING SECTION 61-10-124, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-124, MCA, is amended to read:

"**61-10-124. Special permits — fee — cranes.** (1) As used in this section, "crane" means a self-propelled single-unit vehicle consisting of not more than four axles and used for raising, shifting, and lowering heavy weights by means of a projecting swinging arm.

(2) Except as provided in subsections (3)(b), (3)(d), and (6), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size and weight in excess of that specified in 61-10-101 through 61-10-110 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(3) (a) Except as provided in subsections (3)(b), (3)(d), (6), and (7), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; and an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet, or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length, and the long semitrailer cargo unit of the combination may not exceed 48 feet in length. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (6) and (7). Special permits for vehicle combinations may specify and special permits under subsections (6) and (7) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (3)(a). The fee for this permit is $75. This permit covers a period of 1 year and expires on December 31 of each year with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and 61-10-202 and with payment of the fee prescribed in subsection (2), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(4) Except as provided in subsection (3)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department

of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(5) The owner or operator of a crane with a gross vehicle weight of less than 80,000 pounds may purchase a 30-day special permit for overweight if the crane has a current special mobile equipment identification plate and if the department of transportation has approved the configuration of the crane through a weight analysis completed within the same calendar year. The permit is not transferable, and the fee for the permit is $200.

(6) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system as defined in 60-1-103 and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) ~~no~~ *an* individual cargo unit of the combination may *not* exceed 28 ½ feet in length and 102 inches in width;

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a restricted route permit under 61-10-107(3) and a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(7) The department of transportation may issue special permits under subsection (6) for vehicle combinations ~~consisting~~ *that consist* of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; *and*

(b) ~~a~~ *the* person, firm, or corporation applying for ~~a~~ *the* permit*:* ~~under this subsection (7) operated the truck-trailer-trailer combination before July 1, 1987;~~

~~(c) truck-trailer-trailer operations are restricted to the specified routes those vehicles operated on before July 1, 1987; and~~

~~(d) a person, firm, or corporation applying for a permit provides the department of transportation with an affidavit designating the routes the vehicle operated on before July 1, 1987.~~

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations."

Section 2. **Effective date.** [This act] is effective July 1, 1993.

Approved May 7, 1993.

CHAPTER NO. 622

[SB 354]

AN ACT CREATING A CONTINUING EDUCATION FOR INSURERS PROGRAM; PROVIDING THAT THE PROGRAM BE ADMINISTERED BY THE COMMISSIONER OF INSURANCE; GRANTING RULEMAKING AUTHORITY TO CONDUCT THE PROGRAM; AMENDING SECTIONS 33-2-708 AND 33-17-1001, MCA; AND PROVIDING EFFECTIVE DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because it authorizes the commissioner of insurance to promulgate rules relating to the course content, instructors, material, instructional format, department of insurance forms, and procedures that will compose the continuing education program for insurance producers and consultants and the fees related to the costs of processing the documents and preparing and providing the services mandated by this bill. The legislature intends that the rules adopted to implement this bill be designed principally to protect the insurance-buying public in Montana by ensuring that insurance producers and consultants complete appropriate education activities as a condition of continued licensure. To the extent that they do not conflict with this bill, the model regulations on agents' continuing education adopted by the national association of insurance commissioners in July 1990 express principles that are consistent with this legislative intent and may be used as a model for the continuing education program. The legislature further intends that the commissioner adopt the rules in accordance with 33-1-313, which grants the commissioner general rulemaking authority that permits the commissioner:

(1) to make only reasonable rules that do not extend, modify, or conflict with any laws of this state or with any reasonable implication of those laws; and

(2) to make or amend those rules only after a hearing of which notice has been given as required by 33-1-703.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Short title.** [Sections 1 through 6 and 9] may be cited as the "Insurance Producer and Consultant Continuing Education Act".

Section 2. **Purpose.** The purposes of [sections 1 through 6 and 9] are to:

(1) protect insurance consumers and dedicated insurance producers and consultants by requiring continuing education for insurance producers and consultants;

(2) better educate insurance producers and consultants about changes in insurance law, products, ethical conduct as an insurance producer or consultant, marketing, and management; and

(3) provide standards for the qualification of instructors, courses, and materials.

Section 3. **Continuing education — basic requirements — exceptions.** (1) Unless exempt under subsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer for life, disability, or credit life and disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;

(d) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause shown, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(7)(d) through (7)(g);

(b) a person holding a temporary license issued under 33-17-216;

(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state accords substantially similar privileges to and has similar requirements of residents of this state;

(d) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;

(e) an insurance producer or consultant otherwise exempted by the commissioner; or

(f) a person selling only credit life and disability insurance incidental to other noninsurance activities.

Section 4. **Review and approval of continuing education courses by commissioner — advisory council.** (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The filing fee and process for approval of a course, lecture, seminar, or instructional program must be determined by the commissioner by rule. The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of one representative of the independent insurance agents of Montana, one representative of the Montana association of life underwriters, one representative of the professional insurance agents of Montana, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval, place the activity under probationary approval, or issue a cease and desist order under 33-1-318.

Section 5. **Compliance — failure to comply.** (1) Each person subject to the requirements of [section 3] shall file annually on a form supplied by the commissioner written certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person during the preceding calendar year. The form must be accompanied with a filing fee established by the commissioner.

(2) The commissioner may suspend the license of any person failing to comply with subsection (1) who has not been granted an extension under [section 3] and may impose a late renewal fee in the amount of twice the annual filing fee. The suspension must remain in effect until the time that the person demonstrates to the satisfaction of the commissioner that the person has complied with all the provisions of [sections 1 through 6 and 9]. If the license of an insurance producer or consultant is suspended by reason of this section for a period exceeding 12 months, the license must be terminated upon notice to the insurance producer or consultant.

(3) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all persons who have successfully completed an approved continuing education activity during the preceding calendar year.

(4) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection (3). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection (3). The fine may not exceed the penalty permitted by 33-1-317.

Section 6. **Rulemaking authority.** The commissioner may adopt rules to implement [sections 1 through 6 and 9].

Section 7. Section 33-2-708, MCA, is amended to read:

"**33-2-708. Fees and licenses.** (1) Except as provided in 33-17-212(2), the commissioner shall collect in advance and the persons served shall pay to the commissioner the following fees:

(a) certificates of authority:

(i) for filing applications for original certificates of authority, articles of incorporation (except original articles of incorporation of domestic insurers as provided in subsection (1)(b)) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:

(A) domestic insurers	$ 600.00
(B) foreign insurers	600.00
(ii) annual continuation of certificate of authority	600.00
(iii) reinstatement of certificate of authority	25.00
(iv) amendment of certificate of authority	50.00

(b) articles of incorporation:

(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state	20.00

(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation	25.00
(c) filing bylaws or amendment to bylaws where required	10.00
(d) filing annual statement of insurer, other than as part of application for original certificate of authority	25.00
(e) insurance producer's license:	
(i) application for original license, including issuance of license, if issued	15.00
(ii) appointment of insurance producer, each insurer	10.00
(iii) temporary license	15.00
(iv) amendment of license (excluding additions to license) or reissuance of master license	15.00
(f) nonresident insurance producer's license:	
(i) application for original license, including issuance of license, if issued	100.00
(ii) appointment of insurance producer, each insurer	10.00
(iii) annual renewal of license	10.00
(iv) amendment of license (excluding additions to license) or reissuance of master license	15.00
(g) examination, if administered by the commissioner, for license as insurance producer, each examination	15.00
(h) surplus lines insurance producer license:	
(i) application for original license and for issuance of license, if issued	50.00
(ii) annual renewal of license	50.00
(i) adjuster's license:	
(i) application for original license and for issuance of license, if issued	15.00
(ii) annual renewal of license	15.00
(j) insurance vending machine license, each machine, each year	10.00
(k) commissioner's certificate under seal (except when on certificates of authority or licenses)	10.00
(l) copies of documents on file in the commissioner's office, per page	.50

(m) policy forms:	
(i) filing each policy form	25.00
(ii) filing each application, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks	10.00
(iii) maximum charge if policy and all forms submitted at one time or resubmitted for approval within 180 days	100.00
(n) applications for approval of prelicensing education courses:	
(i) reviewing initial application	150.00
(ii) periodic review	50.00

(2) The commissioner shall establish by rule fees commensurate with costs for filing documents and conducting the course reviews required by [sections 4 and 5].

~~(2)~~*(3)* The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fines and penalties, those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706, and any fees and examination and miscellaneous charges that are collected ~~by him~~ pursuant to Title 33 and the rules adopted under Title 33, *except that all fees for filing documents and conducting the course reviews required by [sections 4 and 5] must be deposited in the state special revenue fund pursuant to [section 9]*.

~~(3)~~*(4)* All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 8. Section 33-17-1001, MCA, is amended to read:

"**33-17-1001. Suspension, revocation, or refusal of license.** (1) Except as provided in 33-17-411, the commissioner may suspend for not more than 12 months, may revoke or refuse to continue, or may deny an application for a license issued under this chapter or any surplus lines insurance producer license if, after hearing held on not less than 10 days' advance notice by certified mail of the hearing and of the charges against the licensee given as provided in 33-1-314(3) to the licensee, ~~he~~ *the commissioner* finds that the licensee or applicant has:

(a) engaged or is about to engage in an act or practice for which issuance of the license could have been refused had it then existed and been known to the commissioner;

(b) obtained or attempted to obtain a license through misrepresentation or fraud;

(c) violated or failed to comply with a provision of this code or has violated a rule, subpoena, or order of the commissioner or of the commissioner of any other state;

(d) improperly withheld, misappropriated, or converted to ~~his~~ *the licensee's or applicant's* own use money or property belonging to policyholders, insurers, beneficiaries, or others and received in conduct of business under the license;

(e) been convicted of a felony;

(f) in the conduct of ~~his~~ *the* affairs under the license, used fraudulent, coercive, or dishonest practices or *the licensee or applicant is* ~~has~~ shown ~~himself~~ to be incompetent, untrustworthy, financially irresponsible, or a source of injury and loss to the public;

(g) made a materially untrue statement in the license application *or in the continuing education affidavit*;

(h) misrepresented the terms of an actual or proposed insurance contract;

(i) been found guilty of an unfair trade practice or fraud prohibited by Title 33, chapter 18;

(j) had ~~his~~ *a* license suspended or revoked in any other state;

(k) forged another's name to an application for insurance;

(l) cheated on an examination for a license; or

(m) knowingly accepted insurance business from a person who is not licensed.

(2) The license of a partnership or corporation may be suspended, revoked, refused, or denied if a reason listed in subsection (1) applies to an individual designated in the license to exercise its powers.

(3) The commissioner may suspend, revoke, or refuse to continue a license under subsection (1)(e) without conducting an investigation pursuant to 37-1-203 or making a written finding pursuant to 37-1-204."

Section 9. **Funding for continuing education program.** All annual continuing education filing fees collected by the commissioner and fees paid to the commissioner for the review of initial applications for approval of continuing education courses or the periodic review of these courses must be turned over promptly to the state treasurer who shall place the money in the state special revenue fund to the credit of the state auditor's office to be used for the continuing education program. The funds allocated by this section to the state special revenue fund may be used only to defray the expenses of the state auditor's office in discharging its duties as prescribed by [sections 1 through 6], subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state money. The state auditor is responsible for the proper expenditure of this money as provided by law.

Section 10. **Codification instruction.** [Sections 1 through 6 and 9] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 6 and 9].

Section 11. **Effective dates.** (1) [Sections 1 through 4 and 6 through 11] are effective July 1, 1993.

(2) [Section 5] is effective January 1, 1995.

Approved May 7, 1993.

CHAPTER NO. 623

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1995.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as "The General Appropriations Act of 1993".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 1995 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Legislative audit costs. Amounts appropriated for legislative audits may be transferred between fiscal years. Agencies shall reserve enough cash in each fund to pay for audit costs and shall, to the maximum extent allowable under federal regulations, charge audit costs to federal funds.

Section 5. Technical allocation costs. For agencies with internal cost allocation plans that are funded with proprietary revenue, the budget director shall adjust agency appropriations by amounts that are necessary to increase the budgets for indirect costs that are attributable to pay increases in an agency's indirect cost pool appropriated in the state pay plan bill. Funding for this appropriation consists of general fund money and other funds in an amount proportionate to the funding allocated for budgeting indirect cost assessments in [this act].

Section 6. Appropriation control. An appropriation item designated as "Biennial" may be spent in either year of the biennium. The office of budget and program planning shall establish a separate appropriation on the statewide budgeting and accounting system for any item designated as "Restricted". Unless otherwise stated, appropriation authority may not be transferred out of an appropriation item designated as "Restricted".

Section 7. Energy conservation bond repayments. Agencies participating in the state building energy conservation program are required to transfer semiannually, upon request by the department of natural resources and conservation, to the energy conservation program account the money appropriated for that purpose in [this act].

Section 8. Program definition. As used in [this act], a program is consistent with the management and accountability structure established on the statewide budgeting and accounting system and is identified as a major subdivision of an agency ordinally numbered with an arabic number.

Section 9. Vacancy savings and budget balancing reduction. (1) The amounts shown for vacancy savings reduce each agency's total appropriation by fund type. The agency, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's expenditure authority accordingly. In allocating the vacancy savings, agencies may adjust amounts among fund types, excluding general fund, which may not be adjusted.

(2) The amounts shown for budget balancing reductions reduce each agency's total general fund appropriation. The agency, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's expenditure authority accordingly.

Section 10. Personal services contingencies. The amounts shown for personal services contingencies that appear in some legislative and judicial agencies and in the office of the commissioner of higher education are biennial appropriations that may be expended by the agency, subject to the approval of the approving authority, as defined in 17-7-102, for personal services if the agency did not experience normal turnover or early retirements in an amount necessary to provide full funding for personal services. Prior to requesting use of these funds, agencies are required to document to the approving authority their efforts to work toward cost savings by implementing efficiencies, economies of scale, streamlined supervision, and better coordination of services provided by that agency. The approving authority shall provide periodic reports to the legislative finance committee, documenting approval for expenditure of any personal services contingency funds.

Section 11. Personal services funding — 1997 biennium. (1) Except as provided in subsection (2), current and modified funding level budget requests for the 1997 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency and the commissioner of higher education must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity for each fiscal year must be shown for each control variable in agency budget requests for the 1997 biennium submitted to the office of budget and program planning.

(2) The provisions of subsection (1) do not apply to the rest of the Montana university system.

Section 12. Budget balancing reductions of general fund. The amounts shown for budget balancing reductions reduce each agency's general fund appropriations by 1/2 of 1%, with the following exceptions: medical assistance and family assistance in the department of social and rehabilitation services, the department of corrections and human services, and the Montana university system, with the exception of the office of the commissioner of higher education.

Section 13. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 14. Effective date. [This act] is effective July 1, 1993.

Section 15. Appropriations. The following money is appropriated for the respective fiscal years:

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

A. GENERAL GOVERNMENT AND HIGHWAYS

LEGISLATIVE AUDITOR (1101)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Audit and Examination Program (01)	1,354,483	1,416,333				2,770,816	1,338,960	1,398,833				2,737,793
a. SJR 28 — Legislative Audit Request — Hard-Rock Bureau (Biennial)		1,200				1,200						
2. Vacancy Savings	52,958					52,958	53,221					53,221
3. Personal Services Contingencies (Restricted/Biennial)	5,296					5,296	5,322					5,322
4. Budget Balancing Reduction	6,534					6,534	6,455					6,455
Total	1,300,287	1,417,533				2,717,820	1,284,606	1,398,833				2,683,439

Item 1a is contingent on passage of Senate Joint Resolution No. 28.

LEGISLATIVE FISCAL ANALYST (1102)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Analysis and Review (01)	821,376					821,376	851,562					851,562
a. Legislative Requests (Restricted/Biennial)	4,000					4,000						
2. Budget Balancing Reduction	4,127					4,127	4,258					4,258
Total	821,249					821,249	847,304					847,304

Of the amount appropriated as item 1a, legislative contingencies, to the office of the legislative fiscal analyst in section 1, Chapter 17, Special Laws of July 1992, amending section 1, Chapter 13, Special Laws of January 1992, amending section 1, Chapter 815, Laws of 1991, any unexpended funds up to $16,000 are reappropriated to the analysis and review program (program 01) within the office of the legislative fiscal analyst. The funds reappropriated to the analysis and review program are appropriated for the 1995 biennium for expenses associated with the review required in Senate Bill No. 378.

LEGISLATIVE COUNCIL (1104)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Interim Studies and Conferences (05)												
a. Interim Studies (Biennial)	146,250					146,250						
2. Legislative Council Operations (10)	1,633,279	917,104				2,550,383	1,915,606	442,751				2,358,357
a. Legislative Branch Computer Network (Restricted)	208,130					208,130	230,870					230,870
3. Budget Balancing Reduction	9,938					9,938	10,732					10,732
Total	1,977,721	917,104				2,894,825	2,135,744	442,751				2,578,495

Individual activities in the interim studies program are budgeted as follows:

Joint Interim Committees	$44,762
Revenue Oversight Committee	21,479
Administrative Code Committee	7,232
Select Committee on Indian Affairs	7,193
Commission on Uniform State Laws	35,000
Northwest Economic Region Conference	30,584
Statewide Issues	0
National Conference of State Legislatures	0

Of the amount appropriated as item 1, interim studies and conferences (program 5), to the legislative council in section 1, Chapter 17, Special Laws of July 1992, amending section 1, Chapter 13, Special Laws of January 1992, amending section 1, Chapter 815, Laws of 1991, $125,000 is reappropriated to item 1a, the interim studies and conferences program (program 5), within the legislative council. The funds reappropriated to the interim studies and conferences program are appropriated for the 1995 biennium.

The legislative council may allocate money appropriated in item 1a among the individual activities listed above in order to complete work assigned by the legislature.

ENVIRONMENTAL QUALITY COUNCIL (1111)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Environmental Quality Program (01)	277,908					277,908	279,226					279,226

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Proprietary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Proprietary	Fiscal 1995 Other	Fiscal 1995 Total
2. Water Policy Committee (02)												
a. Water Policy Committee (Biennial)		27,256				27,256						
3. Budget Balancing Reduction	1,390					1,390	1,396					1,396
Total	276,518	27,256				303,774	277,830					277,830
CONSUMER COUNSEL (1112)												
1. Administration Program (01)		847,855				847,855		848,798				848,798
a. *Consultant Contingency (Restricted)*		100,000				100,000		100,000				100,000
b. Utility Economist		54,270				54,270		54,113				54,113
Total		1,002,125				1,002,125		1,002,911				1,002,911

Item 1a is for expert witness fees for unanticipated cases.

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Proprietary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Proprietary	Fiscal 1995 Other	Fiscal 1995 Total
JUDICIARY (2110)												
1. Supreme Court Operations (01)	1,497,465					1,497,465	1,506,673					1,506,673
a. Legislative Audit (Restricted/Biennial)	17,321					17,321						
b. SB 271 — Pilot Program for Local Citizen Review Boards (Restricted/Biennial)	113,232					113,232						
2. Boards and Commissions (02)	250,408					250,408	258,458					258,458
3. Law Library (03)	592,196					592,196	603,166					603,166
4. District Court Operations (04)	2,908,966					2,908,966	2,920,214					2,920,214

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Proprietary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Proprietary	Fiscal 1995 Other	Fiscal 1995 Total
5. Water Courts Supervision (05)		524,836				524,836		520,823				520,823
a. Legislative Audit (Restricted/Biennial)		1,053				1,053						
6. Clerk of Court (06)	181,421					181,421	181,531					181,531
7. Vacancy Savings	23,626	8,115				31,741	23,626	8,119				31,745
8. Personal Services Contingencies (Restricted/Biennial)	2,362	1,623				3,985	2,362	1,623				3,985
9. Budget Balancing Reduction	27,133					27,133	27,244					27,244
Total	5,512,612	519,397				6,032,009	5,421,534	514,327				5,935,861

Contingent on passage and approval of Senate Bill No. 271, the appropriation in item 1b is appropriated to the office of the supreme court administrator for allocation to the youth court of the judicial districts designated, pursuant to Senate Bill No. 271, for a pilot program for local citizen review boards for foster care placements.

GOVERNOR'S OFFICE (3101)

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Proprietary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Proprietary	Fiscal 1995 Other	Fiscal 1995 Total
1. Executive Office Program (01)	918,867	125,455				1,044,322	923,278	125,627				1,048,905
a. Legislative Audit (Restricted/Biennial)	22,764					22,764						
b. Montana Community Service Act (Biennial)		500,000				500,000						
2. Mansion Maintenance Program (02)	49,561					49,561	49,999					49,999
3. Air Transportation Program (03)	135,328	10,000				145,328	152,770	10,000				162,770
a. Expand Aircraft Usage		32,000				32,000		32,000				32,000
4. Office of Budget and Program Planning (04)	816,616					816,616	811,590					811,590
a. Legislative Audit (Restricted/Biennial)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	14,309					14,309						
5. Northwest Regional Power Act (09)			419,969			419,969			422,838			422,838
6. Lieutenant Governor (12)	182,499	15,000				197,499	184,624	15,000				199,624
a. Office of Public Policy Dispute Resolution		65,000				65,000		65,000				65,000
7. Citizens' Advocate Office (15)	60,889		15,000			75,889	58,943		15,000			73,943
8. Mental Disabilities Board of Visitors (20)	144,765		54,437			199,202	147,063		54,656			201,719
9. Vacancy Savings	88,999	8,158				97,157	89,086	3,000				92,086
10. Budget Balancing Reduction	10,934					10,934	10,836					10,836
Total	2,245,665	739,297	489,406			3,474,368	2,228,345	244,627	492,494			2,965,466

The governor is encouraged to work with executive branch agencies and other elected officials toward cost savings during the 1995 biennium by implementing improved efficiencies, economies of scale, streamlined supervision, and better coordination of services among agencies. In particular, the governor is encouraged to identify duplicative services and FTE within executive branch agencies to promote consolidation and cost savings. This should include but not be limited to attorneys, environmental specialists, statisticians, grant writers, economists, and biologists.

The governor is further encouraged to foster development of a mission-driven budget system, including the development of flexible, unified budgets and the development of an incentive system to encourage agencies to generate cost savings and reduced expenditures. This initiative should include working toward the development of a results-oriented system for budgeting, including budgeting by performance and outcome measures and seeking flexibility and improvement in the quality of decisionmaking information available to the legislature in the 1995 session. The departments of administration, revenue, military affairs, and transportation should be used for pilot projects in developing an innovative budget system.

OFFICE OF THE SECRETARY OF STATE (3201)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Business and Government Services (01)	52,361			1,006,005		1,058,366	69,646			927,577		997,223
a. Legislative Audit (Restricted/Biennial)	683			12,975		13,658						
b. Fireproof Storage	2,500			47,500		50,000						
2. Administrative Code Program (03)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
				210,760		210,760				200,179		200,178
a. Legislative Audit (Restricted/Biennial)				2,927		2,927						
3. Records Management (04)				362,180		362,180				366,053		366,053
a. Legislative Audit (Restricted/Biennial)				2,927		2,927						
4. Vacancy Savings	1,380			42,385		43,765	1,384			42,485		43,869
5. Budget Balancing Reduction	271					271	341					341
Total	53,893			1,602,889		1,656,782	67,921			1,451,323		1,519,244
COMMISSIONER OF POLITICAL PRACTICES (3202)												
1. Administration (01)	126,562					126,562	126,931					126,931
a. Legislative Audit (Restricted/Biennial)	3,252					3,252						
2. Vacancy Savings	4,879					4,879	4,895					4,895
3. Budget Balancing Reduction	625					625	610					610
Total	124,310					124,310	121,426					121,426
OFFICE OF THE STATE AUDITOR (3401)												
1. Central Management (01)	323,190	3,650		7,300		334,140	323,509	3,656		7,311		334,476
a. Legislative Audit (Restricted/Biennial)	2,497					2,497						
b. Glacier General Liquidation		10,000				10,000		10,000				10,000

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2. Insurance Program (03)	1,118,616	41,850				1,160,466	1,115,801	41,850				1,157,651
a. Legislative Audit (Restricted/Biennial)	10,614					10,614						
b. Insurance Examination Costs		91,800				91,800		38,000				38,000
c. SB 354 — Insurance Industry Continuing Education Program		115,848				115,848		99,782				99,782
d. HB 273 — Auto Glass Insurance Practices	10,000					10,000	10,000					10,000
e. SB 430 — Insurance Regulatory Program Accreditation		287,452				287,452		269,052				269,052
3. Securities (04)	332,661					332,661	333,385					333,385
a. Legislative Audit (Restricted/Biennial)	3,122					3,122						
b. SB 314 — Securities Portfolio Registration Program		75,500				75,500		63,732				63,732
4. Fiscal Control and Management Program (10)	219,701	510,461		156,124		886,286	213,848	536,786		156,563		907,197
a. Legislative Audit (Restricted/Biennial)		23,753		1,563		25,316						
b. Bad Debts Expansion				37,494		37,494				37,494		37,494
5. Vacancy Savings	76,301	9,017		8,043		93,361	76,430	9,059		8,066		93,555
6. Budget Balancing Reduction	9,671					9,671	9,551					9,551
Total	1,934,429	1,151,297		194,438		3,280,164	1,910,562	1,053,799		193,302		3,157,663

The state auditor shall deposit into a state special revenue account funds received from examination of insurance companies, liquidation of the glacier general assurance company, and licensing of out-of-state insurance agents.

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

The department shall develop and submit a cost recovery plan for the warrant writing system to the office of budget and program planning and the legislative fiscal analyst by June 1, 1994. The total program cost estimate used to allocate the fees must be reduced by the estimated amount of the state special revenue fund balance for the program that will carry over from the 1995 biennium.

The fixed cost rates charged to state agencies by the state auditor for warrant writing services (object code 2113) may not be higher than the amount necessary to fund the expenses of the agency for providing those services, as appropriated in the state pay plan and [this act], and to fund any unforeseen costs that would require supplemental funding.

Item 2c is contingent on passage and approval of Senate Bill No. 354.

Item 2d is contingent on passage and approval of House Bill No. 273.

Item 2e is contingent on passage and approval of Senate Bill No. 430.

Item 3b is contingent on passage and approval of Senate Bill No. 314.

CRIME CONTROL DIVISION (4107)

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
1. Justice System Support Service (01)	463,524	100,324	204,054			767,902	467,863	100,325	204,053			772,241
a. D.A.R.E. Program Pass-Through Grants (Biennial)		20,000				20,000		20,000				20,000
b. Juvenile Justice Pass-Through Grants (Biennial)			410,000			410,000			410,000			410,000
c. Victims' Assistance Pass-Through Grants (Biennial)			381,000			381,000			381,000			381,000
d. Drug Education Pass-Through Grants (Biennial)			466,588			466,588			466,588			466,588
e. Drug Enforcement Pass-Through Grants (Biennial)			2,132,386			2,132,386			2,132,386			2,132,386
f. Crime Victims' Compensation Pass-Through Benefits (Biennial)		455,000	135,000			590,000		455,000	135,000			590,000
g. Indian Victim Assistance Pass-Through Grants (Biennial)			70,000			70,000			70,000			70,000
h. Improved Victim Services		2,020				2,020		1,960				1,960
i. SB 292 — Youth Detention Services Grant Administration		48,937				48,937		49,170				49,170
2. Vacancy Savings	2,556	3,173				5,729	2,586	3,181				5,767

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
3. Budget Balancing Reduction	2,305					2,305	2,326					2,326
Total	458,663	623,108	3,799,028			4,880,799	462,951	623,274	3,799,027			4,885,252

All remaining federal pass-through grant appropriation authority for the 1993 biennium is authorized to continue into fiscal 1994 and fiscal 1995.

The board of crime control shall charge tuition and fees sufficient to reimburse the general fund for costs associated with the juvenile justice training program and for technical assistance provided to local law enforcement agencies. *The tuition and fees collected must be deposited in the general fund.*

HIGHWAY TRAFFIC SAFETY (4108)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Highway Traffic Safety Division (36)	183,080	385,039	1,308,397			1,876,516	183,080	386,104	1,306,686			1,875,870
2. Vacancy Savings	1,471	3,093				4,564	1,476	3,113				4,589
3. Budget Balancing Reduction	908					908	908					908
Total	180,701	381,946	1,308,397			1,871,044	180,696	382,991	1,306,686			1,870,373

DEPARTMENT OF JUSTICE (4110)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Legal Services Division (01)	1,305,861					1,305,861	1,319,121					1,319,121
a. Case-Related Travel (Restricted)	9,500					9,500	9,500					9,500
b. Other Litigation Costs (Restricted/Biennial)	100,000					100,000						
c. Major Litigation Costs (Restricted/Biennial)	400,000					400,000						
d. Additional Attorney	51,000					51,000	51,000					51,000
2. Agency Legal Services (06)				607,138		607,138				614,435		614,435
3. Gambling Control Division (07)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		1,433,173				1,433,173		1,443,725				1,443,725
a. Retain Gambling Expansion Staff		207,331				207,331		207,478				207,478
b. HB 609 — Transfer Liquor Investigation Function				314,770		314,770				318,973		318,973
4. Motor Vehicle Division (12)	4,999,155	1,122,103	14,500			6,135,758	1,890,364	4,244,207	12,500			6,147,071
a. Reinstate Administrative Officer	43,500					43,500	43,500					43,500
b. ADP Transfer to State Mainframe	344,741					344,741	657,819					657,819
5. Highway Patrol Division (13)		12,710,659	604,120			13,314,779		12,662,962	611,652			13,274,614
6. Law Enforcement Services Division (18)	1,688,170	53,000	386,144			2,127,314	1,687,016	43,000	379,182			2,109,198
a. Automated Fingerprint Identification (AFIS)			360,000			360,000			360,000			360,000
b. WC Investigator/Support Staff		65,132				65,132		90,204				90,204
c. SB 164 — WC Investigation Unit		276,100				276,100		183,500				183,500
d. HB 222 — Fire Protection Equipment Licensing Program		88,200				88,200		82,300				82,300
e. HB 609 — Transfer Public Assistance Investigation Function			113,747	56,983		170,730			112,427	45,580		158,007
7. County Attorney Payroll (19)	1,314,476					1,314,476	1,350,492					1,350,492
8. Law Enforcement Academy Division (22)	630,467					630,467	640,878					640,878
a. MLEA Facility Enhancement	97,640					97,640	104,500					104,500
9. Central Services Division (28)	187,335	235,391		9,236		431,962	178,140	266,052		9,872		454,064
a. Legislative Audit (Restricted/Biennial)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	18,758	23,570		924		43,252						
b. Drug Prevention Coordinator	45,000					45,000	45,000					45,000
10. Data Processing Division (29)	927,417	318,000				1,245,417	938,228	330,000				1,268,228
11. Extradition and Transportation of Prisoners (30)	144,945					144,945	151,720					151,720
12. Forensic Science Division (32)	962,796	270,000				1,232,796	951,090	270,000				1,221,090
a. Firearms and Toolmarks Examiner	52,839					52,839	52,839					52,839
13. Vacancy Savings	384,962	572,183		38,980		996,125	385,050	569,837		39,075		993,962
14. Budget Balancing Reduction	61,020					61,020	54,832					54,832
Total	12,877,618	16,230,476	1,478,511	950,071		31,536,676	9,631,325	19,253,591	1,475,761	949,785		31,310,462

The legislature recognizes that costs associated with litigation in which the legal services division must provide representation to the state of Montana may exceed the appropriation provided in item 1c. In that event, the department will need to request a supplemental appropriation from the 1995 legislature to adequately represent the state.

The department is authorized to request a budget amendment for the rural statewide intelligence network if federal grant funds become available during the 1995 biennium.

The department is directed to prepare a plan to privatize all state driver's license examination stations and to present this plan to the legislative audit committee by July 1, 1994. The department shall also prepare a plan by July 1, 1994, in consultation with the superintendent of public instruction, to have driver's license examinations of students conducted, under the supervision and direction of the department, by local school district staff of traffic education programs administered by the superintendent of public instruction.

The department is to develop a plan for streamlining operations, improving efficiencies, and better coordination of services for the gambling control division. The plan is to be submitted to the legislative finance committee before June 1, 1994.

The department shall work with the department of transportation to develop a plan for coordination of truck inspection and safety. The plan is to be submitted to the legislative finance committee before June 1, 1994.

The department is authorized to transfer the retirement contributions provided under 19-6-404 and 61-5-121(1)(a) in fiscal 1994 and fiscal 1995 from the highway patrol retirement clearing account in the state special revenue fund to the Montana highway patrol officers' retirement pension trust fund. An appropriation must be established each year in the amount required to be transferred.

DEPARTMENT OF TRANSPORTATION (5401)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. General Operations Program (01)		7,159,081	1,577,324			8,736,405		7,192,357	1,503,533			8,695,890
a. Legislative Audit (Restricted/Biennial)		77,398				77,398						
b. Compliance Review Staff (Restricted)		211,847				211,847		201,259				201,259
c. Federal Motor Fuel Compliance Act (Restricted)			50,000			50,000			50,000			50,000
d. Highway Information System (Restricted)		20,000	80,000			100,000		140,000	560,000			700,000
e. Information Service Staff (Restricted)		13,228	52,914			66,142		13,248	52,990			66,238
f. Project Financial Management System (Restricted)		13,228	52,914			66,142		21,248	84,990			106,238
g. FHWA Grant Administration		24,274				24,274		24,309				24,309
h. Multi-Modal Planning			374,010			374,010			124,189			124,189
i. Highway Performance Monitoring System (Restricted)			191,638			191,638			91,770			91,770
j. Transportation Improvement Plan (Restricted)			142,374			142,374			142,531			142,531
k. Scenic Byways Program (Restricted)		34,878	139,514			174,392		12,236	48,944			61,180
l. HB 539 — Tax Special Fuel at Distributor Level (Restricted)		104,000				104,000						
2. Construction Program (02)		56,059,870	158,008,538			214,068,408		56,255,070	159,625,210			215,880,280
a. Analytic Stero Plotter		225,000				225,000						
3. Maintenance Program (03)		50,141,898	88,914			50,230,812		50,396,784	88,914			50,485,698
a. Roadway Striping		1,000,000				1,000,000		1,000,000				1,000,000

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
b. Ice Control Material		1,285,091				1,285,091		1,373,391				1,373,391
c. Hazardous Waste (Restricted)		1,000,000				1,000,000		1,000,000				1,000,000
d. Pavement Preservation		6,500,000				6,500,000		6,500,000				6,500,000
e. Rest Areas Maintenance		165,000				165,000		165,000				165,000
4. State Motor Pool (07)				892,944		892,944				766,708		766,708
5. Equipment Program (08)				15,066,844		15,066,844				15,575,944		15,575,944
a. Equipment — Sweepers				1,000,000		1,000,000						
6. Interfund Transfers Program (11)		14,625,413				14,625,413		15,691,130				15,691,130
7. Stores Inventory (12)		14,474,899				14,474,899		14,645,376				14,645,376
a. Roadway Striping — Stores		1,000,000				1,000,000		1,000,000				1,000,000
b. Ice Control Material — Stores		1,285,091				1,285,091		1,373,391				1,373,391
c. Pavement Preservation — Stores		6,500,000				6,500,000		6,500,000				6,500,000
8. Gross Vehicle Weight Division (22)		4,165,437	16,000			4,181,437		4,193,816				4,193,816
9. Aeronautics Program (40)		538,845	91,800	72,618		703,263		554,684	91,800	73,402		719,886
10. Rail and Transit Program (50)	32,288	315,224	1,564,790			1,912,302	32,416	314,742	1,544,739			1,891,897
a. FTA Section 3 Grant			449,609			449,609						
b. FTA Section 8 Grant			107,022			107,022			107,022			107,022

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
c. FTA Section 18 Grant			261,870			261,870			261,870			261,870
d. FTA Section 26(A)(2) Grant			44,806			44,806			44,806			44,806
e. FTA Section 16(B)(2) Grant			67,398			67,398			67,398			67,398
f. Urban Planning Program		36,658	245,328			281,986		36,663	245,360			282,023
g. McCarty Farms Litigation (Restricted/Biennial)	100,000					100,000						
h. FTA Grant Pass-Through Authority		174,013				174,013		108,513				108,513
11. Vacancy Savings	557	1,985,761		229,598		2,215,916	568	2,005,602		232,879		2,239,049
12. Budget Balancing Reduction	659					659	159					159
Total	131,072	165,164,612	163,606,763	16,802,808		345,705,255	31,689	166,707,615	164,736,066	16,183,175		347,658,545

Of the amount appropriated in item 1, $41,154 must be repaid to the state compensation mutual insurance fund to reimburse the fund for compensation benefits improperly paid to department of transportation employees who were receiving sick or annual leave benefits. The money received by the state compensation mutual insurance fund must be deposited in the fund from which the benefits were paid.

Item 11 is contingent on passage and approval of House Bill No. 539.

The department is directed to submit to the 1995 legislature a construction work plan for the years 1995 through 1999 that is detailed by year and project. This work plan must specify, by road system or project area, proposed projects on which $1 million or more would be spent during the 1997 biennium and an aggregate cost for projects with anticipated expenditures of less than $1 million. Costs must be detailed by year and project.

The department may adjust appropriations and FTE in the construction, interfund transfers, and maintenance programs between fiscal years to reflect actual expenditures related to the construction work plan and maintenance activities.

The department may adjust appropriations in the construction and rail and transit programs between fund types, provided that the adjustment does not exceed 10% of the total appropriation established by the legislature for the construction or rail and transit program and provided that the general fund appropriation in the rail and transit program does not increase over the amount established by the legislature. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning, and all fund transfers of over $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

The legislature recognizes that costs associated with the McCarty farms litigation may exceed the appropriation in item 10g, and in that event, the department will need to request a supplemental appropriation from the 1995 legislature to adequately represent the state.

The legislature urges the department to review the highway leading most directly between Billings and Great Falls. This corridor is important to the economic well-being of the state of Montana and instrumental in economic development of international trade. The department shall prepare a written report encompassing the condition of the highway and the improvements made and planned to be made. The report must include cost estimates, a tentative schedule, the types of improvements, and a means of financing the construction or reconstruction. This report must be made available to the legislature on or before December 1, 1994.

The legislature eliminates a $100,000 allocation per year included in item 3 from the noxious weed control budget for the purchase of biological agents and designates those funds for general operation of the maintenance program.

DEPARTMENT OF REVENUE (5801)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Director's Office (01)	849,860	2,274	4,147	180,178		1,036,459	861,821			180,268		1,042,089
a. Legislative Audit (Restricted/Biennial)	87,446	2,274	1,269	27,710		118,699						
2. Centralized Services Division (02)	797,682					797,682	798,404					798,404
3. Data Processing Division (03)	966,393	86,832		545,189		1,598,414	966,128	86,818		545,099		1,598,045
4. Liquor Division (05)				259,457		259,457				260,222		260,222
5. Income Tax (06)	4,188,878	512,679				4,701,557	4,134,281	512,474				4,646,755
a. Cigarette Tax Funding/Stamps		15,000				15,000		30,000				30,000
6. Corporation Tax (07)	1,330,321	62,413	154,868			1,547,602	1,334,840	62,675	156,151			1,553,666
a. Royalty Audit FTE			37,670			37,670			37,714			37,714
7. Property Valuation Division (08)	13,042,450					13,042,450	13,068,772					13,068,772
a. BEVS Computer Processing	45,000					45,000	90,000					90,000
b. SB 168 — Agricultural Land Valuations (Restricted)	261,432					261,432	4,968					4,968

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
8. Vacancy Savings	796,153	22,930		43,340		862,423	798,283	23,018		43,845		865,146
9. Budget Balancing Reduction	102,559					102,559	102,280					102,280
Total	20,670,750	658,542	197,954	969,194		22,496,440	20,358,651	668,949	193,865	941,744		22,163,209

Liquor division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated in amounts not to exceed $50,662,000 in fiscal 1994 and $52,765,000 in fiscal 1995. During the 1995 biennium, the division shall attempt to return at least 10% of net sales. Net sales are gross sales less discounts and all taxes collected. The division shall limit operational expenses of the liquor merchandising system to not more than 15% of the net sales. Operational expenses may not include product costs, freight charges, expenses allocable to other divisions, or licensing bureau expenses.

It is the intent of the legislature that the department vigorously pursue collection of the dangerous drug tax pursuant to Title 15, chapter 25, part 1.

If the referendum to enact a general sales tax and to provide tax reform in Senate Bill No. 235 is approved by the electorate in the special election provided for by [section 184 of Senate Bill No. 235], there is appropriated from the state special revenue account created in Senate Bill No. 235 to the department of revenue up to $4,511,707 in fiscal 1994 and up to $5,684,952 in fiscal 1995 for the purpose of administering the provisions of Senate Bill No. 235. In accordance with 17-2-107(2)(c), the legislature authorizes the department of administration to provide an interentity loan to the department of revenue for these amounts during the 1995 biennium. These loans must be repaid from proceeds of the sales tax deposited in the state special revenue account.

If the referendum to enact a general sales tax and to provide tax reform as provided in Senate Bill No. 235 is approved by the electorate at the June 8, 1993, special election provided for by [section 184 of Senate Bill No. 235], there is appropriated from the sales tax and use tax account established in [section 71 of Senate Bill No. 235] to the department of revenue the amounts necessary to provide the property tax replacement revenue for taxing jurisdictions as provided for in 15-1-111(5) through (13), as amended by Senate Bill No. 235, and in [section 125 of Senate Bill No. 235], regarding reimbursement to local governments and schools, in fiscal 1994 and fiscal 1995.

DEPARTMENT OF ADMINISTRATION (6101)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Director's Office (01)	243,923			91,647		335,570	242,618			92,178		334,796
2. Accounting and Management Support (03)	952,388			68,148		1,020,536	944,972			67,926		1,012,898
a. Legislative Audit (Restricted/Biennial)	42,227					42,227						
b. CMIA Implementation			30,057			30,057			30,058			30,058
3. Architecture and Engineering (04)		719,451				719,451		722,648				722,648
a. Legislative Audit (Restricted/Biennial)		1,499				1,499						

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Speciel Revenue	Federal Special Revenue	Propri-etary	Other	Total
4. Procurement and Printing (06)	422,617			10,441,990		10,864,607	424,770			10,974,818		11,399,588
a. Legislative Audit (Restricted/Biennial)				19,273		19,273						
b. Montana Fueling Program				117,083		117,083				117,045		117,045
c. Natural Gas Procurement				114,000		114,000				125,000		125,000
d. Excess Property Program				200,000		200,000				200,000		200,000
5. Information Services Division (07)				19,691,426		19,691,426				19,105,081		19,105,081
a. Legislative Audit (Restricted/Biennial)				60,022		60,022						
b. Backup Network Control Center				250,000		250,000				250,000		250,000
c. Interactive Voice Response				183,049		183,049				48,092		48,092
d. HB 99 Implementation				130,800		130,800				130,800		130,800
e. HB 520 – - Electronic Bulletin Board				43,191		43,191				41,691		41,691
6. General Services Division (08)	374,216			3,450,082	58,801	3,883,099	383,997			3,536,709	58,801	3,979,507
a. Legislative Audit (Restricted/Biennial)				6,811		6,811						
b. Major Maintenance Projects				100,000		100,000				100,000		100,000
c. Major Maintenance Contingency Fund (Biennial)				100,000		100,000						
7. Central Mail (13)				1,941,212		1,941,212				1,911,566		1,911,566
a. Legislative Audit (Restricted/Biennial)				3,643		3,643						

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
b. Central Mail Bar Encoding				119,600		119,600				162,000		162,000
c. Central Mail Expansion				504,323		504,323				504,387		504,387
8. State Personnel Division (23)	899,444			694,335		1,593,779	902,684			671,524		1,574,208
a. Legislative Audit (Restricted/Biennial)				1,140		1,140						
b. Benefits Computer System (Biennial)				305,000		305,000						
c. Personal Services Contingency (Restricted/Biennial)	528,633	1,023,914		329,756	12,067	1,894,370	453,498	1,035,235		335,695	11,633	1,836,061
d. HB 428 — Statewide Benefits Program				19,600		19,600				19,600		19,600
e. State Payroll	204,615	210,239				414,854	178,035	222,043				400,078
f. Legislative Audit — State Payroll (Restricted/Biennial)		44,955				44,955						
9. Risk Management and Tort Defense (24)				2,780,824		2,780,824				2,807,191		2,807,191
a. Legislative Audit (Restricted/Biennial)				5,223		5,223						
b. Contracted Legal Services				150,000		150,000				150,000		150,000
10. State Tax Appeal Board (37)	394,294					394,294	395,775					395,775
11. Vacancy Savings	121,550	30,703		380,341	496	533,090	121,914	30,765		386,503	489	539,671
12. Budget Balancing Reduction	19,805					19,805	19,022					19,022
Total	3,921,002	1,969,355	30,057	41,541,837	70,372	47,532,623	3,785,413	1,949,161	30,058	40,964,800	69,945	46,799,377

		Fiscal 1994						Fiscal 1995			
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

The department may transfer cash from the capital projects fund to the state special revenue fund to fund the appropriation in item 3. The transfer may not exceed the state special revenue fund appropriation for the architecture and engineering division that is included in the state pay plan and [this act].

Funds remaining in the capitol land grant account of the capital projects fund, after the appropriations are met for the general services division of the department and any project provided for in Chapter 774, Laws of 1991, are appropriated to the long-range building debt service fund for the payment of principal and interest on bond issues for public buildings at the capitol for executive, legislative, and judicial purposes, as outlined in section 12 of The Enabling Act. This appropriation is for the biennium ending June 30, 1995, and is not to exceed the annual debt service required on these bonds.

The appropriation in item 6 in the "other" column includes $58,801 in fiscal 1994 and $58,801 in fiscal 1995 from the capital projects fund.

In item 6, the department may charge a maximum of $3.47 a square foot in fiscal 1994 and $3.57 a square foot in fiscal 1995 for office space in state-owned buildings.

The appropriation in item 6 includes $28,050 in fiscal 1994 and $51,425 in fiscal 1995 proprietary funds that must be transferred to the department of natural resources and conservation for the purpose of paying off general obligation bonds issued by the department of natural resources and conservation to fund energy savings projects.

The department shall develop and submit a cost recovery plan for the state payroll system to the office of budget and program planning and the legislative fiscal analyst by June 1, 1994. The total program cost estimate used to allocate the fees must be reduced by the estimated amount of the state special revenue fund balance for the program that will carry over from the 1995 biennium.

The fixed cost rates charged to state agencies by the department for payroll services (object code 2114) may not be higher than the amount necessary to fund the expenses of the agency for providing those services, as appropriated in the state pay plan and [this act], and to fund any unforeseen costs that would require supplemental funding.

The fixed cost rates charged to state agencies by the department for network services (object code 2174), messenger services (object codes 2304, 2305, and 2307), and rent (object code 2527) may not be higher than the amount necessary to fund the expenses of the department for providing those services, as appropriated in the state pay plan and [this act].

Item 8c contains biennial appropriations that the department and the office of budget and program planning may allocate to executive branch agencies (except the Montana university system), subject to the process described below, for personal services if the agencies did not experience normal turnover or early retirements in an amount necessary to provide full funding for personal services or for the portion of the state payroll program that is underfunded. In allocating the personal service contingency funds, the department and the office of budget and program planning may adjust amounts among fund types, excluding general fund, which may not be adjusted. The appropriation of the agency to which the funds are allocated is increased by the amount of the allocation.

Prior to March 1 of each fiscal year, any agency requesting allocation of these funds shall provide a report to the governor, documenting:

(1) that normal turnover of employees and early retirements has not occurred in an amount necessary to provide full funding for personal services;

(2) its efforts to work toward cost savings by implementing efficiencies, economies of scale, streamlined supervision, and better coordination of services provided by that agency; and

(3) its efforts to identify duplication in services provided by the agency or any other agency.

The governor shall respond to requests for these funds by April 1 of each fiscal year. The department and the office of budget and program planning may not allocate these funds prior to approval of the governor.

The governor shall provide periodic reports to the legislative finance committee, documenting allocation of any personal services contingency funds. These reports must include a copy of the reports submitted by the agencies receiving these funds.

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Item 8d is contingent on passage and approval of House Bill No. 428.												
STATE COMPENSATION MUTUAL INSURANCE FUND (6103)												
1. State Fund (01)				165,685,290		165,685,290				180,453,821		180,453,821
a. Legislative Audit (Restricted/Biennial)				52,032		52,032						
b. Imaging System				283,745		283,745				730,476		730,476
c. New Positions				143,684		143,684				143,858		143,858
d. Fraud Investigation				65,000		65,000				90,000		90,000
e. Contract Audits				295,152		295,152				295,152		295,152
f. SB 164 — Workers' Compensation Fraud Investigation/Prosecution				542,202		542,202				361,749		361,749
g. SB 163 — Montana Safety Culture Act				456,478		456,478				364,724		364,724
h. SB 381 — Underinsured Employers				86,905		86,905						
i. HB 622 — Revising Workers' Compensation Act				107,269		107,269				92,631		92,631
j. HB 511 — Workers' Compensation Data Base System				251,906		251,906				152,355		152,355
k. SB 347 — Workers' Compensation Medical Cost Containment				749,666		749,666				448,044		448,044
2. Vacancy Savings				321,248		321,248				325,555		325,555
Total				168,398,081		168,398,081				182,807,255		182,807,255

The legislature is not pleased with the past administration of this fund.

Item 1i is contingent on passage and approval of House Bill No. 622.

Item 1j is contingent on passage and approval of House Bill No. 511.

Item 1k is contingent on passage and approval of Senate Bill No. 347.

If House Bill No. 13 is passed and approved and if it provides a statutory appropriation for administration and benefit costs of the state compensation mutual insurance fund, all appropriations for the state compensation mutual insurance fund in [this act] are eliminated.

PUBLIC EMPLOYEES' RETIREMENT BOARD (6104)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Public Employees' Retirement Program (35)					1,135,392	1,135,392					1,140,224	1,140,224
a. Legislative Audit (Restricted/Biennial)					35,122	35,122						
b. HB 517 — PERS Retirement Incentives (Restricted)					42,500	42,500						
2. Vacancy Savings					29,744	29,744					29,835	29,835
Total					1,183,270	1,183,270					1,110,389	1,110,389

The amounts listed in items 1, 1a, and 1b are appropriated from the pension trust fund.

Item 1b is contingent on passage and approval of House Bill No. 517.

TEACHERS' RETIREMENT BOARD (6105)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Teachers' Retirement System (01)					651,975	651,975					643,055	643,055
a. Legislative Audit (Restricted/Biennial)					27,805	27,805						
b. HB 244 — Medical Exams					1,200	1,200					1,200	1,200
c. HB 517 — TRS Retirement Incentives (Restricted)					5,750	5,750						
2. Vacancy Savings					16,491	16,491					16,544	16,544
Total												

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
					670,239	670,239					627,711	627,711

The amounts listed in items 1, 1a, 1b, and 1c are appropriated from the pension trust fund.

Item 1c is contingent on passage and approval of House Bill No. 517 with amendments to include the teachers' retirement system.

DEPARTMENT OF MILITARY AFFAIRS (6701)

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
1. Operations Support (01)	323,529					323,529	329,547					329,547
a. Legislative Audit (Restricted/Biennial)	7,561					7,561						
2. Army National Guard Program (12)	778,464		1,169,021			1,947,485	791,500		1,178,287			1,969,787
a. Service Agreement Backlog	2,974		90,056			93,030			17,439			17,439
b. Training Site Funding			74,019			74,019			74,109			74,109
c. Environmental Compliance			39,216			39,216			39,242			39,242
d. M-1 Tank Security			500,000			500,000			500,000			500,000
e. Utility Data Clerk			19,596			19,596			19,613			19,613
f. M-Coft Utilities			33,000			33,000			34,000			34,000
g. Land Lease — Ft. Harrison			12,000			12,000			12,000			12,000
h. Hangar for Army Guard C-12			20,000			20,000			20,000			20,000
i. Environmental Division Spending Authority			100,000			100,000			100,000			100,000
3. Air National Guard Program (13)	166,691		1,428,111			1,594,802	170,092		1,443,773			1,613,865
4. Disaster Coordination and Response (21)	227,147		243,936			471,083	225,333		242,130			467,463
a. Legislative Audit (Restricted/Biennial)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	5,444		5,444			10,888						
5. Emergency Management Development (24)												
			345,025			345,025			331,576			331,576
a. Legislative Audit (Restricted/Biennial)												
			4,234			4,234						
6. Local Civil Defense Reimbursement (29)												
			600,000			600,000			600,000			600,000
7. Veterans' Affairs Division (31)												
	538,321	42,254				580,575	539,922	38,755				578,677
a. Legislative Audit (Restricted/Biennial)												
	7,561					7,561						
b. Cemetery Sexton (0.25 FTE)												
		5,682				5,682		5,689				5,689
8. Vacancy Savings												
	55,157	965				56,122	55,278	948				56,226
9. Budget Balancing Reduction												
	10,013					10,013	10,006					10,006
Total												
	1,992,522	46,971	4,683,658			6,723,151	1,991,110	43,496	4,612,169			6,646,775

In item 3, up to 1.0 firefighter FTE may be added if the current contract is modified or becomes unnecessary.

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total SECTION A												
	54,479,012	190,849,019	175,593,774	230,459,318	1,923,881	653,305,004	50,737,107	194,286,325	176,646,126	243,491,384	1,808,045	666,968,987

B. HUMAN SERVICES

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES (5301)												
1. Director's Office (01)	141,558		47,234	543,999		732,791	142,378		47,435	541,069		730,882
a. Legal Services (Restricted)	15,000					15,000	15,000					15,000
b. Community Outreach				46,812		46,812				46,812		46,812
2. Central Services (02)	278,696	1,525,316	265,000	1,215,698		3,284,710	264,685	1,565,127	265,000	1,232,507		3,327,319
a. Legislative Audit (Restricted/Biennial)				55,284		55,284						
b. Laboratory Contingency (Restricted/Biennial)		100,000				100,000						
c. Medical Technologist		32,498				32,498		34,233				34,233
d. Laboratory Analysis Automation (Biennial)		53,500				53,500						
e. Network Software Upgrades				61,000		61,000				18,000		18,000
f. ICP Replacement (Biennial)		250,000				250,000						
g. SSA Contract			12,000			12,000			12,000			12,000
h. Central Cashier				33,181		33,181				28,788		28,788
i. Data Processing				110,075		110,075				148,310		148,310
j. Departmental Move		108,084	76,916			185,000		92,636	65,925			158,561
k. Accounting				191,138		191,138				142,774		142,774
l. Laboratory												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		23,058				23,058		23,064				23,064
3. Environmental Sciences (03)	369,843	1,925,148	1,191,677	163,472		3,650,140	370,766	2,034,135	1,082,134	163,763		3,650,798
a. Billings/Laurel Sulfur Dioxide		400,000				400,000		190,000				190,000
b. AQB Operating Permit Program		518,236				518,236		745,602				745,602
c. HB 567 — Commercial Medical Hazardous Waste Incinerators		61,620				61,620		57,170				57,170
4. Solid and Hazardous Waste (04)	146,447	3,444,201	4,658,944			8,249,592	147,111	3,492,879	4,728,183			8,368,173
a. Junk Vehicle (Restricted)		30,000				30,000		30,000				30,000
b. LUST — Cost Recovery			200,000			200,000			200,000			200,000
c. Clark Fork Basin Manager		49,880				49,880		49,892				49,892
d. Tank Installer		51,615				51,615		51,616				51,616
e. CECRA Program Expansion		191,576				191,576		182,863				182,863
f. GIS — ARCO		417,728				417,728		417,750				417,750
g. Burlington Northern Cleanup		125,000				125,000		125,000				125,000
h. DSL Abandoned Mines		40,000				40,000		40,000				40,000
i. Superfund DOD			100,000			100,000			100,000			100,000
j. SB 284 — Underground Tank Installer Permits		11,500				11,500		10,500				10,500
k. HB 592 — Hazardous Waste Management Permit Fees		126,240				126,240		121,240				121,240
5. Water Quality (05)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
		1,723,817	4,268,772			5,992,589		1,696,767	4,251,890			5,948,657
a. Clean Lakes/Volunteer Monitoring		72,010	280,000			352,010		57,116	280,000			337,116
b. Public Water Supply/Subdivisions		202,933				202,933		190,933				190,933
c. Water Pollution Control			202,393			202,393			190,390			190,390
d. Nonpoint Source/Wetlands			482,452			482,452			481,180			481,180
e. Construction Sludge			35,626			35,626			33,626			33,626
f. Pollution Prevention			36,626			36,626			33,626			33,626
g. Storm Water Program			107,259			107,259			101,260			101,260
h. HB 388 — Water Quality Fees		769,892		51,248		821,140		777,388		51,529		828,917
6. Health Services and Medical Facilities (06)	893,944	585,958	376,770			1,856,672	892,469	586,162	373,820			1,852,451
a. Robert Wood Johnson		149,626				149,626		149,703				149,703
b. Trauma Registry			134,561			134,561			134,568			134,568
c. Trauma Care Planning			171,337			171,337			171,337			171,337
d. Primary Care Grant			113,876			113,876			113,879			113,879
e. Rural Physicians Residency Program	200,000					200,000	200,000					200,000
f. Expand MIAMI Program	264,590					264,590	264,590					264,590
g. End-Stage Renal Disease	125,000					125,000	125,000					125,000
7. Family/Maternal and Child Health Bureau (07)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	243,153		22,780,365			23,023,518	243,153		25,432,387			25,675,540
a. Children's Special Health			23,435			23,435			23,435			23,435
b. WIC Information Specialist			36,693			36,693			36,704			36,704
c. Health Services Division Support			51,753			51,753			51,754			51,754
d. Enhanced Nursing Consultation			85,000			85,000			85,000			85,000
e. Data Utilization			80,000			80,000			60,000			60,000
8. Preventive Health Bureau (08)	92,878	73,395	1,572,264			1,738,537	92,878	80,891	1,617,110			1,790,879
a. Tuberculosis			148,531			148,531			146,130			146,130
b. Hepatitis B			69,356			69,356			69,373			69,373
c. Ryan White — Title II			122,548			122,548			127,363			127,363
d. Universal Hepatitis			122,528			122,528			122,528			122,528
e. Preventive Health Block Grant			220,350			220,350			223,063			223,063
f. Perinatal Hepatitis			44,423			44,423			44,433			44,433
9. Health Facilities Division (09)	523,192		1,956,774			2,479,966	523,820		1,943,475			2,467,295
a. Title 18 CLIA			454,909			454,909			454,909			454,909
10. Petroleum Tank Release Compensation Board (11)		1,313,077				1,313,077		1,289,225				1,289,225
11. Vacancy Savings	271,949	56,069		63,257		391,275	272,231	68,120		63,338		403,689
12. Budget Balancing Reduction												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	16,062					16,062	15,998					15,998
Total	3,006,290	14,319,839	40,530,372	2,408,650		60,265,151	2,993,621	14,023,772	43,103,917	2,310,214		62,431,524

It is the intent of the legislature that the department contract with local health agencies and other organizations whenever possible in lieu of adding FTE.

Item 1a may only be used to provide legal services to the board of health. Any unused funds must revert to the general fund.

Item 2b is a biennial appropriation that may be used only if the demand for reimbursable services requires expenditures for supplies, materials, and communications in excess of the appropriated levels of $336,283 in fiscal 1994 and $360,833 in fiscal 1995.

Item 3a contains $400,000 in fiscal 1994 and $190,000 in fiscal 1995 to address sulfur dioxide problems in the Billings/Laurel area. In preparing the 1997 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 3b is contingent on passage and approval of House Bill No. 318.

Item 3c is contingent on passage and approval of House Bill No. 567.

Item 4a may only be used for vehicle crushing and freon removal.

Item 5h is contingent on passage and approval of House Bill No. 388.

It is the intent of the legislature that the department coordinate services provided by items 6a and 6d with the health care commission, contingent on passage and approval of Senate Bill No. 285.

Any maternal and child health and preventive health block grant funds received over amounts appropriated must be allocated by the department to maternal and child health and preventive health services necessary to meet federal grant requirements and to the Montana healthy people year 2000 health objectives as determined by the appropriate health advisory councils.

Item 10 is contingent on passage and approval of House Bill No. 666.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Job Service Division (01)		4,064,362	9,432,912	83,244		13,580,518		3,765,975	9,711,278	83,244		13,560,497
a. Classification Review		262,439				262,439		262,439				262,439
b. Maintenance Contracts		138,523				138,523		138,523				138,523
c. Health Industries (Biennial)			132,464			132,464						
d. Asarco/Troy (Biennial)												

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Proprietary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Proprietary	Fiscal 1995 Other	Fiscal 1995 Total
			113,637			113,637						
2. Unemployment Insurance (02)		132,391	4,373,033			4,505,424		132,391	4,402,387			4,534,778
a. Voice Response Communications			24,000			24,000			24,000			24,000
b. Unemployment Insurance Hearings Officer			36,882			36,882			38,356			38,356
3. Commissioner's Office/Centralized Services (03)				3,033,862		3,033,862				3,071,091		3,071,091
a. Legislative Audit (Restricted/Biennial)				83,902		83,902						
4. Employment Relations (04)	348,118	2,314,972	42,140	472,569		3,177,799	319,589	2,316,528	44,286	460,629		3,141,032
a. Uninsured Employers Fund				594,200		594,200				675,200		675,200
b. Subsequent Injury Benefits				697,400		697,400				786,200		786,200
c. SIF Actuarial Study				10,000		10,000				12,500		12,500
d. HB 511 — Workers' Compensation Data Base System (Biennial)		583,479				583,479						
e. HB 287 — Revising Workers' Compensation Act		4,800				4,800		1,300				1,300
f. SB 347 — Workers' Compensation Medical Cost Containment		299,545				299,545		246,695				246,695
g. HB 622 — Revising Workers' Compensation Act		165,029				165,029		142,509				142,509
h. SB 381 — Underinsured Employers		133,701				133,701		116,991				116,991
i. SB 223 — Revising Child Labor Laws		27,087				27,087		20,927				20,927
5. Legal Services Division (06)		608,651	296,408	83,308		988,367		622,180	284,771	83,308		990,259
a. SB 347 — Workers' Compensation Medical Cost Containment												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		54,758				54,758		48,900				48,900
6. Research, Safety, and Training (07)		1,156,317	1,731,559			2,887,876		1,162,329	1,729,561			2,891,890
a. Health Industries (Biennial)			17,454			17,454						
b. Asarco/Troy (Biennial)			17,454			17,454						
c. SB 163 — Safety Culture Act		93,705				93,705		77,935				77,935
7. Human Rights Commission (08)	402,632		104,600			507,232	402,610		104,600			507,210
a. Additional Caseload FTE	90,412		50,000			140,412	88,046		50,000			138,046
8. Workers' Compensation Judge (09)		370,725				370,725		368,020				368,020
a. Judges' Annual Leave and Sick Leave		17,400				17,400						
b. Law Clerks' Annual Leave and Sick Leave		1,954				1,954		1,954				1,954
c. Overtime		800				800		800				800
9. Job Training Grants (50)		1,682,395	10,457,520			12,139,915		1,682,395	10,457,520			12,139,915
a. UI Administrative Discretionary Grants (Biennial)		1,430,000				1,430,000						
b. Health Industries (Biennial)			546,128			546,128						
c. Asarco/Troy (Biennial)			552,572			552,572						
10. Vacancy Savings	25,977	307,017		121,097		454,091	25,457	297,341		122,401		445,199
11. Budget Balancing Reduction	4,076					4,076	3,924					3,924

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total	811,109	13,236,016	27,928,763	4,937,388		46,913,276	780,864	10,811,450	26,846,759	5,049,771		43,488,844

Proprietary funds in item 4a are decreased by $594,200 in fiscal 1994 and by $675,200 in fiscal 1995, contingent on passage and approval of House Bill No. 287.

Proprietary funds in item 4b are decreased by $697,400 in fiscal 1994 and by $786,200 in fiscal 1995, contingent on passage and approval of House Bill No. 287.

Item 4d is contingent on passage and approval of House Bill No. 511.

Item 4e is contingent on passage and approval of House Bill No. 287.

Items 4f and 5a are contingent on passage and approval of Senate Bill No. 347.

Item 4g is contingent on passage and approval of House Bill No. 622.

State special revenue of $17,400 in fiscal 1994 in item 8a may only be used for payment of accrued balances of annual leave and sick leave payable under state law to the incumbent judge in the event of resignation or nonreappointment.

State special revenue of $1,954 in fiscal 1994 and $1,954 in fiscal 1995 in item 8b may only be used for payment of accrued balances of annual leave and sick leave payable under state law to law clerks.

State special revenue of $800 in fiscal 1994 and $800 in fiscal 1995 in item 8c may only be used for payment of overtime.

Item 9a is appropriated as follows:

(1) (a) Up to $500,000 is appropriated as a reserve for laid-off state employees for fiscal 1994 for dislocated worker program services. At the end of fiscal 1994, remaining reserves may be used for other dislocated workers.

(b) The appropriation in subsection (1)(a) must be reduced by the amount expended for state employees in the dislocated worker program from the appropriation provided for in House Bill No. 3.

(2) (a) Up to $230,000 is appropriated to provide for dislocated worker programs.

(b) The appropriation in subsection (2)(a) must be reduced by the amount expended for nonstate workers in the dislocated worker program from the appropriation provided for in House Bill No. 3.

(3) The amount of $350,000 is appropriated to provide for job training for economically disadvantaged individuals. These funds may be used only to provide services to individuals with four or more barriers, as defined by the Job Training Partnership Act (JTPA).

(4) The amount of $350,000 is appropriated to provide for job training for offenders. These funds may be used only to provide for services to offenders, as defined by JTPA.

The funds appropriated in item 9a may not be used to supplant the level of effort provided by JTPA funding from the federal department of labor. Although the legislature expresses its intent regarding use of the funds, the department has ultimate discretion over the allocation.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (6901)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Family Assistance (01)	16,401,289	917,750	55,910,254			73,229,293	17,477,095	967,101	57,857,819			76,302,015
a. Local JOBS Match			1,100,000			1,100,000			1,650,000			1,650,000
b. Food Stamps Outreach			157,349			157,349			157,349			157,349
c. AFDC Day Care	13,000	170,000	1,038,633			1,221,633	13,000	170,000	1,037,842			1,220,842
d. JOBS Administration (Restricted)	149,500		149,500			299,000	149,500		149,500			299,000
2. Eligibility Determination Program (03)		2,823,290	2,699,583			5,522,873		2,833,132	2,705,738			5,538,870
a. Nonassumed County BA		87,101	83,686			170,787		87,153	83,735			170,888
3. Administrative and Support Services (04)	901,341	378,096	1,633,402			2,912,839	913,379	382,693	1,651,131			2,947,203
a. Legislative Audit (Restricted/Biennial)	75,977	6,950	82,926			165,853						
4. Child Support Enforcement (05)		2,173,795	4,324,398			6,498,193		2,297,754	4,580,593			6,878,347
a. Increased Communication Costs		15,637	30,353			45,990		16,742	32,498			49,240
5. State-Assumed County Administration (06)	3,256,550		3,128,844			6,385,394	3,262,968		3,135,008			6,397,976
a. County Pilot Project (Restricted)	100,000					100,000	100,000					100,000
6. Medical Assistance (07)	45,409,383	6,287,934	151,007,912			202,705,229	49,690,580	6,407,123	158,067,125			214,164,828
a. Medicaid Hospital Costs (Restricted)	28,149,157		68,983,889			97,133,046	34,526,762		82,513,109			117,039,871
b. Medicaid Managed Care	238,967		390,311			629,278	240,332		417,452			657,784
c. Psychiatric Utilization Review	20,687		62,063			82,750	20,687		62,063			82,750

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
d. Medicaid Claims Processing	48,300		144,900			193,200	48,300		144,900			193,200
e. HB 309 — Medically Needy Cost Savings	31,252		31,253			62,505	11,263		11,263			22,526
f. Waiver Inflation and 40 Cases	267,026		654,389			921,415	361,337		863,535			1,224,872
g. Medicaid-Eligible Education Costs (Restricted/Biennial)			4,866,882			4,866,882						
h. SB 40 Galen Closure (Restricted)	175,167		429,274			604,441	178,310		426,131			604,441
i. Baby Your Baby Medicaid Benefits		482,500	482,500			965,000		482,500	482,500			965,000
j. SB 145 — Traumatic Brain Injury Pilot Project	50,000		122,533			172,533	50,000		119,491			169,491
7. Audit and Program Compliance Division (08)	718,162	3,505	1,000,349			1,722,016	720,270	3,516	1,002,704			1,726,490
8. Management Analysis and Systems (09)	2,467,152	1,578,330	4,702,632			8,748,114	2,393,623	1,703,320	4,587,349			8,684,292
9. Vocational Rehabilitation Program (10)	1,704,307	341,914	6,723,936			8,770,157	1,838,565	208,012	6,725,387			8,771,964
a. Provider Rate Increase	38,185		111,025			149,210	76,753		223,163			299,916
b. MSED Administration			5,176			5,176			1,310			1,310
c. MSED Benefits			459,614			459,614			116,288			116,288
d. MonTECH Administration			6,098			6,098			6,403			6,403
e. MonTECH Benefits			565,414			565,414			593,683			593,683
f. Independent Living Benefits	100,000					100,000	100,000					100,000
10. Disability Determination Program (11)			3,167,237			3,167,237			3,238,286			3,238,286

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
a. Additional FTE			78,339			78,339			78,414			78,414
11. Visual Services Program (13)	323,749		1,132,625			1,456,374	322,993		1,129,830			1,452,823
a. Provider Rate Increase	2,440		14,630			17,070	4,903		29,410			34,313
12. Developmental Disabilities Program (14)	15,352,580		22,358,042			37,710,622	16,602,560		23,284,924			39,887,484
a. DD Benefits (Not for Construction)	100,000					100,000	100,000					100,000
b. Provider Rate Increase	573,528		301,178			874,706	1,156,933		601,225			1,758,158
13. Developmental Disabilities Advisory Council (15)			420,475			420,475			420,475			420,475
14. Vacancy Savings	304,757	222,838				527,595	331,621	219,670				551,291
15. Budget Balancing Reduction	127,046					127,046	136,307					136,307
Total	116,235,896	15,043,964	338,561,604			469,841,464	129,892,185	15,339,376	358,187,633			503,419,194

In accordance with 42 U.S.C. 607(B)(2)(c), the department shall implement a payment-after-performance policy for the AFDC-UP program no later than January 1, 1994. In implementing this policy, the department shall:

(1) require that at least one parent in the household participate in approved education, training, or job search activities; and

(2) provide for payment of AFDC benefits, but only after performance of assigned activities under subsection (1) is completed.

The department is authorized to retain 7.5% of the federal community services block grant and pass through the remaining 92.5% to the human resource development councils (HRDCs). If during fiscal 1994 or fiscal 1995 the block grant falls below the federal fiscal year 1990 grant level, the department shall retain only 5% of the grant amount and pass through the remaining 95% to the HRDCs.

The appropriation in item 1 is contingent on a program being in place by July 1, 1994, that requires AFDC recipients whose youngest child is at least 1 year of age to be referred to the JOBS program. The department may waive the requirement for good cause.

Item 1 includes $100,000 of state general fund money in each fiscal year for the department to contract for assistance in obtaining SSI disability benefits for indigent persons.

		Fiscal 1994						Fiscal 1995			
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

In order to expend funds from item 1, the department shall apply for waivers from federal regulations governing AFDC programs no later than July 1, 1994. If federal approval is received, the department shall implement the waivers as soon as feasible. The department shall apply for waivers to encourage employment by allowing working AFDC recipients to retain a greater portion of their income. The department shall work in cooperation with local welfare task forces in development of waiver applications and in implementation of approved waivers. The waivers may include but are not limited to:

(1) expansion of the earned income disregard above the current $30 and 33% of additional earned income;

(2) exclusion of all earnings of children;

(3) elimination of the 100-hour rule for the AFDC-UP program;

(4) reduction, by increasing percentages, of the amount of AFDC benefits for those recipients who remain on AFDC after each 12 consecutive months unless good cause is established for remaining on assistance; and

(5) changing the definition of household income to include the income, minus child support, of all adults in the household where the AFDC recipient lives.

The department is encouraged to seek waivers that are cost-neutral. The department shall develop and use an appeals process for AFDC recipients if it implements waivers that result in cost savings by decreasing individual benefits.

No later than September 1993, the department shall submit to the legislative finance committee a detailed report of the progress towards implementation of the waivers developed by the department and local welfare task forces. The department may not implement a waiver program unless actual cost savings can be demonstrated. The department is authorized to expend up to 10% of projected savings for administrative costs that are mandated by federal regulations associated with implementation of the federal waivers.

The AFDC payment level for the 1995 biennium must be established at 40.5% of the federal poverty index.

The department may not expend funds from item 1d unless the department certifies to the director of the office of budget and program planning that in-house administration of the JOBS program is more cost-effective than contracting for JOBS program administration.

The department shall extend client followup reporting to 6 months for each participant leaving the JOBS program.

The department shall provide the following information about the Montana AFDC population to the 54th legislature by December 1, 1994:

(1) the average length of time a client receives AFDC (since the inception of TEAMS, the automated eligibility determination system);

(2) the percentage of the caseload that remains on AFDC by selected length of stay;

(3) reported reasons that applicants are requesting AFDC benefits; and

(4) reported reasons AFDC recipients no longer require AFDC benefits.

The department may obtain information for items 3 and 4 from periodic surveys of AFDC and former AFDC recipients.

Beginning in fiscal 1995, the department shall competitively award the contract for the food stamp outreach program to an agency or entity that:

(1) can provide the necessary state or local matching funds;

Fiscal 1994						Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

(2) demonstrates that it will reach a broad representation of potentially eligible persons;

(3) will coordinate efforts with the LIEAP, food banks, and food distribution programs; and

(4) provides for an independent evaluation of the outreach program, which will be made available to the 54th legislature. The department shall develop evaluation criteria to measure the effectiveness of the outreach program, including but not limited to the number of persons contacted, the number of persons assisted in making application for food stamps benefits, and any followup information available on the contacts made. If a bid is not awarded (based on the inability to meet all of the above criteria), an outreach program may not be conducted.

The department may require only AFDC and food stamp households with earned income and/or those who have recent work history to report monthly. The department may, however, promulgate administrative rules that require monthly reporting for specific recipient population groups that have been shown to be subject to high eligibility determination errors or fraud.

The department is directed to request units of the university system to assist the department, without charge, in development of clear and concise AFDC program information for the education of AFDC clients. The program information must include a description of AFDC-earned income provisions, transitional day care, transitional medicaid, and any other benefits that will assist the AFDC client in securing and retaining employment.

The state share of AFDC-related support collections and all AFDC and non-AFDC federal incentive payments and program collected fees must be deposited in a state special revenue account from which the state share of the administrative and operational costs of the child support enforcement program must be paid. The legislature intends that, during the 1995 biennium, the department collect at least $1.15 for each $1 expended for administrative and operational costs from the account. The department shall transfer to the general fund from the child support enforcement account any cash balance remaining in excess of $500,000 at the end of fiscal 1994 and 1995.

The department shall conduct a review of child support privatization projects in other states and report the results of the review to the 54th legislature. The review must address: the impact of privatization on the efficient utilization of the state IV-D computer system; the granting of quasi-judicial powers to private contractors; the results of federal audits and conformity to federal regulations of privatized operations; the degree of monitoring by state personnel from privately operating programs or aspects of programs; and a summary of advantages and disadvantages from the perspective of state officials involved with privatization.

The department is appropriated funds in item 5a for a pilot project in Deer Lodge County. The pilot project may include work, job training, subsistence payments, and preventive health programs for low-income people. The use of appropriated funds in item 5a is contingent on Deer Lodge County levying 12 mills for its poor fund for public assistance, protective services, and other benefits for low-income people.

The department is authorized to transfer funds among appropriations for medicaid primary care, medicaid nursing care, medicare buy-in, state medical, and the home- and community-based waiver program.

The legislature intends that expenditures for all provider rate increases approved by the legislature be limited to the dollar amounts appropriated rather than percentage increases on which the original estimates may have been based. The department will be in compliance with this provision if:

(1) it estimates total costs for each medicaid service category in June prior to the beginning of each fiscal year of the 1995 biennium; and

(2) the percentage increases or base adjustments approved by the department are limited to the dollar amount appropriated for each provider rate increase.

It is the intent of the legislature that the department develop a continuum of care designed to limit the growth of state expenditures for long-term care services for the elderly and disabled. The department is directed to present to the 54th legislature a plan that defines and provides a cost-effective range of services for people who are elderly or disabled; provides individuals with a choice of services that best reflects their personal preferences and treatment needs; offers services, including but not limited to in-home care, nursing facility care, long-term hospital care, and alternative community care, such as adult foster homes and personal care facilities. If the department certifies to the director of the office of budget and program planning that cost-effective alternative services for the elderly and disabled can be provided within existing appropriations, the department may implement these services during the 1995 biennium. The legislature intends that these alternative services for the elderly and disabled are within the amount, scope, and duration of the medicaid services supported by appropriations in [this act].

The department shall provide information regarding the specific family planning services covered by medicaid, including birth control pills, norplant, condoms, and sterilization procedures. The information must include the address and phone number of the local family planning clinic.

If House Bill No. 333 is not passed and approved, item 6 is increased by $1,261,427 general fund money in fiscal 1994, $1,268,050 general fund money in fiscal 1995, $3,091,323 federal special revenue in fiscal 1994 and $3,030,424 federal special revenue in fiscal 1995.

The department may transfer funds in and out of item 6a.

Expanded waiver services funded in item 6f should be used to expand waiver services in eastern Montana if clients and services are available. The expansion may occur in the following counties: Blaine, Big Horn, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, McCone, Musselshell, Petroleum, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Valley, Wheatland, and Wibaux.

Contingent on passage and approval of Senate Bill No. 145, the appropriation in item 6j must be used for a medicaid model waiver for people with traumatic brain injuries.

It is the intent of the legislature that annualized expenses for operation of SEARCHS not exceed $1,500,000. This amount includes expenses for any facilities management contracting that may be used for system operations, computer processing costs directly associated with operation of the system, and other personal services and nonpersonal services costs directly charged to the management and operation of the system.

If the department considers contracting for operation of the TEAMS and/or SEARCHS computer applications on a privately owned and operated mainframe or midrange computer, the department shall submit to the office of budget and program planning and to the legislative finance committee a comparison of the cost of operating the system on the state mainframe computer managed by the department of administration. The department of administration shall estimate rate changes that would occur due to removal of TEAMS and/or SEARCHS from the state mainframe. If the office of budget and program planning determines that statewide cost savings are greater than the private contract cost savings to the department, the department shall operate TEAMS and/or SEARCHS on the state mainframe computer if continued operation of TEAMS and/or SEARCHS on the state mainframe does not conflict with federal regulations.

The department is authorized to transfer funds between appropriations for the vocational rehabilitation and visual services programs.

The department may pursue funding of any existing eligible state general funded services under the federal ICF/MR program if the federal government fails to approve adequate medicaid waiver funding under the home- and community-based waiver program.

It is the intent of the legislature that the developmental disabilities division pursue federal funding to enhance and improve services to persons with developmental disabilities. These additional federal funds may be expended by the division for services as long as those actions do not require or commit the state to additional general fund expenditures beyond the amount appropriated during the 1995 biennium by the legislature for the developmental disabilities community.

DEPARTMENT OF FAMILY SERVICES (6911)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Management Support (01)	2,393,653	16,500	4,924,477			7,334,630	2,411,129	16,500	4,934,985			7,362,614
a. Legislative Audit (Restricted/Biennial)	71,415		45,658			117,073						
b. Management Information System (Restricted/Biennial)	2,500,000		800,000			3,300,000						
c. Aging Legal Developer			36,066			36,066			34,866			34,866

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
d. Alzheimer's Demonstration Grant			155,500			155,500			155,500			155,500
e. Information and Assistance for the Elderly			31,802			31,802						
f. Preventive Health Grant			84,340			84,340			84,340			84,340
2. Regional Staff (02)	7,492,737	995,930	4,088,079			12,576,746	6,682,159	995,930	2,845,402			10,523,491
3. Juvenile Corrections (03)	7,033,885	283,895	310,273			7,628,053	7,113,766	284,490	310,275			7,708,531
a. Juvenile Community Corrections	150,000		66,000			216,000	150,000		66,000			216,000
4. Community and Protective Services (05)	14,912,639	1,752,403	7,835,523			24,500,565	15,102,432	1,756,185	7,833,118			24,691,735
a. Youth Psychiatric Care (Biennial)	2,000,000					2,000,000						
b. Refinancing Services	50,000		2,150,000			2,200,000	50,000		2,150,000			2,200,000
c. Annualize Foster Care Continuum	667,162		210,798			877,960	668,918		209,042			877,960
d. Foster Care Rate Increase	222,030	21,968	70,293			314,291	444,365	46,670	137,975			629,010
e. Foster Family Support Services	286,318		148,692			435,010	290,318		147,098			437,416
f. AFDC At-Risk Day Care	410,000		1,004,769			1,414,769	410,000		989,831			1,399,831
g. SB 271 — Pilot Program for Local Citizen Review Boards (Restricted/Biennial)	10,513					10,513						
5. Vacancy Savings	694,363	53,823				748,186	676,554	53,744				730,298
6. Budget Balancing Reduction	187,477					187,477	163,233					163,233
Total												

Fiscal 1994						Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
37,318,512	3,016,873	21,962,270			62,297,655	32,483,300	3,046,031	19,898,432			55,427,763

The department shall use and develop additional services, within appropriation limitations, that are family-focused, child-centered, sensitive to unique cultures, and community-based. The department shall use the least restrictive, most appropriate services with the goal of preserving families.

The department is directed to develop a child welfare management information system (MIS). The appropriation in item 1b must be expended only for development and operation of the MIS. The department shall develop the most comprehensive MIS possible within the appropriation in item 1b. If the appropriation is not sufficient to fund development of the entire system, system components may be prioritized by the department. The MIS should include the following components:

(1) foster care and adoption;

(2) protective services;

(3) juvenile corrections;

(4) licensing;

(5) accounting/fiscal;

(6) utilities; and

(7) case management services for the developmentally disabled.

If the department is selected by the department of social and rehabilitation services to manage the food stamp outreach program, the department is appropriated $157,349 in federal special revenue each fiscal year of the biennium.

The department is appropriated an amount equal to the general fund transfer received from the office of public instruction for education costs of children receiving medicaid-eligible treatment services. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this appropriation in the current level budget.

Funds in item 4a are to serve children in the custody of the department that previously were placed or would have been placed in freestanding inpatient hospitals for youth under 21 years of age. If a balance remains in item 4a after providing for the needs of children in the custody of the department, this balance may be used for related services.

Item 4b is to develop family support services for children at risk of abuse or neglect and for children that have been referred for abuse or neglect and to develop community-based services for children placed in or who are at risk of being placed in juvenile corrections facilities. The development of additional services is contingent on recovery of federal funds through department refinancing initiatives and the collection of contributions from parents of children. The department may add up to 6.0 new FTE to implement the refinancing strategies. The department shall present to the 54th legislature a report that includes the number and types of services developed, the number of children and families served, and the effectiveness of the services delivered. If the department recovers funds from refinancing initiatives and collection of parental contributions in excess of $2,150,000 either year of the 1995 biennium, it is appropriated up to $1 million in federal funds each year for those excess funds. The department may use these excess funds in any manner it considers necessary.

The appropriation in item 4g is contingent on passage and approval of Senate Bill No. 271.

The department shall develop a plan for the establishment of regional treatment centers for children with severe emotional disturbances to provide for the placement of the children in local regions and to allow children currently placed outside of Montana to be returned to the state.

		Fiscal 1994						Fiscal 1995			
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

It is the intent of the legislature that annualized expenses for the operation of the child welfare MIS not exceed $1,500,000 annually. This amount includes expenses for any facilities management contracting that may be used for system operations, computer processing costs directly associated with operation of the system, and other personal services and nonpersonal services costs directly charged to the management and operation of the system. The department may not proceed with the development of the MIS until it has certified to the office of budget and program planning and to the legislative finance committee that the projected annualized operation costs of the system will not exceed the limit imposed in this statement of intent. If the child welfare system will run on the state mainframe computer and if the department elects to contract for operation of the system on a privately owned and operated mainframe or midrange computer, the department shall submit a comparison to the office of budget and program planning and to the legislative finance committee of the cost of operating the system on the state mainframe computer managed by the department of administration. The department of administration shall estimate rate changes that would occur because of operation of the child welfare MIS on the state mainframe. If the office of budget and program planning determines that statewide cost savings are greater than the private contract cost savings, the department shall operate the child welfare system on the state mainframe computer.

The department may pursue medicaid funding for the intermountain deaconess children's home.

Total SECTION B

157,371,807	45,616,692	428,983,009	7,346,038		639,317,546	166,149,970	43,220,629	448,036,741	7,359,985		664,767,325

C. NATURAL RESOURCES

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Proprietary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Proprietary	Fiscal 1995 Other	Fiscal 1995 Total
PUBLIC SERVICE REGULATION (4201)												
1. Public Service Regulation (01)		2,091,664	27,227			2,118,891		2,090,014	25,668			2,115,682
a. Legislative Audit (Restricted/Biennial)		16,260				16,260						
b. Master Meter Operators (Restricted)		2,500	2,500			5,000		2,500	2,500			5,000
c. Consultant Funds (Biennial)		50,000				50,000						
d. Least-Cost Planning (Restricted/Biennial)		50,000				50,000						
e. Local Area Network (Biennial)		200,000				200,000						
f. Data Network Services		2,880				2,880		2,880				2,880
2. Vacancy Savings		71,021				71,021		71,192				71,192
Total		2,342,283	29,727			2,372,010		2,024,202	28,168			2,052,370

If House Bill No. 413 is not passed and approved or is passed and approved in a form depositing revenue to the general fund, the state special revenue appropriations in items 1, 1a through 1f, and 2 are eliminated and general fund appropriations are increased by like amounts.

Item 1b contains appropriations for inspections of natural gas master meter operators. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 1d is a biennial appropriation to be used only for expenditures relating to review of least-cost plans submitted by utilities.

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Proprietary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Proprietary	Fiscal 1995 Other	Fiscal 1995 Total
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)												
1. Administration and Finance Division (01)		2,886,897	490,080	1,758,304		5,135,281		2,971,763	472,682	1,802,115		5,246,560
a. Legislative Audit (Restricted/Biennial)		56,566				56,566						

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Automated License Issuing System (Restricted/Biennial)		60,000				60,000						
c. Moose/Sheep/Goat Early Drawings		49,480				49,480		49,491				49,491
d. Additional Vehicle Account Funding				60,266		60,266				82,155		82,155
e. Legislative Contract Authority (Restricted)			65,000			65,000			65,000			65,000
2. Field Services and Region 8 Division (02)		1,734,980	392,750	155,068		2,282,798		1,768,286	396,323	213,455		2,378,064
a. Dam Rehabilitation Engineer (Restricted)		46,340				46,340		42,373				42,373
3. Fisheries Division (03)		2,692,176	2,683,923			5,376,099		2,683,000	2,620,229			5,303,229
a. Water Rights Leasing (Biennial)		3,750	11,250			15,000						
b. Water Leasing Studies (Biennial)			60,000			60,000						
c. Missouri Basin Reservations (Biennial)		11,562	34,688			46,250						
d. Fish Introductions EIS (Biennial)		13,750	41,250			55,000						
e. Lewistown Biologist		6,667	19,999			26,666		6,667	19,999			26,666
f. Clark Fork River Investigations (Restricted)		12,729	38,186			50,915		12,736	38,210			50,946
g. Legislative Contract Authority (Restricted)		715,000	940,000			1,655,000		1,160,000	990,000			2,150,000
4. Law Enforcement Division (04)		4,465,236	187,293			4,652,529		4,484,103	186,481			4,670,584
a. Law Enforcement Activities		100,000				100,000		100,000				100,000
b. Warden Relocation (Restricted)		27,000				27,000		27,000				27,000

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
c. Additional Field Warden		45,000				45,000		45,000				45,000
d. Board of Outfitters Grant		10,000				10,000		10,000				10,000
e. HB 338 — Game Farm Licensing		45,000				45,000		45,000				45,000
f. Legislative Contract Authority (Restricted)			40,000			40,000			40,000			40,000
5. Wildlife Division (05)		2,928,648	2,421,126			5,349,774		2,904,865	2,437,575			5,342,440
a. Upland Game Birds (Biennial)		1,840,400				1,840,400						
b. Wildlife Management EIS (Restricted)		68,750	206,250			275,000		30,000	90,000			120,000
c. Trapper Education		3,125	9,375			12,500		3,125	9,375			12,500
d. Legislative Contract Authority (Restricted)		855,000	729,000			1,584,000		844,000	687,500			1,531,500
e. HJR 24 — Landowner, Outfitter, Sportsmen Groups (Biennial)		25,000				25,000						
6. Parks Division (06)	318,249	3,484,228	524,200	337,319		4,663,996	323,125	3,514,775	524,200	322,583		4,684,683
a. Land and Water Conservation Fund (Biennial)			700,000			700,000						
b. Off-Highway Vehicle EIS (Restricted/Biennial)		40,000				40,000						
c. Tree and Shrub Replacement (Restricted)				15,030		15,030				15,030		15,030
d. Expanded Fishing Access Sites (Restricted)									60,000			60,000
e. Recreational Trails Act (Biennial)			350,000			350,000						
f. State Parks Deficit		294,083				294,083		303,459				303,459

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
g. Legislative Contract Authority (Restricted)		140,000	20,000			160,000		140,000	20,000			160,000
7. Conservation Education Division (08)		1,446,392	194,258			1,640,650		1,454,367	200,086			1,654,453
a. Shooting Ranges (Biennial)		120,133				120,133						
b. Youth Education		71,000	67,500			138,500		71,000	67,500			138,500
c. Legislative Contract Authority (Restricted)		45,000	35,000			80,000		45,000	35,000			80,000
8. Department Management (09)		1,948,292	531,799			2,480,091		1,974,079	520,349			2,494,428
a. Sikes Act (Biennial)		150,000	20,000			170,000						
b. Legal Services and Court Costs (Biennial)		25,000				25,000						
c. Geographic Information System		45,000				45,000		45,000				45,000
d. Attorney General Assistance (Restricted)		36,100				36,100		36,100				36,100
e. Legislative Contract Authority (Restricted)			157,500			157,500			157,500			157,500
9. Vacancy Savings	5,221	626,523		17,278		649,022	5,240	654,121		18,517		677,878
10. Budget Balancing Reduction	1,923					1,923	1,948					1,948
Total	311,105	25,921,761	10,970,427	2,308,709		39,512,002	315,937	24,117,068	9,638,009	2,416,821		36,487,835

In [this act], the department is appropriated $123,683 in fiscal 1994 and $94,571 in fiscal 1995 from accounting entity 02213 (off-highway vehicle gas tax), $411,692 in fiscal 1994 and $411,931 in fiscal 1995 from accounting entity 02407 (snowmobile fuel tax), and $615,024 in fiscal 1994 and $613,266 in fiscal 1995 from accounting entity 02412 (motorboat fuel tax). The department may not expend funds from these accounts in excess of the amounts of these appropriations.

The fixed cost rates charged to state agencies by the department for capitol grounds maintenance (object code 2770) may not be higher than the amount necessary to fund the expenses of the department for providing those services, as appropriated in the state pay plan and [this act].

Fiscal 1994						Fiscal 1995					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The legislature encourages the department to work with property and homeowner groups around the lakes in Montana in managing and restoring fisheries to better ensure that state lake fisheries provide a fishing experience that is appropriate for those residing around the lakes as well as for the overall public.

The department shall review historic fish planting data for Echo Lake and seek to increase fish plants to a number more appropriate to the lake's size.

The department shall expend reasonable efforts to ensure the continued survival of bull trout at levels sufficient to prevent it from being listed on the endangered species list.

The legislature encourages the department to continue working under the cooperative agreement with the U.S. fish and wildlife service at Creston.

The appropriations for legislative contract authority are subject to the following provisions:

(1) Legislative contract authority applies only to federal and private funds.

(2) The department may transfer appropriation authority between state special revenue and federal special revenue. Transfers may not change the total appropriated to the department for legislative contract authority.

(3) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(4) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

Item 1b contains $60,000 as a biennial appropriation to study the feasibility of implementing an automated license issuing system. The department shall present the results of the study to the 54th legislature. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 2 contains funds for block management. If federal dollars become available, the department may decrease state special revenue and increase federal special revenue by a like amount.

Item 2a contains $46,340 in fiscal 1994 and $42,373 in fiscal 1995 appropriated as a grant to the department of natural resources and conservation to fund a dam rehabilitation engineer to work on the department of fish, wildlife, and parks' dams. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 3f funds aquatic resource data collection and litigation support on the upper Clark Fork River in connection with the state's resource damage assessment suit against ARCO. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base. In the litigation, the state shall seek reimbursement for all expenses incurred by the department associated with the assessment and litigation. Reimbursement must include interest on the amount commensurate with rates earned in the short-term investment pool.

Item 4b contains $27,000 in fiscal 1994 and $27,000 in fiscal 1995 appropriated for warden relocation expenses. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 5b contains $275,000 in fiscal 1994 and $120,000 in fiscal 1995 appropriated to complete a wildlife management environmental impact statement. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

It is the intent of the legislature that the department provide a liaison position to coordinate the Montana conservation corps program with the human resource development council and other appropriate entities.

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Item 6b contains $40,000 in fiscal 1994 as a biennial appropriation for an off-highway vehicles environmental impact statement. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 6c contains an appropriation for 0.5 FTE and $15,030 each year of proprietary funds to replace trees and shrubs damaged in the winter of 1988-1989. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 6d contains $60,000 from federal funds in fiscal 1995 appropriated for maintenance and operations of fishing access sites. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office shall consider replacing state special revenue in current level with federal funds based on the department's conversion of fishing access sites with land and water conservation fund restrictions.

Item 6f funds state parks maintenance and improvements. These appropriations are contingent on passage and approval of House Bill No. 642 or on other sources.

Item 8d contains $36,100 in fiscal 1994 and $36,100 in fiscal 1995 from state special revenue appropriated to contract with the department of justice to provide attorney general assistance to the department in prosecuting fish and wildlife cases. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

DEPARTMENT OF STATE LANDS (5501)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Central Management Program (01)	1,368,995	151,910	120,000	332,565		1,973,470	1,324,766	146,765	120,000	339,701		1,931,232
a. Legislative Audit (Restricted/Biennial)	46,504					46,504						
b. Helicopter Development (Restricted)	54,705	4,981		59,686		119,372	31,445	9,224		99,229		139,898
c. Maintenance Facility/Air Operations				72,867		72,867				73,102		73,102
2. Reclamation Program (03)		1,383,482	5,768,317			7,151,799		1,365,503	5,786,977			7,152,460
a. Hard-Rock Reclamation (Biennial)		150,000				150,000						
b. Bond Forfeitures (Biennial)		500,000				500,000						
c. Environmental Analysis (Biennial)		3,000,000				3,000,000						
d. Reclamation Attorney — AMRB			39,869			39,869			35,085			35,085
e. Environmental Compliance		41,605				41,605		41,605				41,605

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
3. Land Administration Program (04)	1,000,708	312,632				1,313,340	999,722	313,661				1,313,383
a. SB 424 — Advisory Council to the Board of Land Commissioners	23,780					23,780	7,612					7,612
4. Forestry Program (25)	6,213,351	3,308,756	956,701			10,478,808	6,308,461	3,322,690	956,701			10,587,852
a. Vehicle Replacement	12,000	6,000				18,000	12,000	6,000				18,000
b. HB 652 — Timber Sale Revenue for Program Costs (Restricted)		312,000				312,000		312,000				312,000
5. Vacancy Savings	302,889	159,494		8,875		471,258	304,187	159,169		10,794		474,150
6. Budget Balancing Reduction	41,967					41,967	41,861					41,861
Total	8,375,187	9,011,872	6,884,887	456,243		24,728,189	8,337,958	5,358,279	6,898,763	501,238		21,096,238

Item 1b includes $54,705 from general funds, $4,981 from state special revenue funds, and $59,686 from proprietary funds in fiscal 1994. In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base. It is the intent of the legislature that the fiscal 1995 appropriation for this item, adjusted for inflation, is the correct ongoing base for this item when considering the 1997 biennium budget.

Item 3a is contingent on passage and approval of Senate Bill No. 424.

Item 4 contains $7,000 per year to bring Powell County into the state/county cooperative fire protection program.

Item 4b is contingent on passage and approval of House Bill No. 652.

The legislature recommends that the board of land commissioners amend its cabinsite rules and fee structure to require lessees who apply for sale of their cabinsites to reimburse the department for all expenses it incurs in processing the sale applications.

Federal fire reimbursement funds are those funds received for expenses incurred from loaning department personnel to federal agencies to assist in fire suppression activities. Only those federal funds received as reimbursement of expenses credited against the department's state forestry operational budget are considered federal fire reimbursement funds. All other federal funds received must be deposited into the general fund. The department shall report federal fire reimbursement expenditures on state accounting records, and the records must be separate from current level operations.

DEPARTMENT OF LIVESTOCK (5603)

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
1. Centralized Services Program (01)	52,090	468,022	34,500			554,612	49,812	466,317	35,500			551,629

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
a. Legislative Audit (Restricted/Biennial)	3,089	17,236				20,325						
b. Position Description Rewrite (Biennial)	1,140	6,360				7,500						
c. Data Processing Training (Biennial)	182	1,018				1,200						
2. Diagnostic Laboratory Program (03)	126,927	780,722				907,649	122,923	820,273				943,196
a. Diagnostic Laboratory Workload		98,966				98,966		148,522				148,522
3. Disease Control Program (04)		574,837				574,837		579,195				579,195
a. Bison and Game Farm Inspections		46,500				46,500		46,500				46,500
4. Milk and Egg Program (05)		161,802	25,000			186,802		164,191	25,000			189,191
5. Inspection and Control Program (06)		2,303,854				2,303,854		2,317,395				2,317,395
a. Additional Brand Inspectors		47,023				47,023		46,987				46,987
6. Predatory Animal Control Program (08)		310,969				310,969		315,844				315,844
7. Meat and Poultry Inspection Program (10)	262,920	5,050	267,970			535,940	265,213	5,050	270,263			540,526
a. Meat and Poultry Inspection Workload	30,478		30,478			60,956	30,512		30,512			61,024
b. DHES Meat Inspection Contract (Restricted)		50,000				50,000		50,000				50,000
8. Vacancy Savings	22,529	161,541				184,070	22,599	164,328				186,927
9. Budget Balancing Reduction	2,271					2,271	2,229					2,229
Total												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	452,026	4,710,818	357,948			5,520,792	443,632	4,795,946	361,275			5,600,853

Item 1 contains an appropriation for $27,500 of state special revenue in fiscal 1994 and $27,500 of state special revenue in fiscal 1995 derived from the per capita levy. If House Bill No. 516 is passed and approved, the funding source for these state special revenue appropriations will be revenue derived from fees enacted by that bill.

Item 2 contains $16,376 in fiscal 1994 and $16,375 in fiscal 1995 to pay two payments of the $81,876 owed to Montana state university for the energy retrofit of the Marsh laboratory. It is the legislature's intent that the total amount owed be paid in five consecutive annual payments.

Item 2 contains an appropriation for $85,000 of state special revenue in fiscal 1994 and $85,000 of state special revenue in fiscal 1995 derived from the per capita levy. If House Bill No. 516 is passed and approved, the funding source for these state special revenue appropriations will be revenue derived from fees enacted by that bill.

Item 4 contains an appropriation for $161,802 of state special revenue in fiscal 1994 and $164,191 of state special revenue in fiscal 1995 derived from the per capita levy. If House Bill No. 516 is passed and approved, the funding source for these state special revenue appropriations will be revenue derived from fees enacted by that bill.

State special revenue appropriations in item 7 are to be funded from money derived from annual meat establishment license fees established in 81-9-201.

Appropriations in item 7b are to be used only to contract with the department of health and environmental sciences for meat inspection at the retail level.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Centralized Services (21)	788,403	865,003	121,922			1,775,329	857,603	859,574	77,806			1,794,983
a. Legislative Audit (Restricted/Biennial)	43,252					43,252						
b. Missouri River Lawsuit (Biennial)	19,590					19,590						
2. Oil and Gas Conservation (22)		1,212,380				1,212,380		1,207,036				1,207,036
3. Conservation and Resource Development Division (23)		1,138,483	77,000			1,215,483		1,143,057	77,000			1,220,057
a. EPA Wetlands Grant (Biennial)			5,000			5,000						
b. River Coordinator			25,272			25,272			12,637			12,637
c. Saline Seep		100,000				100,000		100,000				100,000
d. Treasure State Endowment		36,146				36,146		60,128				60,128
e. Water Reservations Lower Missouri Basin (Biennial)		45,000				45,000						

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
f. HB 616 — Clean Coal (Biennial)		50,000				50,000						
4. Water Resources Division (24)	2,098,492	3,459,957	52,500			5,610,949	2,107,599	3,444,583	52,500			5,604,682
a. State Water Project Rehabilitation (Biennial)		2,395,000	11,256,000			13,651,000						
b. Transfer of Water Projects		36,800				36,800		36,800				36,800
c. Transfer of Water Projects Operating Expenses (Biennial)		51,488				51,488						
d. Missouri River Reservation		68,869				68,869		70,072				70,072
e. Missouri River Reservation Operating Expenses (Biennial)		181,500				181,500						
f. Broadwater Fisheries Mitigation (Biennial)		52,100				52,100						
g. Dam Rehabilitation Engineer (FWP)		46,340				46,340		42,373				42,373
h. SB 280 — Implement a Portion of the 1992 State Water Plan		35,467				35,467		34,767				34,767
i. Yellowstone National Park Controlled Ground Water Area (Biennial)		9,708				9,708						
5. Reserved Water Rights Compact Commission (25)		500,613				500,613		500,475				500,475
6. Energy Division (26)	566,446	1,203,576	987,850			2,757,872	545,428	1,223,560	991,135			2,760,123
a. Rock Creek Mitigation (Biennial)					400,000	400,000						
b. Lake Broadview (Biennial)		30,280				30,280						
c. School Energy Retrofit (Biennial)			600,000			600,000						
7. Vacancy Savings	169,387	214,167			2,431	385,985	171,660	216,841				388,501

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
8. Budget Balancing Reduction	16,734					16,734	16,695					16,695
Total	3,330,062	11,304,543	13,125,544		397,569	28,157,718	3,322,275	8,505,584	1,211,078			13,038,937

Included in centralized services division funding is $35,000 of indirect funds from MFSA/MEPA fees. If MFSA/MEPA activities generate more than $35,000 of indirect funds over the biennium, the additional indirect funds must be deposited in the general fund.

The board of oil and gas conservation is appropriated $110,000 per year of federal revenue, contingent upon receiving federal funds from the environmental protection agency for the underground injection control program.

Item 3c is funded with RIT reclamation and development funds. If this modification is approved, the Montana salinity control association may not receive a RIT reclamation and development grant in the 1995 biennium.

The department is appropriated up to $700,000 from the account established in 76-14-112 for rangeland loans during the 1995 biennium.

All funds deposited in the state special revenue account established in 76-15-530 are appropriated to the department for distribution as grants to conservation districts.

All funds held in the state special revenue account in accordance with 76-16-106(2) are appropriated to the department for administration of grazing district activities.

The department is appropriated up to $1 million over the biennium from the account established in 85-1-604 for purchase of prior liens on property held as loan security as required by 85-1-618.

On passage and approval of House Bill No. 608, operating expenses and RIT tax proceeds state special revenue funds in item 3 are increased by $27,526 per year.

During the 1995 biennium, the department shall attempt to:

(1) negotiate elimination of escalator clauses in regional office rent agreements; and

(2) negotiate reductions to current regional office rent charges.

Funds received under the provisions of 85-1-514(4) are appropriated to the department for the purpose of performing duties required under 85-1-514.

Any fines collected under the provisions of Title 85, chapter 2, and deposited in the water right appropriation account in accordance with 85-2-318 are appropriated to the department to carry out the enforcement functions required under 85-2-114.

Funds received from bonds required by 37-43-306 are appropriated to the department for the purpose of performing remedial action on water wells, providing compensation for damages caused by water well violations, or paying administration costs incurred by the board of water well contractors.

All interest earned on the Montana power company Beaverhead grant is appropriated to the department for use on the Beaverhead ground water study.

All funds currently in or to be deposited in the Broadwater replacement and renewal account are appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility or to service the Broadwater hydropower bond debt if revenue deposited in the debt service account is insufficient for this purpose.

All interest earned on the Broadwater users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

Funds received by the department from arbitration, litigation awards, or settlements, including funds from the escrow account currently established in an escrow agreement between voith hydro, inc., the department, and norwest bank, Helena, pursuant to agreement 1189.1 Broadwater power project, are authorized to be spent to pay costs, including bond debt associated with the Broadwater power project.

Item 4g is funded with fish, wildlife, and parks (FWP) state special revenue and provides for a 1.0 FTE engineer and related operating expenses to work on FWP dams. The department shall report on the results of this project to the 54th legislature, and expenditures from this item may not be used in constructing the current level base for the 1997 biennium.

The department is appropriated up to $700,000 from the Rock Creek trust account in addition to the $400,000 included in item 6a. The total appropriation for item 6a may not exceed $1,100,000 over the biennium.

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
DEPARTMENT OF AGRICULTURE (6201)												
1. Central Management Division (15)	155,084	238,228	39,828	26,076	9,674	468,890	148,957	245,308	39,978	26,195	9,714	470,152
a. Legislative Audit (Restricted/Biennial)	30,569					30,569						
b. CMD — Federal Position			23,988			23,988			24,032			24,032
2. State Grain Laboratory Program (25)		461,651				461,651		458,716				458,716
3. Agricultural and Biological Sciences Division (30)	57,556	2,527,918	330,500			2,915,974	64,840	2,531,156	330,500			2,926,496
a. Special County Weed District Grants		999,937				999,937		129,004				129,004
b. EPA Special Pesticide Projects			110,434			110,434			110,422			110,422
c. Continue FY 92 Budget Amendment (Restricted)			39,999			39,999						
d. FARM•A•SYST (Restricted)			35,000			35,000						
e. SB 334 — Pesticide Disposal and Recycling Program		220,445				220,445		233,045				233,045
4. Plant Industry Division (40)	145,642	524,969	5,615	8,421		684,647	110,367	561,772	5,731	8,566		686,436
a. Additional Potato Inspections												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		40,736				40,736		40,736				40,736
b. Liquidation Contingency Fund (Biennial)		20,000				20,000						
c. Ag Inspectors Reclassification	1,794	22,112				23,906	1,794	22,112				23,906
d. Insect Surveys			10,350			10,350			10,350			10,350
5. Agricultural Development Division (50)	182,890	1,826,234		188,941	67,346	2,265,411	175,435	1,858,918		187,092	65,487	2,286,932
6. Vacancy Savings	40,867	84,709			11,174	136,750	40,364	85,051			11,298	136,713
7. Budget Balancing Reduction	2,663					2,663	2,305					2,305
Total	530,005	6,797,521	595,714	223,438	65,846	8,212,524	458,724	5,995,716	521,013	221,853	63,903	7,261,209

If federal indirect assessments received are in excess of $39,828 in fiscal 1994 and $39,978 in fiscal 1995, the general fund appropriation in item 1 is reduced by the excess received up to $232,750 in fiscal 1994 and up to $201,780 in fiscal 1995 and the federal appropriation is increased by like amounts.

If House Bill No. 193 is not passed and approved or is passed and approved in a form in which revenue generated by that bill is deposited in the general fund, the general fund appropriation in item 1 is increased by $35,597 in fiscal 1994 and by $35,749 in fiscal 1995 and the state special revenue appropriation is decreased by like amounts.

Items 3 and 3a contain a state special revenue appropriation of $1,285,168 in fiscal 1994 and $1,142,523 in fiscal 1995 for grants of vehicle weed fees that must be used according to 80-7-810.

In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include expenditures from item 3c in the current level base.

In preparing the 1997 biennium budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from item 3d in the current level base.

Item 3c is contingent on passage and approval of Senate Bill No. 334.

If House Bill No. 193 is not passed and approved or is passed and approved in a form in which revenue generated by that bill is deposited in the general fund, the general fund appropriation in item 4 is increased by $228,396 in fiscal 1994 and by $222,508 in fiscal 1995 and the state special revenue appropriation is decreased by like amounts.

If House Bill No. 193 is not passed and approved or is passed and approved in a form in which revenue generated by that bill is deposited in the general fund, the general fund appropriation in item 4a is increased by $40,736 in fiscal 1994 and by $40,736 in fiscal 1995 and the state special revenue appropriation is decreased by like amounts.

If House Bill No. 193 is not passed and approved or is passed and approved in a form in which revenue generated by that bill is deposited in the general fund, the general fund appropriation in item 4c is increased by $8,969 in fiscal 1994 and by $8,969 in fiscal 1995 and the state special revenue appropriation is decreased by like amounts.

The department is authorized to make grants to state agencies from the growth through agriculture account as approved by the Montana agriculture development council in accordance with Title 90, chapter 9. The state agency that receives a grant from the Montana agriculture development council is authorized additional appropriation authority equal to the grant amount.

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
DEPARTMENT OF COMMERCE (6501)												
1. Public Safety Division (01)		70,841		71,279		142,120		70,841		71,560		142,401
a. Legislative Audit (Restricted/Biennial)				206		206						
2. Weights and Measures Bureau (02)		476,769				476,769		490,749				490,749
a. Legislative Audit (Restricted/Biennial)		1,494				1,494						
3. Financial Institutions (36)		913,587				913,587		931,510				931,510
a. Legislative Audit (Restricted/Biennial)		2,668				2,668						
b. Banking Code Revision		258,984				258,984		244,094				244,094
4. Milk Control Bureau (37)		269,067				269,067		270,789				270,789
a. Legislative Audit (Restricted/Biennial)		804				804						
5. Professional and Occupational Licensing Bureau (39)		3,149,935		1,115,910		4,265,845		3,028,251		1,114,196		4,142,447
a. Legislative Audit (Restricted/Biennial)				9,889		9,889						
b. POL Board Requests		103,349				103,349		104,349				104,349
c. POL Pool Workload Increase				153,182		153,182				135,172		135,172
d. Computer Equipment (Biennial)				50,000		50,000						
6. Business Development Division (51)	678,510	589,495	2,475,463			3,743,468	681,264	519,223	2,477,608			3,678,095
a. Legislative Audit (Restricted/Biennial)												

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
	2,192	206	2,192			4,590						
7. Montana Promotion Division (52)		7,563,139				7,563,139		7,835,992				7,835,992
a. Legislative Audit (Restricted/Biennial)		17,812				17,812						
b. Montana Promotions FTE		44,064				44,064		44,120				44,120
8. Community Development Bureau (60)	242,305	372,514	22,501,768			23,116,587	241,421	374,512	23,017,710			23,633,643
a. Legislative Audit (Restricted/Biennial)	466	1,352	13,440			15,258						
b. Hard-Rock Revenue (Restricted)		100,000				100,000		100,000				100,000
c. Treasure State Endowment		181,000				181,000		203,000				203,000
d. HOME/CHAS Program			5,422,419			5,422,419			5,423,568			5,423,568
e. Section 107 Technical Assistance Grant			73,826			73,826			27,448			27,448
f. Coal Board Grants (Biennial)		1,956,558				1,956,558						
9. Office of Research and Information Services (61)	284,510					284,510	285,990					285,990
a. Legislative Audit (Restricted/Biennial)	907					907						
b. Decennial Census Work	35,821					35,821	33,903					33,903
10. Local Government Services Audit/Systems (62)	150,620			1,331,371		1,481,991	151,789			1,347,184		1,498,973
a. Legislative Audit (Restricted/Biennial)				3,578		3,578						
11. Local Government Assistance — Administration (64)				127,649		127,649				127,898		127,898
a. Legislative Audit (Restricted/Biennial)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
				376		376						
12. Building Codes Bureau (65)		1,395,177				1,395,177		1,592,424				1,592,424
a. Legislative Audit (Restricted/Biennial)		4,614				4,614						
b. Additional Building Inspectors		187,276				187,276		243,749				243,749
13. Indian Affairs Coordinator (70)	104,155		91,109			195,264	104,687		91,295			195,982
a. Legislative Audit (Restricted/Biennial)	311		196			507						
14. Health Facilities Authority (71)				139,541		139,541				143,283		143,283
a. Legislative Audit (Restricted/Biennial)				4,607		4,607						
b. HFA Audit and Bond Fees				30,081		30,081				30,081		30,081
15. Montana Science and Technology Alliance (73)		448,475				448,475		455,960				455,960
a. Legislative Audit (Restricted/Biennial)		8,903				8,903						
16. Board of Housing (74)				1,444,648		1,444,648				1,452,694		1,452,694
a. Legislative Audit (Restricted/Biennial)				57,093		57,093						
17. Board of Investments (75)				1,790,178		1,790,178				1,804,804		1,804,804
a. Legislative Audit (Restricted/Biennial)				101,218		101,218						
b. Board of Investments Workload Increase				40,000		40,000				40,000		40,000
18. Montana Lottery (77)				7,064,303		7,064,303				6,690,421		6,690,421
a. Legislative Audit (Restricted/Biennial)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
				139,033		139,033						
19. Board of Horseracing (78)		240,191				240,191		241,267				241,267
a. Legislative Audit (Restricted/Biennial)		581				581						
20. Director/Management Services (81)	103,364			858,825		962,189	104,208			862,805		967,013
a. Legislative Audit (Restricted/Biennial)	285					285						
b. Data Processing/Computer Capacity (Biennial)				100,000		100,000						
21. Vacancy Savings	65,811	181,253		278,262		525,326	65,989	183,311		278,942		528,242
22. Budget Balancing Reduction	7,688					7,688	7,686					7,686
Total	1,529,947	18,177,602	30,580,413	14,354,705		64,642,667	1,529,587	16,567,519	31,037,629	13,541,156		62,675,891

On passage and approval of House Bill Nos. 17 and 70, equipment and state special revenue funds in item 2 are increased by $63,000 in fiscal 1994 and $26,661 in fiscal 1995.

All funds deposited in accordance with 15-35-108(3)(c) are appropriated to the department for distribution as county land planning grants.

If the federally funded equal employment opportunity (EEO) contract is not renewed, the general fund appropriation in item 13 is increased by $2,035 in fiscal 1994 and by $1,941 in fiscal 1995.

It is the intent of the legislature that the Montana science and technology alliance be funded only with revenue received from loan repayments in the 1995 biennium.

At the beginning of each fiscal year, the board of housing shall deposit all funds appropriated in items 16 and 16a and in the pay plan bill for that fiscal year in the housing authority enterprise fund within the state treasury. These funds must remain in the state treasury until expended.

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total SECTION C	14,528,332	78,266,400	62,544,660	17,343,095	463,415	173,145,902	14,408,113	67,364,314	49,695,935	16,681,068	63,903	148,213,333

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
D. INSTITUTIONS AND CULTURAL EDUCATION												
MONTANA ARTS COUNCIL (5114)												
1. Promotion of the Arts (01)	116,079	265,504	283,073			664,656	127,742	159,127	205,680			492,549
a. Legislative Audit (Restricted/Biennial)	14,634					14,634						
b. Federal Grants (Biennial)			618,017			618,017						
c. Folklife Program		35,820				35,820		35,978				35,978
d. Rural Arts Specialist		24,428	24,649			49,077		24,630	24,852			49,482
e. NEA/Tribal College AIE			24,610			24,610			21,380			21,380
2. Vacancy Savings	1,241	4,579				5,820	3,216	6,068				9,284
3. Budget Balancing Reduction	647					647	623					623
Total	128,825	321,173	950,349			1,400,347	123,903	213,667	251,912			589,482
MONTANA STATE LIBRARY COMMISSION (5115)												
1. State Library Operations (01)	1,296,405	161,000	1,531,584			2,988,989	1,049,364	161,000	371,584			1,581,948
a. Legislative Audit (Restricted/Biennial)	14,634					14,634						
b. Donations and Bequests (Biennial)		55,000				55,000						
2. Natural Resource Information Services (07)		295,539	815,000			1,110,539		245,546	15,000			260,546
a. State Lands Core Support		2,400	7,600			10,000		2,400	7,600			10,000

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
b. Highways NRIS Support		100,000				100,000		100,000				100,000
3. Vacancy Savings	15,957	3,730				19,687	24,342	10,016				34,358
4. Budget Balancing Reduction	6,475					6,475	5,125					5,125
Total	1,288,607	610,209	2,354,184			4,253,000	1,019,897	498,930	394,184			1,913,011

Item 1 includes biennial appropriations of $258,621 in general funds and $1,160,000 of federal funds for grants to local libraries.

Item 1b includes a one-time biennial appropriation for an additional bequest of $30,000 for the library for the blind that may not be included in the current level base in the agency budget request for the 1997 biennium.

In the event coal severance tax allocated to the Montana state library under 15-35-108(3)(f) exceeds the amounts appropriated to the Montana state library for fiscal 1994 and fiscal 1995, the additional funds are appropriated to the Montana state library commission for pass-through to the library federations. The additional appropriation allowed is not to exceed $30,000 each year.

The biennial appropriation for legislative contract authority of $550,000 included in item 2 is subject to the following provisions:

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(3) A report must be submitted by the Montana state library commission to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

Item 2b provides spending authority for the expenditure of amounts paid by the department of transportation to the Montana state library for the department's use of the natural resource information services, based on the rates and manner of payment negotiated by the Montana state library and the department. The funds collected from the department must be deposited in a state special revenue account and must be used to support the natural resource information services.

MONTANA HISTORICAL SOCIETY (5117)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration Program (01)	572,305	82,635	44,854			699,794	577,940	82,736	45,184			705,860
a. Legislative Audit (Restricted/Biennial)	18,341					18,341						
2. Library Program (02)	456,601	6,942		30,674		494,217	450,315	7,157		33,070		490,542
a. Photo Archives Storage												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
				2,400		2,400				2,400		2,400
b. Photograph Print Washer										1,095		1,095
c. Photo Archives Clerk				4,449		4,449				4,449		4,449
d. Motion Picture Conservator				1,200		1,200				1,200		1,200
3. Museum Program (03)	225,307	11,121		4,115		240,543	224,862	11,121		4,122		240,105
a. Original Governor's Mansion Preservation		3,700				3,700		3,700				3,700
4. Publication (04)	51,465			522,005		573,470	51,465			525,100		576,565
a. Legislative Audit (Restricted/Biennial)				781		781						
b. Press Editor				12,938		12,938				12,975		12,975
c. Press Book Authority				12,000		12,000				12,000		12,000
5. Historical Sites Preservation (06)	80,181		621,391			701,572	81,193		615,269			696,462
a. Legislative Audit (Restricted/Biennial)	843		4,425			5,268						
b. CRABS Database Managers			14,092			14,092			14,092			14,092
c. Field Survey Historian			27,930			27,930			27,930			27,930
6. Vacancy Savings	46,612	3,014		10,763		60,389	46,545	3,075		10,914		60,534
7. Budget Balancing Reduction	6,792					6,792	6,696					6,696
Total	1,351,639	101,384	712,692	579,799		2,745,514	1,332,534	101,639	702,475	585,497		2,722,145

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES (6401)												
1. Central Operations (10)	2,235,001	27,082		19,368		2,281,451	2,313,982	30,399		22,852		2,367,233
a. Legislative Audit (Restricted/Biennial)	126,143	7,879	1,556	5,885		141,463						
2. Corrections (20)	27,878,726	850,362	461,443	3,687,280		32,877,811	27,536,366	920,513	465,879	3,922,784		32,845,542
a. BA 84, 79, 87 Prison Ranch				120,000		120,000				121,951		121,951
b. HB 617 — Federally Certified Industries Programs										178,524		178,524
3. Mental Health (30)	30,931,800	233,127	1,824,423			32,989,350	31,756,476	233,127	1,717,486			33,707,091
a. Galen Changes	303,411					303,411	313,698					313,698
b. Registered Nurses	78,858					78,858	81,480					81,480
4. Chemical Dependency (40)		2,790,123	2,802,162			5,592,285		2,851,732	2,763,298			5,615,030
a. Galen Changes		131,209				131,209		135,439				135,439
5. Developmental Disabilities (50)	16,110,411	39,859	13,000			16,163,270	16,645,801	39,859	13,000			16,698,660
6. Veterans' Nursing Homes (60)		2,220,158	995,440			3,215,638		2,277,350	1,064,902			3,342,252
a. Eastern Montana Veterans' Nursing Home Startup								325,000				325,000
7. Vacancy Savings	1,446,015	120,596		60,715		1,627,326	1,478,429	122,244		62,438		1,663,111
Total	76,218,335	6,179,243	6,098,024	3,771,818		92,267,420	77,169,376	6,691,175	6,024,565	4,183,673		94,068,789

The legislature directs the department to work toward limiting the number of prisoners at Montana state prison to 850 inmates. Item 2 includes an appropriation sufficient to maintain that number of inmates.

Item 3 includes $82,280 in fiscal 1994 and $130,900 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

Item 3 includes $100,000 each year of the biennium for maintenance of the Galen campus.

The legislature directs the department to maintain the Galen campus in good condition during the 1995 biennium while the department seeks potential users of the facilities. If a use can be found that will not have a negative state general fund impact during the 1995 biennium, the department is authorized to make the necessary transfer after review by the legislative finance committee.

If House Bill No. 333 is not passed and approved, the general fund appropriation in item 3 is reduced by $35,626 in fiscal 1994 and by $77,966 in fiscal 1995 and the state special revenue appropriation in item 6 is reduced by $52,166 in fiscal 1994 and by $76,986 in fiscal 1995.

Item 5 includes $4,675 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

The department shall coordinate the development of programs for children with severe emotional disturbances. The departments of family services, health and environmental sciences, and social and rehabilitation services and the office of public instruction and the board of crime control shall fully cooperate and coordinate resources with the department.

The departments of family services, corrections and human services, health and environmental sciences, and social and rehabilitation services and the office of public instruction and the board of crime control shall collaboratively develop, administer, and fund services for children with severe emotional disturbances and with multiagency service needs. The departments and agencies are directed to develop community-based alternatives to inpatient psychiatric care and to reduce the number of residential care placements.

The departments and agencies may use general fund money, state special revenue, private funds, local government funds, and federal special revenue to design, administer, and provide programs for children with severe emotional disturbances. The departments and agencies may use available state and federal funding, within appropriation limits. The departments and agencies shall maximize the recovery of federal funds for these services, including waivers to the medicaid program to permit children with severe emotional disturbances to be served in their own homes and communities or, when appropriate, in the least-restrictive setting. The departments and agencies may use general fund money to match federal, local government, and private fund sources.

Whenever possible, the departments and agencies shall work with local providers and units of government to develop programs to serve children with severe emotional disturbances. Services may include but are not limited to case management services, day treatment, respite care, emergency services, and crisis intervention and stabilization services. Programs may include a managed care system, when allowable, to control entry into and exit from in-state and out-of-state residential facilities and to control the types and duration of services and reimbursement rates.

The departments and agencies shall encourage families to assist with payment of these services.

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total SECTION D	78,987,406	7,212,009	10,115,249	4,351,617		100,666,281	79,645,710	7,505,411	7,373,136	4,769,170		99,293,427

E. EDUCATION

University system units are defined in 17-7-102(16). For all university system units, except the *office of the commissioner of higher education, all funds, other than plant funds* appropriated in [the long-range planning bill], relating to long-range building, and current unrestricted operating funds, are appropriated contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. All movement of funds between the current unrestricted subfund and the designated subfund account entities must be clearly identified in the state budgeting and accounting system.

Programs for the university system units' budgets, except the office of the commissioner of higher education, include instruction, organized research, public service, academic support, *student services, institutional support, operation* and maintenance of plant, and scholarships and fellowships.

All university system units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the national center for higher education management systems program classification structure, along with the college and university business administration (CUBA) system, as a minimum standard for achieving consistency.

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration (06)	3,222,630	311,991	3,561,565	1,011,954		8,108,140	3,244,798	315,480	3,571,306	1,006,836		8,138,420
a. Legislative Audit (Restricted/Biennial)	57,866					57,866						
b. Transfer (Restricted/Biennial)	876,532					876,532						
c. Advanced Drivers' Education		11,127				11,127		26,127				26,127
d. School Food Commodities		55,000				55,000		55,000				55,000
e. Miscellaneous Federal Funds			914,299			914,299			1,155,728			1,155,728
f. Cooperative Purchase Aid		8,900				8,900		18,200				18,200
g. Resource and Publications		15,000				15,000		15,000				15,000
h. Indirect Cost Pool				110,000		110,000				110,000		110,000
i. Legal Fees (Restricted/Biennial)	28,500					28,500						
j. METNET (Restricted/Biennial)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		400,000				400,000						
2. Distribution to Public Schools (09)												
a. Special Education (Restricted)	32,845,797					32,845,797	32,845,797					32,845,797
b. Special Education Contingency (Restricted/Biennial)	2,031,163					2,031,163						
c. Transportation (Restricted)	5,693,558	3,908,166				9,601,724	5,693,558	3,914,457				9,608,015
d. School Foods (Restricted)	599,397					599,397	599,397					599,397
e. Adult Basic Education (Restricted/Biennial)	250,000					250,000	250,000					250,000
f. Individuals With Disabilities Education Act - B (Biennial)			1,823,000			1,823,000						
g. Job Training Partnership Act (Biennial)			1,017,200			1,017,200						
h. Adult Basic Education (Biennial)			1,365,000			1,365,000						
i. McKinney Homeless Act (Biennial)			180,400			180,400						
j. Preschool Incentive (Biennial)			230,000			230,000						
k. Vocational Education (Biennial)			6,022,525			6,022,525						
l. Individuals With Disabilities Education Act - D (Biennial)			12,000			12,000						
m. Chapter 1 (Biennial)			540,000			540,000						
n. Foreign Language (Biennial)			99,000			99,000						
o. Even Start Family Literacy (Biennial)			925,000			925,000						
p. Instate Treatment (Restricted/Biennial)	2,273,320					2,273,320						

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
q. Instate Residential Services (Biennial)												
	376,471					376,471						
r. School Food Services												
	29,940					29,940	45,673					45,673
s. Gifted and Talented (Restricted/Biennial)												
	300,000					300,000						
t. Secondary Vocational Education (Restricted/Biennial)												
	1,300,000					1,300,000						
3. Vacancy Savings												
	108,319	7,174		24,597		140,090	100,127	7,212		32,724		140,063
4. Budget Balancing Reduction												
	248,884					248,884	212,895					212,895
Total												
	49,527,971	4,703,010	16,689,989	1,097,357		72,018,327	42,366,201	4,337,052	4,727,034	1,084,112		52,514,399

Item 1j must be used to carry out the responsibilities of the superintendent of public instruction as provided in Title 20, chapter 32, part 1.

The office of public instruction may use up to 1% from the appropriation provided in item 2a to provide the matching funds necessary for medicaid reimbursements paid for medicaid-eligible services provided by public school districts.

The office of public instruction may transfer up to 1% from the appropriation provided in item 2a to the department of family services (DFS) to provide the matching funds necessary for medicaid reimbursements paid for education costs of children with disabilities.

The appropriation in item 2b is for unforeseen expenses that may arise in special education programs in local districts. The office of public instruction may transfer any unused balance in this appropriation into the special education appropriation in item 2a.

The office of public instruction may distribute the amounts required from the appropriation in item 2p to public school districts for the purpose of providing education costs in day-treatment services.

The office of public instruction may transfer up to $700,000 from item 2p to the department of family services to provide the matching funds necessary for medicaid reimbursements paid for education costs of children receiving in-state residential treatment services.

All revenue received in the state traffic education account under the provisions of 20-7-504 is appropriated as provided in Title 20, chapter 7, part 5.

BOARD OF PUBLIC EDUCATION (5101)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration (01)												
	110,949	9,550				120,499	110,031	9,550				119,581
a. Legislative Audit (Restricted/Biennial)												

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	1,219					1,219						
2. Advisory Council (03)		77,336				77,336		76,427				76,427
a. Legislative Audit (Restricted/Biennial)		1,220				1,220						
3. Vacancy Savings	4,068	3,036				7,104	4,063	3,043				7,106
4. Budget Balancing Reduction	541					541	530					530
Total	107,559	85,070				192,629	105,438	82,934				188,372
SCHOOL FOR THE DEAF AND BLIND (5113)												
1. Administration Program (01)	222,974					222,974	223,057					223,057
a. Legislative Audit (Restricted/Biennial)	26,016					26,016						
2. General Services Program (02)	293,902					293,902	307,844					307,844
3. Student Services (03)	875,115		34,000			909,115	875,847		34,000			909,847
4. Education (04)	1,099,737	455,797	72,823			1,628,357	1,079,601	463,797	72,823			1,616,221
a. Copier							18,000					18,000
5. Vacancy Savings	15,890	3,223				19,113	15,917	3,318				19,235
6. Budget Balancing Reduction	12,509					12,509	12,442					12,442
Total	2,489,345	452,574	106,823			3,048,742	2,475,990	460,479	106,823			3,043,292

All revenue received from the rental use of the MSDB facilities must be deposited into a state special revenue account. All revenue deposited into this account is appropriated for use by MSDB.

Item 2 contains $4,900 in fiscal 1994 and $4,900 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
MONTANA COUNCIL ON VOCATIONAL EDUCATION (5116)												
1. Administration Program (01)			161,680			161,680			165,781			165,781
a. Legislative Audit (Restricted/Biennial)			3,577			3,577						
Total			165,257			165,257			165,781			165,781
COMMISSIONER OF HIGHER EDUCATION (5102)												
1. Administration Program (01)	920,664					920,664	926,807					926,807
a. Legislative Audit (Restricted/Biennial)	22,764					22,764						
2. Student Assistance Program (02) (Restricted)	5,155,717		305,000			5,460,717	5,059,192		305,000			5,364,192
3. Dwight D. Eisenhower Mathematics and Science Education Act (03)			296,803			296,803			296,806			296,806
4. Community College Assistance (04)	4,202,132					4,202,132	4,202,132					4,202,132
a. Legislative Audit (Restricted/Biennial)	29,890					29,890						
5. Montana University System Group Insurance Program (05)				17,976,875		17,976,875				19,844,204		19,844,204
6. Talent Search (06)			290,420			290,420			291,266			291,266
a. Talent Search			119,014			119,014			158,184			158,184
b. Minority Achievement	87,824					87,824	87,824					87,824
7. Carl D. Perkins Administration (08)	84,293		5,106,169			5,190,462	80,000		5,101,876			5,181,876

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
8. Guaranteed Student Loan Program (12)			1,877,842			1,877,842			1,888,642			1,888,642
a. Guaranteed Student Loan 1			722,567			722,567			797,436			797,436
b. Guaranteed Student Loan 2			766,996			766,996			767,080			767,080
c. Legislative Audit (Restricted/Biennial)			5,854			5,854						
9. Board of Regents — Administration (13)	33,521					33,521	34,024					34,024
10. Board of Regents Bond Payments (14)	216,995					216,995	111,483					111,483
11. Vocational-Technical Center Administration (15)	100,263					100,263	100,517					100,517
12. Montana Career Information System (16)				99,949		99,949				100,015		100,015
a. Additional School Services				50,051		50,051				54,985		54,985
13. Vacancy Savings	42,990			8,881		51,871	42,860			8,905		51,765
14. Personal Services Contingencies (Restricted/Biennial)	4,299			1,776		6,075	4,286			1,781		6,067
15. Budget Balancing Reduction	54,077					54,077	52,817					52,817
Total	10,761,295		9,490,665	18,119,770		38,371,730	10,510,588		9,606,290	19,992,080		40,108,958

It is the intent of the 53rd legislature that no funds be transferred in fiscal 1994 or fiscal 1995 from the student assistance program to any other program within the office of the commissioner of higher education.

Any indirect cost reimbursements received in excess of $20,885 in fiscal 1994 and $20,885 in fiscal 1995 as a result of an increase in the federal talent search grant must cause a general fund reversion of a like amount.

If House Bill No. 5 is not passed and approved in a form that results in the issuance of general obligation bonds for prepayment of the remaining payment obligations for the Butte vocational-technical center, the general fund appropriation in item 10 is increased by $465,115 in fiscal 1994 and by $467,275 in fiscal 1995.

In the event that bond payments on the Butte, Great Falls, and/or Billings vocational-technical centers are less than the amounts shown in item 10 in either year of the 1995 biennium, the difference between the appropriated amount and actual payments is appropriated for preplanning purposes to complete the unfinished space at the Great Falls Vocational-Technical Center.

The general fund appropriation for each community college includes 49% of the total unrestricted budgets for the community colleges in fiscal 1994 and fiscal 1995. The total unrestricted budgets for the community colleges must be approved by the board of regents.

The general fund appropriation for each community college provides 49% of the total audit cost. The remaining 51% of these costs are to be paid from funds other than those appropriated in item 4. Audit costs for the biennium may not exceed $18,000 each for Dawson and Miles community colleges and $25,000 for Flathead Valley community college.

The legislature expects, as a result of the general fund reductions adopted in [this act], that the governor and the board of regents will manage these reductions in the following manner:

(1) Administrative cuts should precede and meet or exceed, on a percentage basis, reductions in any other area of the university system. Management efficiencies, as prescribed by the MGT study, should be implemented to the greatest extent and as soon as possible.

(2) Faculty productivity standards should be negotiated and implemented.

(3) Enrollment limits and tuition increases should be used only as a last resort.

The 53rd legislature does not require that the board of regents' employee reporting system (RERS) be maintained in the 1995 biennium. However, it is the intent of the legislature that accurate, consistent, and accessible position and compensation information be available to the legislature and the governor. The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide the following information electronically to the legislative fiscal analyst and the office of budget and program planning:

(1) On January 1 and at fiscal yearend beginning in fiscal 1994 and each year thereafter, the actual personal services data. This data must tie to the actual expenditures as recorded on SBAS.

(2) Beginning November 1, 1993, and each year thereafter, the budgeted personal services data. The data must tie to the operating plan as approved by the board of regents.

This personal services data must include but not be limited to the following for each position number: program number, responsibility center, salary, benefits, fund type, and FTE position title and position type. The initial submission of this information must be reviewed and approved for accuracy, consistency, and accessibility by the joint committee on postsecondary education policy and budget.

BILLINGS VOCATIONAL-TECHNICAL CENTER (3511)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Combined Operations (01,07,44)	1,188,169	327,741			469,315	1,985,225	1,194,378	333,717			469,315	1,997,410
a. Legislative Audit (Restricted/Biennial)	26,341					26,341						
Total	1,214,510	327,741			469,315	2,011,566	1,194,378	333,717			469,315	1,997,410

Total audit costs are estimated to be $29,268 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
State special appropriations are revenue generated under the provisions of 20-16-202, which requires each county in which a vocational-technical center is located to levy an annual tax of 1.5 mills on all taxable property within the county.												
BUTTE VOCATIONAL-TECHNICAL CENTER (3512)												
1. Combined Operations (01,07,44)	1,239,674	81,383			346,566	1,667,623	1,243,160	82,733			346,566	1,672,459
a. Legislative Audit (Restricted/Biennial)	32,195					32,195						
Total	1,271,869	81,383			346,566	1,699,818	1,243,160	82,733			346,566	1,672,459
Total audit costs are estimated to be $35,772 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.												
State special appropriations are generated under the provisions of 20-16-202, which requires each county in which a vocational-technical center is located to levy an annual tax of 1.5 mills on all taxable property within the county.												
GREAT FALLS VOCATIONAL-TECHNICAL CENTER (3513)												
1. Combined Operations (01,07,44)	1,669,390	156,776			684,163	2,510,329	1,675,801	159,538			684,163	2,519,502
a. Legislative Audit (Restricted/Biennial)	29,268					29,268						
Total	1,698,658	156,776			684,163	2,539,597	1,675,801	159,538			684,163	2,519,502
Total audit costs are estimated to be $32,520 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.												
State special appropriations are revenue generated under the provisions of 20-16-202, which requires each county in which a vocational-technical center is located to levy an annual tax of 1.5 mills on all taxable property within the county.												
HELENA VOCATIONAL-TECHNICAL CENTER (3514)												
1. Combined Operations (01,07,44)	1,890,735	114,499			606,615	2,611,849	1,897,449	116,514			606,615	2,620,578
a. Legislative Audit (Restricted/Biennial)	32,195					32,195						

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total	1,922,930	114,499			606,615	2,644,044	1,897,449	116,514			606,615	2,620,578

Total audit costs are estimated to be $35,772 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

State special appropriations are revenue generated under the provisions of 20-16-202, which requires each county in which a vocational-technical center is located to levy an annual tax of 1.5 mills on all taxable property within the county.

MISSOULA VOCATIONAL-TECHNICAL CENTER (3515)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Combined Operations (01,07,44)	2,003,764	211,601			620,064	2,835,429	2,006,884	215,498			620,064	2,842,446
a. Legislative Audit (Restricted/Biennial)	26,341					26,341						
Total	2,030,105	211,601			620,064	2,861,770	2,006,884	215,498			620,064	2,842,446

Total audit costs are estimated to be $29,268 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

State special appropriations are revenue generated under the provisions of 20-16-202, which requires each county in which a vocational-technical center is located to levy an annual tax of 1.5 mills on all taxable property within the county.

It is the intent of the legislature that the board of regents have additional appropriation flexibility to operate the vocational-technical centers during the 1995 biennium. Therefore, the legislature has approved for each vocational-technical center a single appropriation for its general operations. The appropriation for each postsecondary vocational-technical center listed above is for the following programs: instruction, academic support, student services, institutional support, and operation and maintenance of plant.

It is further the intent of the legislature that all fiscal matters pertaining to the postsecondary vocational-technical centers during the 1995 biennium and the 1997 biennium budget request be recorded, maintained, and submitted using the college and university business administration (CUBA) fund structure and functional expenditure classifications.

UNIVERSITY OF MONTANA (5103)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Combined Operations (01, 02, 03, 07, 08, and 44)	25,244,156	4,495,027			22,052,811	51,791,994	25,342,171	4,512,622			22,052,811	51,907,604
a. Legislative Audit (Restricted/Biennial)	61,789					61,789						
Total	25,305,945	4,495,027			22,052,811	51,853,783	25,342,171	4,512,622			22,052,811	51,907,604

Total audit costs are estimated to be $123,577 for the biennium. Fifty percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

Item 1 contains $68,255 in fiscal 1994 and $260,865 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

MONTANA STATE UNIVERSITY (5104)

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Combined Operations (01, 02, 03, 07, 08, and 44)	30,920,426	4,499,293			19,922,177	55,341,896	31,075,236	4,516,905			19,922,177	55,514,318
a. Legislative Audit (Restricted/Biennial)	65,041					65,041						
Total	30,985,467	4,499,293			19,922,177	55,406,937	31,075,236	4,516,905			19,922,177	55,514,318

Total audit costs are estimated to be $130,081 for the biennium. Fifty percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY (5105)

1. Combined Operations (01, 02, 07, 08, and 44)	7,163,802	780,775			3,142,449	11,087,026	7,215,736	783,831			3,142,449	11,142,016
a. Legislative Audit (Restricted/Biennial)	49,512					49,512						
2. Bureau of Mines — Independent Operations (11)	1,303,362				44,000	1,347,362	1,291,542				44,000	1,335,542
a. Ground Water Assessment (Restricted)		666,000				666,000		666,000				666,000
Total	8,516,676	1,446,775			3,186,449	13,149,900	8,507,278	1,449,831			3,186,449	13,143,558

Total audit costs are estimated to be $66,016 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1, 1a, and 2.

Item 2a is for ground water activities in accordance with Title 85, chapter 2, part 9, and equals the total anticipated deposits to the fund each year. The bureau of mines may not expend funds in any year from this appropriation over the amount deposited to the account.

EASTERN MONTANA COLLEGE (5106)

1. Combined Operations (01, 03, 07, 08, and 44)	9,618,695	1,488,071			5,179,754	16,286,520	9,668,074	1,493,896			5,179,754	16,341,724
a. Legislative Audit (Restricted/Biennial)	60,488					60,488						

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
Total	9,679,183	1,488,071			5,179,754	16,347,008	9,668,074	1,493,896			5,179,754	16,341,724

Total audit costs are estimated to be $80,650 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

Item 1 contains $3,628 in fiscal 1994 and $17,989 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

NORTHERN MONTANA COLLEGE (5107)

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
1. Combined Operations (01, 07, 08, and 44)	5,407,088	793,101			2,650,914	8,851,103	5,425,267	796,205			2,650,914	8,872,386
a. Legislative Audit (Restricted/Biennial)	45,854					45,854						
Total	5,452,942	793,101			2,650,914	8,896,957	5,425,267	796,205			2,650,914	8,872,386

Total audit costs are estimated to be $61,138 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

Item 1 contains $38,335 in fiscal 1994 and $38,335 in fiscal 1995 that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program.

WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA (5108)

	Fiscal 1994 General Fund	Fiscal 1994 State Special Revenue	Fiscal 1994 Federal Special Revenue	Fiscal 1994 Propri-etary	Fiscal 1994 Other	Fiscal 1994 Total	Fiscal 1995 General Fund	Fiscal 1995 State Special Revenue	Fiscal 1995 Federal Special Revenue	Fiscal 1995 Propri-etary	Fiscal 1995 Other	Fiscal 1995 Total
1. Combined Operations (01, 07, 06, and 44)	3,232,223	461,733			1,522,544	5,216,500	3,260,385	463,541			1,522,544	5,246,470
a. Legislative Audit (Restricted/Biennial)	50,732					50,732						
Total	3,282,955	461,733			1,522,544	5,267,232	3,260,385	463,541			1,522,544	5,246,470

Total audit costs are estimated to be $67,642 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

It is the intent of the legislature that the board of regents have additional appropriation flexibility to operate the six university system units and the vocational-technical centers during the 1995 biennium. Therefore, the legislature has approved for each university system unit a single appropriation for its general operations. The appropriations for each postsecondary university system unit listed above is for the following programs, as appropriate: instruction, academic support, student services, institutional support, operation and maintenance of plant, scholarships and fellowships, research, and public service.

The board of regents may transfer appropriations between fiscal years within each fund type. The transfer may not exceed 10% of the unit appropriation. Upon approval of a transfer, the board of regents shall inform the legislative fiscal analyst and the office of budget and program planning of the transfer and the justification for the transfer. Funds may not be transferred among units of the university system.

It is further the intent of the legislature that all fiscal matters pertaining to the university system units during the 1995 biennium and the 1997 biennium budget request be recorded, maintained, and submitted using the college and university business administration (CUBA) fund structure and functional expenditure classifications.

Included within state special revenue to the six university system units is the sum of $12,518,000 in fiscal 1994 and $12,567,000 in fiscal 1995 from revenue generated under the provisions of 20-25-423. The department of revenue shall levy the full 6 mills as authorized in 20-25-423. Revenue received by the university system under the provisions of 20-25-423 that exceeds $12,518,000 in fiscal 1994 and $12,567,000 in fiscal 1995 is appropriated to the office of the commissioner of higher education for distribution to the university system.

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
AGRICULTURAL EXPERIMENT STATION (5109)												
1. Organized Research (02)	7,226,947				2,300,013	9,526,960	7,263,780				2,300,013	9,563,793
2. United States Range Station (15)					490,531	490,531					492,745	492,745
Total	7,226,947				2,790,544	10,017,491	7,263,780				2,792,758	10,056,538
COOPERATIVE EXTENSION SERVICE (5110)												
1. Public Service (03)	2,786,119				2,161,652	4,947,771	2,788,897				2,161,652	4,950,549
Total	2,786,119				2,161,652	4,947,771	2,788,897				2,161,652	4,950,549
FORESTRY AND CONSERVATION EXPERIMENT STATION (5111)												
1. Research (02)	702,762					702,762	702,782					702,762
Total	702,762					702,762	702,782					702,782
FIRE SERVICES TRAINING SCHOOL (5119)												
1. Public Service (03)	248,214					248,214	230,853					230,853

	Fiscal 1994						Fiscal 1995					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
a. Legislative Audit (Restricted/Biennial)												
	3,252					3,252						
Total												
	251,466					251,466	230,853					230,853

The fire services training school must be provided office, classroom, and storage space in the Great Falls vocational-technical center at no charge.

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total SECTION E												
	165,214,704	19,316,654	26,452,734	19,217,127	62,193,568	292,394,787	157,740,612	19,021,465	14,605,928	21,076,192	62,195,782	274,639,979
Total STATE FUNDING												
	470,581,261	341,260,774	703,689,426	278,717,195	64,580,864	1,858,829,520	468,681,512	331,398,144	696,357,866	293,377,799	64,067,730	1,853,883,051

Approved May 10, 1993.

CHAPTER NO. 624

[HB 5]

AN ACT REVISING CERTAIN PROVISIONS RELATING TO CAPITAL PROJECTS; APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1995; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AUTHORIZING THE CREATION OF STATE DEBT BY THE ISSUANCE OF BONDS; AMENDING SECTION 53-30-101, MCA, SECTION 6, HOUSE BILL NO. 777, LAWS OF 1989; SECTION 1, CHAPTER 624, LAWS OF 1991; SECTION 12, CHAPTER 774, LAWS OF 1991; AND SECTION 3, CHAPTER 17, SPECIAL LAWS OF JULY 1992; REPEALING CHAPTER 4, SPECIAL LAWS OF JANUARY 1992; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of [sections 1 through 9], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 9].

(2) "LRBPF" means the long-range building program fund in the capital projects fund type.

(3) "Other funding sources" means money other than LRBPF money, including special revenue fund money, that accrues to an agency under the provisions of the law.

Section 2. **Capital projects appropriations.** (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBPF	Other Funding Sources	
DEPARTMENT OF ADMINISTRATION			
Environmental Hazards Fund, Statewide (5)	$850,000		
Demolition Projects, Statewide (10)	187,600		
Handicapped Access, Capitol Complex (11)	230,000		
Construction Litigation, Architecture and Engineering Division (14)	200,000		
Improve Parking Lots, Capitol Complex (17)	120,000		
Historical Society Climate Control, Capitol Complex (19)	85,000		
Energy Conservation Projects, Statewide		$ 800,000	Federal Special Revenue
		1,000,000	Nonstate State Special Revenue
DEPARTMENT OF CORRECTIONS & HUMAN SERVICES			
Upgrade Fire Safety Systems, Eastmont Human Services Center and Montana State Hospital (1)	150,000		
Replace Roofs, Corrections and Human Services (9)	140,000		
Install Environmental Controls, Center for the Aged (15)	355,180		

Prison Dairy Dormitory		605,212	Proprietary
DEPARTMENT OF EDUCATION			
Maintenance & Improvements, Montana School for the Deaf & Blind (18)	107,192		
DEPARTMENT OF FAMILY SERVICES			
Install Fire Safety Systems, Pine Hills School and Mountain View School (2)	627,000		
Miscellaneous Repairs, Pine Hills School and Mountain View School (4)	143,500		
DEPARTMENT OF FISH, WILDLIFE & PARKS			
Flathead Lake State Park Improvements		172,500	State Special Revenue
		111,215	State Special Revenue-Other
		200,000	State Special Revenue-Motor Fuels Tax
		516,285	Federal Special Revenue
Makoshika State Park Improvements		264,000	State Special Revenue
		716,000	State Special Revenue-Other
		200,000	State Special Revenue-Motor Fuels Tax
		320,000	Federal Special Revenue
Bannack State Park Preservation		168,000	State Special Revenue
		1,732,000	State Special Revenue-Other
		100,000	State Special Revenue-Motor Fuels Tax
Lake Elmo State Park Improvements		150,000	State Special Revenue-Other
		200,000	State Special Revenue-Motor Fuels Tax
Ulm Pishkun State Park Planning		200,000	State Special Revenue-Other
State Parks Road Improvements		1,800,000	State Special Revenue
Warehouse Code Upgrade & Improvements		113,000	State Special Revenue
Washoe Park Trout Hatchery Improvements		175,000	State Special Revenue
		525,000	Federal Special Revenue
Fishing Access Site Development, Statewide		315,000	State Special Revenue
		745,000	Federal Special Revenue
Site Protection and Improvements to Thompson Chain of Lakes		150,000	State Special Revenue
		300,000	Federal Special Revenue
Fish Hatchery Maintenance, Statewide		96,750	State Special Revenue
		290,250	Federal Special Revenue
Wildlife Habitat Maintenance, Statewide		630,000	State Special Revenue
Headquarters Repair, Statewide		200,000	State Special Revenue
Design Bluewater Hatchery Replacement		112,500	State Special Revenue
		337,500	Federal Special Revenue
Oxygenate Giant Springs Hatchery Water		171,750	State Special Revenue
		515,250	Federal Special Revenue
Waterfowl Stamp Program, Statewide		87,500	State Special Revenue
		75,000	Federal Special Revenue
Department Property Development, Statewide		210,000	State Special Revenue
Upgrade Wildlife Rehabilitation Center		200,000	State Special Revenue-Donations
DEPARTMENT OF LABOR & INDUSTRY			
Maintain Job Services, Statewide		273,400	Federal Special Revenue
Preliminary Design to Expand and Renovate Job Services, Statewide		50,000	Federal Special Revenue
DEPARTMENT OF LIVESTOCK			
Diagnostic Laboratory Enhancement, Vet Research Lab, MSU		1,198,000	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Repairs & Improvements, Statewide (16)	185,000		
State Veterans' Cemetery, Phase III, Helena		75,000	State Special Revenue
		75,000	Federal Special Revenue
Federal Spending Authority		300,000	Federal Special Revenue

DEPARTMENT OF TRANSPORTATION			
Repair, Maintenance & Minor Construction Projects, Statewide		130,000	Highways State Special Revenue
Equipment Buildings, Statewide		1,370,000	Highways State Special Revenue
Highway Welcome and Farewell Signs		26,000	State Special Revenue
		174,000	Federal Special Revenue
MONTANA UNIVERSITY SYSTEM			
Upgrade Boiler #3, Montana State University (3)	519,000	346,000	Auxiliary
Electrical Upgrades, Montana Tech (6)	130,000		
Improve Steam & Condensate Lines, Montana State University (7)	450,000	300,000	Auxiliary
Replace & Improve Roofs, University System (8)	666,564		
Install Elevator, Liberal Arts Building, University of Montana (12)	280,000		
Install Elevator, Old Main, Western Montana College (13)	242,500		
Authority Only Projects, University of Montana		1,300,000	Federal, Higher Education Funds, Plant, and/or Donations
Gas Bypass at Mount Sentinel-UM		500,000	Higher Education
Campus Storage Building, Montana Tech		65,000	Higher Education Funds and/or Plant
Animal Science Machine Shop-Bozeman Agricultural Research Center		400,000	Higher Education

(2) The projects funded by LRBPF in [section 6] and this section are to be funded in priority order. The priority number is shown after the project name in parentheses. In the event there is insufficient revenue to fund all of the projects, the projects must be funded in priority order.

(3) For purposes of obtaining cash for the construction litigation appropriation authority in [section 2(1)], the architecture and engineering division of the department of administration may transfer any excess LRBPF money from an agency as long as the transfer does not move funds required to complete any authorized agency project.

(4) (a) The appropriations funded by "state special revenue-other" for the first five park projects under the department of fish, wildlife, and parks are contingent on $2.9 million of new revenue being generated from pending legislation to provide a portion of the state match for the projects. In four of the five projects is $700,000 of funding from state special revenue-motor fuels tax. These four projects are contingent on passage and approval of Senate Bill No. 257 or any other bill that increases revenue sufficient to fund the projects.

(b) The state parks road improvements project is contingent on passage and approval of Senate Bill No. 257 or any other bill that increases the motor fuels tax sufficient to fund the project.

(c) For the purposes of using in-kind matching values, the amounts listed under state special revenue may be decreased and the amounts listed under federal special revenue may be increased by a like amount for those projects listed under the department of fish, wildlife, and parks.

(5) (a) The amount of $1,155,000 for the equipment buildings project for the department of transportation is contingent on passage and approval of Senate Bill No. 257 or any other bill that increases the motor fuels tax sufficient to fund the project.

(b) The amount of state special revenue appropriated for highway welcome and farewell signs may be decreased and the federal special revenue may be increased by a like amount in the event that additional federal revenue is available.

Section 3. **Land acquisition appropriation.** The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, or easement purchase:

Agency/Project	LRBPF	Other Funding Sources	
Fishing Access Site Acquisition, Statewide		$ 643,000	State Special Revenue
Wildlife Habitat Acquisition, Statewide		5,360,000	State Special Revenue
Bighorn Sheep Program, Statewide		113,000	State Special Revenue

Section 4. **River restoration.** The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for irrigation projects, river restoration, and increasing the water capacity at Como reservoir:

Agency/Project	LRBPF	Other Funding Sources	
Big Creek Irrigation Projects		$200,000	Federal Special Revenue
River Restoration Study, Statewide		206,000	State Special Revenue
Como Reservoir Improvements		100,000	State Special Revenue
		300,000	Federal Special Revenue

Section 5. **Bearpaw dam upgrade.** (1) The following money is appropriated to the department of fish, wildlife, and parks, in the indicated amounts for the purpose of upgrading the Bearpaw dam:

Agency/Project	LRBPF	Other Funding Sources	
Bearpaw Dam Upgrade		$ 68,750	State Special Revenue
		206,250	Federal Special Revenue

(2) In accordance with 85-1-101, the department of natural resources and conservation shall coordinate and manage the project.

Section 6. **Capital improvements.** (1) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBPF	Other Funding Sources	
Repair, Maintenance, & Minor Construction Projects, Statewide		$500,000	Highways State Special Revenue

(2) The following money is appropriated to the department of state lands in the indicated amount for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBPF	Other Funding Sources	
Various Maintenance Projects, Statewide (20)	$50,000		

(3) The following money is appropriated to the university of Montana in the indicated amount for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBPF	Other Funding Sources	
Authority Only Projects, University of Montana		$1,550,000	Federal, Higher Education Funds, Plant, and/or Donations
Language Laboratory-UM		350,000	Higher Education Funds

Section 7. **Planning and design.** The department of administration may proceed with the planning and design of capital projects prior to the receipt of

other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred prior to the receipt of other funding sources.

Section 8. **Capital projects — contingent funds.** If a capital project is financed in whole or in part with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding levels provided in [sections 1 through 9] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 1994-95 long-range building program presented to the 53rd legislature.

Section 9. **Appropriation of bonds proceeds and other funds.** The following money is appropriated from other appropriated funds to the department of administration for the capital projects described in this section, contingent upon the respective authorization and sale of general obligation long-range building program bonds by the 53rd legislature and the board of examiners.

Agency/Project	LRBPF	Other Appropriated Funds
DEPARTMENT OF LABOR & INDUSTRY		
Expand and Construct Job Services Statewide	$1,500,000	
COMMISSIONER OF HIGHER EDUCATION		
Purchase Butte Vo-Tech	2,000,000	
DEPARTMENT OF ADMINISTRATION		
SRS Commodities Warehouse	1,700,000	
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES		
Improvements at Women's Correctional Center, Montana State Hospital	260,000	
Miscellaneous Improvements at Montana State Hospital for Accreditation	1,000,000	

Section 10. **Authorization of bonds.** The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $6,460,000 for the projects described in [section 9] over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1993, to be used in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds. The board may fund the department of corrections and human services projects authorized in [section 9] through the use of loans or bonds.

Section 11. **Agreement with department of labor and industry.** For the proceeds of bonds and notes authorized and appropriated by [this act] for the expansion and renovation of job service offices, statewide, the board of examiners and the department of labor and industry may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds and notes from which the appropriation was made and to accommodate and maintain reserves required under the bonds. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the reserves not required for construction or renovation costs may be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payment by the department must be made from funds available therefor.

Section 12. **Agreement with department of social and rehabilitation services.** For the proceeds of bonds and notes authorized and appropriated by [this act] for the construction of a commodities warehouse, the board of examiners and the department of social and rehabilitation services may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds and notes from which the appropriation was made and to accommodate and maintain reserves required under the bonds. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the reserves not required for construction costs may be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year the bonds are outstanding. Payment by the department must be made from funds available therefor.

Section 13. **Benefit to state.** The agreements made pursuant to [sections 11 and 12] are solely for the benefit of the state and are not enforceable by bondholders or other third-party beneficiaries.

Section 14. **Department of labor and industry bond payment.** The department of labor and industry shall transfer to the department of administration, prior to the payment date, sufficient funds to retire $1,500,000 of general obligation long-range building program bonds authorized by the 53rd legislature and issued by the board of examiners. This payment obligation is for the benefit of the state and not enforceable by bondholders.

Section 15. **Department of social and rehabilitation services bond payment.** The department of social and rehabilitation services shall transfer to the department of administration, prior to the payment date, sufficient funds to retire $1,700,000 of general obligation long-range building program bonds authorized by the 53rd legislature and issued by the board of examiners. This payment obligation is for the benefit of the state and not enforceable by bondholders.

Section 16. **Requirements for approval of state debt.** Because [section 10] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [sections 9 through 15]. If [section 10] is not approved by the required vote, [sections 9 through 15] are void. The remaining sections of [this act] are valid and remain in effect in all valid applications upon enactment.

Section 17. Section 1, Chapter 624, Laws of 1991, is amended to read:

"Section 1. **Appropriation *and conditions* for veterans' home project.** (1) The following money is appropriated for the biennium ending June 30, 1993, from the capital projects fund: $1,991,897 to the department of administration for construction and remodeling, including land purchase and design costs, of a state nursing home and domiciliary home at Glendive, Montana, for veterans in Montana.

(2) There is appropriated to the department of administration for the biennium ending June 30, 1993, $3,699,237 in spending authority from the federal special revenue received from the veterans benefits administration.

(3) The department of corrections and human services shall negotiate an agreement with an appropriate and qualified private vendor to operate and maintain the state nursing home at Glendive, in accordance with state and federal regulations and without any state general fund support. The ownership of the state nursing home must be retained by the state in accordance with federal regulations."

Section 18. Section 12, Chapter 774, Laws of 1991, is amended to read:

"Section 12. **Appropriation of bond proceeds and other funds.** (1) The following money is appropriated from the bond proceeds and other funding sources to the department of administration for the capital projects described in this section contingent upon the respective authorization and sale of general obligation long-range building program bonds by the 52nd legislature and the board of examiners:

Agency/Project	LRBPF	Other Funding Sources
~~Major Expansion, Montana State Prison~~	~~$19,300,745~~	
Miscellaneous Prison Projects	*$ 6,705,000*	
Construct Engineering/Physical Sciences Complex, Montana State University	18,401,510	
Construct Business Administration Building, University of Montana	13,022,975	
Construct Women's Correction Center	10,075,600	
Construct Libby Armory	400,000	

(2) If the bonding program in [section 13] fails to receive the necessary two-thirds vote of both houses of the legislature, the $400,000 for the Libby armory is appropriated from the LRBPF funds as stated in [section 6(5)(b)].

(3) The department of administration and the board of examiners shall issue bonds for the projects in subsection (1) in a manner that is consistent with prudent debt management principles, that schedules the payment of principal and interest to minimize the aggregate amount of debt service payable from the general fund on all general obligation bonds during the biennium ending June 30, 1995, and that takes into consideration interest earnings on the proceeds of the bonds. The board of examiners may defer the payment of principal and interest on the bonds. The women's correctional center project construction is delayed until after July 1, 1994. The department of administration and the board of examiners may issue the bonds for the women's correctional facility in fiscal year 1995. The board may authorize the construction or purchase of the women's correctional facility."

Section 19. Section 6, House Bill No. 777, Laws of 1989, is amended to read:

"Section 6. **Capital projects appropriations.** The following money is appropriated to the department of administration for the indicated capital projects from the indicated sources:

Agency/Project	CPF	Other Appropriated Funds	
DEPARTMENT OF ADMINISTRATION			
Hazardous Material Abatement, Statewide	$ 200,000		
Maintain Water Towers and Systems, Statewide	450,000		
DEPARTMENT OF AGRICULTURE — PLANT INDUSTRY DIVISION			
Remodel Grain Laboratory, Great Falls		45,500	State Special Revenue
DEPARTMENT OF EDUCATION			
Roof Repair, Academic Building, Montana School for the Deaf and Blind	10,000		
DEPARTMENT OF FAMILY SERVICES			
Replace/Repair Roof, Custer Lodge, Pine Hills School	155,000		
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Fishing Access Sites Improvement, Statewide		183,000	State Special Revenue
		549,000	Federal Special Revenue
Construct Region 2 Headquarters Storage, Missoula		25,920	State Special Revenue
Waterfowl Habitat Enhancement, Statewide		424,500	State Special Revenue
Boat Facilities, Statewide		54,923	State Special Revenue
		163,770	Federal Special Revenue
State Park Maintenance and Development, Statewide		1,181,500	State Special Revenue
		1,137,500	Federal Special Revenue
State Property Improvement, Statewide		165,037	State Special Revenue
Donation Authority, East Gallatin Park, Bozeman		100,000	State Special Revenue
Lake Elmo Improvements	150,000	150,000	State Special Revenue
DEPARTMENT OF HIGHWAYS			
Maintenance Projects, Statewide		750,000	Highways State Special Revenue
Maintenance Section, Headquarters Complex, Bridger		140,460	Highways State Special Revenue
Construct Sandhouses, Statewide		118,800	Highways State Special Revenue
Headquarters Renovation, Glendive		72,480	Highways State Special Revenue
Construct Equipment Storage Additions, Statewide		419,480	Highways State Special Revenue
DEPARTMENT OF INSTITUTIONS			
Construct Low Security Housing Unit, MSP	1,184,600		
Building Modifications and Exterior Lighting, Center for the Aged	45,396		
Roof Replacement/Repair, Department of Institutions	352,500		
Boiler Room Water Softeners, Montana State Hospital, Galen	45,000		
Supplemental Appropriation for Montana Developmental Center	289,900		
Replace Hospital Floors, Montana State Hospital, Galen	20,000		
Correct Code Deficiencies, Montana State Hospital, Galen	15,000		
Remodel Unit 57 for Women's Correction Center, Montana State Hospital	45,000		
DEPARTMENT OF LABOR AND INDUSTRY			
Acquisition of Arcade Building, Lower Level, Helena		50,000	State Special Revenue
Power Supply Project, Workers' Compensation, Helena		26,000	State Special Revenue
HVAC Replacement and Major Maintenance, Helena Job Service		53,600	Federal Special Revenue
Repair Settling Damage, Great Falls Job Service		50,000	Federal Special Revenue
Heating Unit Replacement, Missoula Job Service		50,000	Federal Special Revenue
Construct/Purchase, Butte Job Service		211,000	Federal Special Revenue
Parking Lot Construction, Havre Job Service		10,000	Federal Special Revenue
Basement Renovation, Bozeman Job Service		100,000	Federal Special Revenue

DEPARTMENT OF STATE LANDS			
Interagency Fire Center and Hangar, Helena		54,800	Federal Special Revenue
Nursery Freezer and Cooler, Missoula		24,000	State Special Revenue
Nursery Shop Building, Missoula		101,000	State Special Revenue
Nursery Storage Building, Missoula		22,000	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Construct M-1 Bays Statewide	30,000	1,340,000	Federal Special Revenue
Remodel Missoula Armory and Study Armories, Statewide	12,000	80,000	Federal Special Revenue
Construct Livingston Armory	~~500,800~~ *450,800*	798,000	Federal Special Revenue
Federal Spending Authority		689,597	Federal Special Revenue
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION			
Oil and Gas Division Addition, Billings		116,950	Oil and Gas State Special Revenue
DEPARTMENT OF REVENUE			
Maintain Liquor Warehouse Roof		170,000	Enterprise Funds
MONTANA UNIVERSITY SYSTEM			
Carpet Replacement, Administration Building, Missoula Vo-Tech Center	80,000		
Replace Roofs, Montana University System	473,120		
Electrical Distribution System, Phase II, MSU	1,153,355	524,871	Auxiliary
Major Maintenance, Water Mains, University of Montana	130,000		
Exterior Door and Vestibules, Western Montana College	14,000		
Window Retrofit, Engineering Hall, Montana Tech	132,750		
Miscellaneous Projects, University of Montana		217,039	UM Building Fees
Centennial Mall, Montana State University		650,000	Private Endowments"

Section 20. Section 3, Chapter 17, Special Laws of July 1992, is amended to read:

"Section 3. Section 11, Chapter 13, Special Laws of January 1992, is amended to read:

"Section 11. Section 6, Chapter 774, Laws of 1991, is amended to read:

"Section 6. **Capital projects appropriations.** (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBPF	Other Funding Sources	
DEPARTMENT OF ADMINISTRATION			
Hazardous Material Abatement, Statewide	$ 594,625	$ 150,000	Auxiliary
State Building Energy Retrofit, Statewide		500,000	Nonstate State Special Revenue
		1,000,000	Federal Special Revenue
		500,000	Auxiliary or Other
Construction, Litigation, Architecture and Engineering Division	345,000		
Develop Alternate Water Supply, Capitol Complex		50,000	Proprietary Funds
Property Acquisition and Development, Capitol Complex		20,000	Capitol Land Grant
DEPARTMENT OF COMMERCE			
Improve Pavement and Lighting, Yellowstone Airport		51,773	Proprietary Funds
		465,957	Federal Special Revenue
DEPARTMENT OF EDUCATION			
Replace Academic Building Roof and Miscellaneous Repairs, Montana School for the Deaf and Blind	339,000		
DEPARTMENT OF FAMILY SERVICES			
Expand Security Fence, Pine Hills School	27,000		

Replace and Repair Roofs, Family Services	127,600		
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Remove Underground Storage Tanks, Statewide		150,000	State Special Revenue
Headquarters Maintenance and Improvements, Statewide		85,000	State Special Revenue
Department Property Development, Statewide		360,000	State Special Revenue
State Park Maintenance and Development, Statewide		~~3,708,500~~ *3,736,500*	State Special Revenue
		~~1,124,500~~ *1,186,500*	Federal Special Revenue
Fish Hatchery Maintenance, Statewide		37,500	State Special Revenue
		112,500	Federal Special Revenue
Fishing Access Site Improvements, Statewide		286,000	State Special Revenue
		858,000	Federal Special Revenue
Motorboat Access Facilities, Statewide		67,000	State Special Revenue
		201,000	Federal Special Revenue
Wildlife Habitat Maintenance, Statewide		304,000	State Special Revenue
Waterfowl Habitat Enhancement, Statewide		349,500	State Special Revenue
DEPARTMENT OF HIGHWAYS			
Maintenance Projects, Statewide		450,000	Highways State Special Revenue
Construct and Expand Maintenance and Storage Buildings, Statewide		~~1,167,600~~ *1,199,543*	Highways State Special Revenue
		~~116,925~~ *116,698*	Federal Special Revenue
DEPARTMENT OF INSTITUTIONS			
Replace Water and Steam Lines, Montana Developmental Center	116,708		
Replace Roofs, Institutions	30,000		
Moisture Protection, Eastmont Human Services Center	98,450		
Montana State Hospital Infrastructure Study	112,375		
Seal Buildings, Montana State Prison	25,000		
Building Improvements, Center for the Aged	105,015		
Replace Multipurpose Building Flooring, Montana State Hospital, Warm Springs	26,800		
Galen Repair Projects	181,000		
DEPARTMENT OF LABOR AND INDUSTRY			
Renovate and Expand Job Service, Great Falls		310,000	Federal Special Revenue
Various Major Maintenance Projects		209,450	Federal Special Revenue
DEPARTMENT OF STATE LANDS			
Construct Two Greenhouses, Missoula		191,900	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Kitchen Upgrade, Statewide	5,000		
Rifle Range Rehabilitation, Statewide	10,000	555,000	Federal Special Revenue
Armory Additions and Alterations, Statewide	1,000	16,155,000	Federal Special Revenue
Acquire Land and Preplan Armory, Billings	~~150,000~~ *90,000*	200,000	Federal Special Revenue
Expand Military Vehicle Compounds, Statewide	5,000	275,000	Federal Special Revenue
Federal Spending Authority		300,000	Federal Special Revenue
Libby Armory	*110,000*	~~827,000~~ *1,007,745*	Federal Special Revenue
MONTANA UNIVERSITY SYSTEM			
Primary Electrical Vault Disconnect, Eastern Montana College	31,000	14,000	Auxiliary
Install Fire Alarm System, University of Montana	70,000		
Replace and Improve Roofs, University System	1,154,550	350,000	Plant
Improve Underground Utilities, Phase I, University System	296,000	200,000	Auxiliary
Repair and Improve Heating System, Western Montana College	57,900		
Improve Handicapped Access, University System	335,000		
Replace Carpet, Great Falls Vo-Tech	60,000		

Improve Sidewalks and Fire Access, University System	86,000		
Window Retrofit Museum Building, Montana Tech	142,000		
Various Improvements, University of Montana		2,584,600	Federal, Higher Education Funds, and/or Donations
Centennial Mall, Montana State University		1,600,000	Plant
Remodel Student Union Building, Western Montana College		600,000	Auxiliary
Construct Engineering/Physical Sciences Complex, Montana State University	452,765	2,215,435	Higher Education Funds and/or Donations
Life Science Building, University of Montana		12,000,000	Federal Special Revenue
Construct Business Administration Building, University of Montana		1,858,320	Higher Education Funds and/or Donations
Multipurpose Building, Northern Agricultural Research Center	150,000	150,000	Higher Education Funds and/or Donations
Repair Northern Montana College Gymnasium	934,500	1,700,000	Higher Education Funds and/or Donations

(2) For purposes of obtaining cash for the construction litigation appropriation authority in [section 6(1)], the architecture and engineering division of the department of administration is authorized to request a budget amendment for transfer of any excess long-range building project funds from any agency so long as the amendment does not move funds required to complete any authorized agency project.

(3) The following money is appropriated to the department of administration in the indicated amounts for the purpose of planning projects described in [section 12] and authorized in [section 13]:

Agency/Project	LRBPF	Other Funding Sources	
Preliminary Design for Prison Expansion	$ 877,500		
Preliminary Design, University System:			
Engineering/Physical Sciences, MSU		1,165,290	Higher Education Funds and/or Donations
Business Administration, UM	183,606	421,099	Higher Education Funds and/or Donations

(4) The following money is appropriated to the department of administration for the university system:

Agency/Project	LRBPF	Other Funding Sources	
University System			
Deferred Maintenance Projects and Equipment Approved by the Board of Regents		$ 517,500	General Fund
Repair Northern Montana College Gymnasium		283,000	General Fund
Equipment for Eastern Montana College		600,000	General Fund

(5) Amounts not to exceed $490,000 of federal special revenue money and $163,333 of state special revenue money appropriated in the state parks maintenance and development statewide line item under subsection (1) may be added to the line item appropriations for motorboat access facilities statewide under subsection (1) or fishing access site acquisition statewide under [section 8(1)]."""

Section 21. **Authorization for interentity loans.** If funding in the amount of $10,075,600 for the women's correctional center and $6,705,000 for the miscellaneous prison projects in [section 18] is deleted, the department of administration is authorized an interentity loan for $700,000 through the 1995 biennium.

Section 22. **Transfer of funds.** There is appropriated $2,600,000 from the general fund to the capital projects fund during the 1995 biennium.

Section 23. **Contingent transfer of funds.** If the fiscal year 1995 ending cash balance in the general fund is greater than $30 million, then the amount of excess over $30 million up to $10 million is appropriated from the general fund to the capital projects fund.

Section 24. **Coordination instruction.** [Section 2] contains five park projects with a portion of funding from "state special revenue-other" that are contingent on new legislation being enacted that will generate $2.9 million of new revenue for parks funding. In section "C" of House Bill No. 2, there is contingent language that states that $597,542 of the appropriations for the parks division is contingent on passage and approval of new legislation that will generate new revenue for parks to provide funding for this appropriation. In the event new legislation does not generate enough revenue to fund both the $597,542 in the parks division and the $2.9 million in [section 2] of this bill, the funding for the parks division is the first priority, unless otherwise specified in the new legislation.

Section 25. **Legislative consent.** The appropriations authorized in [sections 1 through 22] constitute legislative consent for the capital projects contained in [sections 1 through 22] within the meaning of 18-2-102.

Section 26. Section 53-30-101, MCA, is amended to read:

"53-30-101. **Location and function of prison and women's correctional center.** (1) The institution at Deer Lodge is the state prison and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult male criminal offenders.

(2) The institution located in accordance with sections 1 through 7, Chapter 651, Laws of 1991, is the women's correctional center and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult female criminal offenders. *If the authorized institution does not require the level of services provided for in Chapter 651, Laws of 1991, an alternate site in the Billings area may be identified by department officials, city of Billings officials, and Yellowstone County officials as the site of the women's correctional facility.*"

Section 27. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 28. **Repealer.** Chapter 4, Special Laws of January 1992, is repealed.

Section 29. **Effective date.** [This act] is effective on passage and approval.

Approved May 10, 1993.

CHAPTER NO. 625

[HB 92]

AN ACT AMENDING THE STATE-TRIBAL COOPERATIVE AGREEMENTS ACT; CLARIFYING THAT THE ACT INCLUDES AUTHORIZATION TO ASSESS AND COLLECT OR REFUND A TAX OR LICENSE OR PERMIT FEE; ESTABLISHING REQUIREMENTS FOR TAX ASSESSMENT AND COLLECTION UNDER A STATE-TRIBAL TAX AGREEMENT; REQUIRING A PUBLIC AGENCY TO HOLD A PUBLIC MEETING PRIOR TO ENTERING INTO AN AGREEMENT ON TAXATION WITH A TRIBAL GOVERNMENT; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 15-70-234, 17-7-502, 18-11-103, AND 18-11-104, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, the Legislature finds it necessary to clarify provisions of the State-Tribal Cooperative Agreements Act in order to reduce the delays in implementing taxation agreements entered into between the State of Montana and Montana Indian Tribes; and

WHEREAS, clarifying provisions of the State-Tribal Cooperative Agreements Act will also reduce the need for duplicative language, which results in increased costs associated with publication of the Montana Code Annotated; and

WHEREAS, the Supreme Court, in Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 111 S. Ct. 905 (1991), stated, among alternatives, that the state and a tribe may adopt a "mutually satisfactory regime" for collection of a tax but did not mandate that a state collect the tax; and

WHEREAS, in an effort to promote a government-to-government relationship between the State of Montana and Montana Indian Tribes and in recognition that both the state and tribal governments must be trusted to act responsibly, it is appropriate that the party designated to collect taxes on an Indian reservation pursuant to any agreement be subject to negotiation.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the State-Tribal Cooperative Agreements Act to specifically include tax assessment and collection or refund and to establish specific requirements for tax assessment and collection or refund by the state, a public agency, or a Montana Indian Tribe.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Purpose.** (1) It is the intent of the legislature that this part be used to promote cooperation between the state or a public agency and a sovereign tribal government in mutually beneficial activities and services.

(2) It is the goal of the legislature to prevent the possibility of dual taxation by governments while promoting state, local, and tribal economic development.

Section 2. Section 18-11-103, MCA, is amended to read:

"**18-11-103. Authorization to enter agreement — general contents.** (1) Any one or more public agencies may enter into an agreement with any one or more tribal governments to:

(a) perform any administrative service, activity, or undertaking that ~~any of the~~ *a* public ~~agencies~~ *agency* or *a* tribal ~~governments~~ *government* entering into the contract is authorized by law to perform~~.~~*; and*

(b) assess and collect or refund any tax or license or permit fee lawfully imposed by the state or a public agency and a tribal government and to share or refund the revenue from the assessment and collection.

(2) The agreement ~~shall~~ *must* be authorized and approved by the governing body of each party to the agreement. *If a state agency is a party to an agreement, the governor or the governor's designee is the governing body.*

~~(2)~~*(3)* The agreement ~~shall~~ *must* set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

(4) (a) Prior to entering into an agreement on taxation with a tribal government, a public agency shall provide public notice and hold a public meeting on the reservation whose government is a party to the proposed agreement for the purpose of receiving comments from and providing written and other information to interested persons with respect to the proposed agreement.

(b) At least 14 days but not more than 30 days prior to the date scheduled for the public meeting, a notice of the proposed agreement and public meeting must be published in a newspaper of general circulation in the county or counties in which the reservation is located.

(c) At the time the notice of the meeting is published, a synopsis of the proposed agreement must be made available to interested persons."

Section 3. Section 18-11-104, MCA, is amended to read:

"**18-11-104. Detailed contents of agreement.** *(1)* The agreement authorized by 18-11-103 ~~shall~~ *must* specify the following:

~~(1)~~*(a)* its duration;

~~(2)~~*(b)* the precise organization, composition, and nature of any separate legal entity created ~~thereby~~ *by the agreement*;

~~(3)~~*(c)* the purpose of the agreement;

~~(4)~~*(d)* the manner of financing the agreement and establishing and maintaining a budget ~~therefor~~ *for the agreement*;

~~(5)~~*(e)* the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon ~~such~~ partial or complete termination;

~~(6)~~*(f)* provision for administering the agreement, which may include creation of a joint board responsible for ~~such~~ administration;

~~(7)~~*(g)* the manner of acquiring, holding, and disposing of real and personal property used in the agreement; *and*

(h) other necessary and proper matters.

~~(8)~~*(2)* ~~when~~ *If* an agreement involves law enforcement, *it must also include*:

(a) the minimum training standards and qualifications of law enforcement personnel;

(b) the respective liability of each public agency and tribal government for the actions of law enforcement officers when acting under the provisions of an agreement;

(c) the minimum insurance required of both the public agency and the tribal government; and

(d) the exact chain of command to be followed by law enforcement officers acting under the provisions of an agreement~~; and~~.

(3) If an agreement involves the assessment and collection or refund of a similar tax or license or permit fee by the state or a public agency and a tribal government, it must also include:

(a) the procedure for determining the amount of revenue to be shared by the state or a public agency and the tribal government;

(b) the administrative procedures for collection of the shared revenue;

(c) the minimum insurance or bonding, if any, required by the state or a public agency or the tribal government;

(d) a statement specifying the administrative expenses, if any, to be deducted pursuant to [section 4] by the collector of the tax or license or permit fee;

(e) a statement that the state or a public agency or the tribal government collecting the tax or license or permit fee is subject to an audit report by a mutually agreed upon auditor of the revenue collected and administrative expenses;

(f) a statement that the state or a public agency and the tribal government will cooperate to collect only one tax and will share or refund the revenue as specified in the agreement;

(g) a statement that a taxpayer may not be required to pay both the state tax and the tribal tax but shall pay only one tax to one government in an amount established in the agreement; and

(h) a statement that the parties to the agreement are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement

~~(9) any other necessary and proper matters~~."

Section 4. **Revenue account — administrative account — distribution of revenue.** (1) The revenue collected by the state, a public agency, or a tribal government under a state-tribal cooperative agreement and the administrative expenses, if any, deducted under subsection (2) from the total revenue collected must be deposited in separate special revenue accounts.

(2) Administrative expenses deducted by the state, a public agency, or a tribal government for collection of revenue may not exceed the actual cost of collecting the revenue on a reservation or 5%, whichever is less. Money from an administrative account may be expended only for the purpose of administering

the tax or fee imposed under the state-tribal cooperative agreement or for paying the costs incurred in terminating the agreement.

(3) Except for administrative expenses, if any, deducted under subsection (2), revenue collected by a public agency under a state-tribal agreement must be deposited in separate special revenue accounts and must be disbursed as provided for in the agreement. If a public agency that is a party to an agreement is a local government, the agreement must provide for the disposition of revenue.

(4) Money deposited in a state administrative expenses account and in a state special revenue account is statutorily appropriated, as provided in 17-7-502, to the department or public agency that is a party to a state-tribal cooperative agreement under 18-11-103, for the purpose of paying administrative expenses or paying to a tribe its portion of the tax or fee.

(5) If a tax or license or permit fee is collected or refunded pursuant to a state-tribal cooperative agreement, each party must receive its share as provided in the agreement, notwithstanding any contrary state statutory, public agency ordinance, or tribal ordinance distribution formula. For distribution of the remainder, the state statutory, public agency, or tribal distribution formula must apply as if the amount remaining after each party to the agreement receives its share were the total revenue collected from the tax or license or permit fee.

Section 5. Section 15-70-234, MCA, is amended to read:

"**15-70-234. Cooperative agreement — ~~allocation of~~ motor fuels taxes ~~to tribal governments~~.** ~~(1)~~ In order to prevent the possibility of dual taxation of motor fuels purchased by Montana citizens and businesses on Indian reservations, the department of transportation and an Indian tribe may enter into a cooperative agreement. The department of transportation may, with the concurrence of the attorney general, include as a member of the negotiating team a representative of the department of justice who has expertise in Indian matters. The department of transportation shall report the status of cooperative agreement negotiations to each meeting of the revenue oversight committee. After negotiations are complete, the agreement must be presented to the revenue oversight committee for review and comment before the final agreement ~~is~~ *must be* submitted to the attorney general for approval *pursuant to 18-11-105.* ~~The agreement must provide that under conditions specified in this section, the state and the tribe will cooperate to collect only one tax that is at the same level as the tax outside the boundaries of the reservation and will share the revenue as provided in this section. The agreement must provide that the state and the tribe are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically set forth in the agreement.~~

~~(2) The agreement may provide that the distributor may not be required to pay both the state tax and the tribal tax but shall pay only one tax to the state in an amount equal to the tax paid on gasoline that is not subject to a tribal tax.~~

~~(3) The agreement may provide that after deducting administrative expenses equal to 5% of the amount determined under subsection (2) and the amounts necessary for refunds, the department of transportation shall, on a quarterly basis, distribute the remaining amount to the tribal government.~~

~~(4) The agreement may provide for the collection, use, and distribution of the tax.~~"

Section 6. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; *[section 4]*; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 7. **Codification instruction.** [Sections 1 and 4] are intended to be codified as an integral part of Title 18, chapter 11, part 1, and the provisions of Title 18, chapter 11, part 1, apply to [sections 1 and 4].

Section 8. **Effective date — applicability.** [This act] is effective July 1, 1993, and applies to agreements entered into on or after July 1, 1993.

Approved May 10, 1993.

CHAPTER NO. 626

[HB 411]

AN ACT GENERALLY REVISING THE PUBLIC GAMBLING AND AMUSEMENT GAME LAWS OF MONTANA; REVISING THE COMPENSATION FOR GAMING ADVISORY COUNCIL MEMBERS; REVISING THE DEFINITIONS OF BINGO, DISTRIBUTOR, LICENSE, MANUFACTURER, AND PROMOTIONAL GAME OF CHANCE; REQUIRING THE DEPARTMENT OF JUSTICE TO HAVE CLEAR AND CONVINCING EVIDENCE BEFORE ISSUING A TEMPORARY CEASE AND DESIST ORDER; STATING THE TYPES OF EVIDENCE TO BE PRESENTED DURING AN ADMINISTRATIVE PROCEEDING; DEFINING CONDITIONS UNDER WHICH AN ILLEGAL GAMBLING DEVICE MAY BE BROUGHT INTO THE STATE FOR EXPORT PURPOSES; PROVIDING PENALTIES FOR CREDIT GAMBLING AND UNDERAGE GAMBLING VIOLATIONS; REVISING SHAKE-A-DAY PROVISIONS; CLARIFYING PROVISIONS REGARDING THE GRANTING OF CERTAIN GAMBLING PERMITS TO PERSONS WITHOUT ON-PREMISES CONSUMPTION ALCOHOLIC BEVERAGES LICENSES; REVISING CARD GAME TOURNAMENT PROVISIONS; LIMITING THE PAYOUT ON CERTAIN PROMOTIONAL GAMES OF CHANCE; LIMITING SPORTS POOLS TO EVENTS INVOLVING NATURAL PERSONS; CREATING A DISTRIBUTOR'S LICENSE AND A ROUTE OPERATOR'S LICENSE; DEFINING ALLOWABLE COMPENSATION FOR ROUTE OPERATORS; ALLOWING THE SALE OF VIDEO GAMBLING MACHINES BY AN OPERATOR OR LIENHOLDER; REVISING CERTAIN PROVISIONS RELATING TO VIDEO GAMBLING MACHINES; EXPANDING COURT JURISDICTION OVER GAMBLING VIOLATIONS BY YOUTHS; REVISING AMUSEMENT GAME PROVISIONS; PROHIBITING CERTAIN PROMOTIONAL ACTIVITIES IN CONNECTION WITH THE CASHING OF PAYROLL CHECKS; AMENDING SECTIONS 2-15-2021, 23-5-112, 23-5-136, 23-5-152, 23-5-157, 23-5-158, 23-5-160, 23-5-306, 23-5-312, 23-5-317, 23-5-412, 23-5-501, 23-5-602, 23-5-625, 23-5-631, 23-6-104, AND 41-5-203, MCA; AND PROVIDING AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2021, MCA, is amended to read:

"**2-15-2021. Gaming advisory council — allocation — composition — compensation — biennial report.** (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office~~, except that three of the first appointed original members shall serve a 1-year term, three (including both legislative members) shall serve a 2-year term, and three shall serve a 3-year term~~. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a ~~chairman~~ *presiding officer* from its members.

(6) ~~Legislative members~~ *Members* of the gaming advisory council are entitled to ~~compensation and expenses, as provided in 5-2-302, while the council is meeting. The remaining members are entitled to~~ travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. *A member who is not a full-time salaried officer or employee of the state or of a political subdivision of the state is also entitled to be paid $25 for each day during which the member is actually and necessarily engaged in the performance of council duties.* Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit a biennial report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The biennial report required under subsection (8)(a) must be affixed to the report on gambling in the state that the department submits that year. The department and council shall, as provided in 5-11-210, submit the two most recent department and council reports to the legislature.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change."

Section 2. Section 23-5-112, MCA, is amended to read:

"**23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts 1 through 6 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department pursuant to parts 1 through 6 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns. ~~No more~~ *More* than 75 numbers may *not* be used. One number must appear in each square, except for the center square, which may be considered a free play. Numbers are randomly drawn using authorized equipment until the game is won by the person or persons who first cover ~~a~~ *one or more* previously designated ~~arrangement~~ *arrangements* of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live bingo.

(6) "Card game table" or "table" means a live card game table:

(a) authorized by permit and made available to the public on the premises of a licensed gambling operator; or

(b) operated by a senior citizen center.

(7) "Card game tournament" means a gambling activity for which a permit has been issued involving participants who pay valuable consideration for the opportunity to compete against each other in a series of live card games conducted over a designated period of time.

(8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.

(9) "Department" means the department of justice.

(10) "Distributor" means a person who:

(a) purchases or obtains from ~~another person~~ *a licensed manufacturer, distributor, or route operator* equipment of any kind for use in gambling activities; and

(b) sells~~, leases, or otherwise furnishes~~ the equipment to ~~another person for use in public~~ *a licensed distributor, route operator, or operator.*

(11) "Gambling" or "gambling activity" means risking money, credit, deposit, check, property, or any other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling device or gambling enterprise. The term does not mean conducting or participating in a promotional game of chance and does not include amusement games regulated by Title 23, chapter 6, part 1.

(12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling activity.

(13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme, or agreement to provide gambling or a gambling device to the public.

(14) "Gross proceeds" means gross revenue received less prizes paid out.

(15) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the rules of the department. The term includes:

(a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip board, pickle ticket, break-open, or jar game, except for one used under chapter 7 or under part 5 of this chapter or in a promotional game of chance approved by the department; and

(b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, or craps table or a slot machine except as provided in 23-5-153.

(16) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of one or more dice, includes craps, hazard, or chuck-a-luck, but does not include an activity in which a participant rolls one or more dice for a chance to obtain a drink or music; and

(c) sports betting, by whatever name known, in which a person places a wager on the outcome of an athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities authorized in chapter 4 of this title and parts 2 and 5 of this chapter.

(17) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(18) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces the order of the numbers drawn in live keno.

(19) "License" means an operator's, dealer's, *distributor's, manufacturer's,* or ~~manufacturer-distributor's~~ *route operator's* license issued to a person by the department.

(20) "Licensee" means a person who has received a license from the department.

(21) "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(22) "Lottery" or "gift enterprise" means a scheme, by whatever name known, for the disposal or distribution of property by chance among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance. However, "gift enterprise" does not mean:

(a) lotteries authorized under chapter 7; or

(b) cash or merchandise attendance prizes or premiums that the county fair commissioners of agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos.

(23) "Manufacturer" means a person who assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device *and who sells the equipment directly to a licensed distributor, route operator, or operator.*

(24) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes other than to conduct a gambling activity.

(25) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public, a gambling device or gambling enterprise authorized under parts 1 through 6 of this chapter.

(26) "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 6 of this chapter.

(27) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(28) "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(29) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property ~~by chance~~ among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. *The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.*

(30) "Public gambling" means gambling conducted in:

(a) a place, building, or conveyance to which the public has access or may be permitted to have access;

(b) a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or

(c) a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.

(31) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.

(32) "Route operator" means a person who:

(a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;

(b) leases the equipment to a licensed operator for use by the public; and

(c) may sell to a licensed operator equipment that had previously been authorized to be operated on a premises.

~~(32)~~*(33)* "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of family services.

~~(33)~~*(34)* "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner. This definition does not apply to video gambling machines authorized under part 6 of this chapter.

~~(34)~~*(35)* "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."

Section 3. Section 23-5-136, MCA, is amended to read:

"**23-5-136. Injunction and other remedies.** (1) If a person has engaged or is engaging in an act or practice constituting a violation of a provision of parts 1 through 6 of this chapter or a rule or order of the department, the department may:

(a) *upon clear and convincing evidence,* issue a temporary order to cease and desist from the gambling activity, act, or practice for a period not to exceed 60 days;

(b) following notice and an opportunity for hearing, and with the right of judicial review, under the Montana Administrative Procedure Act:

(i) issue a permanent order to cease and desist from the act or practice, which order remains in effect pending judicial review;

(ii) place a licensee on probation;

(iii) suspend for a period not to exceed 180 days a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(iv) revoke a license or permit for the gambling activity, device, or enterprise involved in the act or practice constituting the violation;

(v) impose a civil penalty not to exceed $10,000 for each violation, whether or not the person is licensed by the department; and

(vi) impose any combination of the penalties contained in this subsection (1)(b); and

(c) bring an action in district court for relief against the act or practice. The department may not be required to post a bond. On proper showing, the court may:

(i) issue a restraining order, a temporary or permanent injunction, or other appropriate writ;

(ii) suspend or revoke a license or permit; and

(iii) appoint a receiver or conservator for the defendant or the assets of the defendant.

(2) The department may issue a warrant for distraint against an operator who fails to pay a civil penalty imposed under subsection (1) or a tax imposed under 23-5-409 or 23-5-610. The department may issue the warrant for the amount of the unpaid penalty or for the amount of the unpaid tax, plus penalty and accumulated interest on the tax, and shall follow the procedures provided in 15-1-701 through 15-1-708.

(3) (a) A civil penalty imposed under this section must be collected by the department and distributed as provided in 23-5-123. The local government portion of the penalty payment is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

(b) If a person fails to pay the civil penalty, the amount due is a lien on the person's licensed premises and gambling devices in the state and may be recovered by the department in a civil action."

Section 4. **Evidence in administrative proceedings.** When conducting an administrative proceeding under parts 1 through 8 of this chapter, the department may consider hearsay evidence approved by the hearing examiner in a prehearing conference at which a determination is made that the evidence possesses sufficient guaranties of trustworthiness and does not involve a question of the credibility of a witness or of the credibility of a witness's subjective observations or analysis.

Section 5. Section 23-5-152, MCA, is amended to read:

"**23-5-152. Possession of illegal gambling device or conducting illegal gambling enterprise prohibited — exceptions.** (1) Except as provided in 23-5-153 and subsections (2) through (4) of this section, it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly:

(a) have in ~~his~~ *the person's* possession or under ~~his~~ *the person's* control or permit to be placed, maintained, or kept in any room, space, enclosure, or building owned, leased, or occupied by ~~him~~ or under ~~his~~ *the person's* management or control an illegal gambling device; or

(b) operate an illegal gambling enterprise.

(2) Subsection (1) does not apply to a public officer or to a person coming into possession of an illegal gambling device in or by reason of the performance of an official duty and holding it to be disposed of according to law.

(3) (a) The department may adopt rules to license persons to manufacture gambling devices that are not legal for public play in the state and are manufactured only for export from the state.

(b) A person may not manufacture ~~or possess~~ an illegal gambling device for export from the state without having obtained a license from the department. The department may charge an administrative fee for the license that is commensurate with the cost of issuing the license.

(c) A person licensed under subsection (3) may bring an illegal gambling device into the state ~~after notifying~~ *if:*

(i) the illegal gambling device contains a component that will be used by the licensee to manufacture an illegal gambling device for export from the state; or

(ii) the illegal gambling device will be reconditioned, refurbished, repaired, or otherwise substantially modified in preparation for export from the state; and

(iii) the illegal gambling device will be exported from the state; and

(iv) the licensee has notified the department and ~~receiving~~ *received* authorization from the department *to bring the illegal gambling device into the state.* The ~~person~~ *licensee* is subject to reporting requirements provided for in rules adopted under subsection (3)(a).

(4) An illegal gambling device may be possessed or located for display purposes only and not for operation:

(a) in a public or private museum; or

(b) in any other public place if the device has been made permanently inoperable for purposes of conducting a gambling activity."

Section 6. Section 23-5-157, MCA, is amended to read:

"**23-5-157. Gambling on cash basis.** (1) In every gambling activity, except raffles as authorized in 23-5-413, the consideration paid for the chance to play must be cash. A participant shall present the money needed to play the game as the game is being played. A check, credit card, note, I O U, or other evidence of indebtedness may not be offered or accepted as part of the price of participation in the gambling activity or as payment of a debt incurred in the gambling activity. The use of a check or credit card to pay for other goods or services in the establishment or to obtain cash is not a violation of this section.

(2) A person who violates this section is guilty of*:*

(a) a misdemeanor and must be punished in accordance with 23-5-161~~.~~*; or*

(b) a felony upon conviction of a third or subsequent offense and must be punished in accordance with 23-5-162."

Section 7. Section 23-5-158, MCA, is amended to read:

"**23-5-158. Minors not to participate — penalty — exception.** (1) Except as provided in subsection ~~(2)~~ *(3)*, a person may not purposely or knowingly allow a person under 18 years of age to participate in a gambling activity. A person who violates this subsection is guilty of a misdemeanor and must be punished in accordance with 23-5-161.

(2) Except as provided in subsection (3), a person under 18 years of age may not purposely or knowingly participate in a gambling activity. A person who violates this subsection is subject to a civil penalty not to exceed $50 if the proceedings for violating this subsection are held in justice's, municipal, or city court. If the proceedings are held in youth court, the offender must be treated as an alleged youth in need of supervision, as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

~~(2)~~*(3)* A person under 18 years of age may sell or buy tickets for or receive prizes from a raffle conducted in compliance with 23-5-413 if proceeds from the raffle, minus administrative expenses and prizes paid, are used to support charitable activities, scholarships or educational grants, or community service projects."

Section 8. Section 23-5-160, MCA, is amended to read:

"**23-5-160. Shaking dice for a drink or music or in a shake-a-day game.** (1) It is legal for a customer in an establishment licensed for the sale of alcoholic beverages to be consumed on the premises to:

(a) shake or choose one or more dice, alone or with an owner or employee of the establishment, to determine whether the customer or the establishment shall pay for the customer's drink or to determine whether the customer or the establishment shall immediately pay a predetermined amount of money, not to exceed $2, for music from a jukebox in the establishment; or

(b) play the dice game commonly known as shake-a-day, in which a customer may once each day pay an amount of money predetermined by the establishment, but not more than 50 cents, and shake a number of dice predetermined by the establishment in an attempt to roll ~~a~~ certain ~~combination~~ *combinations* simulating ~~a~~ poker ~~hand~~ *hands* predetermined by the establishment ~~and, if~~. *If one of* the ~~combination~~ *combinations* is rolled, *the customer may* win *merchandise or a portion or* all *of the* money paid to play the game since the last winning combination was rolled. The establishment may, before a game begins, limit the amount that will be won and use the remaining money played on that game to start the pot for the next game, thus enhancing the incentive to play the next game in the early stages of the next game. All money paid to play games must be paid out as winnings. *An establishment may offer to the public more than one shake-a-day game at any given time.*

(2) Nothing in this section authorizes the dice game of craps or any other dice game not specifically described in this section."

Section 9. Section 23-5-306, MCA, is amended to read:

"**23-5-306.** *(Temporary)* **Live card game table — permit — fees — disposition of fees.** (1) A person who has been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for consumption on the premises may be granted an annual permit for the placement of live card game tables. If one or more live card game tables were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed under 16-4-401(2) but were licensed on that date to sell food, cigarettes, or any other consumable product, an operator's license and an annual permit for the placement of live card game tables may be granted to the person who legally operated the premises on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

(a) $250 for the first table; and

(b) $500 for each additional table.

(3) The department shall retain for administrative purposes $100 of the fee collected under this part for each live card game table.

(4) Except as provided in subsection (5), the department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

(5) On June 30, 1993, the department shall transfer to the general fund the remaining fund balance from the account funded by this section. *(Terminates July 1, 1993—sec. 2, Ch. 18, Sp. L. January 1992.)*

23-5-306. *(Effective July 1, 1993)* **Live card game table — permit — fees — disposition of fees.** (1) *(a)* A person who has been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for consumption on the premises may be granted an annual permit for the placement of live card game tables.

(b) The department may issue an annual permit for the placement of live card game tables to a person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

(i) ~~If~~ one or more live card game tables were legally operated on ~~a~~ *the* premises on January 15, 1989~~, and the premises were not on that date licensed under 16-4-401(2) but~~*;*

(ii) the premises were licensed on ~~that date~~ *January 15, 1989,* to sell food, cigarettes, or any other consumable product~~, an operator's license and an annual permit for the placement of live card game tables may be granted to the person who legally operated the premises on January 15, 1989~~*;*

(iii) the person has been granted an operator's license under 23-5-177; and

(iv) at the time of application for the permit:

(A) the person has continuously operated a live card game table on the premises since January 15, 1989; and

(B) the natural person or persons who own the business operated on the premises are the same as on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

(a) $250 for the first table; and

(b) $500 for each additional table.

(3) The department shall retain for administrative purposes $100 of the fee collected under this part for each live card game table.

(4) The department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury."

Section 10. Section 23-5-312, MCA, is amended to read:

"**23-5-312. Prizes not to exceed three hundred dollars.** *(1)* A prize for an individual live card game may not exceed the value of $300. Games may not be combined in any manner so as to increase the value of the ultimate prize awarded. *Except during a tournament conducted under 23-5-317, all prizes must be awarded immediately upon completion of each hand.*

(2) If a licensed operator conducts a promotional game of chance involving a live card game, the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance."

Section 11. Section 23-5-317, MCA, is amended to read:

"**23-5-317. Tournaments.** (1) Subject to the department's approval, a licensed operator who has a permit for placing at least 1 live card game table on ~~his~~ *the operator's* premises may conduct up to 12 live card game tournaments a year on his premises. Each tournament may be conducted for no more than 5 consecutive days. If an operator conducts more than one tournament a year, at least 7 days must lapse between the conclusion of one tournament and the beginning of the next tournament.

(2) (a) Before the start of a tournament, the operator shall submit to the department an application for a tournament permit. The permit application must be accompanied by a $10 fee. The department shall retain the fee for administrative purposes.

(b) If a tournament is to be conducted on the premises of more than one licensed operator, each operator shall submit a permit application and processing fee. The permit is applied toward each operator's annual 12-tournament limit.

(3) Permits for placement of additional live card game tables, as provided in 23-5-306, are not required for additional tables authorized under a tournament permit.

(4) Tournament participants must be provided with a copy of the tournament rules before the start of the tournament. A copy of the rules must be posted in a conspicuous location in each area where the tournament is conducted.

(5) A person must be present on the premises during the tournament to oversee the conduct of the card games and to settle disputes among players. This person may be a dealer licensed under 23-5-308.

(6) Only a dealer licensed under 23-5-308 may deal cards at a poker or panguingue tournament.

~~(6)~~*(7)* A licensed operator may charge a tournament participant an entry fee, which may include a fee to cover expenses incurred in conducting the tournament. A participant who has been eliminated from competition during the tournament may reenter the tournament by paying an additional fee if permitted to do so under tournament rules. A rake-off may not be taken during a tournament card game.

~~(7)~~*(8)* The face value of the chips used does not govern the value of the pot awarded at the end of the tournament.

~~(8)~~*(9)* The provisions of this part and the department rules governing live card games apply to live card games conducted as part of a tournament unless otherwise provided."

Section 12. Section 23-5-412, MCA, is amended to read:

"**23-5-412. Card prices and prizes — exception.** (1) Except as provided in subsection (3):

(a) the price for an individual bingo or keno card may not exceed 50 cents;

(b) a prize may not exceed the value of $100 for each individual bingo ~~award~~ *game* or keno card; and

(c) it is unlawful to, in any manner, combine any ~~awards~~ *bingo or keno games* so as to increase the ultimate value of the ~~award~~ *prize.*

(2) Bingo and keno prizes may be paid in either tangible personal property or cash.

(3) A variation of the game of keno, as approved by the department, in which a player selects three or more numbers and places a wager on various combinations of these numbers is permissible if:

(a) no more than 50 cents is wagered on each combination of numbers; and

(b) a winning combination does not pay more than $100.

(4) A player may give a keno caller a card with instructions on the card to play that card and its marked numbers for up to the number of successive games that the house allows and that the player has indicated on the card, upon payment of the price per game times the number of successive games indicated. The player shall remain on the house premises until the card is played or withdrawn. The caller shall keep the card until the end of the number of games indicated, and the department may by rule provide that at that time the caller shall pay the player any prizes won.

(5) If a licensed operator conducts a promotional game of chance involving bingo or keno, the prize limit provided for in subsection (1) applies to prizes awarded as a result of the promotional game of chance."

Section 13. Section 23-5-501, MCA, is amended to read:

"**23-5-501. Definitions.** As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Sports pool" means a gambling activity, other than an activity governed under chapter 4 or chapter 5, part 2, of this title, in which a person wagers money for each chance to win money or other items of value based on the outcome of a sports event or series of sports events wherein the competitors in the sports event or series of sports events are natural persons ~~or animals~~.

(2) "Sports tab" means a folded or banded ticket with a face covered to conceal a combination of two numbers, with each number ranging from zero through nine.

(3) "Sports tab game" means a gambling enterprise conducted on a card to which 100 sports tabs are attached that have 100 different combinations for which consideration in money is paid by the person purchasing each tab. A person may purchase a sports tab from the card for the chance to win money or other items of value on a sports event as provided in 23-5-503."

Section 14. **Distributor's license — fees.** (1) It is a misdemeanor for a person to conduct business as a distributor without first obtaining a distributor's license from the department.

(2) Except as provided in subsection (6), the department shall charge an annual license fee of $1,000 for issuing or renewing a distributor's license. The department shall retain the fee for administrative purposes.

(3) A distributor's license expires June 30 of each year, and the license fee may not be prorated.

(4) Except as provided in subsection (6), the department may charge an additional, one-time license application processing fee to cover the actual cost of processing the original license. The department shall refund any amount of the application processing fee not needed to reimburse the department for actual costs or shall collect an amount sufficient to reimburse the department for actual costs not completely covered by the initial fee charged.

(5) The department shall retain for administrative purposes the license and application processing fees collected under this section.

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a manufacturer or route operator and may waive the application processing fee provided for in subsection (4) if the applicant is licensed as a manufacturer, route operator, or operator.

Section 15. **Route operator's license — fees.** (1) It is a misdemeanor for a person to conduct business as a route operator without first obtaining a route operator's license from the department.

(2) Except as provided in subsection (6), the department shall charge an annual license fee of $1,000 for issuing or renewing a route operator's license. The department shall retain the fee for administrative purposes.

(3) A route operator's license expires June 30 of each year, and the license fee may not be prorated.

(4) Except as provided in subsection (6), the department may charge an additional, one-time license application processing fee to cover the actual cost of processing the original license. The department shall refund any amount of the application processing fee not needed to reimburse the department for actual costs or shall collect an amount sufficient to reimburse the department for actual costs not completely covered by the initial fee charged.

(5) The department shall retain for administrative purposes the license and application processing fees collected under this section.

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a manufacturer or distributor and may waive the application processing fee provided for in subsection (4) if the applicant is licensed as a manufacturer, distributor, or operator.

Section 16. **Allowable compensation for route operator.** The compensation that a licensed route operator may receive for leasing a video gambling machine to a licensed operator is limited to a set fee or a percentage of gross machine income, or both a set fee and percentage amount. The route operator may not assume responsibility for any expenses of the operator's business except for expenses associated with:

(1) paying video gambling machine permit fees and taxes;

(2) conducting video gambling machine promotional activities;

(3) maintaining and repairing video gambling machines;

(4) supplying funds to allow an operator to exchange a player's money for other coin or currency for operating a video gambling machine and to pay out prizes won by players;

(5) providing accounting and recordkeeping services for video gambling machines; and

(6) other activities, if allowed by department rule.

Section 17. Section 23-5-602, MCA, is amended to read:

"**23-5-602. Definitions.** As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(2) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(3) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4) "Gross income" means money put into a video gambling machine minus credits paid out in cash.

(5) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno as defined by rules of the department. The machine utilizes a video display and microprocessors in which, by the skill of the player, by chance, or both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

~~(6) "Video gambling machine manufacturer-distributor" means a person who assembles, produces, makes, or supplies video gambling machines or associated equipment for sale, use, or distribution in the state.~~"

Section 18. Section 23-5-625, MCA, is amended to read:

"**23-5-625. Video gambling machine ~~manufacturer-distributor~~ *manufacturer* — license — fees — *restrictions*.** (1) ~~(a) Except as provided in subsections (2) and (3), it~~ *It* is unlawful for any person to assemble, produce, *or* manufacture~~, or supply~~ any video gambling machine or associated equipment for use or play in the state without having first been issued a video gambling machine ~~manufacturer-distributor's~~ *manufacturer's* license by the department. A licensed ~~manufacturer-distributor~~ *manufacturer* may supply a video gambling machine only to another licensed ~~manufacturer-distributor~~ *manufacturer* or *to* a licensed *distributor, route operator, or* operator.

~~(b)~~*(2)* ~~The~~ *Except as provided in subsection (6), the* department shall charge an annual license fee of $1,000 for the issuance or renewal of a video gambling machine ~~manufacturer-distributor's~~ *manufacturer's* license.

~~(c)~~*(3)* ~~In addition to other license fees~~ *Except as provided in subsection (6),* the department may charge the applicant ~~a~~ *an additional,* one-time video gambling machine ~~manufacturer-distributor's~~ *manufacturer's* license application processing fee. The *application* processing fee may not exceed the department's actual costs for processing an application.

~~(d)~~*(4)* All video gambling machine ~~manufacturer-distributor's~~ *manufacturer's* licenses expire on June 30 of each year, and the license fee may not be prorated.

~~(e)~~*(5)* The department shall retain the license and processing fees collected for purposes of administering this part, unless otherwise provided.

~~(2) A licensed operator who is not licensed as a manufacturer-distributor may sell up to 20 video gambling machines in a calendar year if the operator:~~

~~(a) had obtained permits for the machines and legally operated them prior to the sale; and~~

~~(b) sells the machines to another licensed operator or a licensed manufacturer-distributor.~~

~~(3) A lienholder who acquires title to video gambling machines through a foreclosure action involving a licensed operator or manufacturer-distributor may sell the machines to a licensed operator or licensed manufacturer-distributor.~~

(6) The department may waive the license fee provided for in subsection (2) if the applicant is licensed as a distributor or route operator and may waive the application processing fee provided for in subsection (3) if the applicant is licensed as a distributor, route operator, or operator."

Section 19. **Sale of video gambling machines by operator or lienholder.** (1) A licensed operator who is not licensed as a manufacturer, distributor, or route operator may sell up to 20 video gambling machines in a calendar year if the operator:

(a) had obtained permits for the machines and legally operated them prior to the sale; and

(b) sells the machines to another licensed operator or to a licensed manufacturer, distributor, or route operator.

(2) A lienholder who acquires title to video gambling machines through a foreclosure action involving a licensed manufacturer, distributor, route

operator, or operator may sell the machines to a licensed manufacturer, distributor, route operator, or operator.

Section 20. Section 23-5-631, MCA, is amended to read:

"**23-5-631. Examination and approval of new video gambling machines and associated equipment — fee.** (1) The department shall examine and may approve a new video gambling machine ~~and~~ *or* associated equipment *or a modification to an approved machine or associated equipment* ~~which are~~ *that is* manufactured, sold, or distributed for use in the state before the video gambling machine or associated equipment is sold, played, or used.

(2) A video gambling machine or associated equipment *or a modification to an approved machine or associated equipment* may not be examined or approved by the department until the video gambling machine ~~manufacturer-distributor~~ *manufacturer* is licensed as required in 23-5-625.

(3) All video gambling machines *or associated equipment* approved by the department of commerce prior to October 1, 1989, must be considered approved under this part.

(4) The department shall require the ~~manufacturer-distributor~~ *manufacturer* seeking the examination and approval of a new video gambling machine or associated equipment *or a modification to an approved machine or associated equipment* to pay the anticipated actual costs of the examination in advance and, after the completion of the examination, shall refund overpayments or charge and collect amounts sufficient to reimburse the department for underpayments of actual costs.

(5) Payments received under subsection (4) are statutorily appropriated to the department, as provided in 17-7-502, to defray the costs of examining and approving video gambling machines and associated equipment *and modifications to approved machines and associated equipment* and to issue refunds for overpayments.

(6) The department may inspect and test and approve, disapprove, or place a condition upon a video gambling machine *or associated equipment or a modification to an approved machine or associated equipment* prior to its distribution and placement for play by the public."

Section 21. Section 23-6-104, MCA, is amended to read:

"**23-6-104. Amusement games allowed.** (1) Crane games, as defined in 23-6-101, and the games described in subsection (2) may be made available for public play.

(2) (a) Fish pond (duck pond). The player catches a fish or other object floating in a pond of water by using a pole, hand, net, or string. All fish or objects are marked on the bottom, indicating the size of prize the player wins. The player is awarded a prize each time, and the player must be allowed to continue playing until a prize is won.

(b) Hoop or ring toss. The player tosses a hoop or ring over a target that must consist of bottles, pegs, blocks, or prizes. The operator shall specifically advise the player as to the degree that the hoop or ring must go over the target.

All hoops of the same color used at an individual stand must be the same size. All targets used at an individual booth must be the same size, or the operator shall advise the player by posting signs or using color codes denoting the different sizes.

(c) Dart games. The target area for all dart games must be of a material capable of being penetrated and of retaining a metal tip dart. The target area must be in the rear of the stand and must be at least 3 feet but not more than 15 feet from the foul line. A target must be stationary at all times.

(i) Balloon (poparoo) (balloon smash). The targets are inflated balloons. The player throws one or more darts to burst a predetermined number of balloons. If the predetermined number of balloons are burst by the darts, the player receives the prize indicated.

(ii) Dart throw. The targets are various sizes and shapes located on the target area. The player throws darts individually at the target. A dart must stick in a predetermined target to win the prize as designated.

(iii) Tic tac toe dart. The target is a tic tac toe board located in the target area. The player throws darts at the target and wins a designated prize when the thrown darts line up in a row in the target. The darts may line up vertically, horizontally, or diagonally to win.

(iv) Add-um-up darts. The target consists of numbered squares located in the target area. Prizes are awarded based on the total score obtained by the player by throwing and sticking the darts in the numbered squares. A dart that sticks on a line must be thrown again. The player may add up the score of the darts thrown.

(d) Ball tosses. In all ball toss games, the balls used at a specific stand must be of the same weight and size. Targets must be of the same weight and size, or the operator shall color code the targets and advise the player of the difference in targets by posting a sign or providing a duplicate of the target showing the limitations or restrictions. The sign or duplicate target must be readily visible to the player.

(i) Milk bottle toss. The player tosses or throws balls at simulated milk bottles. The player wins by either tipping over or knocking bottles off the raised platform as designated by the operator. The bottles may be constructed of wood, metal, or plastic or a combination of the three. Operators may vary the number of bottles and balls used in each game. Floating or loose weights in bottles are not allowed. The weight of individual bottles may not exceed 7 1/2 pounds.

(ii) Milk can (Mexican hat) (cone). The player tosses a ball into the opening of a milk can, into a fiberglass Mexican hat turned upside down, or through a cone to win.

(iii) Football toss (tire toss). The player tosses or throws a football through a stationary tire or hoop to win.

(iv) Basketball toss/throw. The player tosses or throws a basketball through a hoop to win.

(v) Bushel baskets. The player tosses balls into a bushel basket mounted on a stationary backdrop at a fixed angle. The balls must stay in the basket to win. Rim shots are allowed, except the operator may designate the top 6 inches of the basket rim by color and disallow balls striking this area as winning tosses.

(vi) Cat-ball-toss (star/diamond toss). The player tosses balls into a simulated cat's mouth or a round, diamond, or star-shaped hole to win.

(vii) Ping pong toss. The player tosses ping pong balls into dishes, saucers, cups, or ashtrays floating in water. A predetermined number of balls must remain in the dishes, saucers, cups, or ashtrays for the player to win. The dishes, saucers, cups, or ashtrays must have water covering the bottom of the surface that is facing up.

(viii) Fishbowl game. The player tosses ping pong balls into a water-filled fish bowl to win.

(ix) Volleyball toss (soccer ball). The player tosses a volley or soccer ball into a keg-type container mounted on a stationary backdrop at a fixed angle. The ball must stay in the keg to win a prize. Rim shots are authorized as stated in subsection (2)(d)(v) for bushel baskets.

(x) Goblet ball (whiffle ball). The player tosses a whiffle ball into a target area of glass or plastic goblets. Located in the target area are colored goblets that determine the type of prize the player wins. At least 33% of the goblets in the target area must be winners. The ball must stay in the goblet to win a prize.

(xi) Break the plate/bottle. The player tosses or throws a ball at a plate, phonograph record, or bottle. The type of prize won is determined by the number of targets broken by the player.

(xii) Punk rack. The targets for this game are rows of dolls or cats on a ledge at the rear of the stand. The dolls or cats must be filled with sawdust, styrofoam, cotton, or other like material that provides a firm base for the ball to strike. The hair protruding from the side of the dolls or cats may not exceed 3 inches. The prize is determined by how many dolls or cats the player knocks over or off the ledge, as posted by the operator.

(xiii) Teeth game. The target consists of a large face with wooden teeth. The prize is determined by how many teeth the player knocks down by throwing a ball.

(xiv) Toilet game (doniker). To win, the player tosses or throws a ball or other object through a toilet seat located at the rear of the stand.

(xv) Coke roll. The player rolls a ball down an alley with the object of knocking over two coke bottles standing at the end of the alley. The player must tip over both bottles to win. Bottles must be placed on predetermined spots painted on the surface of the alley.

(xvi) Rolldown. The player rolls balls down an alley with the object of putting the balls in numbered slots at the end of the alley. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Scores above or below a predetermined score win. The alley surface must be smooth and free from defects at all times.

(xvii) Fascination (I got it). Fascination is a group game that involves competition among the players. The target area consists of 25 holes, and the player tosses or rolls a ball into one of the holes. The object of the game is to get five balls in a row either vertically, horizontally, or diagonally. The first player to accomplish this is the winner. Prize size is determined by the number of players participating in each game.

~~(xviii) Cakewalk. The players walk on a predetermined route with designated spots, and when the operator stops the walk, the player on a predetermined spot wins a prize.~~

~~(xix)~~*(xviii)* Batter-up. The player uses a whiffle ball bat to swing and strike whiffle balls that are pitched at medium speed from a pitching machine. The player wins when ~~he~~ *the player* hits a ball into the home run shelf. The home run shelf is located at the back of the batting cage approximately 15 feet from the player.

~~(xx)~~*(xix)* Sky bowling. Two bowling pins are set on predetermined painted spots on a shelf. A ball is attached to a chain suspended from a stationary support at least 6 inches to the right or left of the bowling pins. The object is to swing the ball, miss the pins with the ball as it goes forward, and knock the pins over as the ball returns.

~~(xxi)~~*(xx)* Clown rolldown. A ball is tossed through the open mouth of a moving clown or animal head. The ball then rolls down a chute to numbered slots at the rear of the clown or animal head. The scores represented by the balls in each numbered slot are added up at the conclusion of the game. Prizes are awarded on the points achieved.

~~(xxii)~~*(xxi)* Skee ball. The player rolls a ball up the mechanical bowling alley into targets. A computer adds up the scores, and the predetermined scores win.

~~(xxiii)~~*(xxii)* Speedball radar game. The player gets four balls and throws three balls through radar to establish speeds and to estimate at what speed the fourth ball will pass through the radar. The player wins a prize if ~~he~~ *the player* accurately estimates the speed of the fourth ball. The radar must be mounted and stationary.

(e) Shooting games. These games are conducted by the player using a weapon of some type to shoot at a target in the rear of the stand. The safety requirements of local city or county ordinances must be observed by the operator and player. The target may be stationary or mobile.

(i) Short range (shooting gallery). In this game, the player is given four rounds to shoot at a spot target 1/4 inch or less in diameter. The player wins when the spot target is completely shot out, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. The prize is determined by the number of targets struck by the player, or the player is given five rounds to shoot one round each at five triangular, round, or 1/2-inch square targets. Within each target is a bull's eye. The player must hit the bull's eye without touching the outer surface of the target. The prize is determined by the number of bull's eyes correctly hit.

(ii) Shoot-out-the-star (machine gun). The player, using an automatic air pellet gun, is given 100 pellets to shoot at a star-shaped target. The player must shoot out all of the target to win. The star cannot be more than 1 ¼ inches from point-to-point.

(iii) Water racer. This group game involves a competition, with the player winning a prize based on the number of players competing. The player, using a water pistol, shoots the water into a target. The water that strikes the target causes a balloon to inflate or advances an object to ring a bell. The first player who bursts the balloon or rings the bell is the winner.

(iv) Rapid fire. This group game involves competition similar to the water racer game described in subsection (2)(e)(iii). The player uses an electronic pistol to shoot at a target. Hits on the target give the player a score. The first player to reach a predetermined score is the winner.

(v) Cork gallery. The player uses a cork gun or similar device to propel objects, including but not limited to corks, suction cup darts, or styrofoam balls, to shoot at targets located on a shelf or at a bull's eye target. The player must hit the bull's eye or knock the target over or off the shelf to win a prize. The prize is determined by the target knocked over or off the shelf, by the number of targets knocked over or off the shelf, or by the player accomplishing other tasks, as stated in the posted rules. When suction cup darts or other darts are used and fail to stay on or in the target, the player must shoot the dart again. The base of each target must be uniform, front and rear.

(vi) Boomball. The player uses a cannon with compressed air to propel balls into a target area. The targets have varied point value. If the ball remains in the target, a computer adds up the score. Prizes are awarded based on the points achieved.

(f) Coin pitchers.

(i) Spot pitch (lucky strike). The player pitches a coin at colored spots located on a table in the center of the stand. The coin must touch or stay inside of a spot to win a prize.

(ii) Plate pitch. The player pitches a coin onto a glass plate to win a prize as designated.

(iii) Glass pitch (bowl). The player pitches a coin into or onto dishes or glasses. If the coin remains in a top target glass item, then the player wins that item.

(g) Cakewalk. The players walk on a predetermined route with designated spots, and when the operator stops the walk, the player on a predetermined spot wins a prize.

~~(g)~~*(h)* Miscellaneous games.

(i) Skill chute (bulldozer) (penny fall).

(A) The games in each of the following sentences require the ~~The~~ player ~~inserts~~ *to insert* a coin or token into a chute, aiming the coin or token so that it will fall in front of a continuous sweeper (bulldozer) *operating on a playing field containing additional coins, tokens, or merchandise.* ~~If the~~ *A* coin ~~or token~~ *that* is aimed correctly~~, the~~ *will cause a* sweeper (bulldozer) ~~will~~ *operating on a playing field containing additional coins to* push ~~additional tokens or prizes~~

coins into a *counting mechanism that will convert the coins into tokens or tickets and dispense them to the player. A token that is aimed correctly will cause a sweeper (bulldozer) operating on a playing field containing additional tokens or merchandise to push the tokens or merchandise into a* hole or chute that sends them to the player. *A token that is aimed correctly will cause a sweeper (bulldozer) operating on a playing field containing additional tokens to push tokens into a hole or chute that sends them to the player or pushes tokens into a counting mechanism that will convert the tokens into tickets and dispense them to the player.*

(B) ~~Tokens are exchanged for prizes. If there is a hidden~~ *There may not be a* ledge, tip, or similar obstruction that inhibits the passage of *coins,* tokens, or ~~prizes~~ *merchandise* into the *counting mechanism,* hole, or chute ~~that sends them to the player, the operator shall post a sign to advise the players~~.

(ii) Tip-em-up bottle. The player is provided with a pole and a string that has a hoop or ring attached at the end. The player, using the pole with a ring, must raise a bottle lying on its side to an upright position to win.

(iii) Hi-striker. The player, using a wooden maul, must strike a lever target that causes a metal weight to rise on a guideline or track and ring a bell. The player must ring the bell a predetermined number of times to win a prize.

(iv) Rope ladder. The player must climb up a rope ladder, which is anchored at both ends by a swivel, and ring a bell or buzzer to win a prize.

(v) Whac-a-mole. This is a group game that has a target surface with five holes through which animated moles pop up and down at random. The player must hit as many moles as possible with a mallet. The first player to hit a predetermined number of moles wins.

(vi) Dip bowling game. The player rolls a bowling-type ball over a hump in the track. If the ball stays on the back side of the hump, the player wins.

(vii) Horserace derby. This is a group game in which a player advances ~~his~~ *a* horse by shooting or rolling a ball in the target area. The faster and more skillfully the player shoots or rolls ~~his~~ *a* ball, the faster ~~his~~ *the player's* horse will run. The first horse to cross the finish line wins.

(viii) Shuffleboard. The player pushes a puck down a shuffleboard alley to knock over poly pins at the end of an alley. The player wins by knocking down all the pins.

(ix) Bean bag. The player tosses or throws a bean bag or a simulated bean bag at cans, bottles, or other objects on a raised platform. The player wins a prize when he either knocks the object off the raised platform or tips the target over.

(x) Soccer kick. The player kicks a soccer ball through a hole in the target area to win.

(xi) Frog game. A plastic frog or similar object sits on a small end of a teeter-totter. The opposite end of the teeter-totter is struck with a mallet, causing the frog to fly off the teeter-totter. If the frog lands in a pail or similar receptacle, the player wins a prize.

(xii) Cover the spot. The object of this game is for the player to drop five circular discs onto a circular spot, completely covering the spot. The diameter of each of the discs used to cover the spot must be a minimum of 64% of the diameter of the spot to be covered. The spot to be covered must be painted or drawn on a permanent, solid material, such as metal or wood, or may be a lighted circle. The spot and each disc must have a uniform diameter.

(xiii) Pocket billiards. Using a regulation pocket billiard table, a player must run a consecutive number of balls to win a prize. The number of balls is set by the operator."

Section 22. Section 41-5-203, MCA, is amended to read:

"41-5-203. **Jurisdiction of the court.** (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage *and gambling* violations alleged to have been committed by a youth."

Section 23. Payroll checks — promotional activities prohibited. A licensee may not offer financial incentives or conduct promotional games of chance in connection with an offer to cash payroll checks on the premises.

Section 24. **Codification instruction.** [Sections 4, 14 through 16, 19, and 23] are intended to be codified as an integral part of Title 23, chapter 5, and the provisions of Title 23, chapter 5, apply to [sections 4, 14 through 16, 19, and 23].

Section 25. **Applicability.** [Section 16] applies to agreements entered into after October 1, 1993.

Approved May 10, 1993.

CHAPTER NO. 627

[HB 643]

AN ACT REQUIRING THAT PARCELS OF LAND OF 20 ACRES OR MORE BUT LESS THAN 160 ACRES MUST BE USED PRIMARILY FOR RAISING AND MARKETING AGRICULTURAL PRODUCTS IN ORDER TO BE CLASSIFIED AS AGRICULTURAL LAND FOR PROPERTY TAX PURPOSES; TAXING PARCELS OF NONAGRICULTURAL LAND OF 20 ACRES OR MORE BUT LESS THAN 160 ACRES AT SEVEN TIMES THE RATE FOR GRAZING LAND; PROVIDING FOR AN APPROPRIATION; AMENDING SECTIONS 15-6-133, 15-6-144, AND 15-7-202, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-133, MCA, is amended to read:

"**15-6-133. Class three property — description — taxable percentage.** (1) Class three property includes:

(a) agricultural land as defined in 15-7-202;

(b) nonproductive patented mining claims outside the limits of an incorporated city or town held by an owner for the ultimate purpose of developing the mineral interests on the property. For the purposes of this subsection (1)(b), the following provisions apply:

(i) The claim may not include any property that is used for residential purposes, recreational purposes as described in 70-16-301, or commercial purposes as defined in 15-1-101 or any property the surface of which is being used for other than mining purposes or has a separate and independent value for such other purposes.

(ii) Improvements to the property that would not disqualify the parcel are taxed as otherwise provided in this title, including that portion of the land upon which such improvements are located and that is reasonably required for the use of the improvements.

(iii) Nonproductive patented mining claim property must be valued as if the land were devoted to agricultural grazing use.

(c) parcels of land of 20 acres or more but less than 160 acres under one ownership that are not eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(1). The land may not be devoted to a commercial or industrial purpose.

(2) Class three property is taxed at the taxable percentage rate "P" of its productive capacity.

(3) Until July 1, 1986, the taxable percentage rate "P" for class three property is 30%.

(4) Prior to July 1, 1986, the department of revenue shall determine the taxable percentage rate "P" applicable to class three property for the revaluation cycle beginning January 1, 1986, as follows:

(a) The director of the department of revenue shall certify to the governor before July 1, 1986, the percentage by which the appraised value of all property in the state classified under class three as of January 1, 1986, has increased due to the revaluation conducted under 15-7-111. This figure is the "certified statewide percentage increase".

(b) The taxable value of property in class three is determined as a function of the certified statewide percentage increase in accordance with the table shown below.

(c) This table limits the statewide increase in taxable valuation resulting from reappraisal to 0%. In calculating the percentage increase, the department may not consider agricultural use changes during calendar year 1985.

(d) The taxable percentage must be calculated by interpolation to coincide with the nearest whole number certified statewide percentage increase from the following table:

Certified Statewide Percentage Increase	Class Three Taxable Percentage "P"
0	30.00
10	27.27
20	25.00
30	23.08
40	21.43
50	20.00

(5) After July 1, 1986, no adjustment may be made by the department to the taxable percentage rate "P" until a revaluation has been made as provided in 15-7-111.

(6) The land described in subsection (1)(c) is valued at the productive capacity value of grazing land, at a production level set by the department, and the taxable value is computed by multiplying the value by seven times the taxable rate for agricultural land."

Section 2. Section 15-6-144, MCA, is amended to read:

"**15-6-144. Class eleven property — description — taxable percentage.** (1) Class eleven property includes all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202(2). Class eleven property includes 1 acre of real property beneath the agricultural improvements. The 1 acre shall be valued at market value.

(2) Class eleven property is taxed at 80% of the taxable percentage applicable to class four property."

Section 3. Section 15-7-202, MCA, is amended to read:

"**15-7-202. Eligibility of land for valuation as agricultural.** (1) *(a)* Contiguous parcels of land totaling ~~20~~ *160* acres or more under one ownership ~~shall be~~ *are* eligible for valuation, assessment, and taxation as agricultural land each year that none of the parcels is devoted to a *residential,* commercial, or industrial use.

(b) (i) Contiguous parcels of land of 20 acres or more but less than 160 acres under one ownership are eligible for valuation, assessment, and taxation as agricultural land if the land is used primarily for raising and marketing, as defined in subsection (1)(c), products that meet the definition of agricultural in 15-1-101. A parcel of land is presumed to be used primarily for raising agricultural products if the owner or the owner's immediate family members, agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products produced by the land. The owner of land that is not presumed to be agricultural land shall verify to the department that the land is used primarily for raising and marketing agricultural products.

(ii) Noncontiguous parcels of land that meet the income requirement of subsection (1)(b)(i) are eligible for valuation, assessment, and taxation as agricultural land under subsection (1)(b)(i) if:

(A) the land is an integral part of a bona fide agricultural operation undertaken by the persons set forth in subsection (1)(b)(i) as defined in this section; and

(B) the land is not devoted to a residential, commercial, or industrial use.

(c) For the purposes of this subsection (1), "marketing" means the selling of agricultural products produced by the land and includes but is not limited to:

(i) rental or lease of the land as long as the land is actively used for grazing livestock or for other agricultural purposes; and

(ii) rental payments made under the federal conservation reserve program or a successor to that program.

(2) Except as provided in subsection (8), contiguous or noncontiguous parcels of land totaling less than 20 acres under one ownership that are actively devoted to agricultural use ~~shall~~ *are* ~~be~~ eligible for valuation, assessment, and taxation as ~~herein provided~~ *agricultural* each year the parcels meet any of the following qualifications:

(a) the parcels produce and the owner or the owner's agent, employee, or lessee markets not less than $1,500 in annual gross income from the raising of agricultural products as defined in 15-1-101; or

(b) the parcels would have met the qualification set out in subsection (2)(a) were it not for independent intervening causes of production failure beyond the control of the producer or marketing delay for economic advantage, in which case proof of qualification in a prior year will suffice.

(3) Parcels that do not meet the qualifications set out in subsections (1) and (2) ~~shall~~ *may* not be classified or valued as agricultural if they are part of a platted subdivision that is filed with the county clerk and recorder in compliance with the Montana Subdivision and Platting Act.

(4) Land may not be classified or valued as agricultural if it is subdivided land with stated restrictions effectively prohibiting its use for agricultural purposes. For the purposes of this subsection only, "subdivided land" includes parcels of land larger than 20 acres that have been subdivided for commercial or residential purposes.

(5) The grazing on land by a horse or other animals kept as a hobby and not as a part of a bona fide agricultural enterprise ~~shall~~ *is* not ~~be~~ considered a bona fide agricultural operation.

(6) *The department may not classify land less than 160 acres as agricultural unless the owner has applied to have land classified as agricultural land. Land of 20 acres or more but less than 160 acres for which no application for agricultural classification has been made is taxed as provided in 15-6-133(1)(c).* If land has been valued, assessed, and taxed as agricultural land in any year, it ~~shall~~ *must* continue to be ~~so~~ valued, assessed, and taxed *as agricultural* until the department reclassifies the property. A reclassification does not mean revaluation pursuant to 15-7-111.

(7) For the purposes of this part, growing timber is not an agricultural use.

(8) Subject to the provisions of subsections *(1),* (2)(a), and (2)(b), property upon which sod, ornamental, nursery, or horticultural crops are raised, grown, or produced must consist of at least 10 acres before the property is eligible to be

classified as agricultural land. Improvements devoted to crop production described in this subsection may not be included in class eleven property."

Section 4. **Appropriation.** (1) There is appropriated to the department of revenue $90,000 from the general fund for the fiscal year ending June 30, 1995, for the administration of 15-6-133 and 15-7-202, as amended by [this act].

(2) There is appropriated to the department of revenue $111,000 from the general fund for the fiscal year ending June 30, 1994, for the administration of 15-6-133 and 15-7-202, as amended by [this act].

Section 5. **Effective dates — applicability.** (1) [Section 4 and this section] are effective July 1, 1993.

(2) [Sections 1 through 3] are effective January 1, 1994, and apply to tax years beginning after December 31, 1993.

Approved May 10, 1993.

CHAPTER NO. 628

[SB 347]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW TO ATTAIN BETTER MEDICAL COST CONTAINMENT; REVISING AN INJURED WORKER'S FREEDOM OF CHOICE OF PHYSICIANS; AMENDING MEDICAL DEFINITIONS; DISTINGUISHING BETWEEN PRIMARY AND SECONDARY MEDICAL SERVICES; REVISING PROVISIONS REGARDING PAYMENT FOR PRESCRIPTION DRUGS; PROVIDING FOR MANAGED CARE AND A PREFERRED PROVIDERS ORGANIZATION; REQUIRING THE INJURED WORKER TO COMPLY WITH RECOMMENDED MEDICAL TREATMENT; REGULATING DOMICILIARY CARE; LIMITING PHYSICIAN SELF-REFERRAL; CREATING MEDICAL ADVISORY COMMITTEES; AMENDING SECTIONS 33-22-111, 39-71-116, 39-71-704, 39-71-727, AND 39-71-743, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-111, MCA, is amended to read:

"**33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged.** (1) All policies of disability insurance, including individual, group, and blanket policies, ~~and all policies insuring the payment of compensation under the Workers' Compensation Act shall~~ *must* provide *that* the insured ~~shall have~~ *has* full freedom of choice in the selection of any ~~duly~~ licensed physician, physician assistant-certified, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, acupuncturist, or nurse specialist as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of ~~his~~ *the person's* practice. Whenever ~~such~~ *the* policies insure against the expense of drugs, the insured ~~shall have~~ *has* full freedom of choice in the selection of any ~~duly~~ licensed and registered pharmacist.

(2) ~~Nothing in this section shall~~ *This section may not* be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1)~~; nor shall this~~. *This* section *may not* be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 2. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) the investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) utilization of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(2) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(3) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury if no beneficiary, as defined in subsections (3)(a) through (3)(d), exists; and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury but only until the age of 18 years and only when no beneficiary, as defined in subsections (3)(a) through (3)(e), exists.

(4) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(5) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(6) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major groups 15 through 17 in the 1987 Standard Industrial Classification Manual. The term does not include office workers, design professionals, salesmen, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(7) "Days" means calendar days, unless otherwise specified.

(8) "Department" means the department of labor and industry.

(9) "Disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment. Disability does not mean a purely medical condition.

~~(9)~~*(10)* "Fiscal year" means the period of time between July 1 and the succeeding June 30.

~~(10)~~*(11)* "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

~~(11)~~*(12)* "Invalid" means one who is physically or mentally incapacitated.

~~(12) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.~~

(13) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

(14) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

~~(13)~~*(15)* "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(16) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

~~(14)~~*(17)* "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer ~~shall~~ *has* not ~~have~~ operated a sufficient or any length of time during ~~such~~ *the* calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if ~~no~~ average payrolls are *not* available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of ~~such~~ *the* current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

~~(15)~~*(18)* "Permanent partial disability" means a condition, after a worker has reached maximum *medical* healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in some capacity but the physical restriction impairs the worker's ability to work.

~~(16)~~*(19)* "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum *medical* healing, in which a worker ~~has no~~ *does not have a* reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

~~(17) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.~~

~~(18)~~*(20)* The "plant of the employer" includes the place of business of a third person while the employer has access to or control over ~~such~~ *the* place of business for the purpose of carrying on ~~his~~ *the employer's* usual trade, business, or occupation.

(21) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

~~(19)~~*(22)* "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

~~(20)~~*(23)* "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

~~(21)~~*(24)* "Reasonably safe tools and appliances" are ~~such~~ tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(25) "Secondary medical services" means those medical services or appliances considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

~~(22)~~*(26)* "Temporary service contractor" means any person, firm, association, or corporation conducting business that employs individuals directly for the purpose of furnishing the services of those individuals on a part-time or temporary basis to others.

~~(23)~~*(27)* "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum *medical* healing.

~~(24)~~*(28)* "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to substitute for a permanent employee on leave or to meet an emergency or short-term workload.

(29) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a physician, as defined in subsection (29)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5; or

(e) a dentist licensed by the state of Montana under Title 37, chapter 4.

~~(25)~~*(30)* "Year", unless otherwise specified, means calendar year."

Section 3. Section 39-71-704, MCA, is amended to read:

"**39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation.** (1) In addition to the compensation provided under this chapter and as an additional benefit separate and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of ~~the~~ *a compensable* injury and subject to ~~the~~ *other* provisions of ~~subsection (1)(d)~~ *this chapter*, the insurer shall furnish~~, without limitation as to length of time or dollar amount,~~ reasonable *primary medical* services ~~by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained, subject to the requirements of 39-71-727~~ *for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.*

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

~~(b)~~*(c)* The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

~~(c)~~*(d)* The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury ~~pursuant to rules adopted by the department~~ *only if the travel is incurred at the request of the insurer.* Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

~~(d)~~*(e)* Except for the repair or replacement of a prosthesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition; or

(ii) when necessary to monitor the status of a prosthetic device.

(g) If the worker's treating physician believes that palliative or maintenance care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment, the treating physician shall first request approval from the insurer for the treatment. If approval is not granted, the treating physician may request approval from the department for the treatment. The department shall appoint a panel of physicians, including at least one treating physician from the area of specialty in which the injured worker is being treated, pursuant to rules that the department may adopt, to review the proposed treatment and determine its appropriateness.

(h) Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical nonhospital services necessary for the treatment of injured workers. *Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients.* The department may require insurers to submit information to be used in establishing the schedule. *The department shall establish utilization and treatment standards for all medical services provided for under this chapter in consultation with the standing medical advisory committees provided for in [section 13].*

(3) ~~Beginning January 1, 1988, the~~ *The* department shall establish rates for hospital services necessary for the treatment of injured workers. *Beginning January 1, 1995, the rates may be based on per diem or diagnostic-related groups. The rates established by the department pursuant to this subsection may not be less than medicaid reimbursement rates.* Approved rates must be in effect for a period of 12 months from the date of approval. The department may coordinate

this ratesetting function with other public agencies that have similar responsibilities. *For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.*

(4) ~~Notwithstanding subsection (2), beginning January 1, 1988, through December 31, 1991, the maximum fees payable by insurers must be limited to the fee schedule established in January 1987. Notwithstanding subsection (3), beginning January 1, 1988, through December 31, 1991, the hospital rates payable by insurers must be limited to those set in January 1988. After December 31, 1991, the~~ *The* percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as requested by the insurer or is a visit to a preferred provider as requested by the insurer.

(b) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(c) "Visit", as used in subsections (7)(a) and (7)(b), means each time the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605."

Section 4. Section 39-71-727, MCA, is amended to read:

"**39-71-727. Payment for prescription drugs — limitations.** (1) For payment of prescription drugs, an insurer is liable only for the purchase of generic-name drugs if the generic-name product is the therapeutic equivalent of the brand-name drug prescribed by the physician, unless ~~the physician specifies no substitutions or~~ the generic-name drug is unavailable.

(2) If an injured worker prefers a brand-name drug, the worker may pay directly to the pharmacist the difference in the ~~cost~~ *reimbursement rate* between the brand-name drug and the generic-name product, and the pharmacist may only bill the insurer for the ~~cost~~ *reimbursement rate* of the generic-name drug.

(3) The pharmacist may bill only for the cost of the generic-name product on a signed itemized billing, except if purchase of the brand-name drug is allowed as provided in subsection (1).

(4) When billing for a brand-name drug, the pharmacist shall certify that the ~~physician specified no substitutions or that the~~ generic-name drug was unavailable.

(5) Reimbursement rates payable by an insurer subject to an agreement pursuant to [section 6] are limited to the average wholesale price of the product at the time of dispensing, plus a dispensing fee not to exceed $5.50 per product.

(6) The pharmacist may not dispense more than a 30-day supply at any one time.

(7) For purposes of this section, average wholesale prices must be updated weekly.

~~(5)~~*(8)* For purposes of this section, the terms "brand name", "drug product", and "generic name" have the same meaning as provided in 37-7-502.

(9) An insurer may not require a worker receiving benefits under this chapter to obtain medications from an out-of-state mail service pharmacy."

Section 5. **Choice of physician by worker — change of physician — receipt of care from managed care organization.** (1) Subject to subsection (3), a worker may choose the initial treating physician within the state of Montana.

(2) Authorization by the insurer is required to change treating physicians. If authorization is not granted, the insurer shall direct the worker to a managed care organization, if any, or to a medical service provider who qualifies as a treating physician, who shall then serve as the worker's treating physician.

(3) A medical service provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer, if:

(a) the injury results in a total loss of wages for any duration;

(b) the injury will result in permanent impairment;

(c) the injury results in the need for a referral to another medical provider for specialized evaluation or treatment; or

(d) specialized diagnostic tests, including but not limited to magnetic resonance imaging, computerized axial tomography, or electromyography, are required.

(4) A worker whose injury is subject to the provisions of subsection (3) shall, unless otherwise authorized by the insurer, receive medical services from the

managed care organization designated by the insurer, in accordance with [section 8]. The designated treating physician in the managed care organization then becomes the worker's treating physician. The insurer is not liable for medical services obtained otherwise, except that a worker may receive immediate emergency medical treatment for a compensable injury from a medical service provider who is not a member of a managed care organization.

Section 6. **Preferred provider organizations — establishment — limitations.** In order to promote cost containment of medical care provided for in 39-71-704, development of preferred provider organizations by insurers is encouraged. Insurers may establish arrangements with suppliers of soft and durable medical goods and medical providers in addition to or in conjunction with managed care organizations. Workers' compensation insurers may contract with other entities to use the other entities' preferred provider organizations. After the date that a worker is given written notice by the insurer of a preferred provider, the insurer is not liable for charges from nonpreferred providers. This section does not prohibit the worker from choosing the initial treating physician under [section 5(1)].

Section 7. **Workers' compensation managed care.** (1) A managed care system is a program organized to serve the medical needs of injured workers in an efficient and cost-effective manner by managing the delivery of medical services for a defined population of injured workers, pursuant to [section 5], through appropriate health care professionals.

(2) The department shall develop criteria pursuant to [section 9] for certification of managed care organizations. The department may adopt rules for certification of managed care organizations.

(3) Insurers may contract with certified managed care organizations for medical services for injured workers. A worker who is subject to managed care may choose from managed care organizations in the worker's community that have a contract with the insurer responsible for the worker's medical services.

Section 8. **Managed care organizations — notification.** Workers who are subject to managed care must receive medical services in the manner prescribed in the contract. Each contract must comply with the certification requirements provided in [section 9]. Insurers who contract with a managed care organization for medical services shall give written notice to workers of eligible service providers and shall give notice of the manner of receiving medical services.

Section 9. **Managed care organizations — application — certification.** (1) A health care provider, a group of medical service providers, or an entity with a managed care organization may make written application to the department to become certified under this section to provide managed care to injured workers for injuries that are covered under this chapter or for occupational diseases that are covered under the Occupational Disease Act of Montana. However, this section does not authorize an organization that is formed, owned, or operated by a workers' compensation insurer or self-insured employer other than a health care provider to become certified to provide managed care. When a health care provider, a group of medical service providers, or an entity with a managed care organization is establishing a managed care organization and independent physical therapy practices exist in the community, the managed care organization is encouraged to utilize independent physical therapists as part of the managed care organization if the independent physical therapists agree to abide by all the applicable requirements for a managed care organization set forth in this section, in rules established by the department, and in the provisions of a managed care plan for which certification is being sought.

(2) Each application for certification must be accompanied by an application fee if prescribed by the department. A certificate is valid for the period prescribed by the department, unless it is revoked or suspended at an earlier date.

(3) The department shall establish by rule the form for the application for certification and the required information regarding the proposed plan for providing medical services. The information includes but is not limited to:

(a) a list of names of each individual who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for that individual to practice in the state;

(b) names of the individuals who will be designated as treating physicians and who will be responsible for the coordination of medical services;

(c) a description of the times, places, and manner of providing primary medical services under the plan;

(d) a description of the times, places, and manner of providing secondary medical services, if any, that the applicants wish to provide; and

(e) satisfactory evidence of the ability to comply with any financial requirements to ensure delivery of service in accordance with the plan that the department may require.

(4) The department shall certify a group of medical service providers or an entity with a managed care organization to provide managed care under a plan if the department finds that the plan:

(a) proposes to provide coordination of services that meet quality, continuity, and other treatment standards prescribed by the department and will provide all primary medical services that may be required by this chapter in a manner that is timely and effective for the worker;

(b) provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of services;

(c) provides adequate methods of peer review and service utilization review to prevent excessive or inappropriate treatment, to exclude from participation in the plan those individuals who violate these treatment standards, and to provide for the resolution of any medical disputes that may arise;

(d) provides for cooperative efforts by the worker, the employer, the rehabilitation providers, and the managed care organization to promote an early return to work for the injured worker;

(e) provides a timely and accurate method of reporting to the department necessary information regarding medical and health care service cost and utilization to enable the department to determine the effectiveness of the plan;

(f) authorizes workers to receive medical treatment from a primary care physician who is not a member of the managed care organization but who maintains the worker's medical records and with whom the worker has a documented history of treatment, if that primary care physician agrees to refer the worker to the managed care organization for any specialized treatment, including physical therapy, that the worker may require and if that primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care organization. As used in this subsection (f), "primary care physician" means a physician who is qualified to be a treating physician and who is a family practitioner, a general practitioner, an internal medicine practitioner, or a chiropractor.

(g) complies with any other requirements determined by department rule to be necessary to provide quality medical services and health care to injured workers.

(5) The department shall refuse to certify or may revoke or suspend the certification of a health care provider, a group of medical service providers, or an entity with a managed care organization to provide managed care if the department finds that:

(a) the plan for providing medical care services fails to meet the requirements of this section; and

(b) service under the plan is not being provided in accordance with the terms of a certified plan.

Section 10. **Compliance with medical treatment required — termination of compensation benefits for noncompliance.** An insurer that provides 14 days' notice to the worker and the department may terminate any compensation benefits that the worker is receiving until the worker cooperates, if the insurer believes that the worker is unreasonably refusing:

(1) to cooperate with a managed care organization or treating physician;

(2) to submit to medical treatment recommended by the treating physician, except for invasive procedures; or

(3) to provide access to health care information to medical providers, the insurer, or an agent of the insurer.

Section 11. **Domiciliary care — requirements — evaluation.** (1) Reasonable domiciliary care must be provided by the insurer:

(a) from the date the insurer knows of the employee's need for home medical services that results from an industrial injury;

(b) when the preponderance of credible medical evidence demonstrates that nursing care is necessary as a result of the accident and describes with a reasonable degree of particularity the nature and extent of duties to be performed;

(c) when the services are performed under the direction of the treating physician who, following a nursing analysis, prescribes the care on a form provided by the department;

(d) when the services rendered are of the type beyond the scope of normal household duties; and

(e) when subject to subsections (3) and (4), there is a means to determine with reasonable certainty the value of the services performed.

(2) When a worker suffers from a condition that requires domiciliary care, which results from the accident, and requires nursing care as provided for in Title 37, chapter 8, a licensed nurse shall provide the services.

(3) When a worker suffers from a condition that requires 24-hour care and that results from the accident but that requires domiciliary care other than as provided in Title 37, chapter 8, the care may be provided by a family member. The insurer's responsibility for reimbursement for the care is limited to no more than the daily statewide average medicaid reimbursement rate for the current fiscal year for care in a nursing home. The insurer is not responsible for respite care.

(4) Domiciliary care by a family member that is necessary for a period of less than 24 hours a day may not exceed the prevailing hourly wage, and the insurer is not liable for more than 8 hours of care per day.

Section 12. **Physician self-referral prohibition.** Unless authorized by the insurer, a treating physician may not refer a claimant to a health care facility at which the physician does not directly provide care or services when the physician has an investment interest in the facility, unless there is a demonstrated need in the community for the facility and alternative financing is not available. The insurer or the claimant is not liable for charges incurred in violation of this section.

Section 13. **Medical advisory committees — composition — function.** (1) The department shall organize committees of representatives from the following medical provider groups:

(a) physicians;

(b) surgeons;

(c) chiropractors;

(d) physical therapists;

(e) psychologists; and

(f) hospitals.

(2) Committees organized pursuant to this section shall assist the department in the development of utilization and treatment standards for treating injured workers.

(3) The department may seek recommendations for representatives from the state licensing boards governing the providers.

Section 14. Section 39-71-743, MCA, is amended to read:

"**39-71-743. Assignment or attachment of payments.** (1) No payments under this chapter shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts, except:

(a) as provided in 71-3-1118; or

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of social and rehabilitation services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. ~~No~~ *Except as provided in 39-71-704(7), a* fee or charge ~~shall be~~ *is not* payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer."

Section 15. **Codification instruction.** [Sections 5 through 13] are intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections 5 through 13].

Section 16. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 17. **Retroactive applicability.** Because of the decision in Wieland v. St. Compensation Mutual Insurance Fund, WCC No. 9208-6554, there is a conflict between the interpretation of 33-22-111 and Rule 24.29.1403, Administrative Rules of Montana, implementing 39-71-704, upheld in Garland v. Anaconda Co., 177 Mont. 240 (1978), upon which workers' compensation medical benefits were premised, the legislature, in order to resolve the conflict through the curative legislation in [section 1], intends that [section 1] apply retroactively, within the meaning of 1-2-109, to all causes of action arising before [the effective date of this act].

Section 18. **Effective date.** [This act] is effective July 1, 1993.

Approved May 10, 1993.

CHAPTER NO. 629

[SB 310]

AN ACT PROVIDING FOR THE CONDITIONAL REMISSION OF CERTAIN CLAIMS TO EXISTING RIGHTS TO THE USE OF WATER DETERMINED BY THE MONTANA SUPREME COURT TO HAVE BEEN FORFEITED PURSUANT TO SECTION 85-2-226, MCA; PROVIDING FOR THE FILING OF LATE CLAIMS IN THE GENERAL WATER RIGHTS ADJUDICATION; PROVIDING FOR STATEWIDE NOTICE OF THE RIGHT TO FILE LATE CLAIMS; PROVIDING FOR A DEADLINE FOR THE ACCEPTANCE OF CLAIMS IN REMISSION; PROVIDING FOR CONDITIONS UPON THE ADJUDICATION OF SUCH LATE CLAIMS; DIRECTING THE WATER POLICY COMMITTEE, IN COORDINATION WITH CERTAIN STATE AGENCIES, TO CONDUCT AN INTERIM STUDY REGARDING LATE CLAIM ISSUES; AMENDING SECTIONS 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, AND 85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Article IX, section 3, of the Montana Constitution provides that all existing rights to the use of any waters for any useful or beneficial purpose are recognized and confirmed; and

WHEREAS, Article IX, section 3, of the Montana Constitution requires the Legislature to provide for the administration, control, and regulation of water rights and to establish a system of centralized records for such rights; and

WHEREAS, the Legislature established a procedure for the general adjudication of existing rights to the use of water and provided in section 85-2-226, MCA, that the failure to file a claim of existing right on or before the deadline established under section 85-2-221, MCA, would establish a conclusive abandonment of the right; and

WHEREAS, the Montana Supreme Court, in *In the Matter of the Adjudication of the Water Rights Within the Yellowstone River*, 253 Mont. 167, 832 P.2d 1210 (1992), has determined that the failure to file a statement of claim to an existing right to the use of water on or before April 30, 1982, resulted in the forfeiture of that right; and

WHEREAS, it has come to the attention of the Legislature that the forfeiture of water rights for failure to timely file a claim has in some instances caused hardship, and the Legislature accordingly desires to provide water rights claimants with one more opportunity to file a water rights claim in the general adjudication; and

WHEREAS, in so doing, the Legislature recognizes that the adjudication process will not be completed for many years but that a substantial amount of progress has already occurred in the adjudication, specifically in the area of water rights compacts with Indian tribes and the federal government and in decrees and stipulations involving individual claimants, and thus the Legislature believes that it is necessary to ensure that parties who have been recognized as having filed claims on or before April 30, 1982, and holders of federal reserved water rights are not adversely affected by the inclusion of new parties in the adjudication by subjecting the right to file those claims in remission to certain terms and conditions; and

WHEREAS, the Legislature wishes to provide protection for timely filed claimants from incurring additional costs or from being adversely affected by justifiable reliance on the presumption of abandonment; and

WHEREAS, the Legislature wishes to provide a conclusive adjudication of existing water rights; and

WHEREAS, the Legislature recognizes that according a privilege to file additional statements of claim presents a potential for abuse by those who may attempt to refile previously adjudicated claims, and the Legislature thus believes that the courts should deal harshly with any abuses by such measures as, without limitation, the imposition of sanctions under Rule 11, Montana Rules of Civil Procedure; and

WHEREAS, the Legislature determines that the deadline for filing water right claims as provided in this bill appropriately balances the interests at stake in the adjudication.

THEREFORE, the Legislature finds it is appropriate to make the following amendments to sections 85-2-102, 85-2-211, 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, and 85-2-306, MCA, in order to provide for the acceptance of late claims to the use of water under the conditions set forth in this bill. Additionally, the Legislature directs the Water Policy Committee, in coordination with the Department of Justice, the Department of Natural Resources and Conservation, and the Reserved Water Rights Compact Commission, to conduct an interim study regarding certain late claim issues.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-102, MCA, is amended to read:

"**85-2-102.** *(Temporary)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316; or

(c) in the case of the department of fish, wildlife, and parks, to lease water in accordance with 85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(11)~~*(12)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(12)~~*(13)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

~~(13)~~*(14)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

~~(14)~~*(15)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(15)~~*(16)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(16)~~*(17)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(17)~~*(18)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(18)~~*(19)* "Water division" means a drainage basin as defined in 3-7-102.

~~(19)~~*(20)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(20)~~*(21)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(21)~~*(22)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. *(Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)*

85-2-102. *(Effective July 1, 1999)* **Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 85-2-316.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; and

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141.

(3) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(4) "Certificate" means a certificate of water right issued by the department.

(5) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

~~(10)~~*(11)* "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

~~(11)~~*(12)* "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, or any other entity.

~~(12)~~*(13)* "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water but not a private corporation, association, or group.

~~(13)~~*(14)* "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

~~(14)~~*(15)* "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

~~(15)~~*(16)* "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

~~(16)~~*(17)* "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other manmade waterways.

~~(17)~~*(18)* "Water division" means a drainage basin as defined in 3-7-102.

~~(18)~~*(19)* "Water judge" means a judge as provided for in Title 3, chapter 7.

~~(19)~~*(20)* "Water master" means a master as provided for in Title 3, chapter 7.

~~(20)~~*(21)* "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-211, MCA, is amended to read:

"**85-2-211. Petition by attorney general.** Within 20 days after May 11, 1979, the state of Montana upon relation of the attorney general shall petition the Montana supreme court to require all persons claiming a right within a water division to file a claim of the right as provided in 85-2-221*(1)*."

Section 3. Section 85-2-213, MCA, is amended to read:

"**85-2-213. Notice of order — *additional filing period.*** *(1)* To assure that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

~~(1)~~*(a)* It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30 days after the Montana supreme court order as provided in 85-2-212 and in April of 1980, 1981, 1982, and 1983.

~~(2)~~*(b)* It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in 85-2-212.

~~(3)~~*(c)* It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.

~~(4)~~*(d)* It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212, and in April of 1980, 1981, 1982, and 1983.

~~(5)~~*(e)* It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or his designated representative.

~~(6)~~*(f)* It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

~~(7)~~*(g)* It may also in its discretion order that the department or the water judge assist the Montana supreme court in the carrying out of this section.

(2) (a) To assure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1996, as provided in 85-2-221(3), the department shall provide notice as follows:

(i) It shall, in October 1993, April and October 1994, April and October 1995, and April 1996, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.

(ii) It shall, in October 1993, April and October 1994, April and October 1995, and April 1996, provide copies of the notice, in writing, to the press services with offices located in Helena.

(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.

(iv) It shall cause copies of the notice to be posted in a conspicuous location in each county courthouse and department field office in the state and to be maintained in that location through July 1, 1996.

(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of 85-2-221(3).

(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after [the effective date of this act] until July 1, 1996.

(3) Notice given in accordance with subsection (2) must at a minimum indicate that any claim of existing right not filed with the department before April 30, 1982, may be filed by physically filing it with the department on or before July 1, 1996, or sending it by United States mail, postmarked on or before July 1, 1996. Additionally, the notice must indicate that under 85-2-226, a failure to file or mail the claim results in the forfeiture for all time of any existing rights to the use of water that are not claimed in accordance with the provisions of 85-2-221."

Section 4. Section 85-2-221, MCA, is amended to read:

"**85-2-221. Filing of claim of existing water right —** ***filing late claim.*** (1) A person claiming an existing right, unless exempted under 85-2-222 or unless an earlier filing date is ordered as provided in 85-2-212, shall file with the department no later than June 30, 1983, a statement of claim for each water right asserted on a form provided by the department.

(2) The department shall file a copy of each statement of claim with the clerk of the district court for the judicial district in which the diversion is made or, if there is a claimed right with no diversion, the department shall file a copy of the statement of claim with the clerk of the district court of the judicial district in which the use occurs.

(3) Subject to certain terms and conditions, the legislature intends to provide for the remission of the forfeiture of existing rights to the use of water caused by the failure to comply with subsection (1). Accordingly, with respect only to a basin that has not been closed to further appropriation pursuant to a compact ratified by the legislature under part 7 of this chapter prior to [the effective date of this act], a claim of an existing water right not filed with the department on or before April 30, 1982, may be filed with the department on or before July 1, 1996, on forms provided by the department. This section is not intended to prevent the filing of a late claim in addition to a claim of an existing water right filed on or before April 30, 1982, if and to the extent that the additional right claimed is not the same as the right that was the subject of a previous claim and is not an abandoned right. Claims must be physically submitted to the department or sent by United States mail, postmarked on or before the deadline set forth in this subsection, in order to be considered timely. The claims are then subject to adjudication by the district courts as any other claim of existing right. The claimant is then subject to all rights and obligations of any other party, except that:

(a) a late claim must be incorporated into the adjudication, subject to all proceedings that have taken place prior to the date of filing;

(b) the person filing a late claim may request that a decree previously entered be reopened or may object to matters previously determined on the merits by the water court only to the extent that the request or objection is otherwise authorized by law and is based on a claim of water right filed on or before April 30, 1982;

(c) a person filing a late claim does not have the right or standing to object to any water rights compact reached in accordance with part 7 of this chapter that is ratified by the legislature prior to [the effective date of this act] except to the extent that right or standing to object exists based on a claim of water right filed on or before April 30, 1982, or to claim protection for the right represented in the late claim under any provision of such a compact that subordinates the use of a water right recognized in the compact to a right recognized under state law;

(d) if the water judge, following objection under 85-2-233, finds that the right represented in the late claim was the subject of a prior order or decree by the water judge or is otherwise without merit, the water judge shall award costs and reasonable attorney fees to the person or persons filing the objection;

(e) a right represented in a late claim is subordinate to all federal and Indian reserved water rights established by compact or decree under this chapter;

(f) unless a late claim either was placed in the United States mail and postmarked on or before April 30, 1982, or, if there is no evidence of the date of mailing, there is evidence of execution on or before April 30, 1982, and actual receipt by the department on or before May 7, 1982, the right represented in the claim is, in addition, subordinate to:

(i) rights represented in all valid, timely filed claims; and

(ii) rights represented in a permit or reservation of water issued under this chapter if and to the extent that the person holding the permit or reservation files an objection under this part and proves that the person holding the permit or reservation reasonably relied to the detriment of the person holding the permit or reservation upon the failure of the claimant to file a claim on or before April 30, 1982.

(4) The department and the district courts may not accept any statements of claim physically submitted or postmarked after July 1, 1996, and shall notify a person who files a claim after July 1, 1996, that the claim will not be accepted."

Section 5. Section 85-2-225, MCA, is amended to read:

"**85-2-225. Filing fee** ***— processing fee for remitted claims.*** (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(b) no filing fee is required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and ~~which~~ *that* is accompanied by a copy of that decree or pertinent portion thereof.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of $40.

(3) (a) Except as provided in subsection (3)(c), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must

be accompanied by a processing fee in the amount of $150, which must be deposited in the water rights adjudication account for the examination of late claims by the department and for the publication of notices by the department as required under 85-2-213(2).

(b) The water judge shall assess against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to the filing of the late claim and the consideration of the objection, which assessment must be deposited in the water rights adjudication account.

(c) For a statement of claim that was filed after April 30, 1982, but prior to [the effective date of this act] or for a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be paid on or before a date to be established by the department by rule, but no later than July 1, 1999."

Section 6. Section 85-2-226, MCA, is amended to read:

"**85-2-226. Abandonment by failure to file claim.** The failure to file a claim of an existing right as required by 85-2-221*(1)* establishes a conclusive presumption of abandonment of that right."

Section 7. Section 85-2-234, MCA, is amended to read:

"**85-2-234. Final decree.** (1) The water judge shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the water judge shall enter it as the final decree.

(2) The terms of a compact negotiated and ratified under 85-2-702 must be included in the final decree without alteration unless an objection is sustained pursuant to 85-2-233; provided that the court may not alter or amend any of the terms of a compact except with the prior written consent of the parties in accordance with applicable law.

(3) The final decree ~~shall~~ *must* establish the existing rights and priorities within the water judge's jurisdiction of persons ~~required by~~ *who have filed a claim in accordance with* 85-2-221 ~~to file a claim for an existing right~~, of persons required to file a declaration of existing rights in the Powder River basin pursuant to an order of the department or a district court issued under sections 8 and 9 of Chapter 452, Laws of 1973, and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims.

(4) The final decree ~~shall~~ *must* establish, in a form determined to be appropriate by the water judge, one or more tabulations or lists of all water rights and their relative priorities.

(5) The final decree ~~shall~~ *must* state the findings of fact, along with any conclusions of law, upon which the existing rights and priorities of each person, federal agency, and Indian tribe named in the decree are based.

(6) For each person who is found to have an existing right arising under the laws of the state of Montana, the final decree ~~shall~~ *must* state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water included in the right, as follows:

(i) by flow rate for direct flow rights, such as irrigation rights;

(ii) by volume for rights, such as stockpond and reservoir storage rights, and for rights that are not susceptible to measurement by flow rate; or

(iii) by flow rate and volume for rights that a water judge determines require both volume and flow rate to adequately administer the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land, if any, to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the inclusive dates during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(7) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree ~~shall~~ *must* state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702.

(8) Clerical mistakes in a final decree may be corrected at any time on the initiative of the water judge or on the petition of any person who possesses a water right. The water judge shall order the notice of a correction proceeding as he determines to be appropriate to advise all persons who may be affected by the correction. An order of the water judge making or denying a clerical correction is subject to appellate review."

Section 8. Section 85-2-237, MCA, is amended to read:

"**85-2-237. Reopening and review of decrees.** (1) ~~The~~ *After July 1, 1996, the* water judges shall by order reopen and review, within the limits set forth by the procedures described in this section, all preliminary or final decrees*:*

(a) that have been issued ~~by the water courts~~ but have not been noticed throughout the water divisions*; or*

(b) for basins for which claims have been filed under 85-2-221(3).

(2) (a) Each order must state that the water judge will reopen the decree or decrees and, upon a hearing, review the water court's determination of any claim in the decree or decrees if an objection to the claim has been filed for the purpose of protecting rights to the use of water from sources:

(i) within the basin for which the decree was entered; or

(ii) in other basins that are hydrologically connected to sources within the basin for which the decree was entered.

(b) A person may not raise an objection to a matter in a reopened decree if ~~he~~ *the person* was a party to the matter when the matter was previously litigated and resolved as the result of the previous objection process, unless the objection is allowed for any of the following reasons:

(i) mistake, inadvertence, surprise, or excusable neglect;

(ii) newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), Montana Rules of Civil Procedure;

(iii) fraud, misrepresentation, or other misconduct of an adverse party;

(iv) the judgment is void;

(v) any other reason justifying relief from the operation of the judgment.

(c) The objection must be made in accordance with the procedure for filing objections under 85-2-233.

(3) The water judges shall serve notice by mail of the entry of the order providing for the reopening and review of a decree or decrees to the department and to the persons entitled to receive service of notice under 85-2-232(1).

(4) Notice of the reopening and review of a preliminary or final decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation ~~which~~ *that* cover the water division or divisions in which the decreed basin is located.

(5) No objection may cause a reopening and review of a claim unless the objection is filed with the appropriate water court within 180 days after the issuance of the order under subsection (1). This period of time may, for good cause shown, be extended by the water judge for up to two 90-day periods if an application for extension is made within the original 180-day period or any extension of it.

(6) The water judge shall provide notice to the claimant of any timely objection to ~~his~~ *the* claim and, after further reasonable notice to the claimant,

the objector or objectors, and other interested persons, set the matter for hearing. The water judge may conduct individual or consolidated hearings, and any hearing must be conducted according to the Montana Rules of Civil Procedure. On an order of the water judge, a hearing may be conducted by a water master, who shall prepare a report of the hearing as provided in Rule 53(e), Montana Rules of Civil Procedure.

(7) The water judge shall, on the basis of any hearing held on the matter, take action as warranted from the evidence ~~before him~~, including dismissal of the objection or modification of the portion of the decree describing the contested claim.

(8) An order or decree modifying a previously issued final decree as a result of procedures described in this section may be appealed in the same manner as provided for an appeal taken from a final order of a district court.

(9) An order or decree modifying a previously issued preliminary decree as a result of procedures described in this section may be appealed under 85-2-235 when the preliminary decree has been made a final decree."

Section 9. Section 85-2-306, MCA, is amended to read:

"**85-2-306.** *(Temporary)* **Exceptions to permit requirements — fee.** (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders and pay a filing fee. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall be~~ *is* the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ *must* be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided

in subsection (1) ~~of this section~~, with the department to perfect the water right. The filing of a claim ~~of existing water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ *is* the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream ~~which~~ *that* historically has flowed continuously ~~at~~ *during* all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113.

(5) In addition to the filing fee prescribed by the board by rule pursuant to 85-2-113, a person filing a notice under subsection (1) shall pay a $10 fee, and the department shall deposit $10 of each filing fee collected pursuant to subsection (1) in the ground water assessment account, established in 85-2-905, within the state special revenue fund. *(Terminates July 1, 1993—sec. 22, Ch. 769, L. 1991.)*

85-2-306. *(Effective July 1, 1993)* **Exceptions to permit requirements.** (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, the written consent of the person with those property rights. Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation ~~shall be~~ *is* the date of refiling a correct and complete notice with the department. A certificate of water right may not be issued until a correct and complete notice has been filed with the department. The original of the certificate ~~shall~~ *must* be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1) ~~of this section~~, with the department to perfect the water right. The filing of a claim ~~of existing water right~~ pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation ~~shall be~~ *is* the date of the filing of a notice as provided in subsection (1) of this section or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required; however, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, a perennial flowing stream means a stream ~~which~~ *that* historically has flowed continuously ~~at~~ *during* all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the board under 85-2-113."

Section 10. **Late claim interim study — water policy committee.** (1) The water policy committee, in coordination with the department of justice, the department of natural resources and conservation, and the reserved water rights compact commission, shall conduct an interim study analyzing the need for and desirability and impacts of allowing the remission of forfeited water rights in addition to the remissions authorized under the provisions of [this act]. The study must analyze the impacts of additional forfeiture remission on:

(a) the general stream adjudication process, including but not limited to the issues of adequacy and Montana's and the federal government's concurrent water rights adjudication jurisdiction;

(b) the federal government and Indian tribes regarding existing and future negotiated water rights compacts, including but not limited to the issues of equal protection;

(c) timely claimants' water use;

(d) timely claimants' legal rights, including but not limited to constitutional requirements regarding the taking of property;

(e) the potential reduction in agricultural production resulting from not granting additional forfeiture remissions and the associated social and economic impacts;

(f) the issue of fairness to both late and timely claimants;

(g) the potential increased costs to the state and to late and timely claimants;

(h) potential losses in revenue to the state resulting from the state's failure to file claims to existing water rights on or before April 30, 1982;

(i) implications involving the state's trust responsibilities;

(j) potential litigation against the state by private parties; and

(k) impacts on municipal and county governments resulting from late claims.

(2) The study must include an analysis of the potential for identifying individuals or classes of individuals whose additional forfeiture remission could be authorized in a manner that would have an acceptable impact on those issues identified under subsection (1). The classes of late claimants include but are not limited to previously decreed water rights holders and classes established according to filing date.

(3) The study must be completed in consultation with other relevant state and federal agencies, relevant groups and organizations, and other interested and affected citizens.

(4) The water policy committee shall report the results of the study to the 54th legislature by October 1, 1994. The report must include any legislative or other policy options recommended by the water policy committee.

Section 11. **Saving clause.** [This act] does not affect proceedings that were begun before [passage and approval of this act] in which relief for damages have been sought based upon the diversion, impoundment, or withdrawal of water without a water right established under state law.

Section 12. **Severability — partial nonseverability.** (1) If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

(2) It is the intent of the legislature that each part of [this act] is essentially dependent upon [section 4], which amends 85-2-221, and that if one part of [section 4], except subsection (3)(f)(ii), is held unconstitutional or invalid, all other parts of [this act] are invalid.

Section 13. **Effective date.** [This act] is effective July 1, 1993.

Approved May 11, 1993.

CHAPTER NO. 630

[HB 13]

AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW; CLARIFYING THE COMPENSABILITY OF MENTAL STRESS CLAIMS; REVISING THE STATE FUND'S BUDGET AND FUNDING PROCEDURES; EXEMPTING THE STATE FUND FROM THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT FOR PURPOSES OTHER THAN RATEMAKING; AUTHORIZING THE LEGISLATIVE AUDITOR TO REVIEW RATES AND EXAMINE THE STATE FUND EACH YEAR; PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN APPROPRIATION; REQUIRING THE INSURER TO NOTIFY CLAIMANTS OF BENEFITS AND ENTITLEMENTS USING INFORMATION PROVIDED BY THE DEPARTMENT; AMENDING SECTIONS 17-7-502, 18-8-103, 39-71-105, 39-71-606, 39-71-2314, 39-71-2316, 39-71-2321, 39-71-2323, AND 39-71-2352, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-105, MCA, is amended to read:

"**39-71-105. Declaration of public policy.** For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

(5) It is the intent of the legislature that stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, as is the case with repetitive injury claims, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system."

Section 2. Section 18-8-103, MCA, is amended to read:

"**18-8-103. Exemptions.** This part does not apply to employment of:

(1) registered professional engineers, surveyors, real estate appraisers, or registered architects;

(2) physicians, dentists, or other medical, dental, or health care providers;

(3) expert witnesses hired for use in litigation, hearings officers hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or attorneys as specified by executive order of the governor;

(4) consulting actuaries to the public retirement boards *or the state compensation insurance fund*; or

(5) private consultants employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations."

Section 3. Section 39-71-2314, MCA, is amended to read:

"**39-71-2314. State fund — assigned risk plan.** (1) If an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.

(2) The state fund is subject to laws that generally apply to state agencies, including but not limited to Title 2, chapters 2, 3, 4 (~~except~~ *only* as provided in 39-71-2316), and 6, and Title 5, chapter 13. The state fund is not exempt from a law that applies to state agencies unless that law specifically exempts the state fund by name and clearly states that it is exempt from that law."

Section 4. Section 39-71-2316, MCA, is amended to read:

"**39-71-2316. Powers of the state fund ~~— rulemaking~~.** For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state ~~and, in connection with the coverage, provide employers' liability insurance~~. The state fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

~~(3) adopt, amend, and repeal rules relating to the conduct of its business;~~

~~(4)~~*(3)* except as provided in section 21, Chapter 4, Special Laws of May 1990, enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

~~(5)~~*(4)* collect and disburse money received;

~~(6)~~*(5)* adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. Premium rates for classifications may only be adopted and changed using a process, a procedure, formulas, and factors set forth in rules adopted under Title 2, chapter 4, parts 2 through 4. After such rules have been adopted, the state fund need not follow the rulemaking provisions of Title 2, chapter 4, when changing classifications and premium rates. The contested case rights and provisions of Title 2, chapter 4, do not apply to an employer's classification or premium rate. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

~~(7)~~*(6)* pay the amounts determined due under a policy of insurance issued by the state fund;

~~(8)~~*(7)* hire personnel;

~~(9)~~*(8)* declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until adequate actuarially determined reserves are set aside. If those reserves have been set aside, money that can be declared as a dividend must be transferred to the account created by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, and used for the purposes of that account. After all claims funded by that account have been paid, dividends may be declared and paid to insureds.

~~(10)~~*(9)* perform all functions and exercise all powers of a ~~domestic mutual insurer~~ *private insurance carrier* that are necessary, appropriate, or convenient for the administration of the state fund."

Section 5. Section 39-71-2323, MCA, is amended to read:

"**39-71-2323. Surplus in state fund — payment of dividends.** Subject to the provisions of 39-71-2316~~(9)~~, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and a reasonable surplus, and if the excess may be refunded safely, then the state fund may declare a dividend. The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year."

Section 6. Section 39-71-2352, MCA, is amended to read:

"**39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit.** (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in 39-71-2316~~(9)~~ and 39-71-2354, premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than $3 million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 7. **Rate setting.** The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain, by July 1, 2003, a surplus of 25% of the annual premium.

Section 8. **Authority of legislative auditor with respect to state fund.** The legislative auditor shall review rates established by the board to determine if the rates are excessive, inadequate, or unfairly discriminatory. Each year, the legislative auditor shall:

(1) examine the state fund beginning no sooner than October 1 following the end of the fiscal year; and

(2) report the findings of the examination and rate review to the governor, the legislature, and the board of directors of the state fund.

Section 9. **Agency law — submission of budget — annual report.** (1) The state fund is subject to state laws applying to state agencies, except as otherwise provided by law, and it is exempt from the provisions of The Legislative Finance Act in Title 5, chapter 12, and the provisions of Title 17, chapter 7, parts 1 through 4.

(2) The executive director shall annually submit to the board for its approval an estimated budget of the entire expense of administering the state fund for the succeeding fiscal year, with due regard to the business interests and contract obligations of the state fund. The administrative expenditures approved by the board may not exceed 15% of the earned annual premium of the prior fiscal year. A copy of the approved budget must be delivered to the governor and the legislature.

(3) The board shall submit an annual financial report to the governor and to the legislature as provided in 5-11-210, indicating the business done by the state fund during the previous year and containing a statement of the estimated liabilities of the state fund as determined by an independent actuary.

Section 10. Section 39-71-2321, MCA, is amended to read:

"**39-71-2321. What to be deposited in state fund.** (1) *(a)* All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(b) All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502.

(2) The proceeds of bonds issued and loans given to the state fund under 39-71-2354 and 39-71-2355 must be deposited in the account for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 11. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; *39-71-2321;* 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 12. **Appropriation.** There is an appropriation of $35,000 for each fiscal year of the biennium beginning July 1, 1993, to the legislative auditor's office for contracted services for the duties required to be performed pursuant to [section 8] to be paid by the state fund from the funds appropriated in [section 10].

Section 13. Section 39-71-606, MCA, is amended to read:

"**39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of denial — notice to employer.** (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

(2) *The department shall make available to insurers for distribution to claimants sufficient copies of a document describing current benefits and entitlements available under Title 39, chapter 71. Upon receipt of a claim, each insurer shall promptly notify the claimant in writing of potential benefits and entitlements available by providing the claimant a copy of the document prepared by the department.*

(3) Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account."

Section 14. **Name change — directions to code commissioner.** Wherever the name "state compensation mutual insurance fund", meaning the fund established in 39-71-2313, appears in the Montana Code Annotated or in legislation enacted by the 1993 legislature, the code commissioner is directed to change the name to "state compensation insurance fund".

Section 15. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 17. **Codification instruction.** [Sections 7 through 9] are intended to be codified as an integral part of Title 39, chapter 71, part 23, and the provisions of Title 39, chapter 71, part 23, apply to [sections 7 through 9].

Section 18. **Effective dates — applicability.** (1) [Sections 1, 9, and 14 through 17 and this section] are effective on passage and approval.

(2) [Sections 2 through 8 and 10 through 13] are effective July 1, 1993.

(3) [Section 9] applies to the budget for fiscal year 1994.

Approved May 11, 1993.

CHAPTER NO. 631

[HB 335]

AN ACT GENERALLY REVISING CHILD SUPPORT ENFORCEMENT LAWS TO IMPROVE EFFICIENCY AND EFFECTIVENESS OF CHILD SUPPORT ENFORCEMENT SERVICES; PROVIDING FOR ADDITIONAL FEES; REQUIRING NOTICE TO THE CHILD SUPPORT ENFORCEMENT DIVISION OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES WHEN NOTICE OR SERVICE TO THE DEPARTMENT IS REQUIRED; DEFINING "SUPPORT ORDER" TO INCLUDE AN ORDER ISSUED BY A TRIBAL COURT OR A FOREIGN COUNTRY; EXTENDING SERVICES TO CHILDREN OVER AGE 18; ALLOWING CHILD SUPPORT PAYMENTS TO FOLLOW THE CHILD; ENHANCING EXISTING CHILD SUPPORT LIENS ON REAL AND PERSONAL PROPERTY; PROVIDING ADMINISTRATIVE CONTEMPT AUTHORITY; CONSOLIDATING AND STANDARDIZING STATUTES OF LIMITATIONS FOR CHILD SUPPORT; ALLOWING THE DEPARTMENT TO DISTRIBUTE INCOME-WITHHOLDING PAYMENTS BETWEEN MULTIPLE OBLIGEES OF THE SAME OBLIGOR; ELIMINATING CERTAIN OBSOLETE PROVISIONS OF LAW; CORRECTING INCONSISTENT PROVISIONS OF LAW; CONFORMING INCOME-WITHHOLDING PERIODS TO OBLIGOR PAY PERIODS; AMEND-

ING SECTIONS 25-9-301, 25-9-302, 25-9-303, 25-13-101, 27-2-201, 27-2-211, 40-4-204, 40-5-201, 40-5-202, 40-5-206, 40-5-208, 40-5-210, 40-5-224, 40-5-226, 40-5-227, 40-5-232, 40-5-242, 40-5-247, 40-5-255, 40-5-415, 40-6-116, 40-6-117, AND 53-2-613, MCA; AND REPEALING SECTIONS 40-5-241, 40-5-245, AND 40-5-246, MCA.

WHEREAS, it is necessary to draft a composite bill containing unrelated sections in order to present the proposed program improvements in a single, comprehensive bill that promotes the needs of legislative energy, efficiency, and economy by limiting the number of possible bills and by reducing the need for hearings and readings on those bills.

THEREFORE, the Legislature finds it appropriate to enact the following legislation.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-9-301, MCA, is amended to read:

"**25-9-301. Docketing of judgment — lien — *expiration.*** (1) Immediately after the entry of the judgment in the judgment book, the clerk must make the proper entries of the judgment under appropriate heads in the docket kept by ~~him~~ *the clerk.*

(2) From the time the judgment is docketed, it becomes a lien upon all real property of the judgment debtor not exempt from execution in the county, owned by ~~him~~ *the judgment debtor* at the time or which ~~he~~ *the judgment debtor* may afterward acquire until the lien ceases. ~~The~~ *Except as provided in subsection (3), the* lien continues for 6 years unless the judgment ~~be~~ *is* previously satisfied.

(3) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied."

Section 2. Section 25-9-302, MCA, is amended to read:

"**25-9-302. Filing of transcript of docket in another county — *lien — expiration.*** *(1)* A transcript of the original docket, certified by the clerk, may be filed with the district court clerk of any other county; and from the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in ~~such~~ *that* county, owned by ~~him~~ *the judgment debtor* at the time or which ~~he~~ *the judgment debtor* may afterward and before the lien expires acquire. ~~The~~ *Except as provided in subsection (2), the* lien continues for 6 years unless the judgment ~~be~~ *is* previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied."

Section 3. Section 25-9-303, MCA, is amended to read:

"**25-9-303. Filing of transcript of docket of federal court — *lien — expiration.*** *(1)* A transcript of the original docket of any judgment rendered in the circuit or district court of the United States, ninth circuit, district of Montana, certified by the clerk of ~~said~~ court, may be filed with the district court clerk of any county; and from the time of the filing, the judgment becomes a lien upon all real property of the judgment debtor, not exempt from execution, in ~~such~~ *the* county, owned by ~~him~~ *the judgment debtor* at the time or which ~~he~~ *the judgment debtor* may afterward and before the lien expires acquire. ~~The~~ *Except as provided in subsection (2), the* lien ~~shall continue~~ *continues* for 6 years unless the judgment ~~be~~ *is* previously satisfied.

(2) When the judgment is for the payment of child support, the lien continues for 10 years from the termination of the support obligation unless the judgment is previously satisfied."

Section 4. Section 25-13-101, MCA, is amended to read:

"**25-13-101. Time limit for issuing execution.** *(1)* ~~The~~ *Except as provided in subsection (2), the* party in whose favor *the* judgment is given may, at any time within 6 years after the entry thereof, have a writ of execution issued for its enforcement.

(2) When the judgment is for the payment of child support, the party in whose favor the judgment is given may, at any time within 10 years after the termination of the support obligation, have a writ of execution issued for its enforcement."

Section 5. Section 27-2-201, MCA, is amended to read:

"**27-2-201. Actions upon judgments.** (1) ~~The~~ *Except as provided in subsection (3), the* period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within 5 years. The cause of action is ~~deemed~~ *considered,* in ~~such~~ *that* case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation."

Section 6. Section 27-2-211, MCA, is amended to read:

"**27-2-211. Actions to enforce penalty or forfeiture or other statutory liability.** (1) Within 2 years is the period prescribed for the commencement of an action upon:

(a) a statute for a penalty or forfeiture when the action is given to an individual or to an individual and the state, except when the statute imposing it prescribes a different limitation;

(b) a statute or an undertaking in a criminal action for a forfeiture or penalty to the state;

(c) a liability created by statute other than:

(i) a penalty or forfeiture; or

(ii) a statutory debt created by the payment of public assistance.

(2) The period prescribed for the commencement of an action by a municipal corporation for the violation of any city or town ordinance is within 1 year.

(3) Notwithstanding any other provision of this chapter, actions against directors or stockholders of a corporation to recover a penalty or forfeiture imposed or to enforce a liability created by law must be brought within 3 years after the discovery by the aggrieved party of the facts upon which the penalty of forfeiture attached or the liability was created.

(4) Unless fraud is involved *or unless a support obligation has been entered,* an action to enforce a statutory debt created by the payment of public assistance must be brought within 5 years from the date the debt arises. If fraud is involved, an action must be brought within 5 years of the discovery of the fraud. *If a support obligation has been entered, an action must be brought within 10 years of the termination of support obligation.*"

Section 7. Section 40-4-204, MCA, is amended to read:

"**40-4-204. Child support — orders to address health insurance — withholding of child support.** (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for ~~his~~ *the child's* support, without regard to marital misconduct.

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the custodial parent;

(c) the standard of living the child would have enjoyed had the marriage not been dissolved;

(d) the physical and emotional condition of the child and ~~his~~ *the child's* educational and medical needs;

(e) the financial resources and needs of the noncustodial parent;

(f) the age of the child;

(g) the cost of day care for the child;

(h) any custody arrangement that is ordered or decided upon; and

(i) the needs of any person, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of ~~such~~ *the* standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(4) Each district court judgment, decree, or order establishing a final child support obligation under this title and each modification of a final order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment, decree, or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment, decree, or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party must, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) All temporary child support orders must contain a provision requiring the party who has health insurance in effect for the child or children of the parties to continue the insurance coverage pending final disposition of the case.

(d) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(e) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obligor is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obligor's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(6) For the purposes of income withholding under subsection (5), every district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(7) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(8) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(9) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

(b) A judgment, decree, or order that omits the provision required by subsection (9)(a) is subject to the requirements of subsection (9)(a) without need for an

amendment to the judgment, decree, or order or for any further action by the court."

Section 8. Section 40-5-201, MCA, is amended to read:

"**40-5-201. Definitions.** As used in this part, the following definitions apply:

(1) "Alleged father" means a man who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a man who is presumed to be a child's father under the provisions of 40-6-105.

(2) *(a)* "Child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States, *any person under 19 years of age and still in high school, or any person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday* and for whom:

~~(a)~~*(i)* support rights are assigned under 53-2-613;

~~(b)~~*(ii)* a public assistance payment has been made;

~~(c)~~*(iii)* the department is providing support enforcement services under 40-5-203; or

~~(d)~~*(iv)* the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act or under Title IV-D of the Social Security Act.

(b) Child may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of social and rehabilitation services.

(4) "Director" means the director of the department of social and rehabilitation services or ~~his~~ *the director's* authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearing officer" or "hearing examiner" means the hearing officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide support to a child under the laws of this or any other state or a support order; or

(b) a support order for spousal maintenance if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child of whom the person awarded maintenance is the custodial parent.

(14) "Support order" means an order providing a determinable amount for temporary or final periodic payment of funds for the support of a child, that is issued by:

(a) a district court of this state;

(b) a court of appropriate jurisdiction of another state, *Indian tribe, or foreign country*;

(c) an administrative agency pursuant to proceedings under this part; or

(d) an administrative agency of another state, *Indian tribe, or foreign country* with a hearing function and process similar to those of the department under this part.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regulations promulgated thereunder."

Section 9. Section 40-5-202, MCA, is amended to read:

"**40-5-202. Department of social and rehabilitation services — powers and duties regarding collection of support debt.** (1) The department may take action under the provisions of this part, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Title 40, chapter 6, part 1, and other appropriate state and federal statutes to ~~ensure that the parent or other person responsible pays for the care, support, or maintenance of a child~~ *provide IV-D services* if the department:

(a) receives a referral from the department of social and rehabilitation services or the department of family services on behalf of the child;

(b) is providing child support enforcement services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act or an interstate action by a Title IV-D agency of another state.

(2) ~~If the department is providing child support enforcement services for a child under this part, the department becomes trustee of any cause of action of the child or the obligee to recover support due to the child or obligee from the obligor. The department may bring and maintain the action in its own name or in the name of the obligee.~~ *A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. The department may initiate, participate in, or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.*

(3) The department has the power of attorney to act in the name of any obligee to endorse and cash any and all drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(4) ~~For purposes of prosecuting any civil action, the department is a real party in interest if it is providing child support enforcement services under this part.~~ *The department is a party to and must be afforded notice and an opportunity to participate in any proceeding relating to paternity or to the establishment, enforcement, or modification of a support obligation, whether initiated by the obligee, the obligor, or the child.* ~~No obligee~~ *A recipient of services* may *not* act to prejudice the rights of the department while ~~such~~ *the* services are being provided.

(5) If child support enforcement services are being or have been provided under this part, ~~no~~ *an* agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may *not* act to reduce or terminate any rights of the department to recover from the obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(7) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 53-2-613 and the support debt created by 40-5-221.

(8) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 53-2-613 and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(9) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts and records, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

(11) When a person is required to give notice to, serve, or provide a written response to the department in a proceeding concerning the establishment or enforcement of child support, the notice, service, or response must be made to the department's child support enforcement division."

Section 10. Section 40-5-206, MCA, is amended to read:

"**40-5-206. Central unit for information and administration — cooperation enjoined — availability of records.** (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) If services are provided to a child under this part, the department may request and, *notwithstanding any statute making the information confidential,* all state, county, and city agencies, officers, and employees must provide on request ~~any~~ information, *if known,* concerning ~~the location, income, and assets of~~ an obligor, *including:*

(a) name;

(b) address of obligor's residence;

(c) date of birth;

(d) social security number;

(e) wages or other income;

(f) number of dependents claimed for state and federal income tax withholding purposes;

(g) name and address of employer;

(h) address of any real property owned by the obligor; and

(i) any other asset in which the obligor may have an interest, including the extent, nature, and value of the interest.

~~(3) Except as provided in 40-5-261 and rules adopted under 40-5-262, any records established pursuant to the provisions of this section are available only to the department.~~

(3) Any information obtained by the department during the course of a child support investigation that is confidential at the source must be treated by the department as confidential and must be safeguarded accordingly.

(4) Use or disclosure of information obtained by the department from confidential sources of and information maintained by the department in its records, including the names, addresses, and social security numbers of obligors and obligees, is limited to:

(a) purposes directly related to the provision of services under this chapter;

(b) county attorneys~~;~~ and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act; *and*

(c) any other use permitted or required by the federal Social Security Act."

Section 11. Section 40-5-208, MCA, is amended to read:

"**40-5-208. Medical support — obligation enforcement — sanctions.** (1) (a) In any proceeding initiated pursuant to this part to establish a child support order, whether final or temporary, and in each modification of an existing order, the department shall require the obligor to obtain and maintain health insurance coverage for each child if health insurance coverage is available through the obligor's employment or other group health insurance plan. The order or modification of an order must include a statement that the insurance must be obtained and maintained whenever the department is providing support enforcement services and that the failure to do so may result in the imposition of sanctions under this section.

(b) If the support order or modification of an order does not include a provision requiring the obligor to provide health insurance coverage for a child, upon notice to the obligor that the child is receiving support enforcement services under Title IV-D of the Social Security Act, the obligor shall obtain and maintain health insurance coverage as provided for in subsection (1)(a). This insurance is in addition to:

(i) an order requiring the obligee to maintain health insurance coverage;

(ii) an agreement that the obligee will maintain health insurance coverage; or

(iii) a failure or omission of the court order or modification of an order to require health insurance coverage.

(2) (a) If the department is providing child support enforcement services and the obligor is required by an existing district court order or an administrative order under this section to provide health insurance coverage for a child, the department shall also enforce the health insurance obligation.

(b) To ensure that health insurance coverage is available for the child, the obligor, upon written request by the department, shall provide the name of the insurance carrier, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

(3) (a) The department may issue a notice commanding the obligor to appear at a hearing held by the department and show cause why a sum of not more than $100 should not be assessed for each month health insurance coverage is not secured or maintained if the department determines an obligor has failed to:

(i) obtain or maintain health insurance coverage as required under this section; or

(ii) provide information required under this section.

(b) If the department finds, after hearing or the obligor's failure to appear, that health insurance coverage has not been obtained or maintained or that the obligor has failed to provide the information required, the department may assess against the obligor not more than $100 for each month health insurance coverage has not been obtained or maintained or for each month information has not been provided. ~~Such~~ *The* amounts may be enforced by any administrative remedy available to the department for the enforcement of child support obligations, including warrant for distraint provided for in ~~40-5-241~~ *40-5-247* and income withholding provided for in Title 40, chapter 5, part 4.

(4) The health insurance coverage must be provided under this section even though it may reduce the amount of the child support obligation or reduce the obligor's ability to pay child support as required.

(5) Any amounts collected pursuant to this section must be returned to the general fund to help offset expenditures for medicaid."

Section 12. Section 40-5-210, MCA, is amended to read:

"**40-5-210. Standardized fee schedule — *rules*.** (1) The department ~~shall by rule establish a standardized schedule of fees for the recovery of administrative costs and expenses of child support enforcement. The fees may be recovered from an obligor if the obligor's failure or refusal to support a child makes it necessary for the department to provide child support enforcement services under this part. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities~~ *may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:*

(a) a flat dollar amount; or

(b) an amount based on a sliding fee schedule that is based on the applicant's income level.

(2) The department may charge a handling fee for each payment of support collected on behalf of any obligee who is not a recipient of public assistance. The department may withhold the fee from the support payment before distribution to the obligee.

(3) The department may charge an obligor a late payment fee for each late payment of support collected on behalf of any obligee.

(4) The department may establish a fee schedule in order to recover costs and expenses in excess of the application, handling, and late fees. The fees must be

commensurate with costs or an average of the expenditures related to specific or routine activities.

(a) The department shall develop procedures for determining whether it is appropriate for either the obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

(b)~~(2)~~ In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order ~~in which~~ *whenever* the department*:*

(i) is ~~the~~ *a* prevailing party *in the action; or*

(ii) is not a party but incurs expenses and costs related to the action.

~~(3) Fees awarded under this section are in the nature of child support and are collectible in the same manner as a support order. The fee award may be collected separately or added to and collected with any balance due on a support debt.~~

~~(4) Collection of a fee award may not reduce any current child support payment due the obligee.~~

~~(5) Arrearage amounts collected that include a fee must be allocated as follows:~~

~~(a) If the obligee is a recipient of public assistance, the amount must be allocated first to satisfy the fee.~~

~~(b) If the obligee is not a recipient of public assistance, the first 10% of each amount collected must be allocated to satisfy the fee.~~

(5) The department may collect the fees awarded under this section by one of the following means:

(a) if the fee is owed by an obligor, the fee may be:

(i) collected through any remedy available to the department for the collection of child support arrearages; or

(ii) deducted from any payments made by the obligor before the payment is distributed to the obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may not reduce any current or past-due support due to the obligee.

(b) if the fee is owed by the obligee, the fee may be collected separately through any remedy available to the department for the collection of child support or the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the payment as if the withholding of fees did not occur.

(6) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

(7) The department may adopt rules necessary to implement fee schedules under this section.

(8) The fees and costs charged and collected under this section must be paid monthly into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected."

Section 13. Section 40-5-224, MCA, is amended to read:

"**40-5-224. Finding of support liability based upon payment of public assistance — warrant for distraint — bond to release warrant — action to collect.** (1) If the department reasonably believes that the obligor is not a resident of this state or is about to move from this state or has ~~concealed himself~~ *hidden*, absconded, ~~absented himself~~ *or left*, or has removed or is about to remove, secrete, waste, or otherwise dispose of property ~~which~~ *that* could be made subject to collection action to satisfy the support debt, the department may issue a warrant for distraint pursuant to ~~40-5-241~~ *40-5-247* during the pendency of the fair hearing or ~~thereafter~~ *after the hearing*, whether or not appealed. ~~No further~~ *Further* action may *not* be taken on the warrant until final determination after fair hearing or appeal. The department shall make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The obligor may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or ~~thereafter~~ *after the hearing*, and in ~~such~~ *that* case warrants issued must be released. If the decision resulting from the hearing is in favor of the obligor, all warrants issued must be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing."

Section 14. Section 40-5-226, MCA, is amended to read:

"**40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

(2) At the discretion of the hearing officer, the administrative hearing may be held:

(a) in the county of residence or other county convenient to the obligor or obligee; or

(b) in the county in which the department or any of its offices are located.

(3) If a hearing is requested, it must be scheduled within 20 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the obligor under the notice and shall enter a final decision and order in accordance with ~~such~~ *the* determination.

(5) If the obligor fails to appear at the hearing or fails to timely request a hearing, the hearing officer, upon a showing of valid service, shall enter a decision and order declaring the amount stated in the notice to be final.

(6) In a hearing to determine financial responsibility, the monthly support responsibility must be determined in accordance with the evidence presented and with reference to the scale of suggested minimum contributions under 40-5-214. The hearing officer is not limited to the amounts stated in the notice.

(7) Within 20 days of the hearing, the hearing officer shall enter a final decision and order. The determination of the hearing officer constitutes a final agency decision, subject to judicial review under 40-5-253 and the provisions of the Montana Administrative Procedure Act.

(8) A support order entered under this part must contain a statement that the order is subject to review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D for the enforcement of the order.

(9) A support debt determined pursuant to this section is subject to collection action without further necessity of action by the hearing officer.

(10) A support debt or a support responsibility determined under this part by reason of the obligor's failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the motion of an obligor, by the hearing officer within the time provided and upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(11) Unless the hearing officer makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, every order establishing a child support obligation, whether temporary or final, and each modification of an existing child support order under this part is enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment of the support order or for any further action by the hearing officer.

(12) For the purposes of income withholding provided for in subsection (11), whenever the department establishes or modifies a child support obligation, the department's order must include a provision requiring the obligor, for as long as the department is providing support enforcement services, to keep the department informed of the name and address of the obligor's current employer, whether the obligor has access to health insurance through an employer or other group, and, if so, the health insurance policy information.

(13) The hearing officer may:

(a) compel obedience to the hearing officer's orders, judgments, and process and to any orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

(b) compel the attendance of witnesses at administrative hearings;

(c) compel obedience of subpoenas for paternity blood tests;

(d) compel the production of accounts, books, documents, and other evidence; and

(e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in accordance with the provisions of 2-4-104.

(14) A contempt occurs whenever:

(a) a person acts in disobedience of any lawful order, judgment, or process of the hearing officer or of the department;

(b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for genetic paternity tests fails to do so;

(c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing fails to do so;

(d) an obligor or obligee subject to a discovery order issued by the hearing officer fails to comply with discovery requests; or

(e) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time income is required to be withheld and paid to the department and the payor fails to take the required action.

(15) An affidavit of the facts constituting a contempt must be submitted to the hearing officer, who shall review it to determine whether there is cause to believe that a contempt has been committed. If cause is found, the hearing officer shall issue a citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be determined to be in contempt and required to pay a penalty of not more than $500 for each count of contempt. The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

(16) At the time and date set for hearing, the hearing officer shall proceed to hear witnesses and take evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearing officer finds the alleged contemnor in contempt, the hearing officer may impose a penalty of not more than $500 for each count found. The hearing officer's decision constitutes a final agency decision, subject to judicial review under 40-5-253 and subject to the provisions of Title 2, chapter 4.

(17) An amount imposed as a penalty may be collected by any remedy available to the department for the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1. The department may retain any penalties collected under this section to offset the costs of administrative hearings conducted under this chapter.

(18) The penalties charged and collected under this section must be paid into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected."

Section 15. Section 40-5-227, MCA, is amended to read:

"40-5-227. **Filing and docketing of final orders — orders effective as district court decrees.** (1) An abstract of any final administrative order under this chapter may be filed in the office of the clerk of the district court of any county of Montana. The order, if approved, must be docketed in the judgment docket of the district court. The properly filed and docketed order has all the force, effect, and attributes of a docketed order or decree of the district court, including but not limited to lien effect and enforceability by supplemental proceedings, writs of execution, and contempt of court proceedings.

(2) A final administrative order that determines and sets periodic support payments in the absence of a district court order, when filed and docketed under this section, may be modified by a district court order only as to installments accruing after actual notice to the parties of any motion for modification. The standard for ~~any such~~ *a* modification is that set forth in 40-4-208.

(3) The department may issue a warrant for distraint based upon a properly filed and docketed order pursuant to ~~40-5-241~~ *40-5-247*."

Section 16. Section 40-5-232, MCA, is amended to read:

"40-5-232. **Establishment of paternity — notice of paternity determination — contents.** (1) When the paternity of a child has not been legally established under the provisions of Title 40, chapter 6, part 1, or otherwise, the department may proceed to establish paternity under the provisions of 40-5-231 through 40-5-237. An administrative hearing held under the provisions of 40-5-231 through 40-5-237 is a contested case within the meaning of 2-4-102 and is subject to the provisions of Title 2, chapter 4, except as otherwise provided in 40-5-231 through 40-5-237.

(2) It is presumed to be in the best interest of a child to legally determine and establish ~~his~~ paternity. A presumption under this subsection may be rebutted by a preponderance of the evidence.

(3) In any proceeding under 40-5-231 through 40-5-237, if a man acknowledges ~~his~~ paternity of a child in writing and ~~such~~ *the* acknowledgment is filed with the department, the department may enter an order establishing legal paternity. An acknowledgment is binding on a parent who executes it, whether or not ~~he~~ *the parent* is a minor.

(4) The department shall commence proceedings to establish paternity by serving on an alleged father a notice of paternity determination. The department may not serve ~~such~~ *the* notice unless it has:

(a) a sworn statement from the child's mother claiming that the alleged father is the child's natural father;

(b) evidence of the existence of a presumption of paternity under 40-6-105; or

(c) any other reasonable cause to believe that the alleged father is the child's natural father.

(5) Service on the alleged father of the notice of paternity determination ~~shall~~ *must* be made as provided in 40-5-231(2). The notice must include:

(a) an allegation that the alleged father is the natural father of the child involved;

(b) the child's name and place and date of birth;

(c) the name of the child's mother and the name of the person or agency having custody of the child, if other than the mother;

(d) the probable time or period of time during which conception took place;

(e) a statement that if the alleged father fails to timely deny the allegation of paternity, the question of paternity may be resolved against ~~him~~ *the alleged father* without further notice;

(f) a statement that if the alleged father timely denies the allegation of paternity:

(i) ~~he~~ *the alleged father* is subject to compulsory blood testing;

(ii) a blood test may result in a presumption of paternity; and

(iii) ~~he may request a trial in district court to determine paternity before the final administrative decision is made~~ *upon receipt of the blood test results, if the alleged father continues to deny paternity, the alleged father may request the department to refer the matter to district court for a determination of paternity.*

(6) The alleged father may file a written denial of paternity with the department within 20 days after service of the notice of paternity determination.

(7) When there is more than one alleged father of a child, the department may serve a notice of paternity determination on each alleged father in the same consolidated proceeding or in separate proceedings. Failure to serve notice on an alleged father does not prevent the department from serving notice on any other alleged father of the same child."

Section 17. Section 40-5-242, MCA, is amended to read:

"**40-5-242.** ~~**Civil**~~ ***Notice of support lien — civil*** **liability upon failure to** ***honor support lien or to*** **comply with warrant** ~~**or to honor assignment of wages**~~ ***for distraint.*** *(1) The department may, at any time after asserting a support lien, serve a notice of the lien on any person, firm, corporation, association, or political subdivision or department of the state in possession of any real or personal property that is due, owing, or belonging to an obligor. For this purpose, personal property includes the obligor's share of a decedent's estate, workers' compensation benefits, and any proceeds or potential proceeds from suits at law.*

(2) Except as provided in subsection (3), ~~A~~ *a* person~~, firm, corporation, association, political subdivision, or department of the state~~ *or entity* is liable to the department in an amount equal to 100% of the value of ~~the~~ *a* support ~~debt that is the basis of the distraint or assignment of wages~~ *lien or warrant for distraint* or the value of ~~the distrained~~ *real or personal* property *subject to a support lien or distrained by a warrant for distraint*, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

~~(1) fails or refuses to deliver property pursuant to the order;~~

~~(2)~~*(a)* pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the support lien; *or*

~~(3)~~*(b)* fails or refuses to surrender upon demand property ~~distrained under 40-5-241~~ *of an obligor when presented with a warrant for distraint by a sheriff or levying officer under the provisions of 40-5-247*~~; or~~.

~~(4) fails or refuses to honor an assignment of wages presented by the department.~~

(3) A person or entity is not liable to the department under this section when:

(a) a written release or waiver of the support lien or warrant for distraint issued by the department has been delivered to the person or entity;

(b) a determination has been made in an adjudicative proceeding, either administrative or judicial, that a support lien does not exist or that the lien has been satisfied; or

(c) the property subject to a support lien has been transferred to, paid over to, or repossessed by a person or entity holding:

(i) a prior perfected lien;

(ii) a mortgage, the proceeds of which were used by the obligor to purchase real property; or

(iii) a perfected purchase money security interest, as defined by 30-9-107."

Section 18. Section 40-5-247, MCA, is amended to read:

"**40-5-247. ~~Filing warrant with district court — effect of filing — release~~ *Warrant for distraint — effect — satisfaction of support lien — redemption.*** ~~(1) After issuing a warrant, the department may file the warrant with the clerk of a district court. The clerk shall file the warrant in the judgment docket, with the name of the delinquent obligor listed as the judgment debtor.~~

~~(2) Upon filing the warrant, there is a lien against all real and personal property of the delinquent obligor located in the county where the warrant is filed. The resulting lien is treated in the same manner as a properly docketed judgment lien, and the department may collect delinquent child support and enforce the lien in the same manner as a judgment is enforced. The lien is for the amount indicated on the warrant plus accrued interest from the date of the warrant.~~

(1) The department may issue a warrant for distraint to execute support liens established by [section 25] or to enforce and collect any money obligation authorized under this chapter.

(a) The warrant must be an order, under official seal of the department, directed to a sheriff of any county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must command the recipient

to levy upon and sell nonexempt real and personal property to satisfy the support lien upon which the warrant is based.

(b) A warrant must be signed by the director of the department or the director's designee.

(c) The warrant must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, including interest and fees, if any.

(d) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce money judgments.

~~(3)~~*(2)* (a) A ~~copy of the filed~~ warrant *for distraint* may be sent by the department to the sheriff or ~~authorized agent~~ *levying officer.* Upon receipt of ~~a copy of~~ the ~~filed~~ warrant, the sheriff or ~~authorized agent~~ *levying officer* shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A sheriff or ~~agent~~ *levying officer* shall return a warrant, along with any funds collected, within 90 days of the receipt of the ~~copy of the~~ warrant.

(c) Funds resulting from execution upon the warrant must first be applied to the sheriff's or levying officer's costs, any superior liens, the support lien, or other money obligation and to any inferior liens. Any amounts in excess of this distribution must be paid to the obligor.

~~(c)~~*(d)* If the warrant is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

(3) A sheriff's or levying officer's levy against real and personal property of the obligor is not limited to property in possession of persons or other entities given notice of a support lien under 40-5-242.

(4) (a) Upon receiving payment in full of the unpaid ~~child support~~ *warrant* amount plus penalty and fees, if any, and accumulated interest, the department shall release the ~~lien~~ *warrant.*

(b) Upon receiving partial payment of the unpaid ~~child support~~ *warrant* amount or if the department determines that a release or partial release of the ~~lien~~ *warrant* will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the ~~lien acquired by filing the~~ warrant for distraint. The department may release the ~~lien~~ *warrant* if it determines that the ~~lien~~ *warrant* is unenforceable.

(5) An obligor or other person or entity having an interest in real or personal property levied upon by a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

(6) An obligor or other person or entity having an interest in real property levied upon and sold by a sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser plus

interest at the statutory interest rate payable on judgments recovered in the district court.

(7) At any time after distraint of property under a warrant for distraint, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

~~(5)~~*(9)* The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts."

Section 19. Section 40-5-255, MCA, is amended to read:

"**40-5-255. Charging off child support debts as uncollectible.** (1) Any support debt due the department from an obligor, which debt the department determines uncollectible, may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. If a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien.

(2) At any time after ~~6 years from the date a support debt was incurred~~ *10 years from the date of termination of the support obligation,* the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the support debt may be collected. ~~No proceedings~~ *A proceeding* or action under the provisions of this part may *not* be begun after expiration of the ~~6-year~~ *10-year* period to institute collection of a support debt. ~~Nothing herein~~ *This part* may *not* be construed to render invalid or nonactionable a warrant for distraint ~~filed with the clerk of court~~ *issued by the department* prior to the expiration of the ~~6-year~~ *10-year* period or an assignment of earnings executed prior to the expiration of the ~~6-year~~ *10-year* period."

Section 20. Section 40-5-415, MCA, is amended to read:

"**40-5-415. Order to withhold income — *rules.*** (1) When the requirements of this part have been met, the department shall serve an order or modification order to withhold and deliver income upon any payor or combination of payors. The order must:

(a) direct the payor and successor payors to withhold from the obligor's income each month the amount specified in the order if sufficient funds are available;

(b) direct the payor to deliver the amount withheld to the department in the same month in which the funds were withheld;

(c) state that the order is binding on the payor until further notice by the department;

(d) state the rights and duties of the payor under this part; and

(e) include a statement that the obligor is required under a support order to provide health insurance coverage for the obligor's child, if appropriate.

(2) An order or modification order to withhold and deliver the obligor's income made under this section is binding upon the payor immediately upon service of the order upon the payor. Service of the order or modification order to withhold may be made either personally or by certified mail.

(3) Whenever there is more than one payor, the department may, in its discretion, apportion the total amount to be withheld each month among payors. *Whenever an obligor's income is subject to withholding for more than one obligee, the department may consolidate the payments received each month and distribute the income among the obligees according to department rules.*"

Section 21. Section 40-6-116, MCA, is amended to read:

"40-6-116. **Judgment or order.** (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) (a) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child.

(b) Except when the financial responsibility of a responsible parent is in the process of being determined pursuant to the administrative procedure provided in 40-5-225, the judgment or order must contain a provision concerning the duty of child support.

(c) The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) (a) Support judgments or orders ordinarily ~~shall~~ *must* be for periodic payments which may vary in amount.

(b) In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support.

(c) The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court ~~deems~~ *considers* just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child, including ~~his~~ medical needs;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;

(d) the earning ability of the parents;

(e) the need and capacity of the child for education, including higher education;

(f) the age of the child;

(g) the financial resources and the earning ability of the child;

(h) the responsibility of the parents for the support of others;

(i) the value of services contributed by the custodial parent;

(j) the cost of day care for the child; and

(k) any custody arrangement that is ordered or decided upon.

(6) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in this section and the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209, unless the court finds by clear and convincing evidence that the application of the standards and guidelines is unjust to the child or to any of the parties or is inappropriate in that particular case.

(b) If the court does not apply these standards and guidelines to determine child support, it shall state its reasons for finding that the application of ~~such~~ *the* standards and guidelines is unjust to the child or a party or is inappropriate in that particular case.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(7) The judgment or order concerning child support and each modification of a judgment or order for child support must include a provision addressing health insurance coverage in the following cases:

(a) If either party has available through an employer or other organization health insurance coverage for the child or children for which the premium is partially or entirely paid by the employer or organization, the judgment or order may contain a provision requiring that coverage for the child or children be continued or obtained.

(b) In the event that health insurance required in a child support judgment or order becomes unavailable to the party who is to provide it, through loss or change of employment or otherwise, that party shall, in the absence of an agreement to the contrary, obtain comparable insurance or request that the court modify the requirement.

(c) The parties may by written agreement provide for the health care coverage required by this section, subject to the approval of the court.

(d) Unless otherwise provided in the decree, the health care coverage required by this section is in addition to and not in substitution, in whole or in part, for the child support obligation.

(8) *(a)* Unless an exception is found under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation made under 40-6-118 must be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the exception or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) After October 1, 1993, if a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay period.

(9) For the purposes of income withholding as provided in subsection (8), whenever the district court establishes or modifies a child support obligation, the judgment, decree, or order must include a provision requiring the parent obligated to pay support to inform the court and, if the department of social and rehabilitation services is providing services under Title IV-D of the Social Security Act for the enforcement of the judgment, decree, or order, the department, of the following:

(a) the name and address of the parent's current employer;

(b) whether the parent has access to health insurance through an employer or other group; and

(c) if insurance coverage is available, the health insurance policy information.

(10) If the department of social and rehabilitation services is providing or later provides support enforcement services under Title IV-D of the Social Security Act, each district court order or modification of an order must contain a statement providing that the noncustodial parent, without further order of the court, is required to obtain and maintain health insurance coverage as provided in 40-5-208. Failure to include a warning statement in the judgment or order does not preclude the imposition of sanctions under 40-5-208.

(11) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and modification by the department of social and rehabilitation services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order."

Section 22. Section 40-6-117, MCA, is amended to read:

"**40-6-117. Enforcement of judgment or order.** (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

(3) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support to be paid to:

(i) the legal custodian of the minor child;

(ii) (A) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(B) the court for the benefit of the minor child;

(iii) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(iv) any assignee or other person, organization, or agency authorized to receive or collect child support.

(b) A judgment, decree, or order that omits the provision required by subsection (3)(a) is subject to the requirements of subsection (3)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court."

Section 23. Section 53-2-613, MCA, is amended to read:

"**53-2-613. Application for assistance — assignment of support rights.** (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application ~~shall~~ *must* be submitted, *in* the manner and form prescribed by the department of social and rehabilitation services, and ~~shall~~ *must* contain information required by the department of social and rehabilitation services.

(2) A person by signing an application for public assistance assigns to the state, the department of social and rehabilitation services, and to the county welfare department all rights the applicant may have to support and medical payments from any other person in ~~his~~ *the applicant's* own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) Whenever a support obligation is assigned to the department of social and rehabilitation services pursuant to this section, the following provisions apply:

(a) If ~~such~~ *the* support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) ~~No~~ *A* recipient or former recipient of public assistance may *not* commence or maintain an action to recover a delinquent support obligation without notifying the ~~department~~ *department's child support enforcement division.* The department may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the ~~department~~ *department's child support enforcement division* has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) ~~No~~ *A* recipient or former recipient of public assistance may *not* take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the ~~department~~ *department's child support enforcement division* is given written notice and an opportunity to participate. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department ~~of social and rehabilitation services~~, and the county welfare department."

Section 24. **Child support payments to follow the child.** (1) A support order issued or modified under this part must contain a provision requiring the child support to be paid to:

(a) the legal custodian of the minor child;

(b) (i) any other person, organization, or agency having legal physical custody of the minor child or collecting child support on behalf of the minor child under a legal assignment of rights; or

(ii) the court for the benefit of the minor child;

(c) any other person or agency designated as caretaker of the minor child by agreement of the legal custodian; or

(d) any assignee or other person, organization, or agency authorized to receive or collect child support.

(2) An order that omits the provision required by subsection (1) is subject to the requirements of subsection (1) without need for an amendment to the order or for any further action by the department.

Section 25. **Lien against real and personal property — effect of lien — interest — warrant for distraint.** (1) There is a support lien on the real and personal property of an obligor:

(a) when the department has entered a final decision in a contested case under this chapter that finds the obligor owes a sum certain debt either to this department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a final decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as defined in 30-9-107.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor, if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under 30-9-401. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

(8) A buyer for value of an obligor's personal property, other than motor vehicles and other items for which a certificate of ownership is issued by the department of justice, who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247.

Section 26. **Payment of debts to department.** If money is due and owing the department, a payment due under Title 40, chapter 5, part 2 or 4, or under this chapter that is accompanied by or bears any notation by the debtor that the payment represents payment in full is not full payment, notwithstanding the department's acceptance of the payment, unless there is additional written agreement, signed by the department, that the payment is payment in full.

Section 27. **Repealer.** Sections 40-5-241, 40-5-245, and 40-5-246, MCA, are repealed.

Section 28. **Codification instruction.** (1) [Sections 24 and 25] are intended to be codified as an integral part of Title 40, chapter 5, part 2, and the provisions of Title 40, chapter 5, part 2, apply to [sections 24 and 25].

(2) [Section 26] is intended to be codified as an integral part of Title 53, chapter 2, part 1, and the provisions of Title 53, chapter 2, part 1, apply to [section 26].

Section 29. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 11, 1993.

CHAPTER NO. 632

[HB 525]

AN ACT ESTABLISHING THE JUDICIAL UNIFICATION AND FINANCE COMMISSION; PROVIDING FOR APPOINTMENTS TO THE COMMISSION; DIRECTING THE COMMISSION TO CONDUCT A STUDY OF THE FINANCING AND ORGANIZATION OF THE MONTANA JUDICIARY; APPROPRIATING FUNDS FOR OPERATION OF THE COMMISSION; PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE; AND PROVIDING FOR CONTINGENT VOIDNESS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Judicial unification and finance commission — composition — vacancies.** (1) There is a judicial unification and finance commission.

(2) The commission is composed of the following 13 members:

(a) three members, to be appointed by the governor, who must be from the public at large;

(b) two members, to be appointed by the chief justice of the Montana supreme court;

(c) one member, to be appointed by the speaker of the house of representatives, who must be a member of the house of representatives;

(d) one member, to be appointed by the president of the senate, who must be a member of the senate; and

(e) six members, one each of whom must be appointed by the following:

(i) the Montana judges' association;

(ii) the Montana magistrates' association;

(iii) the Montana association of clerks of court;

(iv) the state bar of Montana;

(v) the Montana league of cities and towns; and

(vi) the Montana association of counties.

(3) The members of the commission shall elect a presiding officer from among the members.

(4) Any vacancy occurring on the commission must be filled in the same manner as the original appointment.

Section 2. **Meetings.** (1) The presiding officer shall schedule meetings of the commission as considered necessary and shall give notice of the time and place of each meeting to the members of the commission.

(2) The commission may adopt rules of procedure for the conduct of its meetings.

Section 3. **Reimbursement of expenses — compensation.** (1) Each member of the commission, except the legislative members appointed under [section 1(2)(c) and (2)(d)], is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

(2) A legislative member appointed under [section 1(2)(c) or (2)(d)] is entitled to compensation and expenses as provided in 5-2-302.

Section 4. **Powers and duties — staff support — recommendations — report.** (1) The commission shall make a detailed and thorough study of the Montana judiciary, including:

(a) possible unification of the Montana judiciary;

(b) current and future funding of the Montana judiciary;

(c) matters pertaining to the standards and selection of judges; and

(d) other matters relating to the efficient operation of the Montana judiciary.

(2) The legislative council shall provide staff support to the commission.

(3) The commission is authorized to secure directly from any agency, board, or commission or from any independent organization any information, suggestion, estimate, or statistic. Any agency, board, commission, or organization requested by the commission to provide information shall furnish the information.

(4) On or before December 1, 1994, the commission shall submit to the legislature a written report of its findings, conclusions, and recommendations and options for further consideration. If legislation is recommended, the report must include a draft of the legislation.

Section 5. **Authority to accept contributions — appropriation — restriction on expenditures.** (1) The legislative council may accept, on behalf of the commission, gifts, grants, or donations that may not, in total, exceed $33,000.

(2) Any money received from gifts, grants, or donations must be deposited in an account in the state special revenue fund to the credit of the legislative

council for use by the commission. Money in the account may be used only for fulfilling the duties of the commission, including:

(a) reimbursing or compensating the members as provided in [section 3];

(b) contracting for services to execute the study to be conducted by the commission; or

(c) paying other expenses as may be incurred by the commission or the legislative council in conducting the study of the Montana judiciary.

(3) (a) There is appropriated to the legislative council for the purposes of conducting the study described in [section 4] $33,000 from the state special revenue fund account described in subsection (2).

(b) There is allocated to the legislative council from the district court criminal reimbursement program, funded in 3-5-901, up to $25,000 for the purpose of conducting the study described in [section 4]. Any amount received pursuant to subsection (1) in excess of $8,000 decreases the allocation under this subsection (b) by a corresponding amount. The allocation must be from funds available before the supreme court administrator has paid expenses specified in 3-5-901. For the purposes of 3-5-901(2), the study described in [section 4] is a cost of administering certain district court expenses described in 3-5-901.

(4) The appropriations and allocation under subsection (3) are biennial.

(5) As required under 17-2-108, the legislative council shall expend special revenue allocated in subsection (3)(a) of this section before expending any amount allocated in subsection (3)(b) or contingently appropriated in [section 6]. If any funds appropriated or allocated for the study remain unexpended on June 30, 1995, the funds must be credited to the district court criminal reimbursement program funded under 3-5-901.

Section 6. **Coordination instruction.** If House Bill No. 278 is not passed and approved in a form that includes a statutory appropriation of funds received under 61-3-509, then the following language is included in House Bill No. 2, within the appropriation to the judiciary:

"If House Bill No. 525 is passed and approved, then $33,000 of the appropriation to the district court criminal reimbursement program (program 7) must be allocated to the legislative council for the purpose of conducting the study of judicial unification and finance."

Section 7. **Contingent voidness.** If House Bill No. 278 is not passed and approved in a form that includes a statutory appropriation of funds received under 61-3-509 and the appropriation in House Bill No. 2 to the judiciary for the district court criminal reimbursement program (program 7) is less than $33,000, then [this act] is void.

Section 8. **Effective date.** [This act] is effective July 1, 1993.

Section 9. **Termination.** [This act] terminates June 30, 1995.

Approved May 11, 1993.

CHAPTER NO. 633

[HB 667]

AN ACT EQUALIZING THE STUDENT AND TAXPAYER EQUITY FOR MONTANA PUBLIC K-12 EDUCATION BY RESTRUCTURING THE FUNDING AND BUDGET MECHANISMS FOR SCHOOL DISTRICT GENERAL FUND BUDGETS; CALCULATING A MAXIMUM GENERAL FUND BUDGET FOR EACH DISTRICT BASED ON A BASIC ENTITLEMENT AND A TOTAL PER-ANB ENTITLEMENT; ALLOWING A DISTRICT UP TO 3 YEARS TO BUDGET 80 PERCENT OF THE MAXIMUM GENERAL FUND BUDGET AMOUNT FOR THE DISTRICT, DESIGNATED AS THE BASE AMOUNT FOR SCHOOL EQUITY (BASE) BUDGET FOR THE DISTRICT; PROVIDING THAT 40 PERCENT OF THE BASIC ENTITLEMENT AND 40 PERCENT OF THE TOTAL PER-ANB ENTITLEMENT FOR A DISTRICT BE FUNDED THROUGH DIRECT STATE AID AND THAT 40 PERCENT OF THE BASIC ENTITLEMENT AND 40 PERCENT OF THE TOTAL PER-ANB ENTITLEMENT FOR A DISTRICT BE FUNDED THROUGH LOCAL REVENUE SOURCES AND GUARANTEED TAX BASE AID IF THE DISTRICT IS ELIGIBLE; REQUIRING VOTER APPROVAL TO EXCEED CERTAIN GENERAL FUND BUDGET GROWTH INCREMENTS UP TO THE BASE BUDGET AMOUNT FOR A DISTRICT IN THE 5 SCHOOL FISCAL YEARS FOLLOWING IMPLEMENTATION; PROVIDING THAT THE REMAINING 20 PERCENT OF THE MAXIMUM GENERAL FUND BUDGET OF A DISTRICT BE FUNDED WITH LOCAL REVENUE; REQUIRING VOTER APPROVAL FOR DISTRICT GENERAL FUND BUDGET GROWTH THAT EXCEEDS 104 PERCENT OF THE PREVIOUS YEAR'S TOTAL GENERAL FUND BUDGET OR 104 PERCENT OF THE PREVIOUS YEAR'S GENERAL FUND BUDGET PER-ANB MULTIPLIED BY THE CURRENT YEAR'S ANB; REVISING THE METHOD OF CALCULATING GUARANTEED TAX BASE AID TO ELIGIBLE DISTRICTS BY COMPARING A DISTRICT'S TAXABLE VALUATION DIVIDED BY THE DISTRICT'S DIRECT STATE AID AND 40 PERCENT OF THE SPECIAL EDUCATION ALLOWABLE COST AMOUNT TO THE STATEWIDE TAXABLE VALUATION DIVIDED BY THE STATEWIDE DIRECT STATE AID AND 40 PERCENT OF THE SPECIAL EDUCATION ALLOWABLE COST AMOUNT; PROVIDING GENERAL FUND GUARANTEED TAX BASE AID TO ELIGIBLE DISTRICTS AT 175 PERCENT OF THE STATEWIDE TAXABLE VALUATION PER-ANB; REQUIRING DISTRICTS ABOVE THE ALLOWABLE MAXIMUM GENERAL FUND BUDGET TO FREEZE GENERAL FUND BUDGET GROWTH UNTIL THE MAXIMUM GENERAL FUND BUDGET LEVEL IS ACHIEVED; REQUIRING VOTER APPROVAL OF A DISTRICT GENERAL FUND BUDGET ABOVE THE MAXIMUM GENERAL FUND BUDGET, WITH AN EXEMPTION FROM THE VOTER APPROVAL REQUIREMENT FOR THE FIRST 2 YEARS OF IMPLEMENTATION; CREATING A FEDERAL IMPACT AID FUND; EQUALIZING FUNDING FOR SCHOOL DISTRICT FACILITY NEEDS BY PROVIDING STATE REIMBURSEMENT FOR SCHOOL FACILITIES BASED ON A VARIATION OF GUARANTEED TAX BASE AID FOR THE DEBT SERVICE FUND OF A SCHOOL DISTRICT IF THE DISTRICT MILL VALUE PER ANB IS LESS THAN THE CORRESPONDING STATEWIDE MILL VALUE PER ANB; LIMITING THE STATE REIMBURSEMENT FOR SCHOOL FACILITIES TO $2 MILLION FOR THE BIENNIUM ENDING JUNE 30, 1995; ALLOWING A DISTRICT THAT QUALIFIES FOR

GUARANTEED TAX BASE AID TO INCUR INDEBTEDNESS UP TO 45 PERCENT OF THE STATEWIDE TAXABLE VALUE PER PUPIL MULTIPLIED BY THE DISTRICT'S ANB; PROVIDING THAT THE FUND BALANCE IN THE EQUALIZATION AID ACCOUNT BE TRANSFERRED TO THE GENERAL FUND AT THE END OF EACH FISCAL YEAR; REMOVING THE TERMINATION DATE IN SECTION 6, CHAPTER 14, SPECIAL LAWS OF JANUARY 1992, TO ALLOW INCOME FROM THE SALE OF TIMBER FROM STATE SCHOOL LANDS TO CONTINUE TO BE DEPOSITED IN THE SCHOOL EQUALIZATION ACCOUNT; REVISING THE DISTRIBUTION SCHEDULE FOR BASE AID; BASING THE DISTRICT ANB COUNT ON THE ENROLLMENT COUNT FROM OCTOBER OF THE PREVIOUS YEAR; PROVIDING MATCHING FUNDS FROM THE STATE EQUALIZATION AID ACCOUNT FOR THE SYSTEMIC INITIATIVE FOR MONTANA MATHEMATICS AND SCIENCE GRANT; REQUESTING THAT AN APPROPRIATE INTERIM COMMITTEE BE ASSIGNED TO CONDUCT AN INTERIM STUDY OF CERTAIN TAXES AND PROPERTY VALUATION FOR THE PURPOSE OF ENHANCING EQUALIZED SCHOOL FUNDING AND OF EQUALIZING TAX BURDENS AMONG THE STATE'S SCHOOL DISTRICTS; APPROPRIATING FUNDS TO THE OFFICE OF PUBLIC INSTRUCTION TO IMPLEMENT THIS ACT; APPROPRIATING FUNDS TO THE LEGISLATIVE AUDITOR TO PAY FOR AUDIT COSTS; APPROPRIATING FUNDS TO THE LEGISLATIVE COUNCIL FOR AN INTERIM STUDY COMMITTEE; PROVIDING A MORATORIUM ON ALLOWING A SCHOOL DISTRICT TO CREATE A NEW SCHOOL DISTRICT OUT OF THE TERRITORY OF AN EXISTING DISTRICT; AMENDING SECTIONS 20-2-121, 20-3-106, 20-3-205, 20-3-324, 20-5-305, 20-5-312, 20-6-506, 20-6-603, 20-6-702, 20-6-703, 20-7-306, 20-7-435, 20-9-104, 20-9-113, 20-9-141, 20-9-143, 20-9-162, 20-9-163, 20-9-165, 20-9-166, 20-9-168, 20-9-201, 20-9-208, 20-9-212, 20-9-303, 20-9-305, 20-9-311, 20-9-314, 20-9-321, 20-9-335, 20-9-343, 20-9-344, 20-9-346, 20-9-347, 20-9-351, 20-9-353, 20-9-366, 20-9-367, 20-9-368, 20-9-369, 20-9-406, 20-9-439, AND 20-9-507, MCA, AND SECTION 6, CHAPTER 14, SPECIAL LAWS OF JANUARY 1992; REPEALING SECTIONS 20-9-145, 20-9-147, 20-9-301, 20-9-312, 20-9-315, 20-9-316, 20-9-317, 20-9-318, 20-9-319, 20-9-320, 20-9-322, AND 20-9-348, MCA, AND SECTION 12, CHAPTER 6, SPECIAL LAWS OF JULY 1992; AND PROVIDING EFFECTIVE DATES, A TERMINATION DATE, AND RETROACTIVE APPLICABILITY DATES.

WHEREAS, it is the intent of the Legislature to enhance both student equity and taxpayer equity for Montana public K-12 education by restructuring the funding and budget mechanisms for school district general fund budgets; and

WHEREAS, for these purposes, the Legislature determines that the foundation program funding mechanism of the past 4 decades be replaced with a public school funding system designed to yield greater equalization of both district general fund budgets per-ANB and district taxpayer efforts within a reasonable number of years; the Legislature has structured the base amount for school equity (BASE) funding program to contain components that can be modified to meet a number of state and school district objectives and economic realities but that will still maintain the essential elements of equalization as required by the Montana Constitution; and

WHEREAS, it is the intent of the Legislature that for the year of implementation of [this act], the Office of the Superintendent of Public Instruction focus first on implementing procedures and processes within [this act] and on assisting school districts to calculate and adopt adequate general fund budgets in compliance with [this act] and that, as soon as practical after the adoption of district final budgets, the Office of the Superintendent of Public Instruction implement essential rulemaking procedures; and

WHEREAS, the Legislature recognizes that school districts and the Office of the Superintendent of Public Instruction will need assistance in order to implement [this act] before the school fiscal year beginning July 1993 and intends that the Office of the Legislative Auditor provide available computer models and consultation, as necessary and as approved by the Legislative Audit Committee, to the Office of Public Instruction to ensure that a transition to the provisions of [this act] is accomplished with a minimum of delay and inconvenience to the districts; and

WHEREAS, the Legislature intends that the implementation of [this act] be accomplished with a minimum of additional reporting workload at the district and state level and that the Office of the Superintendent of Public Instruction, school districts, and county superintendents be strongly encouraged to implement electronic reporting and transmitting of data and information as soon as practical, using existing telecommunications networks, computer diskettes, or any other standardized means practicable; and

WHEREAS, in developing any request for proposals for software and data processing development, the superintendent of public instruction shall solicit input from school officials and organizations to accomplish the intent of [this act].

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as

provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) $200,000 for each high school district; and

(b) $18,000 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) $18,000 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $200,000 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means 40% of the basic entitlement and 40% of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of $4,900 for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of $3,500 for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of $3,500 for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of $4,900 for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB.

Section 2. **BASE funding program — district general fund budget — funding sources.** (1) A basic system of free quality public elementary schools and high schools must be established and maintained throughout the state of Montana to provide equality of educational opportunity to all school-age children.

(2) The state shall in an equitable manner fund and distribute to the school districts the state's share of the cost of the basic school system through BASE aid to support the BASE funding program in the manner established in this title.

(3) The budgetary vehicle for achieving the financing system established in subsection (2) is the general fund budget of the school district. The purpose of the district general fund budget is to finance those instructional, administrative, facility maintenance, and other operational costs of a district not financed by other funds established for special purposes in this title.

(4) The BASE funding program for the districts in the state is financed by a combination of the following sources:

(a) county equalization money, as provided in 20-9-331 and 20-9-333;

(b) state equalization aid, as provided in 20-9-343, including guaranteed tax base aid for eligible districts as provided in 20-9-366 through 20-9-369;

(c) appropriations for special education;

(d) a district levy, as provided in 20-9-302, for support of a school not approved as an isolated school under the provisions of that section; and

(e) district levies or other revenue, as provided by [section 3] and 20-9-353.

Section 3. **BASE budgets and maximum general fund budgets.** (1) For the school fiscal year beginning on [the effective date of this section], the trustees of a district shall adopt a general fund budget that:

(a) except as provided in subsection (2), is at least equal to the BASE budget established for the district; or

(b) except as provided in subsection (3), does not exceed the maximum general fund budget established for the district.

(2) (a) If the BASE budget for a district for the school fiscal year beginning on [the effective date of this section] is greater than the general fund budget of the district for the prior school fiscal year, the trustees of the district:

(i) may increase the general fund budget for the district by 4% of the previous year's general fund budget or by 4% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; but

(ii) may not adopt a general fund budget that reflects less than the following general fund budget growth amounts for the appropriate school fiscal year:

(A) 20% of the range between the district general fund budget for the school fiscal year ending June 30, 1993, and the BASE budget for the district for the school fiscal year beginning July 1, 1993;

(B) 25% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for the district for the school fiscal year beginning July 1, 1994;

(C) 33.3% of the range between the district general fund budget for the school fiscal year ending June 30, 1995, and the BASE budget for the district for the school fiscal year beginning July 1, 1995;

(D) 50% of the range between the district general fund budget for the school fiscal year ending June 30, 1996, and the BASE budget for the district for the school fiscal year beginning July 1, 1996; or

(E) the remainder of the range between the district general fund budget for the school fiscal year ending June 30, 1997, and the BASE budget for the district for the school fiscal year beginning July 1, 1997.

(b) (i) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (2)(a).

(ii) Except for the school fiscal year beginning July 1, 1993, whenever the trustees of a district adopt a general fund budget that exceeds one of the limitations in subsection (2)(a) but does not exceed the BASE budget for the district, the trustees shall submit a proposition on the amount that exceeds the limitation to the electors of the district, as provided in 20-9-353.

(c) Nothing in this section is intended to require a district to budget in excess of its BASE budget.

(3) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall:

(a) adopt a resolution stating the reasons and purposes for exceeding the BASE budget amount if the general fund budget adopted under this subsection (3) does not exceed the greater of:

(i) 104% of the previous year's general fund budget; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes; or

(b) except for the school fiscal year beginning July 1, 1993, submit a proposition on any amount of the over-BASE budget that exceeds one of the limitations in subsection (3)(a) to the electors of the district, as provided in 20-9-353.

(c) For the school fiscal year beginning July 1, 1993, a district may not exceed the limitations in subsection (3)(a).

(4) (a) If the maximum general fund budget for a district for an ensuing school fiscal year is less than the general fund budget for the district for the current school fiscal year, the trustees of the district may not adopt a general fund budget for the ensuing school fiscal year that is greater than the district's general fund budget for the current school fiscal year.

(b) Except for the school fiscal years beginning July 1, 1993, and July 1, 1994, the trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

(5) Whenever the trustees of a district adopt a general fund budget that does not exceed the BASE budget for the district, the trustees shall finance this amount with the following sources of revenue:

(a) state equalization aid as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

(6) The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district as provided in 20-9-141.

[(7) For the purpose of this section, the general fund budget or general fund per-ANB budget for the school fiscal year ending June 30, 1993, is the general fund budget funded by any state, local, and federal revenue, excluding Public Law 81-874 receipts received in the school fiscal year ending June 30, 1993. Before excluding any Public Law 81-874 funding, a district may increase the district general fund budget for the school fiscal year ending June 30, 1993, by the allowable increases in subsections (2) and (3).]

Section 4. Section 20-3-106, MCA, is amended to read:

"**20-3-106. Supervision of schools — powers and duties.** The superintendent of public instruction has the general supervision of the public schools and districts of the state~~,~~ and ~~he~~ shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) serve on the teachers' retirement board in accordance with the provisions of 2-15-1010;

(5) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 20-6-311;

(6) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(7) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

(8) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescribe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(9) establish a system of communication for calculating joint district revenues in accordance with the provisions of 20-9-151;

(10) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional *direct* state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(11) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(12) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213(5) and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(13) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(14) distribute ~~state equalization~~ *BASE* aid *and special education allowable cost payments* in support of the ~~foundation~~ *BASE funding* program ~~and guaranteed tax base aid~~, in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(15) distribute state impact aid in accordance with the provisions of 20-9-304;

(16) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(17) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 20-7-705;

(18) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(19) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(20) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(21) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 20-1-303 and 20-1-304;

(22) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(23) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(24) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(25) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

(26) as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(27) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(28) administer the traffic education program in accordance with the provisions of 20-7-502;

(29) administer the school food services program in accordance with the provisions of 20-10-201, 20-10-202, and 20-10-203;

(30) review school building plans and specifications in accordance with the provisions of 20-6-622;

(31) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

(32) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect

and summarize the results of the student assessment for the board of public education and the legislature;

(33) administer the distribution of guaranteed tax base aid ~~for county retirement levy obligations~~ in accordance with 20-9-366 through 20-9-369; and

(34) perform any other duty prescribed from time to time by this title, any other act of the legislature, or the policies of the board of public education."

Section 5. Section 20-3-324, MCA, is amended to read:

"**20-3-324. Powers and duties.** As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and otherwise govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) establish the ANB, ~~foundation program, permissive,~~ *BASE budget levy, over-BASE budget levy,* additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous federal programs fund, building fund, lease or rental agreement fund, traffic education fund, *impact aid fund,* and interlocal cooperative agreement fund in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to ~~his~~ *a* child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpublic school that is not accredited, as required in 20-5-110; and

(24) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Section 6. Section 20-5-305, MCA, is amended to read:

"**20-5-305. Elementary tuition rates.** (1) Whenever a pupil of an elementary district has been granted approval to attend a school outside of the district in which ~~he~~ *the pupil* resides, under the provisions of 20-5-301 or 20-5-302, the district of residence shall pay tuition to the elementary district where the pupil attends school. Except as provided in subsection (2), the basis of the rate of tuition ~~shall~~ *must* be determined by the attended district. The rate of tuition must be determined on March 15 by:

(a) totaling the previous school fiscal year's expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) by the October 1 enrollment of the district for the previous school fiscal year, as reported to the office of public instruction for purposes of accreditation pursuant to 20-7-102 and 20-9-344; and

(c) subtracting from the amount determined in subsection (1)(b) the per-ANB amount ~~allowed by the foundation program schedules~~ *of any general fund budget amount up to the district BASE budget level* and the per-ANB amount that is the ANB value per mill calculated pursuant to 20-9-366, multiplied by the number of ~~permissive and~~ retirement mills levied.

(2) The tuition for a full-time elementary special education pupil must be determined under rules adopted by the superintendent of public instruction for the calculation of elementary tuition for full-time elementary special education pupils as designated in 20-9-311 for funding purposes."

Section 7. Section 20-5-312, MCA, is amended to read:

"**20-5-312. Reporting, budgeting, and payment for high school tuition.** (1) Except as provided in subsection (2), on March 15, the trustees of each high school district shall determine the rate of tuition for the current school fiscal year by:

(a) totaling the previous school fiscal year's expenditures from the district general fund, the debt service fund, and, if the pupil is a resident of another county, the retirement fund;

(b) dividing the amount determined in subsection (1)(a) above by the October 1 enrollment of the district for the previous school fiscal year, as reported to the office of public instruction for purposes of accreditation pursuant to 20-7-102 and 20-9-344; and

(c) subtracting from the amount determined in subsection (1)(b) the per-ANB amount ~~allowed by the foundation program schedules~~ *of any general fund budget amount up to the district BASE budget level* and the per-ANB amount that is the ANB value per mill calculated pursuant to 20-9-366, multiplied by the number of ~~permissive and~~ retirement mills levied.

(2) The tuition for a full-time high school special education pupil must be determined under rules adopted by the superintendent of public instruction for

the calculation of tuition for full-time high school special education pupils as designated in 20-9-311 for funding purposes.

(3) Before July 15, the trustees shall report to the county superintendent of the county in which the district is located:

(a) the names, addresses, and resident districts of the pupils attending the schools of the district under an approved tuition agreement;

(b) the number of days of school attended by each pupil;

(c) the amount, if any, of each pupil's tuition payment that the trustees, in their discretion, have the authority to waive; and

(d) the rate of current school fiscal year tuition, as determined under the provisions of this section.

(4) When the county superintendent receives a tuition report from a district, ~~he~~ *the county superintendent* shall immediately send the reported information to the superintendent of each district in which the reported pupils reside.

(5) When the district superintendent receives a tuition report or reports for high school pupils residing in ~~his~~ *the* district and attending an out-of-district high school under approved tuition agreements, ~~he~~ *the district superintendent* shall determine the total amount of tuition due the out-of-district high schools on the basis of the following per-pupil schedule: the rate of tuition, number of pupils attending under an approved tuition agreement, and other information provided by each high school district where resident district pupils have attended school.

(6) The total amount of the high school tuition, with consideration of any tuition waivers, for pupils attending a high school outside the county of residence must be financed by the county basic special tax for high schools as provided in 20-9-334. In December, the county superintendent shall ~~cause the payment~~ *pay* by county warrant ~~of~~ at least one-half of the high school tuition obligations established under this section out of the first money realized from the county basic special tax for high schools. The remaining obligations must be paid by June 15 of the school fiscal year. The payments must be made to the county treasurer of the county where each high school entitled to tuition is located. Except as provided in subsection (8), the county treasurer shall credit tuition receipts to the general fund of the applicable high school district, and the tuition receipts must be used in accordance with the provisions of 20-9-141.

(7) For pupils attending a high school outside their district of residence but within the county of residence, the total amount of the tuition, with consideration of any tuition waivers, must be paid during the ensuing school fiscal year. The trustees of the sending high school district shall include the tuition amount in the tuition fund of the preliminary and final budgets. This budgeted tuition amount is not subject to the budget adjustment provisions of 20-9-132. The county superintendent shall report the net tuition fund levy requirement for each high school district to the county commissioners on the second Monday of August, and a levy on the district must be made by the county commissioners in accordance with 20-9-142. The levy requirement must be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget the sum of the fund balance in the tuition fund at the end of the

immediately preceding school fiscal year plus any other anticipated money that may be realized in the tuition fund. The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification. Payments must be made whenever there is a sufficient amount of cash available in the tuition fund but no later than the end of the school fiscal year for which the budget is adopted. However, if the trustees of either the sending or receiving high school district feel the transfer privilege provided by this subsection is being abused, they may appeal to the county superintendent of schools, who shall hold a hearing and either approve or disapprove the transfer.

(8) Any unanticipated tuition receipts received under the provisions of chapter 7, part 4, or this part for the current school fiscal year must be deposited in a separate account of the district miscellaneous programs fund and may be used for that year in the manner provided for in that fund. For the ensuing school fiscal year, the receipts must be credited to the district general fund budget."

Section 8. Section 20-6-506, MCA, is amended to read:

"20-6-506. **Budgeting and cost sharing when junior high school operated by elementary district and high school district operating a county high school.** (1) Whenever the opening of a junior high school is approved for the ensuing school fiscal year under 20-6-505, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years must be applied ~~under 20-9-320~~ to prorate the ~~foundation program schedule amount provided in 20-9-303(2)(a)~~ *BASE funding program amount* between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of the prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school must be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school."

Section 9. Section 20-6-603, MCA, is amended to read:

"20-6-603. **Trustees' authority to acquire or dispose of sites and buildings — when election required.** (1) The trustees of ~~any~~ *a* district may purchase, build, exchange, or otherwise acquire, sell, or dispose of sites and buildings of the district. Action may not be taken by the trustees without the approval of the qualified electors of the district at an election called for the purpose of approval unless:

(a) a bond issue has been authorized for the purpose of constructing, purchasing, or acquiring the site or building;

(b) an additional levy under the provisions of 20-9-353 has been approved for the purpose of constructing, purchasing, or acquiring the site or building;

(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the maximum general fund budget amount for the

district and, in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or

~~(c) the cost of constructing, purchasing, or acquiring the site or building is financed without exceeding the foundation program schedule amount provided in 20-9-303(2)(a), and in the case of a site purchase, the site has been approved under the provisions of 20-6-621; or~~

(d) money is otherwise available under the provisions of this title and the ballot for the site approval for the building incorporated a description of the building to be located on the site.

(2) When an election is conducted under the provisions of this section, it must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector qualified to vote under the provisions of 20-20-301 may vote in the election. If a majority of those electors voting at the election approve the proposed action, the trustees may take the proposed action."

Section 10. Section 20-6-702, MCA, is amended to read:

"**20-6-702. Funding for K-12 school districts.** (1) Notwithstanding the provisions of subsections (2) through (6), a K-12 school district formed under the provisions of 20-6-701 is subject to the provisions of law for high school districts.

(2) The number of elected trustees of the K-12 school district must be based on the classification of the attached elementary district under the provisions of 20-3-341 and 20-3-351.

(3) Calculations for the following must be made separately for the elementary school program and the high school program of a K-12 school district:

(a) the calculation of ANB for purposes of determining the ~~foundation program schedule payments~~ *total per-ANB entitlements* must be in accordance with the provisions of 20-9-311;

(b) the basic county tax and revenues for the elementary ~~foundation~~ *BASE funding* program amount for the district must be determined in accordance with the provisions of 20-9-331, and the basic special tax and revenues for the high school ~~foundation~~ *BASE funding* program amount for the district must be determined in accordance with 20-9-333; and

(c) the guaranteed tax base aid for ~~the permissive levy amount~~ *BASE funding program purposes* for a K-12 school district must be calculated separately, using ~~the mill value per elementary ANB and the mill value per high school ANB~~ *each district's guaranteed tax base ratio,* as defined in 20-9-366. The ~~permissive amount~~ *BASE budget levy* to be levied for the K-12 school district must be prorated based on the ratio of the ~~foundation~~ *BASE funding* program amounts for elementary school programs to the ~~foundation~~ *BASE funding* program amounts for high school programs.

(4) The retirement obligation and eligibility for retirement guaranteed tax base aid for a K-12 school district must be calculated and funded as a high school district retirement obligation under the provisions of 20-9-501.

(5) For the purposes of budgeting for a K-12 school district, the trustees shall adopt a single fund for any of the budgeted or nonbudgeted funds described in 20-9-201 for the costs of operating all grades and programs of the district.

(6) Tuition for attendance in the K-12 school district must be determined separately for high school pupils and for elementary pupils under the provisions of chapter 5, part 3, except that the actual expenditures used for calculations in 20-5-305 and 20-5-312 must be based on an amount prorated between the elementary and high school programs in the appropriate funds of each district in the year prior to the attachment of the districts."

Section 11. Section 20-9-104, MCA, is amended to read:

"**20-9-104.** ~~*(Temporary)*~~ **General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) ~~through (7)~~ *and (6)*, the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the ~~permissive levy provided by 20-9-145 or to reduce the voted~~ *BASE budget levy, the over-BASE budget levy, or the additional* levy provided by 20-9-353, *except that districts with a balance on June 30, 1993, in the excess reserve account for Public Law 81-874 funds shall transfer the June 30, 1993, balance to the impact aid fund established in [section 41].*

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b)(iii).

(5) For fiscal year 1994 and subsequent fiscal years, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than one or more of the following:

~~(a) any amount received under Public Law 81-874;~~

~~(b)~~*(a)* the unused balance of any amount received:

(i) in settlement of tax payments protested in a prior school fiscal year;

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

~~(c)~~*(b)* any amount received as a general bonus payment under 20-6-401.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.

~~(7) For fiscal year 1993, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the amounts identified by a school district as one or more of the following:~~

~~(a) any amount received under Public Law 81-874;~~

~~(b) the unused balance of any amount received:~~

~~(i) in settlement of tax payments protested in a prior school fiscal year;~~

~~(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and~~

~~(iii) in delinquent taxes from a prior school fiscal year; or~~

~~(c) any amount received as a general bonus payment under 20-6-401.~~

~~20-9-104. *(Effective on occurrence of contingency)* General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) through (7), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.~~

~~(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.~~

~~(3) Any unreserved fund balance that is equal to or less than the prior year's excess reserves as provided in subsection (5) may be used to reduce the permissive levy provided by 20-9-145 or to reduce the voted levy provided by 20-9-353.~~

~~(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b)(iii).~~

~~(5) For fiscal year 1994 and subsequent fiscal years, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than one or more of the following:~~

~~(a) any amount received under Public Law 81-874 in the current school fiscal year;~~

~~(b) the unused balance of any amount received:~~

~~(i) in settlement of tax payments protested in a prior school fiscal year;~~

~~(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and~~

~~(iii) in delinquent taxes from a prior school fiscal year; or~~

~~(c) any amount received as a general bonus payment under 20-6-401.~~

~~(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.~~

~~(7) A district that received Public Law 81-874 money in a prior year and that must reduce its operating reserve to 10% pursuant to this section in the next school fiscal year may consider a percentage of the unreserved fund balance to be an excess amount as provided in subsection (5). The percentage of unreserved fund balance that may be considered an excess amount is the average of the 3 previous years' ratio of total district general fund revenue to Public Law 81-874 money received.~~"

Section 12. Section 20-9-113, MCA, is amended to read:

"**20-9-113. Preparation and adoption of preliminary budget by trustees.** (1) The trustees of ~~each~~ *a* district shall meet at their regular place of meeting at any time from February 1 through the fourth Monday in June, at the discretion of the board, to adopt a preliminary budget for the next ensuing school fiscal year. This budget meeting may be continued from day to day but ~~shall~~ *may* not exceed 5 days in total. Any taxpayer in the district may attend ~~such~~ *the* meeting and be heard in regard to the preliminary budget or any item or amount proposed to be included in ~~such~~ *the* budget. The preliminary budget ~~shall~~ *must* include all funds ~~which~~ *that* require the adoption of a budget and ~~which~~ *that* the trustees wish to utilize during the ensuing year.

(2) The proposed expenditures adopted as the preliminary budget ~~shall~~ *must* be entered on the appropriate portion of the budget form. The amount of the preliminary general fund budget for a district ~~shall~~ *may* not exceed the ~~foundation program of such~~ *maximum general fund budget for the* district except in the manner permitted by the laws of Montana. If any appropriation item of the preliminary budget provides for the payment of wages or salaries to more than one person, the district shall attach to the preliminary budget a separate listing of each position of employment with the budgeted amount of compensation for each position.

(3) After the adoption of the preliminary budget by the trustees, the ~~chairman~~ *presiding officer* of the trustees and the clerk of the district shall sign the budget form, and it shall constitute the preliminary budget for the district. The trustees shall send both copies of the adopted preliminary budget, with all appendages and any other information required by law, to the county superintendent on or before the fifth day after the fourth Monday of June.

(4) At least 2 weeks before the first meeting day on adoption of a preliminary budget for the ensuing school fiscal year, as required by this section, the trustees of a district shall publish a notice of the meeting at least one time in a newspaper of general circulation in the district. The notice must state that any taxpayer in the district may attend the meeting and be heard on the preliminary budget."

Section 13. Section 20-9-141, MCA, is amended to read:

"**20-9-141. Computation of general fund net levy requirement by county superintendent.** (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the ~~amount established by the schedules in 20-9-316 through 20-9-321~~ *sum of direct state aid and the special education allowable cost payment for the district* by totaling:

(i) the district's nonisolated school ~~foundation program~~ *BASE budget* requirement to be met by a district levy as provided in 20-9-303; and

(ii) any ~~additional~~ general fund budget amount adopted by the trustees of the district under the provisions of ~~20-9-145~~ *[section 3]* and 20-9-353, including any additional ~~levies~~ *funding for a general fund budget that exceeds the maximum general fund budget* ~~authorized by the electors of the district~~.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling*:*

(i) general fund balance reappropriated, as established under the provisions of 20-9-104; and

(ii) amounts received in the last fiscal year for which revenue reporting was required for each~~:~~

~~(i) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;~~

~~(ii) anticipated~~ *of the following sources:*

(A) tuition payments for out-of-district pupils under the provisions of 20-5-303, 20-5-307, 20-5-312, and 20-5-313;

~~(iii) general fund balance reappropriated, as established under the provisions of 20-9-104;~~

~~(iv)~~*(B)* ~~anticipated or reappropriated~~ state impact aid received under the provisions of 20-9-304;

~~(v)~~*(C)* ~~anticipated or reappropriated~~ revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

~~(vi)~~*(D)* ~~anticipated~~ net proceeds taxes for new production, as defined in 15-23-601;

~~(vii)~~*(E)* ~~anticipated~~ revenue from local government severance taxes as provided in 15-36-112;

~~(viii)~~*(F)* ~~anticipated~~ revenue from coal gross proceeds under 15-23-703;

~~(ix)~~*(G)* ~~anticipated interest to be earned or reappropriated~~ interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

~~(x)~~*(H)* ~~anticipated~~ revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

~~(xi)~~*(I)* any other revenue ~~anticipated by the trustees to be~~ received during the ~~ensuing~~ school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any ~~additional~~ general fund budget amount adopted by the trustees of the district ~~as the permissive amount under the provisions of 20-9-145~~, *up to the BASE budget amount,* to determine the general fund ~~permissive net~~ *BASE budget* levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by *an over-BASE budget amount,* a district levy as provided in 20-9-303, and *any additional financing as provided in* 20-9-353 to determine ~~the~~ *any* additional general fund levy ~~requirement~~ *requirements.*

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund ~~permissive net~~ levy requirement *for any amount that does not exceed the BASE budget amount for the district* by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the second Monday of August by the county superintendent as the ~~general fund permissive net levy requirement and the additional~~ general fund *net* levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142."

Section 14. Section 20-9-143, MCA, is amended to read:

"**20-9-143. Allocation of federal funds in lieu of property taxation.** Federal funds received by a district under the provisions of Title I of Public Law 81-874 or funds designated in lieu of such federal act by the congress of the United States ~~may~~ *must* be ~~allocated to the various operating budgets of the district by the trustees~~ *deposited in the impact aid fund established in [section 41].*"

Section 15. Section 20-9-162, MCA, is amended to read:

"**20-9-162. Authorization for budget amendment adoption.** (1) *(a)* Notwithstanding the provisions of subsections (2) and (3), a budget amendment may be adopted at any time of the school fiscal year, except that a budget amendment required by an enrollment increase ~~that could not have been anticipated at the time of the adoption of the regular budget~~ as provided in 20-9-161(1) may not be adopted until after October 1.

~~(2)~~*(b)* ~~If a budget amendment for the reasons provided in 20-9-161(1) through (4) does not cause the district general fund budget to exceed the~~

~~limitations in 20-9-315, the~~ *The* trustees may approve ~~the~~ *a* budget amendment *pursuant to 20-9-161(2) through (6)* by a resolution ~~as provided in 20-9-163~~.

(c) Whenever the trustees of a district decide that a budget amendment is necessary, they may proclaim the need for the budget amendment by a majority vote of the trustees. The proclamation must state the facts constituting the need for the budget amendment, the funds affected by the budget amendment, the anticipated source of financing, the estimated amount of money required to finance the budget amendment, and the time and place the trustees will meet for the purpose of considering and adopting the budget amendment for the current school fiscal year.

(2) The trustees shall send a copy of the ~~resolution~~ *proclamation* to the county superintendent and to the board of county commissioners of the county.

(3) The trustees shall submit ~~the following~~ *a budget amendment for an enrollment increase* to the superintendent of public instruction for approval in the manner provided in 20-9-163~~:~~

~~(a) a budget amendment for the reasons provided in 20-9-161(5) and (6); and~~

~~(b) a budget amendment for any reason provided in 20-9-161(1) through (4) that causes the district general fund budget to exceed the limitations in 20-9-315~~."

Section 16. Section 20-9-163, MCA, is amended to read:

"**20-9-163. Resolution for budget amendment — petition to superintendent of public instruction.** (1) ~~Notwithstanding the provisions of subsection (3), whenever~~ *Whenever* the trustees of a district decide that a budget amendment is necessary *because of an enrollment increase*, they may *petition the superintendent of public instruction to* adopt a resolution ~~proclaiming~~ *for* the budget amendment. *The petition must be signed* by a majority ~~vote~~ of the trustees.

(2) The ~~budget amendment resolution must also~~ *petition must* state the facts constituting the need for the budget amendment, the estimated amount of money required to fund the budget amendment, the funds affected by the budget amendment, ~~and the time and place the board will meet for the purpose of considering and adopting a budget amendment for funds for the current school fiscal year~~ *the anticipated source of financing for the budget amendment, and the current year enrollment.*

~~(2) If the trustees of a school district determine that the proposed budget amendment will cause the district general fund to exceed the limitations of 20-9-315 or is for the reasons provided in 20-9-161(5) and (6), the trustees shall petition the superintendent of public instruction for permission to adopt a resolution for a budget amendment. The petition must set forth in writing the reasons for the request, the district funds affected by the budget amendment, the estimated amount of money required for the budget amendment for each affected fund, the anticipated sources of financing for the budget amendment expenditures, and any other information required by the superintendent of public instruction. The petition must be signed by a majority of the trustees.~~

(3) The superintendent of public instruction shall promptly approve or disapprove the petition requesting approval to adopt a resolution for a budget amendment *because of increased enrollment. If the petition is for a budget amendment for an enrollment increase as provided in 20-9-161(1), the superintendent of public instruction shall adjust the district's maximum general fund budget based on the approved enrollment increase. Upon approval, a district may not adopt a budget amendment if the amount will cause the district to exceed the district's adjusted maximum general fund budget.* If the petition is approved, the trustees may adopt a resolution for a budget amendment and take all other steps required for the adoption of a budget amendment. Approval of a petition by the superintendent of public instruction authorizes the board of trustees to initiate a budget amendment by resolution and does not relieve the trustees of the necessity of complying with the requirements of the school budgeting laws. Approval of the petition may not be construed as approval of any subsequent application for increased state aid on account of the budget amendment."

Section 17. Section 20-9-201, MCA, is amended to read:

"**20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are classified as follows:

(a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund, debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated by the legislature are budgeted funds.

(b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, *impact aid fund,* enterprise fund, agency fund, extracurricular fund, metal mines tax reserve fund, endowment fund, and any other funds designated by the legislature are nonbudgeted funds.

(2) The school financial administration provisions of this title apply to all money of any elementary or high school district. Elementary and high school districts shall record the receipt and disbursement of all money in accordance with generally accepted accounting principles. The superintendent of public instruction has general supervisory authority as prescribed by law over the school financial administration provisions, as they relate to elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to secure compliance with the law.

(3) Except as otherwise provided by law, whenever the trustees of a district determine that a fund is inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account balances to the general fund if the fund does not have a cash or fund balance deficit."

Section 18. Section 20-9-303, MCA, is amended to read:

"**20-9-303. ~~Definition of foundation program — nonisolated school foundation program financing~~ *Nonisolated school BASE budget funding* — special education funds.** (1) ~~As used in this title, the term "foundation program" means the minimum expenditures that are sufficient to provide for the educational program of a school. The foundation program relates only to those expenditures authorized by a district's general fund budget and may not include expenditures from any other fund. It is financed by:~~

~~(a) county equalization money, as provided in 20-9-331 and 20-9-333;~~

~~(b) state equalization aid, as provided in 20-9-343;~~

~~(c) appropriations for special education; and~~

~~(d) a district levy as provided in subsection (3) for support of a school not approved as an isolated school under the provisions of 20-9-302.~~

~~(2) The foundation program includes:~~

~~(a) amounts in support of general education programs as provided in the schedules in 20-9-316 through 20-9-320; and~~

~~(b) payments in support of special education programs under 20-9-321.~~

~~(3)~~ An elementary school ~~having~~ *that has* an ANB of nine or fewer pupils for 2 consecutive years ~~which~~ *and that* is not approved as an isolated school under the provisions of 20-9-302 may budget and spend the ~~schedule~~ *BASE budget* amount, but the county and state shall ~~participate in financing~~ *provide* one-half of the ~~foundation program~~ *direct state aid*, and the district shall finance the remaining one-half *of the direct state aid* by a tax levied on the property of the district. When a school of nine or fewer pupils is approved as isolated under the provisions of 20-9-302, the county and state shall participate in the financing of the total amount of the ~~foundation program~~ *direct state aid*.

~~(4)~~*(2)* Funds provided to support the special education ~~accounting budget~~ *program* may be expended only for special education purposes as approved by the superintendent of public instruction in accordance with the special education budgeting provisions of this title. Expenditures for special education must be accounted for separately from *and in addition to* the balance of the school district general fund *budgeting requirements provided in [sections 2 and 3]*. ~~Transfers between items within the special education budget for accounting purposes may be made at the discretion of the board of trustees in accordance with the financial administration part of this title.~~ The ~~unexpended balance~~ *amount* of the special education ~~accounting budget carries over to the next year to~~ *allowable cost payments that is not matched with district funds, as required in 20-9-321, will* reduce ~~the amount of funding required to finance~~ *by a like amount* the district's ensuing year's ~~foundation program~~ *allowable cost* ~~amount~~ *payment* for special education."

Section 19. Section 20-9-305, MCA, is amended to read:

"**20-9-305. Proration and calculation of ~~foundation~~ *BASE funding* program for a joint district.** (1) In joint districts, the ~~foundation program shall~~ *direct state aid of a joint district must* be prorated among the counties in which any part of the joint district is located for the purpose of determining the amount of each source of revenue for the ~~foundation program~~ *direct state aid* for which each county is obligated. The proration of the joint district ~~foundation program shall~~ *direct state aid must* be calculated as follows:

(a) Divide the joint district ~~foundation program~~ *direct state aid* by the ANB of the joint district to determine the per-ANB amount of the ~~foundation program~~ *direct state aid.*

(b) Determine the ANB for each county's portion of the joint district on the basis of each pupil's resident county. When taken together, the sum of the ANB assigned to all the counties ~~shall~~ *must* equal the total ANB for the joint district.

(c) Multiply the per-ANB amount of the ~~foundation program~~ *direct state aid* determined in subsection (1)(a) by the ANB for each county's portion, as determined in subsection (1)(b), to determine the portion of the ~~foundation program~~ *direct state aid* for each county.

(2) The portion of a joint district ~~foundation program~~ *direct state aid* for each county, as determined in subsection (1)(c) ~~of this section~~, ~~shall be considered as~~ *is* a separate ~~foundation program~~ *direct state aid amount* in ~~such~~ *the* county for the purposes of calculating the various revenues for the ~~foundation~~ *BASE funding* program. After the calculation of the ~~foundation program~~ *direct state aid* revenues, the remainder of the general fund revenues ~~shall~~ *must* be calculated in accordance with the provisions for general fund financing."

Section 20. Section 20-9-311, MCA, is amended to read:

"**20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging *(ANB)* must be computed ~~by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180. However, when~~ *as follows:*

(a) count the regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year; and

(b) multiply the enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school year and divide by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-804, the total *ANB* must be calculated in accordance with the provisions of 20-9-805. ~~For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days.~~

(4) ~~Attendance~~ *Enrollment* for a part of a morning session or a part of an afternoon session by a pupil must be counted as ~~attendance~~ *enrollment* for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), ~~attendance~~ *enrollment* at ~~or absence from~~ a regular session of the program for at least 2 hours of either a morning or an afternoon session ~~will~~ *must* be counted as one-half ~~day attended or absent as the case may be~~ *pupil for ANB purposes*. If a variance has been granted as provided in 20-1-302, ANB ~~will~~ *must* be computed in a manner prescribed by the superintendent of public instruction, but ~~in no case may~~ the ANB *for a kindergarten student may not* exceed one-half for each kindergarten pupil.

(6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, ~~including pupil instruction related days,~~ ~~his~~ *the* ~~absence after the 10th day of absence~~ *pupil* may not be included in the ~~aggregate days of absence and his enrollment in the school may not be considered in the~~ *count* calculation of the ~~average number belonging~~ *ANB* ~~until he resumes attendance at school~~ *unless the pupil resumes attendance prior to the day of the enrollment count.*

(7) The enrollment of prekindergarten pupils, as provided for in 20-7-117, may not be included in the ANB calculations.

~~(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he is considered a full-time special pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he is considered regularly enrolled for ANB purposes.~~

(8) If a student spends less than half the time in the regular program and the balance of the time in school in the special education program, the student is considered a full-time special education pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of the time in school in the regular program and the balance of the time in the special education program, the student is considered regularly enrolled for ANB purposes.

~~(3)~~*(9)* The ~~average number belonging~~ *ANB* of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) ~~(i) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town located in the district and 3 miles from any other school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes; or~~

~~(ii) a school of the district is located more than 3 miles from any other school of the district and no incorporated territory is involved in the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes;~~

(i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes, and the district

must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes, and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes, and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the ~~foundation~~ *BASE funding* program for the district.

~~(4)~~*(10)* When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

(11) For average daily attendance reporting purposes, districts shall provide the superintendent of public instruction with annual reports of school attendance for regularly enrolled students and special education students, using a format determined by the superintendent of public instruction."

Section 21. Section 20-9-314, MCA, is amended to read:

"20-9-314. Procedures for determining eligibility and amount of increased average number belonging due to unusual enrollment increase. A district that anticipates an unusual increase in enrollment in the ensuing school fiscal year, as provided for in 20-9-313(4), may increase its ~~foundation program~~ *basic entitlement and total per-ANB entitlement* for the ensuing school fiscal year in accordance with the following provisions:

(1) Prior to May 10, the district shall estimate the elementary or high school enrollment to be realized during the ensuing school fiscal year, based on as much factual information as may be available to the district.

(2) No later than May 10, the district shall submit its application for an unusual enrollment increase by elementary or high school level to the superintendent of public instruction. The application must include:

(a) the enrollment for the ~~preceding~~ *current* school fiscal year;

(b) the average number belonging used to calculate the ~~foundation program schedule amount~~ *basic entitlement and total per-ANB entitlement* for the current school fiscal year;

(c) the average number belonging that will be used to calculate the ~~foundation program schedule amount~~ *basic entitlement and total per-ANB entitlement* for the ensuing school fiscal year;

(d) the estimated enrollment, including the factual information on which the estimate is based, as provided in subsection (1); and

(e) any other information or data that may be requested by the superintendent of public instruction.

(3) The superintendent of public instruction shall immediately review all the factors of the application and shall approve or disapprove the application or adjust the estimated average number belonging for the ensuing ANB calculation period. After approving an estimate, with or without adjustment, the superintendent of public instruction shall:

(a) determine the percentage increase that the estimated enrollment increase is over the current enrollment; and

(b) approve an increase of the average number belonging used to establish the ensuing year's ~~foundation program~~ *basic entitlement and total per-ANB entitlement* in accordance with subsection (5) if the increase in subsection (3)(a) is at least 6%.

(4) The superintendent of public instruction shall notify the district of the decision by the fourth Monday in June.

(5) Whenever an unusual enrollment increase is approved by the superintendent of public instruction, the increase of the average number belonging used to establish the ~~foundation program~~ *basic entitlement and total per-ANB entitlement* for the ensuing ANB calculation period is the difference between the enrollment for the ensuing school fiscal year and 106% of the current enrollment. The amount determined is the maximum allowable increase added to the average number belonging for the purpose of establishing the ensuing year's ~~foundation program~~ *basic entitlement and total per-ANB entitlement.*

(6) Any ~~equalization or~~ entitlement increases resulting from provisions of this section must be reviewed at the end of the ensuing school fiscal year. If the actual enrollment is less than the average number belonging used for ~~foundation~~ *BASE funding* program and entitlement calculations, the superintendent of public instruction shall revise the ~~foundation program and~~ *total per-ANB* entitlement calculations using the actual average number belonging. All ~~pay-~~

~~ments~~ *total per-ANB entitlements* received by the district in excess of the revised entitlements are overpayments subject to the refund provisions of 20-9-344(3)."

Section 22. Section 20-9-321, MCA, is amended to read:

"**20-9-321. ~~Foundation program~~ *Allowable cost payment* and contingency funds for special education.** (1) For the purpose of establishing the ~~foundation program~~ *allowable cost* ~~amount~~ *payment* for a current year special education program for a school district, the superintendent of public instruction shall determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program:

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of ~~20-9-315 through 20-9-321~~ *this section.*

(2) The total amount of allowable costs approved by the superintendent of public instruction is the special education ~~foundation program~~ *allowable cost* ~~amount~~ *payment* for current year special education program purposes. ~~The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district.~~

~~(3) Any amount of the special education allowable costs for a district approved under the provisions of subsection (2) that is an increase in the approved allowable costs from the previous school fiscal year and is a result of expanded programs or recalculations of the special education allowable costs base may be deposited and managed in the separate account of the miscellaneous programs fund of the district that is prescribed in subsection (4).~~

~~(4)~~*(3)* If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district ~~foundation program~~ *general fund budget* for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507. ~~However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the budget amendment provisions of 20-9-161(6), allowable costs for the given year may be funded in the miscellaneous programs fund by other revenue sources and added to the foundation program amount for special education for the subsequent school year under the provisions of 20-9-147. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.~~

~~(5)~~*(4)* (a) The special education contingency funds in subsection ~~(4)~~ *(3)*:

(i) are biennially appropriated;

(ii) are for emergencies that may arise in the special education programs of school districts or special education cooperatives; and

(iii) may be used to fund positions that have gone unfilled for a full school fiscal year and for which state special education funds were not awarded.

(b) The board of trustees of a district or the management board of a special education cooperative may apply for contingency funding by submitting to the superintendent of public instruction, in the form prescribed by the superintendent of public instruction, written documentation that describes the need for the funds.

~~(6) The sum of the previous year special education expenses as defined in subsections (3) and (4) and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.~~

~~(7) The foundation program amount for special education must be added to the foundation program amount of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total foundation program amount for the district.~~"

Section 23. Section 20-9-321, MCA, is amended to read:

"**20-9-321. ~~Foundation program and contingency funds~~ *Allowable cost payment* for special education.** (1) For the purpose of establishing the ~~foundation program amount~~ *allowable cost payment* for a current year special education program for a school district, the superintendent of public instruction shall determine the total ~~estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget must be prepared on forms provided by the superintendent of public instruction and must set out for each program~~ *special education payment to a school district, cooperative, or joint board for special education services formed under 20-3-361 prior to July 1, 1992, using the following factors*:

(a) the ~~estimated allowable costs associated with operating the program where allowable costs are as defined in 20-7-431~~ *district ANB student count as established pursuant to 20-9-311 and 20-9-313*;

(b) ~~the number of pupils expected to be enrolled in the program~~ *a per-ANB amount for the special education instructional block grant*; ~~and~~

(c) a per-ANB amount for the special education related services block grant;

(d) weighted cost factors for cooperatives or joint boards meeting the requirements of 20-7-457, to compensate for the additional costs of operations and maintenance, travel, supportive services, recruitment, and administration;

(e) district and cooperative expenditure reports; and

~~(e)~~*(f)* any other data required by the superintendent of public instruction ~~for budget justification purposes and~~ to administer the provisions of ~~20-9-315 through 20-9-321~~ *this section.*

(2) ~~The total amount of allowable costs approved by the superintendent of public instruction is the special education foundation program amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget may not, under any condition, be less than the foundation program amount for one regular ANB for each full-time special pupil in the school district.~~ *Special education allowable cost payments must be granted to each school district and cooperative with a special education program as follows:*

(a) An instructional block grant must be awarded to each school district, based on the district ANB and the per-ANB special education instructional amount.

(b) A special education related services block grant must be awarded to each school district that is not a cooperative member, based on the district ANB and the per-ANB special education related services amount. The special education related services block grant amount for districts that are members of approved cooperatives or a joint board must be awarded to the cooperatives or joint board. If a cooperative or joint board meets the requirements of 20-7-457, the special education related services block grant must be weighted for the factors in subsection (1)(d).

(3) The superintendent of public instruction shall annually determine the per-ANB special education instructional and special education related services block grant amounts based on the prior years' trustees' expenditure data for special education instruction and related services.

(4) The superintendent of public instruction shall adopt rules necessary to implement this section.

(5) A district shall provide a 25% local contribution for special education, matching every $3 of state special education instructional and special education related services block grants with at least one local dollar. A district that is a cooperative member is required to provide the 25% match of the special education related services grant amount to the special education cooperative, but the district is not required to match the weighted funding factors.

(6) The superintendent of public instruction shall determine the actual district match based on the trustees' reports. Any unmatched portion reverts to the state and must be subtracted from the district's ensuing year's special education allowable cost payment.

(7) If a district's allowable costs of special education, as verified by the trustees' reports, exceed by at least 10% the total of the special education instructional and special education related services block grant plus the required district match, the district is eligible for a 65% reimbursement of the costs that exceed the additional 10%. A district that demonstrates severe economic hardship because of exceptional special education costs may apply to the superintendent of public instruction for an advance on the reimbursement for the year in which the actual costs will be incurred.

~~(3) Any amount of the special education allowable costs for a district approved under the provisions of subsection (2) that is an increase in the approved allowable costs from the previous school fiscal year and is a result of~~

~~expanded programs or recalculations of the special education allowable costs base may be deposited and managed in the separate account of the miscellaneous programs fund of the district that is prescribed in subsection (4).~~

~~(4) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district foundation program for the school year as prescribed in this part, allowable costs approved under the budgeting provisions of subsections (1) and (2) for the operation of the program during the given year must be funded from any legislative appropriation for contingency financing for special education. Contingency funds granted under this subsection must be deposited in a separate account of the miscellaneous programs fund of the district as provided in 20-9-507. However, if contingency funds are not available, then subject to the approval of the program by the superintendent under the budget amendment provisions of 20-9-161(6), allowable costs for the given year may be funded in the miscellaneous programs fund by other revenue sources and added to the foundation program amount for special education for the subsequent school year under the provisions of 20-9-147. The allowable costs must be recorded as previous year special education expenses in the school district budget for the subsequent school year.~~

~~(5) (a) The special education contingency funds in subsection (4):~~

~~(i) are biennially appropriated;~~

~~(ii) are for emergencies that may arise in the special education programs of school districts or special education cooperatives; and~~

~~(iii) may be used to fund positions that have gone unfilled for a full school fiscal year and for which state special education funds were not awarded.~~

~~(b) The board of trustees of a district or the management board of a special education cooperative may apply for contingency funding by submitting to the superintendent of public instruction, in the form prescribed by the superintendent of public instruction, written documentation that describes the need for the funds.~~

~~(6) The sum of the previous year special education expenses as defined in subsections (3) and (4) and the foundation program amount for current year special education as defined in subsections (1) and (2) is the special education budget for accounting purposes.~~

~~(7) The foundation program amount for special education must be added to the foundation program amount of the regular program ANB defined in 20-9-311 and 20-9-313 to obtain the total foundation program amount for the district.~~"

Section 24. Section 20-9-343, MCA, is amended to read:

"**20-9-343.** *(Temporary)* **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the money deposited in the state special revenue fund as required in this section plus any legislative appropriation of money from other sources for:

(a) distribution to the public schools for the payment of guaranteed tax base aid and for equalization of the foundation program;

(b) the Montana educational telecommunications network as provided in 20-32-101; and

(c) filing fees for school district audits as required by 2-7-514(2).

(2) The superintendent of public instruction may spend funds appropriated for state equalization aid, as required by subsections (1)(a) and (1)(b), throughout the biennium.

(3) The following must be paid into the state special revenue fund for state equalization aid to public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium. *(Terminates June 30, 1993—sec. 5, Ch. 729, L. 1991.)*

20-9-343. *(Effective July 1, 1993)* **Definition of and revenue for state equalization aid.** (1) As used in this title, the term "state equalization aid" means the ~~money deposited~~ *account* in the state special revenue fund *that receives revenue* as required in this section plus any legislative appropriation of money from other sources for distribution to the public schools for the purposes of payment of ~~guaranteed tax base aid and equalization of the foundation program~~ *systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to* *administer the BASE funding program, guaranteed tax base aid, BASE aid, state reimbursement for school facilities, and matching funds for the systemic initiative for Montana mathematics and science grant* and for the Montana educational telecommunications network as provided in 20-32-101.

(2) The superintendent of public instruction may spend funds appropriated ~~for~~ *from the* state equalization aid *account* as required for the purposes of ~~guaranteed tax base aid, the foundation~~ *systems development and other related costs resulting from the enactment of legislation that requires changes to the automated system used to administer the BASE funding program, guaranteed tax base aid, BASE aid for the BASE funding* program, *state reimbursement for school facilities,* and the Montana educational telecommunications network, throughout the biennium, *and for the biennium beginning July 1, 1993, equipment purchases that qualify as the state match for the systemic initiative for Montana mathematics and science grant.*

(3) The following must be paid into the ~~state special revenue fund for~~ state equalization aid ~~to~~ *account for the* public schools of the state:

(a) money received from the collection of income taxes under chapter 30 of Title 15, as provided by 15-1-501;

(b) except as provided in 15-31-702, money received from the collection of corporation license and income taxes under chapter 31 of Title 15, as provided by 15-1-501;

(c) money allocated to state equalization from the collection of the severance tax on coal;

(d) money received from the treasurer of the United States as the state's shares of oil, gas, and other mineral royalties under the federal Mineral Lands Leasing Act, as amended;

(e) interest and income money described in 20-9-341 and 20-9-342;

(f) money received from the state equalization aid levy under 20-9-360;

(g) income from the lottery, as provided in 23-7-402;

(h) the surplus revenues collected by the counties for foundation program support according to 20-9-331 and 20-9-333;

(i) investment income earned by investing money in the state equalization aid account in the state special revenue fund; and

(j) 15% of the income and earnings of all coal severance tax funds as provided in 17-5-704.

(4) The superintendent of public instruction shall request the board of investments to invest the money in the state equalization aid account to maximize investment earnings to the account.

(5) Any surplus revenue in the state equalization aid account ~~in the second year of a biennium may be used to reduce any appropriation required for the next succeeding biennium~~ *at the end of a fiscal year must be transferred to the general fund."*

Section 25. Section 20-9-344, MCA, is amended to read:

"20-9-344. ~~Purpose of state equalization aid and duties~~ *Duties* of board of public education for distribution *of BASE aid.* (1) ~~The money available for state equalization aid must be distributed and apportioned to provide:~~

~~(a) an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings and grounds, and transportation; and~~

~~(b) the Montana educational telecommunications network as provided in 20-32-101.~~

~~(2)~~ The board of public education shall administer and distribute the ~~state equalization~~ *BASE* aid and state advances for county equalization in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of ~~state equalization~~ *BASE* aid and state advances for county equalization in accordance with the provisions of law;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) order the superintendent of public instruction to distribute the ~~state equalization~~ *BASE* aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of ~~state equalization~~ *BASE* aid, the board of public education may not increase or decrease the ~~state equalization~~ *BASE* aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

~~(3)~~*(2)* The board of public education may order the superintendent of public instruction to withhold distribution of ~~state equalization~~ *BASE* aid ~~or order the county superintendent of schools to withhold county equalization money~~ from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

~~(4)~~*(3)* Prior to any proposed order by the board of public education to withhold distribution of ~~state equalization~~ *BASE* aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

~~(5)~~*(4)* If a district or county receives more ~~state equalization~~ *BASE* aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

~~(6)~~*(5)* Except as provided in 20-9-347(3), the ~~foundation program payment and guaranteed tax base~~ *BASE* aid payment must be distributed according to the following schedule:

(a) from August to ~~May~~ *October* of the school fiscal year, ~~8%~~ *10%* of the ~~foundation program payment~~ *direct state aid* to each district;

(b) from December to April of the school fiscal year, 10% of the direct state aid to each district;

~~(b)~~*(c)* in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county *that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134*;

~~(c)~~*(d)* in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

~~(d)~~*(e)* in June of~~:~~

~~(i) the 1993 school fiscal year, one-half of the remaining foundation program payment of each district and on July 15, 1993, the remaining school fiscal year 1993 foundation program payment of each district; and~~

~~(ii)~~ the school fiscal year, *one-half of* the remaining ~~foundation program~~ payment to each district *of direct state aid and on the following July 15, the remaining payment to each district of direct state aid for the school fiscal year ending on the preceding June 30.*

~~(7)~~*(6)* The distribution ~~of foundation program payments and guaranteed tax base aid~~ provided for in subsection ~~(6)~~*(5)* must occur by the last working day of each month."

Section 26. Section 20-9-346, MCA, is amended to read:

"**20-9-346. Duties of the superintendent of public instruction for state *and county* equalization aid distribution.** The superintendent of public instruction shall administer the distribution of the state *and county* equalization aid by:

(1) establishing the annual entitlement of each district and county to state *and county* equalization aid, based on the data reported in the retirement and general fund budgets for each district that have been duly adopted for the current school fiscal year and verified by the superintendent of public instruction ~~and by applying the verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347~~;

(2) for the purposes of state reimbursements for school facilities, limiting the distribution from the state equalization aid account to no more than $1 million for the school fiscal year ending June 30, 1994, and to no more than $2 million for the biennium ending June 30, 1995, to the districts that are eligible under the provisions of 20-9-366 through 20-9-369 and [sections 38 and 39] by:

(a) determining by May 1 of each school fiscal year the number of mills levied in each district for debt service on bonds that were issued as provided in [section

38(2)(b)(i) or (2)(b)(ii)] and that qualify for guaranteed tax base aid under the provisions of 20-9-366 through 20-9-369 and [section 38];

(b) based on the limitation of state equalization aid available for debt service purposes in this subsection (2), determining the percentage of state equalization aid that each eligible district must receive for the school fiscal year;

(c) distributing that amount to each eligible district for reducing the property tax for the debt service fund for the ensuing school fiscal year; and

(d) at the end of the school fiscal year ending June 30, 1994, determining whether there is an unused portion of the amount of state equalization aid appropriated in this subsection (2) to be carried into the next school fiscal year for the purposes of this subsection (2).

~~(2)~~*(3)* distributing by ~~state warrant or~~ electronic transfer the ~~state equalization~~ *BASE* aid and state advances for county equalization, for each district or county entitled to the aid, to the county treasurer of the respective county or county where the district is located, in accordance with the distribution ordered by the board of public education;

~~(3)~~*(4)* keeping a record of the full and complete data concerning money available for state equalization aid, state advances for county equalization, and the entitlements for ~~state equalization~~ *BASE* aid of the districts of the state;

~~(4)~~*(5)* reporting to the board of public education the estimated amount that will be available for state equalization aid; and

~~(5)~~*(6)* reporting to the legislature as provided in 5-11-210:

(a) the figures and data available concerning distributions of state *and county* equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed;

(d) the latest estimate of accruals of money available for state equalization aid; and

(e) the amount of state advances and repayment for county equalization."

Section 27. Section 20-9-347, MCA, is amended to read:

"20-9-347. ~~Formula for~~ *Distribution of* ~~state equalization~~ *BASE* aid ~~apportionment~~ *and special education allowable cost payments* in support of ~~foundation~~ *BASE funding* program — exceptions. ~~(1) The superintendent of public instruction shall apportion the state equalization aid available for support of the foundation program, individually for the elementary districts of a county or the high school districts of a county, in accordance with 20-9-346 and on the basis of the following procedure:~~

~~(a) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all counties.~~

~~(b) Determine the percentage that the total funds available in each county in support of the foundation programs in the county (excluding state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all districts of the county.~~

~~(c) Counties in which the percentage determined in subsection (1)(b) exceeds the percentage determined in subsection (1)(a) are not entitled to an apportionment of the state equalization aid in support of the foundation program.~~

~~(d) After elimination of the counties referred to in subsection (1)(c), determine the percentage that the total money available to all remaining counties in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all remaining counties.~~

~~(e) Each district of each remaining county is entitled to an apportionment of the state equalization aid in support of the foundation program equal to the difference between the percentage determined in subsection (1)(d) and the percentage determined for the county in subsection (1)(b) multiplied by the foundation program amount for the district.~~

~~(2)~~*(1)* The superintendent of public instruction shall:

(a) supply the county treasurer and the county superintendent with a *monthly* report of the ~~apportionments~~ *payment* of ~~state equalization~~ *BASE* aid in support of the ~~foundation~~ *BASE funding* program of each district of the county~~, and the state equalization aid in support of the foundation program must be apportioned to the districts in accordance with the report~~;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be raised for the basic county tax fund as provided in 20-9-331 and for the basic special tax fund as provided in 20-9-333;

(c) adopt rules to implement the provisions of subsection ~~(2)(b)~~ *(1)(b)*.

~~(3)~~*(2)* (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the ~~foundation program and guaranteed tax base~~ *BASE* aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212~~(9)~~*(8)*.

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. ~~Nothing in this~~ *This* section may *not* be construed to authorize the superintendent of public instruction to exceed a district's annual payment for ~~state~~ *BASE aid* ~~and county equalization aid~~.

(3) The superintendent of public instruction shall:

(a) distribute special education allowable cost payments to districts; and

(b) supply the county treasurer and the county superintendent of public instruction with a report of payments for special education allowable costs to districts of the county."

Section 28. Section 20-9-351, MCA, is amended to read:

"**20-9-351. Funding of deficiency in ~~state equalization~~ *BASE* aid.** If the money available for ~~state equalization~~ *BASE* aid is not the result of a reduction in spending under 17-7-140 and is not sufficient to provide the ~~foundation program schedule support determined in 20-9-348 and the~~ guaranteed tax base aid required under 20-9-366 through 20-9-369 *and BASE aid support determined under 20-9-347*, the superintendent of public instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of ~~guaranteed tax base aid and the foundation programs of the elementary or secondary schools, or both,~~ *BASE aid for the elementary and high school districts* for the current biennium."

Section 29. Section 20-9-353, MCA, is amended to read:

"**20-9-353. Additional ~~levy~~ *financing* for general fund — election for authorization to impose.** (1) Except as limited by ~~20-9-315(2)~~ *[section 3]*, the trustees of a district may propose to adopt a general fund budget in excess of the ~~foundation program and the permissive~~ *maximum general fund budget* amount for the district ~~for any of the following purposes:~~

~~(a) building, altering, repairing, or enlarging any schoolhouse of the district;~~

~~(b) furnishing additional school facilities for the district;~~

~~(c) acquisition of land for the district;~~

~~(d) proper maintenance and operation of the school programs of the district; or~~

~~(e) severance pay for district employees.~~

(2) ~~When~~ *Except as provided in [section 3(4)(b)], when* the trustees of a district determine that an additional amount of financing is required for the general fund budget that is in excess of the ~~statutory schedule amount and the permissive~~ *maximum general fund budget* amount, the trustees shall submit the proposition ~~of an additional levy to raise~~ *to finance* the excess amount of general fund financing to the electors who are qualified under 20-20-301 to vote upon the proposition~~, except that an election is not required to permit the school trustees to use any funds available to finance the additional amount other than those funds to be raised by the additional levy~~. The special election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state ~~only~~ the amount of money to be ~~raised by additional property taxation~~ *financed*, the approximate number of mills required to raise *all or a portion of* the money, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall ~~a levy be made in addition to the levies authorized by law in the number of mills as may be necessary~~ *the district be authorized* to ~~raise~~ *expend* the sum of (state the amount to be ~~raised~~ *expended* ~~by additional tax levy~~), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional ~~tax levy~~ *financing* is made)?

☐ FOR ~~the~~ *budget authority and any* levy.

☐ AGAINST ~~the~~ *budget authority and any* levy.

(3) If the election on any additional ~~levy~~ *financing* for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the preliminary general fund budget. The trustees shall certify ~~the~~ *any* additional levy amount authorized by the special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141, to raise the amount of the additional levy.

(4) Authorization to levy an additional tax under the provisions of this section is effective for only 1 school fiscal year and must be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective.

(5) If the trustees of a district are required to submit a proposition to finance a base budget amount, as provided in [section 3(2)(b)], or an over-BASE budget amount, as provided in [section 3(3)(b)], to the electors of the district, the trustees shall comply with the provisions of subsections (2) through (4)."

Section 30. Section 20-9-366, MCA, is amended to read:

"**20-9-366. Definitions.** As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year ~~foundation program~~ *total per-ANB entitlement* amounts.

(2) *(a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district's current year direct state aid and 40% of the special education allowable cost payment.*

(b) "District mill value per ANB", *for school facility entitlement purposes,* means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year ~~foundation program~~ *total per-ANB entitlement* amount.

(3) ~~"Permissive amount" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 35% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.~~

~~(4)~~*(a)* "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for ~~permissive and~~ *school facility entitlement and* retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year ~~foundation program~~ *total per-ANB entitlement* amounts.

(b) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total sum of either the state elementary school districts' or the high school districts' current year total direct state aid and 40% of special education allowable cost amounts."

Section 31. Section 20-9-367, MCA, is amended to read:

"**20-9-367. Eligibility to receive guaranteed tax base aid.** (1) If the district ~~mill value per ANB~~ *guaranteed tax base ratio* of any elementary or high school district is less than the corresponding statewide ~~district mill value per elementary ANB or high school ANB~~ *elementary or high school guaranteed tax base ratio*, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of ~~its permissive amount of the~~ *up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the* general fund budget.

(2) If the county retirement mill value per elementary ANB or *the* county retirement mill value per high school ANB is less than the corresponding statewide ~~county~~ mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of [sections 38 and 39], if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive guaranteed tax base aid based on the number of mills levied in support of the debt service fund."

Section 32. Section 20-9-368, MCA, is amended to read:

"**20-9-368. Amount of guaranteed tax base aid — reversion.** (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide ~~county~~ mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide ~~county~~ mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid ~~per ANB~~ that a district may receive in support of ~~its permissive amount of the~~ *up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted within the* general fund budget, *and up to 40% of the special education payment* is ~~the difference between the district mill value per ANB and the corresponding statewide district mill value per ANB, multiplied by the number of mills levied in support of the district's permissive amount of the general fund budget~~ *calculated in the following manner:*

(a) multiply the sum of the district's direct state aid and 40% of the special education allowable cost payment by the corresponding statewide guaranteed tax base ratio;

(b) subtract the taxable valuation of the district from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. ~~If the actual expenditures from the fund or portion of the fund for which guaranteed tax base aid is earmarked are less than the amount budgeted, the guaranteed tax base aid reverts in proportion to the amount budgeted but not expended.~~ If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 33. Section 20-9-311, MCA, is amended to read:

"**20-9-311. Calculation of average number belonging (ANB).** (1) Average number belonging *(ANB)* must be computed ~~by determining the total of the aggregate days of attendance by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year plus the aggregate days of absence by regularly enrolled, full-time pupils during the second semester of the preceding school fiscal year and the first semester of the current school fiscal year and by dividing the total by 180~~ *as follows:*

(a) compute an average enrollment by adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in October of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the nearest school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in subsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divided by 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) ~~However, when~~ *When* a school district has approval to operate less than 180 school days under 20-9-804, the total *ANB* must be calculated in accordance with the provisions of 20-9-805. ~~For the purpose of calculating ANB under this section, the days of attendance for a regularly enrolled pupil may not exceed 180 pupil-instruction days and 7 pupil-instruction-related days.~~

(4) ~~Attendance~~ *Enrollment* for a part of a morning session or a part of an afternoon session by a pupil must be counted as ~~attendance~~ *enrollment* for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), ~~attendance~~ *enrollment* at ~~or absence from~~ a regular session of the program for at least 2 hours of either a morning or an afternoon session ~~will~~ *must* be counted as one-half ~~day attended or absent as the case may be~~ *pupil for ANB purposes.* If a variance has been granted as provided in 20-1-302, ANB ~~will~~ *must* be computed in a manner prescribed by the superintendent of public instruction, but ~~in no case may~~ the ANB *for a kindergarten student may not* exceed one-half for each kindergarten pupil.

(6) When any pupil has been absent, with or without excuse, for more than 10 consecutive school days, ~~including pupil-instruction-related days, his absence after the 10th day of absence~~ *the pupil* may not be included in the ~~aggregate days of absence and his~~ enrollment ~~in the school may not be considered~~ *count used* in the calculation of the ~~average number belonging until he resumes attendance at school~~ *ANB unless the pupil resumes attendance prior to the day of the enrollment count.*

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, may not be included in the ANB calculations.

~~(2) If a student spends less than half his time in the regular program and the balance of his time in school in the special education program, he is considered a full-time special pupil but is not considered regularly enrolled for ANB purposes. If a student spends half or more of his time in school in the regular program and the balance of his time in the special education program, he is considered regularly enrolled for ANB purposes.~~

~~(3)~~*(8)* The average number belonging of the regularly enrolled, full-time pupils for the public schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

~~(a) (i) a school of the district is located more than 3 miles beyond the incorporated limits of a city or town located in the district and 3 miles from any other school of the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes; or~~

~~(ii) a school of the district is located more than 3 miles from any other school of the district and no incorporated territory is involved in the district, all of the regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes;~~

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(ii) a school of the district is located more than 20 miles from any other school of the district and no incorporated territory is involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(b) a junior high school has been approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must be considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the foundation program for the district.

~~(4)~~*(9)* When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.

(10) For average daily attendance reporting purposes, districts shall provide the superintendent of public instruction with annual reports of school attendance for regularly enrolled students and special education students, using a format determined by the superintendent."

Section 34. Section 20-9-369, MCA, is amended to read:

"**20-9-369. Duties of superintendent of public instruction and department of revenue.** (1) The superintendent of public instruction shall administer the distribution of guaranteed tax base aid by:

(a) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide *and district* ~~and county mill values per ANB~~ *guaranteed tax base ratios* and, by May 1 of each year, with the final statewide~~,~~ *and* district~~, and county mill values per ANB~~ *guaranteed tax base ratios*, for use in calculating the guaranteed tax base aid available for the ensuing school fiscal year;

(b) providing each school district and county superintendent, by March 1 of each year, with the preliminary statewide, county, and district mill values per ANB and, by May 1 of each year, with the final statewide, county, and district mill values per ANB, for use in calculating the guaranteed tax base aid available to counties and districts for the ensuing school fiscal year;

~~(b)~~*(c)* requiring each county and district that qualifies and applies for guaranteed tax base aid to report to the county superintendent all budget and accounting information required to administer the guaranteed tax base aid;

~~(c)~~*(d)* keeping a record of the complete data concerning appropriations available for guaranteed tax base aid and the entitlements for ~~such~~ *the* aid of the counties and districts that qualify;

~~(d)~~*(e)* distributing the guaranteed tax base aid entitlement to each qualified county or district from the appropriations for that purpose.

(2) The superintendent shall adopt rules necessary to implement 20-9-366 through 20-9-369.

(3) The department of revenue shall provide the superintendent of public instruction by December 1 of each year a final determination of the taxable value of property within each school district and county of the state reported to the department of revenue based on information delivered to the county clerk and recorder as required in 15-10-305.

(4) For the purposes of implementing 20-9-366 through 20-9-368 and this section for the school fiscal year beginning July 1, 1993, the superintendent of public instruction shall estimate the direct state aid for a district for the school fiscal year beginning July 1, 1993, in order to calculate the district and statewide guaranteed tax base ratios for that school fiscal year. For succeeding school fiscal years, the superintendent of public instruction shall calculate the district and statewide guaranteed tax base ratios by applying the prior year's direct state aid payment."

Section 35. Section 20-9-406, MCA, is amended to read:

"**20-9-406. Limitations on amount of bond issue.** (1) (a) ~~The~~ *Except as provided in subsection (1)(c), the* maximum amount for which an elementary district or a high school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of the indebtedness~~, including:~~

~~(i) the taxable value of coal gross proceeds as determined for county bonding purposes in 15-23-703(2);~~

~~(ii) the taxable value of oil and gas net proceeds as determined for county bonding purposes in 15-23-607(3); and~~

~~(iii) the amount of the value of any other oil and gas production occurring after December 31, 1988, multiplied by 60%.~~

(b) ~~The~~ *Except as provided in subsection (1)(c), the* maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation as ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness. The total indebtedness of the high school district with an attached elementary district ~~as represented by the issuance of bonds~~ must be limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes.

(c) The maximum amount for which an elementary district or a high school district that qualifies for guaranteed tax base aid under the provisions of 20-9-367 may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(2) The maximum amounts determined in subsection (1), however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of the amount are void, except as provided in this section.

(3) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(4) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly."

Section 36. Section 20-9-439, MCA, is amended to read:

"**20-9-439. Computation of net levy requirement — procedure when levy inadequate.** (1) The county superintendent shall compute the levy requirement for each school district's debt service fund on the basis of the following procedure:

(a) ~~determine~~ *Determine* the total money available in the debt service fund for the reduction of the property tax on the district by totaling:

(i) the end-of-the-year fund balance in the debt service fund, less any limited operating reserve as provided in 20-9-438;

(ii) anticipated interest to be earned by the investment of debt service cash in accordance with the provisions of 20-9-213(4) or by the investment of bond proceeds under the provisions of 20-9-435;

(iii) any state reimbursement for school facilities distributed to a qualified district under the provisions of 20-9-346, [section 38], and [section 39]; and

~~(iii)~~*(iv)* any other money, *including money from federal sources,* anticipated by the trustees to be available in the debt service fund during the ensuing school fiscal year from such sources as legally authorized money transfers into the debt service fund or from rental income, *excluding any guaranteed tax base aid.*~~;~~

(b) ~~the~~ *Subtract the* total amount available to reduce the property tax, determined in subsection (1)(a), ~~must be subtracted~~ from the final budget ~~expenditure amount~~ for the debt service fund as established in 20-9-438~~;~~.

~~(c)~~*(2)* ~~the~~ *The* net debt service fund levy requirement determined in subsection (1)(b) must be reported to the county commissioners on the second Monday of August by the county superintendent as the net debt service fund levy requirement for the district, and a levy must be made by the county commissioners in accordance with 20-9-142.

~~(2)~~*(3)* If the board of county commissioners fails in any school fiscal year to make a levy for any issue or series of bonds of a school district sufficient to raise the money necessary for payment of interest and principal becoming due during the next ensuing school fiscal year, in any amounts established under the provisions of this section, the holder of any bond of the issue or series or any taxpayer of the district may apply to the district court of the county in which the school district is located for a writ of mandate to compel the board of county commissioners of the county to make a sufficient levy for such purposes. If, upon the hearing of the application, it appears to the satisfaction of the court that the board of county commissioners of the county has failed to make a levy or has made a levy that is insufficient to raise the amount required to be raised as established in the manner provided in this section, the court shall determine the amount of the deficiency and shall issue a writ of mandate directed to and requiring the board of county commissioners, at the next meeting for the purpose of fixing tax levies for county purposes, to fix and make a levy against all taxable property in the school district that is sufficient to raise the amount of the deficiency. The levy is in addition to any levy required to be made at that time for the ensuing school fiscal year. Any costs that may be allowed or awarded the petitioner in the proceeding must be paid by the members of the board of county commissioners and may not be a charge against the school district or the county."

Section 37. Section 20-9-507, MCA, is amended to read:

"**20-9-507. Miscellaneous programs fund.** (1) The trustees of a district receiving money from local, state, federal, or other sources provided in 20-5-307(4)~~,~~ *and* 20-5-312(8)~~, and 20-9-321(3)~~ other than money under the provisions of Title I of Public Law 81-874 or federal money designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district or may be a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When the money is a reimbursement, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must be expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall cause a separate accounting to be maintained for each federal grant program and for the aggregate of all reimbursement money.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

Section 38. **Definitions.** As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "School facility entitlement" means:

(a) $220 per ANB for an elementary school district;

(b) $330 per ANB for a high school district; or

(c) $270 per ANB for an approved and accredited junior high school or middle school.

(2) "State reimbursement for school facilities" means the amount of state equalization aid distributed to a district that:

(a) is eligible for guaranteed tax base aid under the provisions of 20-9-366 through 20-9-369; and

(b) (i) for the school fiscal years beginning July 1, 1993, and July 1, 1994, has outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991;

(ii) for the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, has outstanding bonded indebtedness on bonds sold in the debt service fund of the district in any year.

(3) "Total school facility entitlement" means the school facility entitlement times the total ANB for the district.

Section 39. **Calculation and uses of school facility entitlement amount.** (1) The state reimbursement for school facilities for a district is the percentage determined in 20-9-346(2)(b) times (1-(district mill value per ANB/statewide mill value per ANB)) times the lesser of the total school facility entitlement calculated under the provisions of [section 38] or the district's current year debt service obligations on bonds that qualify under the provisions of [section 38(2)(b)(i) or (2)(b)(ii)].

(2) For the school fiscal years beginning July 1, 1993, and July 1, 1994, the trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement for all outstanding bonded indebtedness on bonds sold in the debt service fund of the district after July 1, 1991.

(3) For the school fiscal year beginning July 1, 1995, and for succeeding school fiscal years, the trustees of a district may apply the state reimbursement for school facilities to reduce the levy requirement of all bonded indebtedness in the district debt service fund.

Section 40. Section 20-2-121, MCA, is amended to read:

"**20-2-121. Board of public education — powers and duties.** The board of public education shall:

(1) effect an orderly and uniform system for teacher certification and specialist certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 20-4-102 and 20-4-111;

(2) consider the suspension or revocation of teacher or specialist certificates and appeals from the denial of teacher or specialist certification in accordance with the provisions of 20-4-110;

(3) administer and order the distribution of ~~state equalization~~ *BASE* aid in accordance with the provisions of 20-9-344;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 20-10-111;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 20-1-302;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 20-1-303 and 20-1-304;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 20-7-101 and 20-7-102;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 20-7-201;

(9) adopt policies for the conduct of special education in accordance with the provisions of 20-7-402;

(10) adopt rules for issuance of documents certifying equivalency of completion of secondary education in accordance with 20-7-131;

(11) adopt policies for the conduct of programs for gifted and talented children in accordance with the provisions of 20-7-903 and 20-7-904;

(12) adopt rules for student assessment in the public schools; and

(13) perform any other duty prescribed from time to time by this title or any other act of the legislature."

Section 41. **Impact aid fund.** (1) The trustees of a district that receives federal funds under the provisions of Title I of Public Law 81-874 shall establish an impact aid fund. Money received under the provisions of Public Law 81-874 must be deposited with the county treasurer to the credit of the impact aid fund.

(2) The expenditure of money from the impact aid fund must be made pursuant to Title I of Public Law 81-874. The impact aid fund must be administered pursuant to the financial administration provisions of this title for nonbudgeted funds.

Section 42. Section 20-9-165, MCA, is amended to read:

"**20-9-165. Budget amendment limitation, preparation, and adoption procedures.** (1) The meeting of the trustees to consider and adopt a budget amendment must be open to the public, and any taxpayer in the district has the right to appear and be heard. If at the meeting a majority of the trustees present find that there is sufficient need for a budget amendment, the trustees may make and adopt a preliminary budget amendment, ~~on the regular budget form,~~ setting forth fully the facts constituting the need for the budget amendment. In adopting the preliminary budget amendment, the trustees may budget for any fund that was included on the final budget of the district for the current school fiscal year. The budget must be itemized to show the amount appropriated for each item ~~as required on the budget form~~.

(2) When the budget amendment is the result of increased enrollment, the maximum amount of the budget amendment for all funds must be determined in the following manner:

(a) Determine the total amount in the final budget for the current school fiscal year of all funds affected by the enrollment increase, less any amounts appropriated as capital outlay and any amount appropriated for addition to the operating reserve.

(b) Divide the amount determined in subsection (2)(a) by the number of pupils originally enrolled in the district during the immediately preceding school fiscal year. The resulting cost per pupil is the maximum permissible per-pupil expenditure in the budget amendment.

(c) Determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result is the enrollment increase for the current school fiscal year.

(d) Multiply the cost per pupil determined in subsection (2)(b) by the enrollment increase determined in subsection (2)(c). The result is the maximum limitation on a budget amendment for amendments resulting from increased enrollment.

(3) For other types of budget amendments, the budget amendment is limited to the expenditures considered by the trustees to be reasonable and

necessary to finance the conditions of the budget amendment and the preliminary budget amendment must include the details of the proposed expenditures.

(4) Whenever the trustees adopt a preliminary budget amendment for the transportation fund, the trustees shall attach to the budget amendment a copy of each transportation contract that is connected with the budget amendment and that has been prepared and executed in accordance with the school transportation contract laws.

(5) After the trustees have adopted the budget amendment by a majority vote of the trustees, it must be signed by the chairman of the trustees and the clerk of the district and copies must be sent to the county superintendent, the county treasurer, and the superintendent of public instruction."

Section 43. Section 20-9-166, MCA, is amended to read:

"**20-9-166. State financial aid for budget amendments.** Whenever a final budget amendment has been adopted for the general fund or the transportation fund to finance the cost of an amendment resulting from increased enrollment ~~or any other reason approved by the superintendent of public instruction under the provisions of 20-9-163~~, the trustees may apply to the superintendent of public instruction for an increased payment from the state public school equalization aid account for the foundation program or for state transportation reimbursement, or both. The superintendent of public instruction shall adopt rules for the application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with 20-9-314 and this section. When the superintendent of public instruction approves an application, ~~he~~ *the superintendent of public instruction* shall determine the additional amount of state aid from the state public school equalization aid account or the state transportation reimbursement that will be made available to the applicant district because of the increase in enrollment. The superintendent of public instruction shall notify the applicant district of ~~his~~ *the superintendent's* approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction shall disburse the state aid to the eligible district at the time the next regular state aid payment is made."

Section 44. Section 20-9-168, MCA, is amended to read:

"**20-9-168. Emergency budget amendment tax levy.** When a budget amendment has been ~~approved by the superintendent of public instruction~~ *adopted by the board of trustees* under 20-9-161(2) and a district does not have sufficient funds, including insurance proceeds *and reserves*, to finance the budget amendment, the district may levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment."

Section 45. Section 20-9-208, MCA, is amended to read:

"**20-9-208. Transfer among appropriation items of a fund.** (1) Whenever it appears to the trustees of a district that the appropriated amount of an item of a budgeted fund of the final budget or a budget amendment is in excess of the amount actually required during the school fiscal year for the appropriation item, the trustees may transfer any or all of the excess appropriation amount to any other appropriation item of the same budgeted fund.

(2) Transfers may not be made between different funds of the same district, *between the final budget and a budget amendment,* or between similar funds of different districts except as specifically provided by this title. The trustees shall enter the authorized transfers upon the permanent records of the district."

Section 46. Section 20-9-212, MCA, is amended to read:

"**20-9-212. Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts ~~which~~ *that* are entitled to a portion of the money according to the apportionments ordered by the county superintendent *or by the superintendent of public instruction.* A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary ~~foundation programs~~ *BASE aid*;

(b) the basic special tax for high schools in support of the high school ~~foundation programs~~ *BASE aid*;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners.

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) ~~of this section~~ and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent *or the superintendent of public instruction*;

(3) ~~keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;~~

~~(4)~~ keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund ~~included in the final budget of each district and for each nonbudgeted fund established by each district~~;

~~(5)~~*(4)* except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

~~(6)~~*(5)* receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if ~~no~~ *a* fund is *not* designated by law. Interest and penalties on delinquent school taxes ~~shall~~ *must* be credited to the same fund and district for which the original taxes were levied.

~~(7)~~*(6)* send all revenue received for a joint district, part of which is situated in ~~his~~ *the* county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

~~(8)~~*(7)* at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

~~(9)~~*(8)* register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

~~(10)~~*(9)* invest the money of any district as directed by the trustees of the district within 3 working days of the direction;

~~(11)~~*(10)* each month give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance;

~~(12)~~*(11)* remit promptly to the state treasurer receipts for the county tax for a vocational-technical center when levied by the board of county commissioners under the provisions of 20-16-202;

~~(13)~~*(12)* invest the money received from the basic county tax ~~in support of the elementary foundation programs~~, ~~and~~ the basic special tax ~~in support of the high school foundation programs~~, *the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules* within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) ~~and (1)(b)~~ *through (1)(d).*

~~(14)~~*(13)* remit on a monthly basis to the state treasurer, in accordance with the provisions of 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333 ~~for elementary and high school district foundation program support~~, including all interest earned and excluding any amount required for high school out-of-county tuition under the provisions of 20-9-334, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 47. Section 20-9-335, MCA, is amended to read:

"**20-9-335. Formula for apportionment of county equalization ~~moneys~~** ***money.*** (1) The ~~county~~ superintendent *of public instruction* shall calculate the apportionment of revenue available in the basic county tax account and in the basic special tax for high schools account in accordance with the following procedure:

(a) determine the percentage that the county equalization ~~moneys~~ *money* available for the support of the elementary ~~foundation program~~ *direct state aid* of the districts in the county is of the total elementary ~~foundation program~~ *direct state aid* of all districts in the county;

(b) multiply the elementary ~~foundation program~~ *direct state aid* amount of each district by the percentage determined in subsection (1)(a) ~~above~~ to determine the portion of the county equalization ~~moneys~~ *money* available to each school district.

(2) The ~~above~~ procedure ~~shall~~ *in subsection (1) must* also be applied for the high school ~~foundation program~~ *direct state aid* after the deduction of the county's obligation for high school out-of-county tuition.

(3) Territory situated within a county may not be excluded from the calculations of the county equalization ~~moneys~~ *money* under this section solely because the territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year may not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization ~~moneys~~ *money* reported under these procedures ~~are~~ *is* the first source of revenue for financing the elementary and high school ~~foundation program~~ *direct state aid* payments."

Section 48. Section 20-3-205, MCA, is amended to read:

"**20-3-205. Powers and duties.** The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in his county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition application submitted to him in accordance with the provisions of 20-5-301, 20-5-302, 20-5-304, and 20-5-311 and transmit the tuition information required by 20-5-312;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned to him under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted revenues and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned to him under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-334, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the ~~provisions of 20-9-348 and the other~~ general fund revenue provisions of the general fund part of this title;

(17) compute the revenues and the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of his official acts, preserve all reports submitted to him under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the administration of the office, and surrender all records, books, supplies, and equipment to his successor;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained by the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

Section 49. Section 20-6-703, MCA, is amended to read:

"**20-6-703. Transitions after formation of K-12 school district.** (1) When an attachment order for a K-12 school district becomes effective on July 1 under the provisions of 20-6-701:

(a) the board of county commissioners shall execute all necessary and appropriate deeds, bills of sale, or other instruments for the conveyance of title to all real and personal property of the elementary district to the high school district;

(b) the trustees of the elementary district shall entrust the minutes of the board of trustees, the elementary district documents, and other records to the high school district to which it is attached; and

(c) the county treasurer shall transfer all end-of-the-year warrants and fund balances of the attached elementary district to the similar funds established for the K-12 school district in the high school district.

(2) All taxes levied by and revenue due from a previous school fiscal year to an elementary district attached to a high school district must be payable to the appropriate fund of the high school district.

(3) The previous year's general fund budget amounts for the elementary district and the high school district that form a K-12 school district must be combined to determine the budget limitation for the ensuing school fiscal year pursuant to ~~20-9-315~~ *[section 3]*.

(4) An elementary district and a high school district that form a K-12 school district under the provisions of 20-6-701 may not be considered an enlarged district for the purpose of bonus payments under 20-6-401 through 20-6-408."

Section 50. Section 20-7-306, MCA, is amended to read:

"20-7-306. **Distribution of secondary vocational education and industrial arts funds.** (1) The superintendent of public instruction shall categorize secondary vocational programs into one of five weighted categories based upon the relative additional costs of those programs.

(2) The superintendent of public instruction shall determine the weighted category to be assigned industrial arts programs.

(3) The superintendent of public instruction shall adjust the weighted categories as necessary to assure that the procedures outlined in ~~subsections~~ *subsection* (4) ~~and (5)~~ do not result in entitlements that exceed the amount appropriated.

(4) Funding must be based upon the average number belonging (ANB) for secondary vocational education and industrial arts programs of the high school district in the ANB calculation period immediately preceding the year for which funding is requested. The ANB must be computed for each separate secondary vocational education and industrial arts program.

(5) For secondary vocational education programs, the ANB generated for each category established in subsection (1) must be multiplied by the factor for that category, and the product must be multiplied by the ~~applicable ANB dollar value established by 20-9-319~~ *district's direct state aid per-ANB*. Industrial arts programs must be funded at 50% of the category assigned. The high school district is entitled to receive for secondary vocational education and industrial arts, the total of the computation of all secondary vocational education and industrial arts categories.

(6) The superintendent of public instruction shall annually distribute the funds allocated in this section by November 1. The money received by the high school district must be deposited into the subfund of the miscellaneous programs fund established by 20-9-507 and may be expended only for approved secondary vocational education and industrial arts programs. The expenditure of the money must be reported in the annual trustees' report as required by 20-9-213."

Section 51. Section 20-7-435, MCA, is amended to read:

"20-7-435. **Funding of educational programs at in-state children's psychiatric hospitals and in-state residential treatment programs for eligible children with emotional disturbances.** (1) It is the intent of the legislature that eligible children in in-state children's psychiatric hospitals and residential treatment facilities be provided with an appropriate educational opportunity in a cost-effective manner.

(2) The superintendent of public instruction may contract with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the hospital or treatment facility.

(3) Whenever the superintendent of public instruction contracts with an in-state children's psychiatric hospital or residential treatment facility for provision of an educational program for an eligible child in the children's psychiatric hospital or residential treatment facility, the superintendent of public instruction shall:

(a) monitor the provision of an appropriate educational opportunity for the child attending the hospital or residential treatment facility;

(b) negotiate the approval of allowable costs under the provisions of 20-7-431 for allowable costs for providing special education, including the costs of retirement benefits, federal social security system contributions, and unemployment compensation insurance; and

(c) fund 100% of any approved allowable costs under this section from funds appropriated for this purpose. An appropriation in excess of the allowable costs required under the provisions of this section must revert to the state equalization aid account.

(4) A supplemental education fee or tuition may not be charged for an eligible Montana child who receives inpatient treatment in an in-state children's psychiatric hospital or residential treatment facility.

(5) If a children's psychiatric hospital or residential treatment facility fails to provide an appropriate educational opportunity for an eligible child at the children's psychiatric hospital or residential treatment facility or fails to negotiate a contract under the provisions of subsection (2), the superintendent of public instruction shall negotiate with the school district in which the children's psychiatric hospital or residential treatment facility is located for the supervision and implementation of an appropriate educational program for a child attending the children's psychiatric hospital or residential treatment facility. The amount negotiated with the school district must be consistent with allowable costs that may be negotiated under the provisions of subsection (3).

(6) Funds provided to a district under this section:

(a) must be deposited in the miscellaneous programs fund of the district that provides the education program for an eligible child, regardless of the age or grade placement of the child who is served under a negotiated contract; *and*

(b) are not subject to the budget limitations in ~~20-9-315~~ *[section 3]*~~; and~~

~~(c) may not be included in the foundation program amount of the district~~."

Section 52. **Appropriations.** (1) There is appropriated from the state equalization aid account to the office of public instruction $400,000 for the biennium ending June 30, 1995, for any necessary costs incurred by the office of public instruction in implementing [this act].

(2) If House Bill No. 667 and Senate Bill No. 378 are passed and approved, then there is appropriated from the general fund $124,910,000 to the state equalization aid account for the biennium ending June 30, 1995.

(3) There is appropriated from the general fund to the Montana legislative council for the biennium ending June 30, 1995, $20,000 for the interim study to be assigned and conducted as provided in [section 63].

Section 53. **Audit during 1994-95 biennium — appropriation.** (1) The legislative audit committee, in accordance with its constitutional authority to supervise legislative postaudits, shall ensure the independence of the audit of the office of the superintendent of public instruction conducted pursuant to Title 5, chapter 13, during the 1994-95 biennium. It is the intent of the legislature that the biennial financial compliance audit for the 2 fiscal years ending June 30, 1994, be contracted. To the extent that the legislative audit committee contracts with a private firm to conduct a portion of the audit or the entire audit, including audit work required to complete the statewide audit and the federal single audit, the total cost of all audit work during the biennium must be paid first from the line item appropriation to the office of the superintendent of public instruction for audit costs.

(2) There is appropriated from the general fund to the legislative auditor $40,000 for the biennium ending June 30, 1995, to be used if the line item appropriation to the office of the superintendent of public instruction is insufficient to pay the total audit costs.

Section 54. **Repealer.** Sections 20-9-145, 20-9-147, 20-9-301, 20-9-312, 20-9-315, 20-9-316, 20-9-317, 20-9-318, 20-9-319, 20-9-320, and 20-9-322, MCA, and section 12, Chapter 6, Special Laws of July 1992, are repealed.

Section 55. **Name change — short form amendment.** (1) Wherever it appears in 17-7-140, 20-2-115, 20-6-166, 20-9-116, 20-9-331, 20-9-333, 90-6-309, and 90-6-403 and in legislation enacted by the 1993 legislature, the code commissioner is directed to change the term "foundation program", when it refers to equalization aid for schools, to "BASE funding program".

(2) Wherever it appears in 20-7-414, 20-7-431, and 20-7-435 and in legislation enacted by the 1993 legislature, the code commissioner is directed to change the term "foundation program", when it refers specifically to state funding for special education, to "allowable cost payment".

Section 56. **Moratorium on creation of new district.** (1) Following [the effective date of this section], a school district may not initiate the creation of a new elementary district under the provisions of 20-6-216 and 20-6-217 or initiate the creation of a new high school district under the provisions of 20-6-303 and 20-6-325.

(2) This section does not apply to a petition to create a new elementary or high school district that was filed prior to [the effective date of this section].

Section 57. **Codification instruction.** (1) [Sections 1 through 3 and 41] are intended to be codified as an integral part of Title 20, chapter 9, part 3, and the provisions of Title 20 apply to [sections 1 through 3 and 41].

(2) [Sections 38 and 39] are intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [sections 38 and 39].

Section 58. Section 6, Chapter 14, Special Laws of January 1992, is amended to read:

"Section 6. **Effective date ~~— termination~~.** [This act] is effective on passage and approval~~, and [sections 3 through 5] terminate June 30, 1993~~."

Section 59. **Effective dates — retroactive applicability.** (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1993.

(2) [Section 11] is effective July 1, 1993, and the provisions of [section 11(3)] relating to excess reserves and Public Law 81-874 money apply retroactively,

within the meaning of 1-2-109, to district general fund reserves for the school fiscal year beginning July 1, 1992.

(3) [Sections 23 and 33] are effective July 1, 1994, and apply retroactively, within the meaning of 1-2-109, to the school fiscal year beginning July 1, 1993.

Section 60. **Coordination instruction.** (1) If House Bill No. 667 and Senate Bill No. 348 are passed and approved and if they include a section that amends 20-9-303, then [section 4 of Senate Bill No. 348], amending 20-9-303, is void.

(2) If House Bill No. 667 and Senate Bill No. 348 are passed and approved and if they include a section that amends 20-9-311, then [section 5 of Senate Bill No. 348], amending 20-9-311, is void.

(3) If House Bill No. 667 and Senate Bill No. 348 are passed and approved and if they include a section that amends 20-9-321, then [section 7 of Senate Bill No. 348], amending 20-9-321, is void.

(4) If House Bill No. 667 and House Bill No. 469 are passed and approved, then [sections 6 and 7 of this act] are void.

(5) If House Bill No. 667 and House Bill No. 469 are passed and approved, then [section 4(1)] of House Bill No. 469 must read as follows:

"(1) Except as provided in subsections (3) and (4), whenever a child has approval to attend a school outside of the child's district of residence under the provisions of [section 1 or 2], the basis of the rate of tuition is a flat rate for each of the 15 district-size groupings determined by rule by the superintendent of public instruction by March 15 of each year, using statewide district expenditure and revenue data for the general fund, debt service fund, and retirement fund to determine the average district contribution."

(6) If House Bill No. 667 and House Bill No. 202 are passed and approved, then [section 12] of House Bill No. 202, amending 20-9-322, is void.

(7) If House Bill No. 667 and Senate Bill No. 235 are passed and approved, then [section 143] of Senate Bill No. 235, amending 20-9-439, is void.

(8) If House Bill No. 667 is passed and approved and if Senate Bill No. 235 is approved by the electorate, then the amendments to 20-9-344, 20-9-347, 20-9-366, and 20-9-368 in [this act] and in Senate Bill No. 235 are void and those sections are amended to read as follows:

Section 20-9-344, MCA, is amended to read:

"**20-9-344.** ~~**Purpose of state equalization aid and duties**~~ ***Duties*** **of board of public education for distribution *of BASE aid.*** (1) ~~The money available for state equalization aid must be distributed and apportioned to provide:~~

~~(a) an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings and grounds, and transportation; and~~

~~(b) the Montana educational telecommunications network as provided in 20-32-101.~~

~~(2)~~ The board of public education shall administer and distribute the ~~state equalization~~ *BASE* aid and state advances for county equalization in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of ~~state equalization~~ *BASE* aid, *state retirement obligation payments,* and state advances for county equalization in accordance with the provisions of law;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) order the superintendent of public instruction to distribute the ~~state equalization~~ *BASE* aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of ~~state equalization~~ *BASE* aid, the board of public education may not increase or decrease the ~~state equalization~~ *BASE* aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

~~(3)~~*(2)* The board of public education may order the superintendent of public instruction to withhold distribution of ~~state equalization~~ *BASE* aid ~~or order the county superintendent of schools to withhold county equalization money~~ from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

~~(4)~~*(3)* Prior to any proposed order by the board of public education to withhold distribution of ~~state equalization~~ *BASE* aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

~~(5)~~*(4)* If a district or county receives more ~~state equalization~~ *BASE* aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

~~(6)~~*(5)* Except as provided in 20-9-347(3), the ~~foundation program payment and guaranteed tax base~~ *BASE* aid payment must be distributed according to the following schedule:

(a) from August to ~~May~~ *October* of the school fiscal year, ~~8%~~ *10%* of the ~~foundation program payment~~ *direct state aid* to each district;

(b) from December to April of the school fiscal year, 10% of the direct state aid to each district;

~~(b)~~*(c)* in November of the school fiscal year, one-half of the guaranteed tax base aid payment *and one-half of the state retirement obligation payment* to each district or county *that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134*;

~~(c)~~*(d)* in May of the school fiscal year, the remainder of the guaranteed tax base aid payment *and one-half of the state retirement obligation payment* to each district or county; and

~~(d)~~*(e)* in June of~~:~~

~~(i) the 1993 school fiscal year, one-half of the remaining foundation program payment of each district and on July 15, 1993, the remaining school fiscal year 1993 foundation program payment of each district; and~~

~~(ii)~~ the school fiscal year, *one-half of* the remaining ~~foundation program~~ payment to each district *of direct state aid and on the following July 15, the remaining payment to each district of direct state aid for the school fiscal year ending on the preceding June 30.*

~~(7)~~*(6)* The distribution ~~of foundation program payments and guaranteed tax base aid~~ provided for in subsection ~~(6)~~ *(5)* must occur by the last working day of each month."

Section 20-9-347, MCA, is amended to read:

"**20-9-347.** **~~Formula for state equalization~~ *Distribution of BASE* aid ~~apportionment~~ in support of ~~foundation~~ *BASE funding* program *and retirement* — exceptions.** ~~(1) The superintendent of public instruction shall apportion the state equalization aid available for support of the foundation program, individually for the elementary districts of a county or the high school districts of a county, in accordance with 20-9-346 and on the basis of the following procedure:~~

~~(a) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all counties.~~

~~(b) Determine the percentage that the total funds available in each county in support of the foundation programs in the county (excluding state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all districts of the county.~~

~~(c) Counties in which the percentage determined in subsection (1)(b) exceeds the percentage determined in subsection (1)(a) are not entitled to an apportionment of the state equalization aid in support of the foundation program.~~

~~(d) After elimination of the counties referred to in subsection (1)(c), determine the percentage that the total money available to all remaining counties in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all remaining counties.~~

~~(e) Each district of each remaining county is entitled to an apportionment of the state equalization aid in support of the foundation program equal to the difference between the percentage determined in subsection (1)(d) and the~~

~~percentage determined for the county in subsection (1)(b) multiplied by the foundation program amount for the district.~~ *(1) The superintendent of public instruction shall apportion state retirement obligation payments to each district in support of the district's retirement fund obligations. The superintendent of public instruction shall adopt rules to ensure that for school fiscal year 1995 and succeeding years, each district receives state retirement obligation payments equal to the full amount required by the elementary districts and high school districts in the county.*

(2) The superintendent of public instruction shall:

(a) supply the county treasurer and the county superintendent with a *monthly* report of the ~~apportionments~~ *payment* of ~~state equalization~~ *BASE* aid in support of the ~~foundation~~ *BASE funding* program of each district of the county~~, and the state equalization aid in support of the foundation program must be apportioned to the districts in accordance with the report~~;

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be raised for the basic county tax fund as provided in 20-9-331 and for the basic special tax fund as provided in 20-9-333;

(c) adopt rules to implement the provisions of subsection (2)(b).

(3) (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the ~~foundation program and guaranteed tax base~~ *BASE* aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212~~(9)~~*(8)*.

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. ~~Nothing in this~~ *This* section may *not* be construed to authorize the superintendent of public instruction to exceed a district's annual payment for ~~state and county equalization~~ *BASE* aid."

Section 20-9-366, MCA, is amended to read:

"**20-9-366. Definitions.** As used in 20-9-366 through 20-9-369, the following definitions apply:

~~(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school ANB count used to calculate the elementary school districts' and high school districts' current year foundation program amounts.~~

~~(2)~~*(1) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the base budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district's current year direct state aid and 40% of the special education allowable cost payment.*

(b) "District mill value per ANB", *for school facility entitlement purposes,* means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year ~~foundation program~~ *total per-ANB entitlement* amount.

~~(3)~~*(2)* ~~"Permissive amount" means that portion of a district's general fund budget in excess of the foundation program amount for the district, as provided in 20-9-316 through 20-9-321, but not exceeding 35% of the district's foundation program amount, and which excess is authorized under the provisions of 20-9-145 and 20-9-353.~~

~~(4)~~*(a)* "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for ~~permissive and retirement guaranteed tax base~~ *school facility entitlement* purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year ~~foundation program~~ *total per-ANB entitlement* amounts.

(b) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the base budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total of either the state elementary school districts' or high school districts' current year total maximum general fund budget amounts."

Section 20-9-368, MCA, is amended to read:

"**20-9-368. Amount of guaranteed tax base aid — reversion.** (1) ~~The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide county mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.~~

~~(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide county mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.~~

~~(3)~~ The amount of guaranteed tax base aid ~~per ANB~~ that a district may receive in support of ~~its permissive amount of the general fund budget~~ *up to 40% of the basic entitlement, up to 40% of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment* is ~~the difference between the district mill value per ANB and the corresponding statewide district mill value per ANB, multiplied by the number of mills levied in support of the district's permissive amount of the general fund budget~~ *calculated in the following manner:*

(a) multiply the sum of the district's direct state aid and 40% of the special education allowable cost payment by the corresponding statewide guaranteed tax base ratio;

(b) subtract the taxable valuation of the district from the product obtained in subsection (1)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

~~(4)~~*(2)* Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. ~~If the actual expenditures from the fund or portion of the fund for which guaranteed tax base aid is earmarked are less than the amount budgeted, the guaranteed tax base aid reverts in proportion to the amount budgeted but not expended.~~ If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 61. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 62. **Termination.** [Sections 20 and 22] terminate June 30, 1994.

Section 63. **Interim study of taxes and valuation.** (1) The legislative council is requested to assign the revenue oversight committee, the legislative finance committee, or an appropriate interim committee to conduct an interim study of certain taxes and property valuation for the purpose of enhancing equalized school funding and of equalizing tax burdens among the state's school districts. The study should include but is not limited to:

(a) exploring the best means of including revenue from local government severance taxes, new and interim production of oil and natural gas, the "flat tax" on coal, corporation license taxes collected from financial institutions, and motor vehicle fees in the formula for equalizing funding per ANB and for equalizing tax burden among the state's school districts; and

(b) identifying measures that would allow the value of all centrally assessed property to be included in the formula for equalizing funding per ANB and for equalizing tax burden among the state's school districts.

(2) In conducting the study, the committee may request assistance from the:

(a) superintendent of public instruction;

(b) board of public education;

(c) department of revenue;

(d) representatives of local government entities, including the Montana association of counties and the Montana league of cities and towns;

(e) representatives of schools and teachers and other interested persons and organizations; and

(f) staff of the legislative council, legislative fiscal analyst, and the legislative auditor.

(3) If the legislative council does not assign an appropriate interim committee to conduct the study requested in this section, the superintendent of public instruction is requested to conduct the study and may request assistance from any of the entities referred to in subsection (2) or from any other entity having relevant knowledge, insight, or information.

Section 64. **Contingent termination.** The bracketed language in [section 3], relating to excluding Public Law 81-874 receipts, is void on the date that the superintendent of public instruction certifies to the governor that, prior to January 1, 1995, a letter has been received from the United States department of education declaring that, after analysis of [this act], the bracketed language in [section 3] violates the provisions of the federal impact aid laws and will result in the loss of federal impact aid funds.

Approved May 12, 1993.

CHAPTER NO. 634

[HB 671]

AN ACT GENERALLY REVISING INDIVIDUAL INCOME TAX LAWS AND AMENDING CORPORATE LICENSE AND INCOME TAX LAWS; PROVIDING A SINGLE INCOME TAX RATE; REPLACING ITEMIZED INCOME TAX DEDUCTIONS WITH STANDARD DEDUCTIONS AND INCREASING THE EXEMPTION AMOUNT; CHANGING THE METHOD OF INDEXING THE STANDARD DEDUCTION AND EXEMPTION AMOUNTS; PROVIDING FOR A ONE-TIME TAX CREDIT RESULTING FROM GAIN FROM THE SALE OF A BUSINESS HELD FOR 15 OR MORE YEARS; INCREASING THE RATE OF THE CORPORATE LICENSE OR INCOME TAX FOR CORPORATIONS WITH TAXABLE INCOME OVER $500,000; INCREASING THE MINIMUM CORPORATE TAX TO $100; INCREASING THE SMALL BUSINESS CORPORATION MINIMUM FEE TO $25; AMENDING SECTIONS 13-37-218, 15-30-101, 15-30-103, 15-30-105, 15-30-111, 15-30-112, 15-30-117, 15-30-122, 15-30-126, 15-30-131, 15-30-137, 15-30-142, 15-30-323, 15-31-121, 15-31-131, 15-31-202, 15-31-204, AND 15-32-303, MCA; REPEALING SECTIONS 15-30-121, 15-30-156, 15-30-157, 15-30-159, 15-30-160, AND 15-30-199, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-101, MCA, is amended to read:

"**15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) ~~the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;~~

~~(b)~~ the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6)~~, in effect on June 30 of the taxable year~~;

~~(c)~~*(b)* the ~~maximum~~ standard deduction provided in 15-30-122, but unadjusted by subsection ~~(2)~~ *(4)* of 15-30-122~~, in effect on June 30 of the taxable year~~.

(2) "Consumer price index" means the consumer price index *for all urban consumers,* United States city average, for all items, using the ~~1967~~ *1982-1984* base *index* of 100, *as that base index is periodically adjusted,* as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends ~~as herein defined~~. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June~~, 1980~~ *1993, then subtracting 1, then multiplying by 0.5, then adding 1.*

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" ~~shall~~ *must* be construed according to the method

of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts after cessation of regular employment received from fully matured, privately purchased annuity contracts.

(14) "Purposely" is as defined in 45-2-101.

(15) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" ~~shall~~ *must* be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(16) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(17) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(18) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

(19) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Section 2. Section 15-30-103, MCA, is amended to read:

"**15-30-103. Rate of tax — *adjustment.*** (1) ~~There shall be~~ *Subject to subsection (2), there is* levied, collected, and paid for each taxable year commencing on or after December 31, ~~1968~~ *1992,* upon the taxable income of every ~~taxpayer~~ *individual* subject to this tax, after making allowance for exemptions and deductions ~~as hereinafter provided~~, a tax *at the rate of 6.7% of the* *individual's taxable income* ~~on the following brackets of taxable income as adjusted under subsection (2) at the following rates:~~

~~(a) on the first $1,000 of taxable income or any part thereof, 2%;~~

~~(b) on the next $1,000 of taxable income or any part thereof, 3%;~~

~~(c) on the next $2,000 of taxable income or any part thereof, 4%;~~

~~(d) on the next $2,000 of taxable income or any part thereof, 5%;~~

~~(e) on the next $2,000 of taxable income or any part thereof, 6%;~~

~~(f) on the next $2,000 of taxable income or any part thereof, 7%;~~

~~(g) on the next $4,000 of taxable income or any part thereof, 8%;~~

~~(h) on the next $6,000 of taxable income or any part thereof, 9%;~~

~~(i) on the next $15,000 of taxable income or any part thereof, 10%;~~

~~(j) on any taxable income in excess of $35,000 or any part thereof, 11%.~~

(2) ~~By November 1 of each year, the department shall multiply the bracket amount contained in subsection (1) by the inflation factor for that taxable year and round the cumulative brackets to the nearest $100. The resulting adjusted brackets are effective for that taxable year and shall be used as the basis for imposition of the tax in subsection (1) of this section~~ *(a) The department shall, pursuant to subsection (2)(b), adjust the tax rate provided in subsection (1) to reflect changes in federal adjusted gross income. The adjustment must maintain a rate that produces revenue that does not exceed 6.7% of taxable income based upon the definition of federal adjusted gross income as provided in 26 U.S.C. 62 on January 1, 1993. Prior to adopting a change in rate, the department shall present the proposed change to the revenue oversight committee for review by the committee.*

(b) (i) For purposes of subsection (2)(a), for tax year 1994 and each tax year thereafter, the department shall in the succeeding year determine the change in the amount of revenue collected resulting from changes made by the United States congress to federal adjusted gross income, as defined by the Internal Revenue Code, effective for that year.

(ii) Based on the determination in subsection (2)(b)(i), the tax rate for the tax year following the determination must be adjusted in increments of 0.1%.

(iii) A change in the rate may not be made unless the amount of change exceeds $4.5 million."

Section 3. Section 15-30-105, MCA, is amended to read:

"**15-30-105. Tax on nonresident — alternative tax based on gross sales.** (1) A like tax is imposed upon every person not resident of this state, which tax ~~shall~~ *must* be levied, collected, and paid annually at the ~~rates~~ *rate* specified in 15-30-103 with respect to ~~his entire net~~ *the person's taxable* income. ~~After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest~~

~~income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana.~~

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. ~~Such~~ *The* tax ~~shall be~~ *is* in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year ~~shall~~ *must* be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 4. Section 15-30-111, MCA, is amended to read:

"**15-30-111. Adjusted gross income.** (1) Adjusted gross income ~~shall be~~ *is* the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in addition ~~shall include~~ *includes* the following:

(a) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision thereof;

~~(b) refunds received of federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability;~~

~~(c)~~*(b)* that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954, that has been reduced by any federal taxes paid by the subchapter S. corporation on the income; and

~~(d)~~*(c)* depreciation or amortization taken on a title plant as defined in 33-25-105(15).

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following which are exempt from taxation under this chapter:

(a) all interest income from obligations of the United States government, the state of Montana, county, municipality, district, or other political subdivision thereof;

(b) interest income earned by a taxpayer age 65 or older in a taxable year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips covered by section 3402(k) of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, *and service charges* received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging~~;~~. *For the purposes of this subsection (f), "service charge" means an arbitrary fixed charge added to the customer's bill by the person's employer in lieu of a tip. It is collected by the employer and paid to the person by the employer.*

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law; ~~and~~

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange"*; and*

(j) except as provided in subsection (7), for a single joint return of husband and wife, an amount, not to exceed $3,000, equal to 10% of the earned income received by the spouse that earned the least amount of earned income in the tax year.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in ~~his~~ *the shareholder's* adjusted gross income the earnings and profits of the DISC in the same manner as provided by federal law (section 995, Internal Revenue Code) for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced ~~his~~ *the taxpayer's* business deductions by an amount for wages and salaries for which a federal tax credit was elected under section 44B of the Internal Revenue Code of 1954 or as that section may be labeled or amended is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who must include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the taxable year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 per week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, permanently and totally disabled means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) The amount specified in subsection (2)(j) is reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.) "

Section 5. Section 15-30-112, MCA, is amended to read:

"**15-30-112. Exemptions.** (1) Except as provided in subsection (6), in the case of an individual, the exemptions provided by subsections (2) through (5) ~~shall be~~ *are* allowed as deductions in computing taxable income.

(2) (a) An exemption of ~~$800~~ *$2,710* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1992,* for the taxpayer.

(b) An additional exemption of ~~$800~~ *$2,710* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1992,* for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of ~~$800~~ *$2,710* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1992,* for the taxpayer if ~~he~~ *the taxpayer* has attained the age of 65 before the close of ~~his~~ *the taxpayer's* taxable year.

(b) An additional exemption of ~~$800~~ *$2,710* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1992,* for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of ~~such~~ *the* taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of ~~$800~~ *$2,710* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1992,* for the taxpayer if ~~he~~ *the taxpayer* is blind at the close of ~~his~~ *the taxpayer's* taxable year.

(b) An additional exemption of ~~$800~~ *$2,710* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1992,* for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection ~~(4)(b)~~ *(b)*, the determination of whether the spouse is blind ~~shall~~ *must* be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during ~~such~~ *the* taxable year, ~~such~~ *the* determination ~~shall~~ *must* be made as of the time of ~~such~~ death.

(c) For purposes of this subsection (4), an individual is blind only if ~~his~~ *the individual's* central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if ~~his~~ *the individual's* visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of ~~$800~~ *$2,710* ~~shall be~~ *is* allowed for taxable years beginning after December 31, ~~1978~~ *1992*, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than ~~$800~~ *$2,710*; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) ~~No~~ *An* exemption ~~shall be~~ *is not* allowed under this subsection *(5)* for any dependent who has made a joint return with ~~his~~ *the dependent's* spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection ~~(5)(d)(ii)~~ *(ii)*, the term "educational institution" means only an educational institution ~~which~~ *that* normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

(6) *(a) The exemptions provided for in this section are reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000.*

(b) ~~The~~ *For tax years beginning after December 31, 1993, the* department, by November 1 of each year, shall multiply all the exemptions provided in this section by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that taxable year and ~~shall~~ *must* be used in calculating the tax imposed in 15-30-103."

Section 6. Section 15-30-117, MCA, is amended to read:

"**15-30-117. Net operating loss — computation.** (1) A Montana net operating loss *for a loss incurred in tax years beginning after December 31, 1992,* must be determined in accordance with section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended and in accordance with the following:

(a) The net operating loss deduction for Montana purposes is increased by ~~the following:~~

~~(i) that portion of the federal income tax and motor vehicle tax allowed as a deduction under 15-30-121 or 15-30-131 which is attributable to income from a Montana trade or business; and~~

~~(ii)~~ Montana wages and salaries allowed as a business deduction under 15-30-111(4).

(b) The net operating loss deduction for Montana purposes is decreased by the ~~following:~~

~~(i)~~ interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a)~~;~~

~~(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as Montana business income;~~

~~(iii) state income tax; and~~

~~(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income~~.

(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 or as that section may be labeled or amended, a net operating loss does not include~~:~~

~~(a)~~ income defined as exempt from state taxation under 15-30-111(2)~~; or~~

~~(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 or as that section may be labeled or amended~~."

Section 7. Section 15-30-122, MCA, is amended to read:

"**15-30-122. Standard deduction.** (1) A standard deduction ~~equal to 20%~~ of adjusted gross income ~~shall be~~ *is* allowed ~~if elected by the taxpayer on his~~ *on the taxpayer's* return. ~~The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum~~

(2) (a) Except as provided in subsections (2)(b) through (2)(e), the standard deduction ~~shall be $1,500~~ *is 40% of Montana adjusted gross income, but not more than $5,000.* ~~, as adjusted under the provisions of subsection (2), except that in the case of~~

(b) For a single joint return of husband and wife, *the standard deduction is 40% of Montana adjusted gross income, but not more than $10,000.* ~~or in the case of~~

(c) For a single individual who qualifies to file as a head of household on ~~his~~ *the individual's* federal income tax return, the ~~maximum~~ standard deduction ~~shall be $3,000~~ *is 40% of Montana adjusted gross income, but not more than $7,500.* ~~, as adjusted under the provisions of subsection (2).~~

(d) The standard deduction ~~shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction~~ *for married taxpayers filing separately is 40% of Montana adjusted gross income, but not more than $5,000.*

(e) The standard deductions provided for in this subsection (2) are reduced by 6.25% for every $5,000 of federal adjusted gross income in excess of $100,000.

(3) For purposes of this section, the determination of whether an individual is married ~~shall~~ *must* be made as of the last day of the taxable year~~; provided, however,~~. *However,* if one of the spouses dies during the taxable year, the determination ~~shall~~ *must* be made as of the date of death.

~~(2)~~*(4)* ~~By~~ *For taxable years beginning after December 31, 1993, by* November 1 of each year, the department shall multiply the ~~maximum~~ standard deduction for single *returns, qualified-head-of-household returns, and joint* returns by the inflation factor for that taxable year and round the product to the nearest $10. ~~The standard deduction for joint returns and qualified head of household returns shall be twice the amount for single returns.~~ The resulting adjusted deductions are effective for that taxable year and ~~shall~~ *must* be used in calculating the tax imposed in 15-30-103."

Section 8. **Credit for sale of business.** (1) (a) For tax years beginning after December 31, 1992, an individual who realizes a gain that must be included in Montana adjusted gross income, from the sale of a business, trade, or profession, is allowed a one-time credit against the tax imposed by 15-30-103.

(b) To be eligible for the credit, the individual, including the individual's parents, grandparents, children, and grandchildren, must have held the interest in the business, trade, or profession for at least 15 years.

(2) (a) Subject to the limitation contained in subsection (2)(b), the credit must be computed by multiplying the gain that was included in the Montana adjusted gross income from the sale times the individual's highest federal tax rate in the tax year in which the gain from the sale is reported times this state's highest tax rate for that individual in the same year.

(b) For an individual who realized a gain in excess of $1 million, the credit is reduced at the rate of 1% for every $20,000 of gain in excess of $1 million.

(c) The credit provided for in this section is not refundable, nor may it be carried back or carried forward.

(3) For sales that occurred prior to December 31, 1992, and for which the gain for the sale of the business, trade, or profession is being reported on the installment basis, the individual shall satisfy the requirements of subsection (1)(b).

Section 9. Section 15-30-126, MCA, is amended to read:

"**15-30-126. Small business corporation — deduction for donation of computer equipment to schools.** A small business corporation, as defined in 15-31-201, is allowed a deduction equal to the fair market value, not to exceed 30% of the small business corporation's net income, of a computer or other sophisticated technological equipment or apparatus intended for use with the computer donated to an elementary, secondary, or accredited postsecondary school located in Montana if:

(1) the contribution is made no later than 5 years after the manufacture of the donated property is substantially completed;

(2) the property is not transferred by the donee in exchange for money, other property, or services; *and*

(3) the electing small business corporation receives a written statement from the donee in which the donee agrees to accept the property and representing that the use and disposition of the property will be in accordance with the provisions of subsection (2)~~; and~~

~~(4) the deduction allowed in this section is in lieu of the deduction allowed under 15-30-121 for charitable contributions~~."

Section 10. Section 15-30-131, MCA, is amended to read:

"**15-30-131. Nonresident and ~~temporary~~ *part-year* resident taxpayers — adjusted gross income.** *(1)* In the case of a *nonresident or part-year resident* taxpayer ~~other than a resident of this state~~, adjusted gross income includes the entire amount of adjusted gross income ~~as provided for in 15-30-111~~ *from sources within this state but does not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations, except to the extent to which the income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations are a part of income from any business, trade, profession, or occupation carried on in this state. Interest income from installment sales of real or tangible commercial or business property located in Montana must be included in Montana adjusted gross income. Adjusted gross income from sources within and outside of this state must be allocated and apportioned under rules adopted by the department in accordance with the Multistate Tax Compact.*

(2) For purposes of this section, "installment sales" means sales in which the buyer agrees to pay the seller in one or more deferred installments.

(3) The deductions allowed in computing net income are restricted to a prorated standard deduction, as adjusted, allowed under 15-30-122 and prorated exemptions, as adjusted, allowed under 15-30-112. The standard deduction and the claimable exemptions must be prorated according to the ratio that the taxpayer's Montana adjusted gross income bears to the taxpayer's federal adjusted gross income."

Section 11. Section 15-30-137, MCA, is amended to read:

"**15-30-137. Determination of tax of estates and trusts.** The amount of tax must be determined from taxable income of an estate or trust in the same manner as the tax on taxable income of individuals, by applying the ~~rates~~ *rate* contained in 15-30-103. Credits allowed individuals under Title 15, chapter 30, also apply to estates and trusts when applicable."

Section 12. Section 15-30-142, MCA, is amended to read:

"**15-30-142. Returns and payment of tax — penalty and interest — refunds — credits.** (1) *A return must be filed as provided in subsections (2)(a) through (2)(d) on forms and according to rules prescribed by the department. The filing status used in subsection (2) must be the same status used for the individual's or married couple's federal income tax return.*

(2) A return must be filed by:

(a) ~~Every~~ *each* single individual ~~and every married individual not filing a joint return with his or her spouse and~~ having ~~a~~ gross income for the taxable year of more than ~~$1,000,~~ *the combined amount of the standard deduction for a single individual plus the amount for the exemption claimable by the individual as provided in 15-30-112;* ~~as adjusted under the provisions of subsection (7), and~~

(b) each individual filing as a head of household having gross income for the taxable year of more than the combined amount of the standard deduction for a head of household plus the amount for the exemption claimable by the individual as provided in 15-30-112;

(c) married individuals not filing separate returns and having a combined gross income for the taxable year of more than ~~$2,000,~~ *the combined amount of the standard deduction for married individuals not filing separately plus the amount for the exemption claimable by the individuals as provided in 15-30-112; and*

(d) ~~as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe~~ *married individuals filing separately with combined gross income exceeding one-half of the combined amount of the standard deduction for married individuals not filing separately plus the amount for the exemption claimable by the individual as provided in 15-30-112.* ~~The gross income amounts referred to in the preceding sentence shall be increased by $800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4).~~

(3) A nonresident ~~shall be~~ *is* required to file a return if ~~his~~ *the nonresident's* gross income for the taxable year derived from sources within Montana exceeds the *total* amount of the *prorated* exemption deduction *and prorated standard deduction* ~~he is entitled to claim for himself and his~~ *claimable by the nonresident and the nonresident's* spouse under the provisions of 15-30-112(2), (3), and (4).

~~(2)~~*(4)* In accordance with instructions set forth by the department, every taxpayer who is married, ~~and~~ *who is* living with ~~husband or wife~~ *the taxpayer's spouse,* and *who* is required to file a return may, at ~~his or her~~ *the taxpayer's* option, file a joint return with ~~husband or wife~~ *the spouse* even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax ~~shall~~ *must* be computed on the aggregate taxable income and the liability with respect to the tax ~~shall be~~ *is* joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department ~~so~~ consents.

~~(3)~~*(5)* If ~~any such~~ *a* taxpayer is unable to make ~~his own~~ *a* return *that is required to be made by the taxpayer,* the return ~~shall~~ *must* be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of ~~such~~ *the* taxpayer.

~~(4)~~*(6)* All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 ~~and/or~~ *and* any payment made by reason of an estimated tax return provided for in 15-30-241~~; provided, however,~~ *if* the tax ~~so~~ computed is greater by $1 than the amount withheld ~~and/or~~ *or* paid by estimated return as provided in this chapter. If the amount of tax withheld ~~and/or~~ *or* payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer ~~shall be~~ *is* entitled to a refund of the excess.

~~(5)~~*(7)* As soon as practicable after the return is filed, the department shall examine and verify the tax.

~~(6)~~*(8)* If the amount of tax as verified is greater than the amount ~~theretofore~~ paid, the excess ~~shall~~ *must* be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction ~~thereof~~ *of a year* on the additional tax. In ~~such~~ *that* case, there ~~shall be~~ *is* no penalty because of ~~such~~ *the* understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

~~(7)~~*(9)* By November 1 of each year, the department shall ~~multiply~~ *determine* the minimum amount of gross income necessitating the filing of a return ~~by the inflation factor~~ for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

~~(8)~~*(10)* Individual income tax forms distributed by the department for each taxable year must contain instructions and tables based on the adjusted base year structure for that taxable year.

(11) For the purposes of this section:

(a) "exemption" means an exemption provided by 15-30-112 and includes the adjustment provided in 15-30-112(6); and

(b) "standard deduction" means a deduction provided by 15-30-122 and includes the adjustment provided in 15-30-122(4)."

Section 13. Section 15-30-323, MCA, is amended to read:

"**15-30-323. Penalty for deficiency.** (1) If the payment required by 15-30-142~~(6)~~*(8)* is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, there ~~shall~~ *must* be added to the amount of the deficiency 5% ~~thereof; provided, however, that no~~ *of* *the deficiency. However, a* deficiency penalty ~~shall~~ *may not* be less than $2. Interest ~~will~~ *must* be computed at the rate of 9% per annum or fraction ~~thereof~~ *of a year* on the additional assessment. Except as otherwise expressly provided in this subsection, the interest ~~shall~~ *must* in all cases be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest ~~thereon~~ *on the tax due* at the rate of 9% per annum from the time when the return was originally required to be filed to the time of payment."

Section 14. Section 15-31-121, MCA, is amended to read:

"**15-31-121.** *(Temporary for tax year 1993)* **Rate of tax — minimum tax — surtax.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 ~~shall be~~ *is:*

(a) ~~6-3/4%~~ *7.08%* of ~~all~~ *the first $500,000 of* net income for the taxable period*; and*

(b) 7.57% of all net income in excess of $500,000 for the taxable period. ~~The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.~~

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 ~~shall be~~ *is:*

(a) ~~7% of all~~ *7.33% of the first $500,000 of* taxable net income for the taxable period*; and*

(b) 7.82% of all net income in excess of $500,000 for the taxable period.

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than ~~$50~~ *$100.*

~~(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add, as a surtax for tax year 1992, 2.3% of the tax liability and, as a surtax for tax year 1993, 4.7% of the tax liability, and the amount so derived is the amount due the state.~~

~~(5) The additional tax collected under subsection (4) must be deposited to the credit of the state general fund.~~

15-31-121. *(Effective ~~on receipt of taxes~~ for tax year ~~1993~~ 1994 and thereafter)* **Rate of tax — minimum tax — surtax.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 ~~shall be~~ *is:*

(a) 6 3/4% of ~~all~~ *the first $500,000 of* net income for the taxable period*; and*

(b) 7 1/4% of all net income in excess of $500,000 for the taxable period. ~~The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.~~

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 ~~shall be~~ *is:*

(a) 7% of ~~all~~ *the first $500,000 of* taxable net income for the taxable period*; and*

(b) 7.5% of all net income in excess of $500,000 for the taxable period.

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than ~~$50~~ *$100.*

~~(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add, as a surtax for tax year 1988, 4% of the tax liability, and the amount so derived is the amount due the state.~~"

Section 15. Section 15-31-202, MCA, is amended to read:

"**15-31-202. Small business corporation not subject to chapter.** (1) A small business corporation is not subject to the taxes imposed by this chapter. The corporate net income or loss of the corporation is included in the stockholders' adjusted gross income as defined in 15-30-111.

(2) Each small business corporation is required to pay the minimum fee of ~~$10~~ *$25* required by 15-31-204."

Section 16. Section 15-31-204, MCA, is amended to read:

"**15-31-204. Minimum fee of small business corporations unaffected.** Notwithstanding the provisions of 15-31-121, small business corporations shall pay a minimum fee of ~~$10~~ *$25.*"

Section 17. Section 15-31-131, MCA, is amended to read:

"**15-31-131. Credit for dependent care assistance.** (1) There is a credit against the taxes otherwise due under this chapter allowable to an employer for amounts paid or incurred during the taxable year by the employer for dependent care assistance actually provided to or on behalf of an employee if the assistance is furnished by a registered or licensed day-care provider and pursuant to a program that meets the requirements of section 89(k) and 129(d)(2) through (6) of the Internal Revenue Code.

(2) (a) The amount of the credit allowed under subsection (1) is 20% of the amount paid or incurred by the employer during the taxable year, but the credit may not exceed $1,250 of day-care assistance actually provided to or on behalf of the employee.

(b) For the purposes of this subsection, marital status must be determined under the rules of section 21(e)(3) and (4) of the Internal Revenue Code.

(c) In the case of an onsite facility, the amount upon which the credit allowed under subsection (1) is based, with respect to any dependent, must be based upon utilization and the value of the services provided.

(3) An amount paid or incurred during the taxable year of an employer in providing dependent care assistance to or on behalf of any employee does not

qualify for the credit allowed under subsection (1) if the amount was paid or incurred to an individual described in section 129(c)(1) or (2) of the Internal Revenue Code.

(4) An amount paid or incurred by an employer to provide dependent care assistance to or on behalf of an employee does not qualify for the credit allowed under subsection (1):

(a) to the extent the amount is paid or incurred pursuant to a salary reduction plan; or

(b) if the amount is paid or incurred for services not performed within this state.

(5) If the credit allowed under subsection (1) is claimed, the amount of any deduction allowed or allowable under this chapter for the amount that qualifies for the credit (or upon which the credit is based) must be reduced by the dollar amount of the credit allowed. The election to claim a credit allowed under this section must be made at the time of filing the tax return.

(6) The amount upon which the credit allowed under subsection (1) is based may not be included in the gross income of the employee to whom the dependent care assistance is provided. However, the amount excluded from the income of an employee under this section may not exceed the limitations provided in section 129(b) of the Internal Revenue Code. For purposes of Title 15, chapter 30, part 2, with respect to an employee to whom dependent care assistance is provided, "wages" does not include any amount excluded under this subsection. ~~Amounts excluded under this subsection do not qualify as expenses for which a deduction is allowed to the employee under 15-30-121.~~

(7) Any tax credit otherwise allowable under this section that is not used by the taxpayer in a particular year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in the next succeeding tax year may be carried forward and used in the second succeeding tax year, and likewise through the fifth year succeeding the tax year in which the credit was first allowed or allowable. A credit may not be carried forward beyond the fifth succeeding tax year.

(8) If the taxpayer is an S corporation, as defined in section 1361 of the Internal Revenue Code, and the taxpayer elects to take tax credit relief, the election may be made on behalf of the corporation's shareholders. A shareholder's credit must be computed using the shareholder's pro rata share of the corporation's costs that qualify for the credit. In all other respects, the effect of the tax credit applies to the corporation as otherwise provided by law.

(9) For purposes of the credit allowed under subsection (1):

(a) The definitions and special rules contained in section 129(e) of the Internal Revenue Code apply to the extent applicable.

(b) "Employer" means an employer carrying on a business, trade, occupation, or profession in this state.

(c) "Internal Revenue Code" means the federal Internal Revenue Code as amended and in effect on January 1, 1989."

Section 18. Section 15-32-303, MCA, is amended to read:

"**15-32-303. Deduction for purchase of Montana produced organic fertilizer.** In addition to all other deductions ~~from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or~~ from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct ~~his~~ expenditures *made by the taxpayer* for organic fertilizer produced in Montana and used in Montana if the expenditure was not otherwise deducted in computing taxable income."

Section 19. Section 13-37-218, MCA, is amended to read:

"**13-37-218. Limitations on receipts from political committees.** *(1)* A candidate for the state senate may receive no more than $1,000 in total combined monetary contributions from all political committees contributing to ~~his~~ *the* campaign, and a candidate for the state house of representatives may receive no more than $600 in total combined monetary contributions from all political committees contributing to ~~his~~ *the* campaign. The foregoing limitations ~~shall~~ *must* be multiplied by the inflation factor as defined in ~~15-30-101(8)~~ *subsection (2)* for the year in which general elections are held ~~after 1984;~~, *and* the resulting figure ~~shall~~ *must* be rounded off to the nearest $50 increment. The commissioner of political practices shall publish the revised limitations as a rule. In-kind contributions may not be included in computing these limitation totals. The limitation provided in this section does not apply to contributions made by a political party eligible for a primary election under 13-10-601.

(2) "Inflation factor" means a number determined for each year by dividing the consumer price index for June of the year by the consumer price index for June 1980. The consumer price index to be used in determining the inflation factor is the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor."

Section 20. **Codification instruction.** [Section 8] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 8].

Section 21. **Transition.** (1) Notwithstanding the provisions of 15-30-111, the adjusted gross income of an individual includes refunds of federal income tax received for tax years prior to December 31, 1992, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability.

(2) Notwithstanding the provisions of 15-30-122, all itemized deductions allowed pursuant to 26 U.S.C. 161 and 211 that may be carried forward, including but not limited to the contributions carryover, investment interest expense carryover, home mortgage interest amortization, bond premium amortization, and deduction for income in respect of a decedent, may be continued to be carried forward for a period not to exceed 5 years.

Section 22. **Repealer.** Sections 15-30-121, 15-30-156, 15-30-157, 15-30-159, 15-30-160, and 15-30-199, MCA, are repealed.

Section 23. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

Approved May 11, 1993.

CHAPTER NO. 635

[HB 692]

AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE UNITED STATES NATIONAL PARK SERVICE AND THE STATE OF MONTANA; ESTABLISHING A STATUTORY APPROPRIATION; AND AMENDING SECTION 17-7-502, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **United States National Park Service — Montana compact ratified.** The compact entered into by the state of Montana and the United States National Park Service and filed with the secretary of state of the state of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, NATIONAL PARK SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims to water for certain lands administered by the National Park Service within the State of Montana at the time of the effective date of this Compact.

RECITALS

WHEREAS, in 1979 the United States filed in the United States District Court for the District of Montana several actions to adjudicate, inter alia, its rights to water with respect to Glacier National Park, see United States v. Aageson, No. CV-79-21-GF; United States v. Abell, No. CV-79-33-M; and United States v. AMS Ranch, Inc., No. CV-79-22-GF.

WHEREAS, the State of Montana, in 1979 pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate settlement of claims by the federal government to non-Indian reserved waters within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of the existing National Park Service units in the State of Montana, including those reserved water rights necessary to preserve Glacier National Park and Yellowstone National Park unimpaired for future generations;

WHEREAS, the United States, in quantifying its reserved water rights recognizes the need to accommodate the interests of the state and its citizens by providing for the development and use of water in the vicinity of the Park units to the extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS The Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of Interior pursuant to 43 U.S.C. §1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I

DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

(1) "Abstract" means the copy of the document entitled "Abstract of National Park Service Water Rights" referenced in this Compact as Appendix 1.

(2) "Big Hole National Battlefield" or "BHNB" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by Executive Order No. 1216 of June 23, 1910; Presidential Proclamation No. 2339 of June 29, 1939, 53 Stat. 2544; and Act of May 17, 1963, 77 Stat. 18.

(3) "Bighorn Canyon National Recreation Area" or "BCNRA" means those lands located in Montana that were acquired pursuant to, or designated as such by Act of October 15, 1966, 80 Stat. 913.

(4) "Bureau" means the Montana Bureau of Mines and Geology or its successor.

(5) "Category 1 stream" means a stream that headwaters on the reserved land administered by the National Park Service.

(6) "Category 1a stream" means a stream that headwaters on the reserved land administered by the National Park Service and which, in part, carries water that drains non-federal land within the boundaries of the same reserved land.

(7) "Category 2 stream" means a stream that headwaters in a Wilderness Area in Montana outside the respective Park unit which flows into the reserved land administered by the National Park Service, and which is not the source for a consumptive use water right recognized under state law on the effective date of this Compact and drains a hydrologic basin that contains only federal land.

(8) "Category 3 stream" means a stream that headwaters in Montana outside the reserved land administered by the National Park Service that flows into the reserved land and is the source for consumptive use water rights recognized under state law on the effective date of this Compact.

(9) "Category 4 stream" means a stream that is treated individually due to special circumstances.

(10) "Consumptive use" means use of surface water not considered a nonconsumptive use under (24) and use of groundwater which is shown to be hydrologically connected to surface water pursuant to Article II.

(a) "Current consumptive use", when referring to water rights recognized under state law only, means all consumptive use water rights recognized under state law with a priority date before January 1, 1993.

(b) "Future consumptive use", when referring to a water right recognized under state law only, means a consumptive use water right recognized under state law with a priority date on or after January 1, 1993.

(11) "Credible information" means credible evidence sufficient to support a prima facie basis for the theory asserted.

(12) "Department" means the Montana Department of Natural Resources and Conservation or its successor.

(13) "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is later.

(14) "Glacier National Park" or "GNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved by the Act of May 11, 1910, 36 Stat. 354; Act of February 27, 1915, 38 Stat. 814; and Act of April 11, 1972, 86 Stat. 120.

(15) "Grant Kohrs Ranch National Historic Site" means those lands acquired by the United States and designated as such pursuant to Public Law 92-406, August 25, 1972.

(16) "Groundwater" means water that is beneath the ground surface.

(17) (a) "Hydrologically connected", for the purposes of Articles II and III, means groundwater that is connected to surface water such that appropriation at the proposed rate will cause a calculable reduction in surface water flow. A "calculable reduction in surface water flow" means a theoretical reduction based on credible information as opposed to a measured reduction.

(b) "Hydrologically connected" for the purposes of Article IV, means groundwater that is considered to be connected to the hydrothermal system within the reserved land of Yellowstone National Park based on scientific evidence according to the procedures in Article IV.

(18) "Hydrothermal system" means the groundwater system, including cold water recharge, transmission and warm water discharge that is hydrologically connected to the hydrothermal features within the reserved land of Yellowstone National Park.

(19) "Hydrothermal discharge water" means groundwater with a temperature in excess of 59 degrees Fahrenheit that is hydrologically connected to the hydrothermal system within the reserved land of Yellowstone National Park.

(20) "Hydrothermal feature" means a surface manifestation of a hydrothermal system, including but not limited to: hot springs, geysers, mud pots, and fumaroles.

(21) "Instream flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' reserved water right for the purposes of the reserved land.

(22) "Little Bighorn Battlefield National Monument" or "LBBNM" means those lands located in Montana that were acquired pursuant to or withdrawn and reserved by Presidential Proclamation of December 7, 1886.

(23) "Nez Perce National Historical Park" means those lands in Montana acquired and added to the Nez Perce National Historical Park by Congress on October 30, 1992, pursuant to Public Law 102-576.

(24) (a) "Non-consumptive use" when applied to a mining or hydropower use for which a water right is recognized under state law with a priority date on or after January 1, 1993, means an appropriation that does not cause a net loss in the surface source of supply, and where substantially all of the diverted water becomes return flow with little or no delay between the time of diversion and the time of return, and without adverse effect on the quantity or quality of water necessary to fulfill the purposes of the reserved land.

(b) "Non-consumptive use" when applied to a water right recognized under state law other than a mining or hydropower use with a priority date on or after January 1, 1993, or a water right recognized under state law with a priority date before January 1, 1993, means a water right considered to be non-consumptive by the decree, permit or law authorizing the use.

(25) "Parties" means the State of Montana and the United States.

(26) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

(27) "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right.

(28) "Return flow" means the portion of water diverted from a source that is returned to the same source, at or near the point of diversion.

(29) "Scientific evidence" means geologic, geophysical, geochemical and hydrologic information.

(30) "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

(31) "Technical Oversight Committee" or "TOC" means the scientific committee established by Article IV of this Compact.

(32) "Tributary to" means surface water that originates in the same hydrologic basin or subbasin as the stream referred to and which contributes water to the same stream.

(33) "Unincorporated municipality" includes but is not limited to a rural special improvement district or any other entity that serves community water needs.

(34) "United States" means the federal government and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means the Secretary of the Department of the Interior, or his or her designees.

(35) "Working Group Report" means the Abridged and Unabridged reports by Custer, S., et. al. dated January 5, 1993, and titled Recommended Boundary for Controlled Groundwater Area in Montana Near Yellowstone National Park and accompanying maps.

(36) "Yellowstone National Park" or "YNP" means those lands located in Montana that were acquired pursuant to, or withdrawn and reserved for Yellowstone National Park by the Act of March 1, 1872, 17 Stat. 32; Act of May 26, 1926, 44 Stat. 655; Act of March 1, 1929, 45 Stat. 1435; Act of April 19, 1930, 46 Stat. 220; and Proclamation No. 2013 of October 20, 1932, 47 Stat. 2537.

ARTICLE II

IMPLEMENTATION

A. Abstract:

Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234(4) and (7), MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall be reflected in a final decree.

B. Method of Allocation of Water on Category 3 and 4 Streams:

This section explains the method of quantification of the reserved instream flow water rights of the United States for Category 3 and 4 streams and the method of calculating the quantity of consumptive use pursuant to state law within a basin to which the United States agrees to subordinate its reserved instream flow water right. The method set forth in this section shall be used to determine whether the limits on consumptive use pursuant to state law set forth in Article III have been reached. Addition to the Abstract of a reserved instream flow water right on a stream inadvertently omitted by the parties or reclassification of a stream due to a water right recognized under state law and inadvertently omitted by the parties shall be consistent with this section and shall not be deemed a modification of this Compact.

1. Allocation to Instream Flow:

The allocation of water to instream flow on Category 3 and 4 streams is arrived at using the following method as explained in general terms:

a. The United States' reserved water right for instream flow includes the entire flow of that stream within the State of Montana at the point where the stream flows over or forms the boundary of the specified reserved land after: (1) all consumptive use water rights of any agency of the United States recognized under federal or state law are satisfied; and (2) subordination of the reserved water right for instream flow to water rights recognized under state law as set forth in and limited by Article III and more specifically in the Abstract.

b. Actual use of water in Wyoming or Canada shall not diminish the quantity of water designated for consumptive use pursuant to state law as set forth in Article III.

2. Method of Calculation of Consumptive Use Rights Recognized Under State Law:

To determine whether water is available for appropriation for consumptive use pursuant to state law on Category 3 and 4 streams, and for determining whether the limit on subordination of the United States' water rights to consumptive uses has been reached, the following provisions shall apply:

a. Tributary Water: The calculation of total consumptive use on a Category 3 or 4 stream shall include all current and future consumptive use, recognized under state law, of surface water tributary to the stream to the point it enters the reserved land. The limits on total consumptive use on a Category 4 stream that forms the boundary of the reserved land shall include all current and future consumptive use recognized under state law, of surface water tributary to the stream to the most downstream point that the stream forms the boundary of the reserved land.

b. Groundwater:

i. An exemption from state permit requirements for wells or developed springs shall not apply to appropriations within a basin tributary to the reserved portion of a Category 3 or 4 stream after the effective date of this Compact, provided that the registration process set forth in Article II, section B.2.b.ii.(3)(b) shall apply to applications for a permit for a well of 35 gpm or less, not to exceed 10 acre-feet per year. In addition, all groundwater appropriations within the Yellowstone Controlled Groundwater Area shall be subject to Article IV.

ii. The calculation of total consumptive use on a Category 3 or 4 stream shall include appropriations of groundwater as follows:

(1) Pre-January 1, 1993: An appropriation of groundwater with a priority date before January 1, 1993, shall not be included in the calculation of total consumptive use.

(2) January 1, 1993 - Effective Date: An appropriation of groundwater with a priority date on or after January 1, 1993, but before the effective date of this

Compact shall be included in the calculation of total consumptive use if the following procedural requirements are met and the appropriation is found to be hydrologically connected to surface water tributary to the reserved portion of a Category 3 or 4 stream.

(a) Within 120 days after the effective date of this Compact, the Department shall provide the United States with notice of all groundwater appropriations in drainages tributary to the reserved portion of a Category 3 or 4 stream that, according to the records of the Department, have a priority date on or after January 1, 1993 and before the effective date of this Compact.

(b) Up to 120 days following mailing of such notice the United States shall provide the Department with credible information that a groundwater appropriation included in the notice is hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(c) Within 60 days of receipt of such information, the Department shall issue an order stating that (1) the appropriation is hydrologically connected to surface water tributary to the Category 3 or 4 stream; and (2) the action to be taken with respect to the appropriation. The order is effective within 60 days of issuance unless the appropriator enters an appearance to contest the order. If credible information of hydrologic connection has not been provided by the United States, the Department shall issue an order stating its determination and reasons therefore.

(d) If the appropriator enters an appearance to contest the order, the Department shall (1) issue an order staying use of the appropriation pending a final decision on the matter by the Department only if the limits on total consumptive use for that drainage have been reached; (2) set a date for a hearing; and (3) proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated, provided that the burden of proving hydrologic connection shall be as set forth in Article II, section B.2.b.(3). The Department shall, whenever possible, consolidate any proceedings on the groundwater application pursuant to Article IV with any proceeding made necessary by this Article.

(3) Post-Effective Date: An appropriation of groundwater recognized under state law with a priority date after the effective date of this Compact shall be included in the calculation of total consumptive use if the following conditions apply:

(a) Wells in excess of 35 gallons per minute or 10 acre-feet per year: The limit on total consumptive use shall include groundwater appropriation by a well or developed spring with a permit amount in excess of 35 gpm or any well with a volume of use greater than 10 acre-feet per year, including a combined appropriation from the same source from two or more wells or developed springs that exceeds these limitations, unless the applicant is able to show by a preponderance of the evidence that the appropriation is not hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(i) The applicant shall submit credible information, including a report to the Department prepared by a professional qualified in the science of groundwater hydrology verifying that the appropriation is not hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream. If the applicant fails to submit the report, the application shall be considered defective and shall be returned to the applicant for completion as provided by state law.

(ii) The Department shall provide notice of the proposed appropriation and a copy of the report to the United States concurrent with notice pursuant [to] 85-2-307, MCA.

(iii) Within 60 days of the mailing of notice, the United States shall file an objection to the proposed appropriation on the basis that it is hydrologically connected to surface water.

(iv) The Department shall not exclude the appropriation from the limits on total consumptive use unless the applicant proves by a preponderance of the evidence that the proposed appropriation is not hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream. In doing so the Department shall make a specific finding on the adequacy of the report provided by the applicant.

(v) If the proposed appropriation is determined not to be hydrologically connected to surface water, or if the limit on consumptive use has not been reached, the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

(b) Wells of 35 gallons per minute or less and 10 acre-feet per year or less:

(i) An applicant for an appropriation of groundwater of 35 gpm or less, not to exceed 10 acre-feet per year shall register for a permit by filing a form prescribed by the department.

(ii) The Department shall provide notice of the registration for a permit to the United States within 30 days of the filing. Within 30 days of the receipt of notice, the United States may file an objection to the application on the basis that the proposed appropriation is of groundwater that is hydrologically connected to surface flow tributary to the reserved portion of a Category 3 or 4 stream.

(iii) As long as the limit on consumptive use rights for a Category 3 or 4 stream has not been reached, the calculation of total consumptive use shall not include groundwater appropriations by well or a developed spring of 35 gallons per minute or less that do not exceed 10 acre feet per year unless the United States shows by a preponderance of the evidence that the proposed appropriation is hydrologically connected to the reserved portion of a Category 3 or 4 stream. If the United States meets this burden, the Department shall include the appropriation in the calculation of total consumptive use.

(iv) After the limit on consumptive use rights has been reached on a particular stream, the necessary showing by the United States' shall be to file an objection and come forward with credible information showing that the proposed appropriation is hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream. If the United States makes such a showing, the Department shall consider the application under the criteria in Article II, section B.2.b.(3)(b)(v) and (vi).

(v) The Department shall not exclude the appropriation from the limits on total consumptive use unless the applicant proves by a preponderance of the evidence that the proposed appropriation is not hydrologically connected to surface flows tributary to the reserved portion of the Category 3 or 4 stream.

(vi) If the proposed appropriation is determined not to be hydrologically connected to surface water the Department may issue a permit in accordance with state law and the applicant may complete the appropriation.

iii. Within 2 years after the effective date of this Compact, the Department, in consultation with the United States, is directed to promulgate rules as may be necessary to implement Article II, section B.2.b. Said rules shall not alter the rights or obligations of the parties hereto.

c. Effect of Decree in Calculation of Consumptive Use: Except as provided in Article II, section G., for the purposes of this Compact, the flow rate of a consumptive use shall be as finally decreed in a general adjudication, or recognized under state law until such final decree. At each stage in an adjudication, the allocation to current use as set forth in Article III and more specifically in the Abstract shall be adjusted to reflect the decreed amount.

d. Abandonment: When a consumptive use right recognized under state law on a Category 3 or 4 stream is abandoned and such abandonment causes water to become available for appropriation within the limits of the total amounts of water allocated to consumptive use rights recognized under state law established for that stream by Article III, the increment of water below that limit is available for new appropriation in accordance with state law and this Compact. State law governs the issue of whether an abandonment has occurred.

e. Non-Consumptive Use: The limit on total consumptive use rights recognized under state law shall not include non-consumptive uses as defined by this Compact.

C. Subordination of Instream Flow Right:

1. The United States agrees to subordinate its reserved water right for instream flow to consumptive uses calculated according to this Article in a manner that is specific to each stream on which a reserved water right is described. This subordination is set forth for each stream in Article III. Curtailment of uses to which the reserved water rights described in this Compact have not been subordinated during periods of low flow shall proceed on the basis of priority and may be initiated in a state or federal court of competent jurisdiction pursuant to Article II, section I.

2. The reserved water rights described in this Compact shall not be subordinate to water rights which were forfeited by 85-2-226 as interpreted in In the Matter of the Adjudication of the Water Rights within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), nor shall any claimant of such forfeited water right have standing, based solely on such claimed right, to object to this Compact or any reserved water right described in this Compact.

D. Location of Instream Flow Rights: The United States' reserved water rights for instream flow apply to the portion of the Categories 1 through 4 streams specified in this Compact that flow over or form the boundary to reserved land administered by the National Park Service.

E. Change in Instream Flow Right: Except as provided in Article II, section J.2.b., the water rights dedicated to instream flow by this Compact shall not be changed to any other use.

F. Prohibition on Future Impoundments: With the exception of the North Fork of the Big Hole River and its tributaries, no new impoundments may be permitted on the mainstem of a Category 2, 3, or 4 stream upstream of, or along, the portion of the stream for which a water right for instream flow is described in this Compact after the effective date of this Compact. This prohibition shall include impoundments that are exempt from permit requirements under state law. Reclamation, repair or rehabilitation of an existing impoundment shall not be considered a new impoundment, provided that without the consent of the United States, reclamation, repair or rehabilitation shall not cause the impoundment to exceed the original constructed capacity of the impoundment. This prohibition shall not apply to impoundments constructed to store a Tribal water right or to implement settlement of litigation regarding quantification of a Tribal water right. On Category 3 and 4 streams for which an instream flow right is described for periods of low flow as set forth in Article III, sections G.3.c. and d., such water right has not been subordinated to a new water right with the method of diversion as an impoundment on the mainstem of the stream with a priority date on or after January 1, 1993, but before the effective date of this Compact.

G. Management to Maximize Use by Montana Water Users of the Water Allocated to Consumptive Use Rights Recognized Under State Law: If any type of conservation or water distribution plan which includes measurement of actual water use, including use pursuant to rights recognized under state law with a priority date before January 1, 1993, is adopted pursuant to state law, the limits established for consumptive use appropriated pursuant to state law shall apply to actual measured use, not permitted and decreed or claimed rights, provided that records of actual use be made available to the United States on request and provided further that, such plan shall not diminish the reserved water right of the United States as described in this Compact.

H. Basin Closure

1. Except as provided in Article II, section B.2.d., in the following drainage basins upstream of the portion of the stream for which a reserved water right for instream flow is described in this Compact, the Department shall not process or grant an application or registration for a permit to appropriate or to reserve water for future consumptive use as defined by this Compact once the limits on consumptive use tabulated in Article III and set forth more specifically in the Abstract are reached:

Big Hole National Battlefield:
North Fork of the Big Hole River

Glacier National Park:
North Fork of the Flathead River
Middle Fork of the Flathead River

Yellowstone National Park:
Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little Cotton-

wood, Snowslide, Crevice, Dry Canyon, Slough, Tepee, and Soda Butte Creeks, and the Gallatin, Madison, and Yellowstone Rivers

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for which future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater shall control.

I. Enforcement of Water Right

1. The United States, the state, or the holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water right described by this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable, or to the extent not applicable, by applicable state or federal law.

2. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter a federal reservation for which a water right is described in this Compact for the purpose of data collection, including the collection of information necessary for water distribution on or off the federal reservation, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of instream flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

3. The Department or the Bureau may enter a federal enclave for which a reserved water right is described in this Compact, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department or Bureau shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

4. The United States may request an investigation by the Department of a diversion located upstream of the reserved portion of a stream for which a reserved water right is described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

5. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it deems necessary for enforcement of its reserved water right for instream flow described in this Compact.

6. A person who violates or refuses or neglects to comply with the provisions of this Compact, an order of the Department pursuant to this Compact, or an action by the Bureau pursuant to this Compact is subject to the penalties provided by state law, including but not limited to, revocation of a permit issued pursuant to Article IV after the effective date of this Compact.

7. For any appeal to state court of an administrative decision authorized by this Compact, venue shall be the First Judicial District in Helena and the review

shall be conducted according to the procedures for judicial review of contested cases under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

8. In any contested case proceeding held under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated, pursuant to this Compact, the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding.

J. Change in Use

1. Change in Use Defined: For the purpose of this Article, the following actions affecting the use of a reserved water right for consumptive use described in this Compact shall be considered a change in use:

a. An action that alters type of use, place of use, point of diversion, place or means of storage, period of use or point of return flow that will:

i. increase the net depletion on a source; or

ii. adversely affect water quality at the point the reserved water right ends; or

iii. result in a change in point of diversion or point of return flow relative to a holder of a water right recognized under state law; or

iv. change the point of diversion from groundwater to surface water, or from surface to groundwater; or

v. in any other manner, adversely affects the reasonable exercise of a water right that is recognized under state law.

b. The exercise of a reserved water right to future consumptive use as authorized by this Compact shall not be considered a change in use.

2. Instream flow: Reserved water rights specified in this Compact for instream flow shall not be subject to change to any other use, provided that:

a. the emergency use of water for fire suppression as provided for in Article III.H. shall not be deemed a change or alteration in use, or violation of a reserved water right for instream flow; and

b. the United States may seek to appropriate water for a consumptive use on a source for which no consumptive use is described in this Compact by seeking a permit under state law for consumptive use, provided that the water right granted shall not be counted against the limits on allocation for state consumptive use water rights imposed by this Compact. The water right so acquired shall be administered in accordance with Article V, section B.

3. Consumptive uses: The United States may take action affecting the use of its consumptive use water rights provided that (1) the action shall be in fulfillment of the purposes of the reservation; (2) the total use shall not exceed the amount described in this Compact; and (3) the action shall not adversely affect a water right that is recognized under state law.

4. Notice of intent to change use: At least 180 days prior to a change in use, the United States agrees to provide notice to the Department.

a. The notice shall contain the facts pertinent to the proposed change including, where applicable:

i. The location of a new point of diversion.

ii. The new source of water.

iii. The new means of diversion.

iv. If a well is involved, the depth and locations of the old and new well.

v. The new use and its impact on actual consumption and water quality.

vi. If the change includes storage, the location, period and capacity of the storage facility.

vii. An estimate of when the change will be effective.

viii. A map showing the existing system and the proposed change.

b. At least 120 days prior to the proposed change, the United States agrees to publish the notice required by Article II, section J.4.a. with a statement that within 60 days following publication or service of notice, relief may be sought in a state or federal court of competent jurisdiction, once in a newspaper of general circulation in the area of the source, and to serve the notice by first-class mail on interested and potentially affected persons as identified by the records of the Department, including:

i. an appropriator of water or applicant for or holder of a permit who, according to the records of the Department, may be affected by the proposed appropriation;

ii. a purchaser under contract for deed that, according to the records of the Department, may be affected by the proposed appropriation;

iii. any public agency that has reserved water in the source recognized under state law; and

iv. a federal agency or Tribe that claim a reserved water right or other water rights in the source.

c. On request by the United States, the Department shall provide the information contained in its records identifying any person potentially affected by the proposed change. The United States agrees to reimburse the Department for the expense of providing this information.

d. In the event that future changes in state law establish a method of notice of a proposed change in use to interested and potentially affected persons other than by first-class mail, the United States may alter the method of notification accordingly.

e. Prior to the actual change, the United States agrees to provide the Department with proof of notice by affidavit.

5. Objection to proposed change: Within 60 days following the notice pursuant to Article II, section J.4.b., the Department or any other person may bring an action against the proposed change in use in a state or federal court of competent jurisdiction, if a property right, water right, or other interest protected under state law would be adversely affected, or if the proposed change is not in compliance with this Compact.

6. Notice of Change:

a. The United States agrees to notify the state and provide a copy of the final order within 60 days of its entry by a state or federal court of competent jurisdiction resolving any objections to the change in use of a federal reserved water right described in this Compact,

b. The United States agrees to provide the state with notice of completion of the change within 60 days after the completion.

7. Reporting by the United States: For any action affecting the use of a consumptive right whether or not such action is deemed a change in use, the United States agrees to provide the following information to the Department:

a. Well log: For a use that includes the drilling of a well or enlargement of an existing wellbore, the United States agrees to provide a well log to the state within 60 days of the completion of the well.

b. Emergency Use: Within 60 days after the commencement of a temporary emergency use for fire suppression described in Section III.H. of this Compact, the United States agrees to notify the state of the use to which the water was put, the dates of use, and the estimated amount of water used.

c. Annual Report: Between April 1 and May 1 of each year, the United States agrees to provide the Department with a report on (1) actions during the preceding year affecting the use of a consumptive use right described in this Compact, regardless of whether the action is deemed a change in use pursuant to Article II, section J.1.; (2) the initiation of new uses that were completed during the preceding year; and (3) any data and documents generated or received by the National Park Service during the preceding year on measurement of instream flow on a Category 3 or 4 stream.

8. Reporting by the State: Between December 1 and December 31 of each year, the Department shall provide the United States with a report of: (1) changes in use during the preceding year, as defined by state law, of water rights upstream of or within the boundaries of reserved land for which a reserved water right is described in this Compact; (2) new permits issued during the preceding year according to the records of the Department; and (3) any data and documents generated by the Department during the preceding year on the measurement of streamflows, diversions and well use on or tributary to Category 3 or 4 streams.

ARTICLE III

WATER RIGHT

The parties agree that the following water rights are in settlement of the reserved water rights of the United States for the reservations described. All reserved water rights described in this Article are subject to Article V, section A.

A. Big Hole National Battlefield

1. Priority Date

The United States has a priority date of June 29, 1939 for the reserved water rights described in this Compact for BHNB.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of the BHNB as set forth in Table 1. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at BHNB shall include any non-reserved land within BHNB boundaries as the boundaries exist on the effective date of this Compact.

TABLE 1

United States National Park Service

Big Hole National Battlefield Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Visitor center Museum Maintenance area Residences Picnic area Irrigation		
Total for all use	7.14	50

3. Instream Flow

The North Fork of the Big Hole River is designated a Category 4 stream where it flows over the reserved land of BHNB. The United States has a reserved water right for instream flow on the North Fork of the Big Hole River where it flows over the reserved land of BHNB. The reserved water right for instream flow is quantified and defined as follows:

a. Instream Flow Quantification for November through March: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River at the point the river enters the reserved land of BHNB in the amount of 10 cfs for November through March. The instream flow water right is subordinate to (1) any use recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

b. Instream Flow Quantification for April through October: The United States has a reserved water right for instream flow on the North Fork of the Big Hole River for April through October in the amount of water left in the river after satisfaction of current and future consumptive uses pursuant to state law in the amounts up to but no greater than provided in Table 2, provided, that the limits of Table 2 notwithstanding, the instream flow water right of the United States is subordinate to (1) any water rights recognized under state law with a priority date before January 1, 1993; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use pursuant to Article II.

TABLE 2

State Law Based

Total Current and Future Consumptive Use Rights (cfs)

Tributary to the Reserved Portion of the
North Fork of the Big Hole River

Month	Consumptive Use
April	4.85
May	23.85
June	18.70
July	4.05
Aug.	1.75
Sept.	1.35
Oct.	1.50

4. Nothing in this Compact may affect an existing right to divert water from a point within BHNB and transport it for use off BHNB.

B. Bighorn Canyon National Recreation Area

The parties were unable to finalize agreement on quantification of the water rights for BCNRA prior to the effective date of this Compact. The parties agree to continue to pursue, in good faith, quantification of water rights, and further agree that all other relevant provisions of this Compact apply to a settlement of this water right through this process. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for BCNRA adjudicated in a state or federal court of competent jurisdiction.

C. Glacier National Park

1. Priority Date

The United States has a priority date of May 11, 1910 for reserved water rights described in this Compact for GNP. The United States recognizes that this date is junior to the priority dates for reserved water rights of the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation, and the Blackfeet Tribe of the Blackfeet Indian Reservation.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of GNP as set forth in Table 3. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at GNP shall include any nonreserved land within GNP boundaries as the boundaries exist on the effective date of this Compact.

TABLE 3

United States National Park Service

Glacier National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
North Fork Flathead River Basin		
Station, campground	4.7	70
Backcountry Use	1.98	
Backcountry Patrol Cabins	2.06	55
Middle Fork Flathead River Basin		
McDonald Creek areas	246.00	1720
Middle Fork areas	0.70	10
Backcountry Use	2.42	
Backcountry Patrol Cabins	2.06	55
Saint Mary River Basin		
Northern Border areas	2.20	20
Many Glacier areas	166.40	600
Saint Mary areas	128.40	915
Backcountry Use	2.02	
Backcountry Patrol Cabins	1.50	40
Two Medicine River Basin		
Two Medicine areas	6.40	70
Backcountry Use	0.38	
Backcountry Patrol Cabins	0.19	5
Cut Bank River Basin		
Backcountry Use	0.18	
Backcountry Patrol Cabins	0.19	
Milk River Basin		
Backcountry Use	0.02	
GNP TOTAL	567.80	

3. Instream Flow Right

a. Category 1:

i. Identification:

The following streams are designated as "Category 1:"

Sage, Spruce, Kishenehn, Starvation, Kintla, Red Medicine Bow, Agassiz, Ford, Parke, Long Bow, Akokala, Numa, Pocket, Jefferson, Bowman, Rainbow, Cummings, Logging, Anaconda, McGee, Camas, Fern, Fish, Howe, Longfellow, Trapper, Continental, Flattop, Kipp, Cattle Queen, Ahern, Mineral, Alder, Haystack, Logan, Hidden, Avalanche, Snyder, Sprague, Walton, Lincoln, Thompson, Pacific, Stimson, Nyack, Peril, Pinchot, Elk, Coal, Muir, Park, Debris, Ole, Shields, Autumn, Upper Bear, Boundary, Olson, South Fork Valentine, Valentine, Kootenai, Pass, Camp, Cleveland, Street, Whitecrow, Redgap, Lee, Otatso, Kennedy, Windy, Appekunny, Ptarmigan, Iceberg, Wilbur, Cataract, Allen, Swiftcurrent, Boulder, Two Dog, Rose, Baring, Siyeh, Reynolds, Virginia, Medicine Owl, Hudson Bay, Red Eagle, Atlantic, North Fork Cut Bank, Lake, Dry Fork, Aster, Paradise, Appistoki, Two Medicine, Fortymile, Fortyone Mile, Midvale, Railroad, Coonsa, Long Knife, Jackson, Grinnell, Kaina, Lunch, Pyramid, Thunderbird and Upper Summit Creeks and Waterton, St. Mary, North Fork Belly, Mokowanis and Belly Rivers.

ii. Instream Flow

The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact. This reserved water right ends at the point the stream exits the reserved land of GNP. The relationship between this water right and a water right to water stored within GNP held by the United States shall be governed by the rule of priority.

b. Category 1a Streams

i. Identification:

The following streams are designated as "Category 1a:"

Apgar, Canyon, Dutch, Harrison, McDonald, and Quartz Creeks.

ii. Instream Flow:

(a) The United States has a reserved water right for instream flow on the Category 1a streams in the amount of the entire flow of the streams, less (1) any United States' consumptive use rights described in this Compact; and (2) all water rights appurtenant to non-federal land within the boundaries of GNP recognized under state law with a priority date before January 1, 1993. This reserved water right ends at the most downstream point that the stream exits the reserved land of GNP.

(b) In the event all non-federal land on a Category 1a stream is acquired by the United States for the purpose of addition to GNP, the stream may be reclassified as a Category 1 stream at the request of the United States.

c. Category 4 Streams

i. Identification:

The following streams are designated as Category 4: the North Fork of the Flathead River, the Middle Fork of the Flathead River, Divide, Jule, Rubideau and Wild Creeks.

ii. Instream Flow for the North and Middle Forks of the Flathead River:

The United States has a reserved water right for instream flow on the North and Middle Forks of the Flathead River in the amount of the entire flow of the rivers, less any United States' consumptive use rights described in this Compact provided that, the instream flow water right is subordinate to 1) all water rights recognized under state law with a priority date before January 1, 1993, 2) future consumptive use rights calculated according to Article II up to the limits set forth in Table 4; (3) any use considered non-consumptive as defined by this Compact; and (4) any use of groundwater not included in the calculation of consumptive use according to Article II. This reserved water right ends at the most downstream point that the River forms the boundary of the reserved land of GNP.

TABLE 4

State Law Based

Future Consumptive Use Rights (cfs)

Tributary to the Reserved Portion of the Flathead River

Month	North Fork Flathead River	Middle Fork Flathead River
Jan.	7.5	7.1
Feb.	7.2	6.9
Mar.	8.9	8.1
April	#	#
May	#	#
June	#	#
July	40.5	#
Aug.	16.2	13.7
Sept.	11.8	9.7
Oct.	11.8	10.6
Nov.	12.0	11.6
Dec.	9.0	9.2

The amount of water available for future consumptive use in these months shall be an amount equivalent to the flow rate for all consumptive uses recognized under state law on December 31, 1992. The amount shall be adjusted to reflect the flow rates in a decree issued by a state or federal court of competent jurisdiction after December 31, 1992. At such time as final decrees are entered in these basins, the Department shall tabulate these rights, insert the appropriate amounts into Table 4, and submit the revised Table to the United States and the state for inclusion in this Compact. Revision of Table 4 to reflect this agreement shall not be deemed a modification of this Compact.

iii. Instream Flow for Divide, Jule, Rubideau and Wild Creeks

The United States has a reserved water right for instream flow on Divide, Jule, Rubideau, and Wild Creeks in the amount of the entire flow of the stream, less any United States' consumptive use rights described in this Compact. This water right ends at the most downstream point that the stream exits or no longer forms the boundary to the reserved land of GNP. This right is subject to the provisions of Article V, section A., and (1) on Divide Creek, is subordinate to any water rights recognized under state law with a priority date before January 1, 1993; and (2) on Rubideau Creek, is subordinate to any water rights recognized under state law with a priority date before January 1, 1993, provided that the use of such right is consistent with federal law.

4. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of GNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to (1) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth specifically in the Abstract.

D. Grant Kohrs Ranch National Historic Site

The Grant Kohrs Ranch National Historic Site in Montana does not include reserved land. The United States may apply for a permit to appropriate water or seek recognition of any existing water rights in accordance with state law.

E. Little Bighorn Battlefield National Monument

The parties were unable to finalize agreement on quantification of the water rights for LBBNM prior to the effective date of this Compact. For the purposes of settlement of the reserved water rights for land administered by the National Park Service in Montana, the parties agree that a water right for instream flow is necessary for the historic purposes of LBBNM. The parties agree to continue to pursue, in good faith, quantification of water rights and further agree that all other relevant provisions of this Compact apply to a settlement of this water right through this process. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water right for LBBNM adjudicated in a state or federal court of competent jurisdiction.

F. Nez Perce National Historical Park

The Nez Perce National Historical Park in Montana does not include reserved land. The United States may apply for a permit to appropriate water or seek recognition of any existing water rights in accordance with state law.

G. Yellowstone National Park

1. Priority Date

The United States has a priority date of March 1, 1872 for the reserved water rights described in this Compact for YNP.

2. Consumptive Use

The United States has a reserved water right for current and future consumptive use for the purposes of YNP as set forth in Table 5. The period of use shall be from January 1 through December 31. The source and place of use shall be as set forth more specifically in the Abstract. The place of use or point of diversion of a consumptive use water right at YNP shall include any non-reserved land within YNP as the boundaries exist on the effective date of this Compact.

TABLE 5

United States National Park Service

Yellowstone National Park Consumptive Use

Place of Use	Total Volume (ac-ft)	Maximum Flow Rate (gpm)
Yellowstone River Basin		
North Entrance	1.70	35
Stephens Creek facilities	12.00	50
TW facilities (Gardiner)	58.70	300
NE Entrance	15.60	50
Backcountry Use	10.70	
Backcountry Patrol Cabins	2.00	15
Day Use Areas	2.40	6
Gallatin River Basin		
NW Entrance Area	15.00	50
Backcountry Use	2.80	
Backcountry Patrol Cabins	0.50	10
Day Use Areas	0.60	6
Madison River Basin		
West Entrance	48.90	200
Backcountry Use	2.80	
Backcountry Patrol Cabins	0.50	10
Day Use Areas	0.70	
6 YNP TOTAL	174.90	

3. Instream Flow Right

a. Category 1:

i. Identification:

The following streams are designated as "Category 1:"

Black Bear Canyon, Black Butte, Blacktail Deer, Cougar, Daly, Duck, Fan, Grayling, Landslide, Mol Heron, Pebble, Specimen, Stephens, Upper Reese, and Wickiup Creeks, and the Gardner [sic] River.

ii. Instream Flow:

The United States has a reserved water right for instream flow on the Category 1 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

b. Category 2:

i. Identification:

The following streams are designated as "Category 2:"

Bacon Rind, Buffalo, Cottonwood, Coyote, Hellroaring, Little Cottonwood, and Snowslide Creeks.

ii. Instream Flow

The United States has a reserved water right for instream flow on the Category 2 streams in the amount of the entire flow of the streams, less any consumptive use rights of an agency of the United States recognized under federal or state law. This reserved water right ends at the most downstream point that the stream exits the reserved land of YNP.

iii. Change in Wilderness Designation

In the event that the Congress of the United States repeals the Wilderness designation assigned to the headwaters of an above named Category 2 stream, then, to the extent consistent with the law repealing the Wilderness designation as it pertains to water use, the stream headwatered in the former Wilderness may be reclassified in the appropriate category on request by the state.

c. Category 3:

i. Identification:

The following streams are designated as "Category 3:"

Crevice, Dry Canyon, Slough, and Tepee Creeks.

ii. The United States has a reserved water right for instream flow on Category 3 streams in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the instream flow right is subordinate to (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use set forth in Table 6 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 6

State Law Based

Total Current and Future Consumptive Use Rights (cfs)

Tributary to the Reserved Portion of Category 3 Streams

Month	Crevice Creek	Dry Canyon Creek	Slough Creek	Teepee Creek
Jan.	0.2	0.1	1.5	0.3
Feb.	0.2	0.1	1.6	0.3
Mar.	0.3	0.1	1.9	0.4
April	1.1	0.2	5.6	1.2
May	3.8	1.3	19.8	4.5
June	3.4	1.2	22.4	5.3
July	1.0	0.3	7.3	1.7
Aug.	0.4	0.2	2.9	0.8
Sept.	0.4	0.1	2.3	0.6
Oct.	0.4	0.1	2.4	0.6
Nov.	0.3	0.1	2.1	0.5
Dec.	0.2	0.1	1.8	0.4

iii. The provisions of Article III, section G.3.c.ii notwithstanding, in the event of a period of low flow such that Crevice, Dry Canyon, Slough, or Teepee Creeks fall below the critical levels of instream flow shown in Table 7 at the point the stream enters the reserved land of YNP, the United States' water right for instream flow is not subordinate to consumptive use water rights recognized under state law with a priority date on or after January 1, 1993.

TABLE 7

Low Stream Flow Levels at which Subordination is Limited (cfs)

Month	Crevice Creek	Dry Canyon Creek	Slough Creek	Tepee Creek
Jan.	3.8	1.1	28.9	6.5
Feb.	4.5	1.0	30.6	6.5
Mar.	5.2	1.2	35.4	7.7
April	20.2	4.7	106.4	23.7
May	71.8	24.0	376.2	84.6
June	63.8	22.9	425.6	100.1
July	18.7	6.6	138.7	33.2
Aug.	8.1	3.1	55.2	14.9
Sept.	7.0	2.0	44.2	10.9
Oct.	7.1	1.9	46.0	10.8
Nov.	5.2	1.5	39.5	9.1
Dec.	3.9	1.4	34.1	8.1

d. Category 4:

The following streams are designated as Category 4: Soda Butte Creek within the state, and the Gallatin, Madison and Yellowstone Rivers where they flow within or form the boundary to reserved land of YNP within the state.

i. Soda Butte Creek

(1) The United States has a reserved water right for instream flow on Soda Butte Creek in the amount of the entire flow of the stream, less any United States' consumptive use rights described in this Compact, provided that, the

instream flow right is subordinate to: (a) any water rights recognized under state law with a priority date before January 1, 1993; (b) any future consumptive use rights calculated according to Article II, as long as the limit on total current and future consumptive use set forth in Table 8 has not already been reached or exceeded by the rights protected under subsection (1)(a); (c) any use considered non-consumptive as defined by this Compact; and (d) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 8

State Law Based

Total Current and Future Consumptive Use Rights (cfs)

Tributary to the Reserved Portion of Soda Butte Creek

Month	
Jan.	0.3
Feb.	0.3
Mar.	0.2
April	0.1
May	6.2
June	17.5
July	6.4
Aug.	2.4
Sept.	0.8
Oct.	0.7
Nov.	0.5
Dec.	0.3

(2) The provisions of Article III, section G.3.d.i.(1) notwithstanding, in the event of a period of low flow such that Soda Butte Creek falls below the critical levels of instream flow shown in Table 9 at the point the stream enters the reserved land of YNP, the United States' water right for instream flow shall be subordinate only to: (a) any water right for domestic use of 35 gpm or less and to any water right held by an incorporated or unincorporated municipality, recognized under state law with a priority date before January 1, 1993; (b) any use considered non-consumptive as defined by this Compact; and (c) any use of groundwater not included in the calculation of consumptive use according to Article II.

(3) In the event that the Congress of the United States repeals the Wilderness designation assigned to the land over which Republic and Hayden Creeks and two unnamed tributaries to Soda Butte Creek flow in Wyoming, or otherwise makes water from such tributaries available for appropriation in Wyoming, the state may seek modification of Article III, section G.3.d.i.(2). of this Compact as provided in Article VI, section A.2.

TABLE 9

Low Stream Flow Levels at which Subordination is Limited (cfs)

Soda Butte Creek

Month	Flow
Jan.	5.4
Feb.	5.1
Mar.	4.0
April	1.7
May	116.9
June	332.5
July	120.7
Aug.	46.4
Sept.	15.3
Oct.	14.2
Nov.	9.3
Dec.	6.3

ii. The Gallatin, Madison and Yellowstone Rivers

The United States has a water right for instream flow on the Gallatin, Madison and Yellowstone Rivers in the amount of the entire flow of the streams, less any United States' consumptive use rights described in this Compact, provided that, the right is subordinate to: (1) the sum of all water rights recognized under state law with a priority date before January 1, 1993, plus any future consumptive use rights calculated according to Article II, until the limit on total current and future consumptive use rights set forth in Table 10 is reached; (2) any use considered non-consumptive as defined by this Compact; and (3) any use of groundwater not included in the calculation of consumptive use according to Article II.

TABLE 10

State Law Based

Total Current and Future Consumptive Use Rights (cfs)

Tributary to the Reserved Portion of these Rivers

Month	Gallatin River	Madison River	Yellowstone River
Jan.	3.1	19.9	41.2
Feb.	3.1	19.7	40.6
Mar.	3.5	20.0	44.5
April	9.8	24.3	73.7
May	39.3	40.9	284.7
June	48.0	40.2	556.7
July	15.7	24.7	335.0
Aug.	5.8	21.4	156.5
Sept.	4.4	21.1	96.0
Oct.	4.6	21.4	75.0
Nov.	4.2	21.0	58.4
Dec.	3.8	20.4	47.2

4. Hot Springs tributary to Bear Creek and the Yellowstone River

The hot springs that contribute to Bear Creek outside the boundaries of YNP are important to maintenance of biologic values of reserved water in the Yellowstone River downstream from the confluence with Bear Creek. As part of the settlement of the reserved water right for YNP, the state agrees to grant the United States a water right under state law to all of the natural flow of the Bear Creek hot springs located at the mouth of Bear Creek in S1/2 S1/2, sec. 19, T9S, R9E, Montana Principle Meridian. The priority date is the effective date of this Compact.

5. Lakes

The United States has a reserved water right for the maintenance of natural water levels in all naturally occurring lakes within the boundaries of YNP for the purpose of preserving unimpaired these Park resources. The water right for the maintenance of lake levels is subordinate to (1) any United States' consumptive use rights described in this Compact; and (2) any water right recognized under state law with a priority date before January 1, 1993. The named and unnamed lakes in which the United States has a reserved water right are those set forth more specifically in the Abstract.

H. Emergency Fire Suppression

The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the various Park reservations. The United States, may as part of its reserved water right, divert water for fire suppression at all of the National Park Service Units as needed, and without a definition of the specific elements of a recordable water right. Use of water for fire suppression shall not be deemed an exercise of the United States' reserved water rights for consumptive use or a violation of its reserved water rights for instream flow.

ARTICLE IV

YELLOWSTONE CONTROLLED GROUNDWATER AREA

A. Statement of Intent

Yellowstone National Park was reserved for the express purpose of "preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition." 17 Stat. 32. The parties agree that Congress reserved water necessary to preserve the hydrothermal features within the reserved land of YNP. These reserved water rights have priorities as of the date on which the land was reserved.

The parties understand that knowledge of the interrelationship of hydrothermal features within YNP, the hydrothermal system that supports those features, and groundwater in surrounding areas of Montana will benefit from increased study. The parties agree that the hydrothermal features of YNP are a unique and irreplaceable resource and represent one of the few undisturbed hydrothermal systems in the United States.

This Compact does not recognize a reserved water right to groundwater outside the boundaries of the reserved land of YNP. However, the parties agree that restrictions shall be placed on the development of groundwater adjacent to YNP to the extent necessary to prevent adverse effect on the reserved water right to groundwater within YNP. The parties agree that the goal of establishment and administration of the Yellowstone Controlled Groundwater Area shall be to allow no impact to the hydrothermal system within the reserved land of YNP.

B. Findings

Ratification of this Compact by the Montana legislature constitutes a finding that:

1. unrestricted use of groundwater adjacent to Yellowstone National Park is likely to interfere with the water rights reserved by the United States in 1872, 1929, 1930, and 1932, for the preservation of hydrothermal features within YNP;

2. prevention of adverse effect on the United States' reserved water right to groundwater within the reserved land of YNP is a benefit to the state and to the United States;

3. the public interest and welfare requires that a corrective control be adopted to regulate groundwater development adjacent to YNP; and

4. the cooperative state-federal management and oversight established by this Article is an effective means to achieve protection of the reserved water right to groundwater necessary to preserve the hydrothermal system within the reserved land of YNP.

C. General Provisions

1. Establishment: The Yellowstone Controlled Groundwater Area or "Area" is hereby established and shall be defined and administered according to this Compact.

2. Funding: The United States agrees that it receives substantial benefit from the establishment and administration of the Yellowstone Controlled Groundwater Area, and that the national and international public benefit extends far beyond the boundaries of the state. Thus, the United States agrees that the relatively small population of the state should not bear the entire cost of protection of the United States' reserved water right. To this end, the Department of the Interior agrees, subject to appropriations by Congress, to reimburse the state for the expense of establishment, administration and enforcement of the Yellowstone Controlled Groundwater Area by the Department; to fund the inventory, sampling, reporting and database management by the Bureau; and, except as provided in Article IV, section J.1.c., to fund the administrative costs and the cost of any study or any other necessary activity pursuant to this Article by the Technical Oversight Committee.

3. Implementation Contingent on Funds: Such funding shall be accomplished pursuant to the terms and conditions of a separate agreement which shall incorporate terms and conditions necessary to specify the activities to be funded and appropriate cost and accounting principles consistent with generally applicable guidelines for federal funding in similar circumstances, and consistent with the terms of this Compact, including, but not limited to, the enumeration of state expenses to be reimbursed in Article IV, section C.2. The state is relieved of its obligation to establish, administer, inventory, sample and maintain a database on the Controlled Groundwater Area in the absence of a funding

agreement and the provision of the funds specified therein. If the state is relieved of its obligation to implement all or a portion of this Article, all other terms of this Compact shall remain in effect, including all reserved water rights established herein. Such agreement may be amended, extended, renewed or terminated pursuant to its terms.

4. Interim Measures:

The state agrees that the following interim measures shall apply from the effective date of this Compact until the receipt of funds from the United States or December 31, 1995, whichever occurs first. The United States agrees to reimburse the state for the cost of the interim measures, subject to the appropriation of funds by Congress. The parties agree that, even if funding is not received by December 31, 1995 and interim measures are suspended, the state and the Department of the Interior will continue to recommend federal funding.

a. The Department shall issue the notice required by Article IV, section F.

b. All permits issued within this time period within the Area shall be conditioned on appropriation of water of less than 60F., measured at the wellhead.

c. The Department shall require that each applicant for a permit or person filing a notice of completion for issuance of a certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.

d. The Department shall not issue a certificate of water right for the appropriation of groundwater with a temperature of 60 F. or more within the Area during this time period. The Department shall order temporary abandonment of any well in the Area for which a conditional permit was issued or notice of completion for issuance of a certificate of water right was filed within this time period that produces groundwater with a temperature of 60F. or more, measured at the wellhead. Temporary abandonment shall be according to the rules of the Montana Board of Water Well Contractors.

e. Following receipt of funds from the United States, the Department shall notify the applicant that the appropriation is subject to the terms of this Compact and shall proceed according to the procedures set forth in this Article. If funds are not received by December 31, 1995, the Department may remove the order of temporary abandonment and remove the condition on the permit or issue the certificate of water right pursuant to state law. The Department shall continue to require that each applicant for a permit or certificate of water right to appropriate groundwater within the Area report the following information on filing of a well log: (1) well location to the quarter-quarter-quarter-quarter section; (2) ground elevation at the wellhead; (3) well depth; (4) water level; (5) flow rate or maximum pump capacity; and (6) water temperature measured at the wellhead.

5. Additional Studies: In addition to appropriations necessary to implement this Article, the state and the National Park Service agree to recommend federal

funding for a baseline study of hydrothermal features in YNP and within the Controlled Groundwater Area, for continued monitoring of these features, and for geologic and geophysical studies including, but not limited to, geologic mapping, and monitoring of microearthquakes and subsidence in and adjacent to YNP. Implementation of this Article is not contingent on such appropriation.

6. Access for Studies: Consistent with the purposes of YNP, the United States agrees to allow reasonable access to and across YNP to the extent necessary to accomplish the data collection authorized by this Article or additional studies recommended pursuant to Article IV, section C.5. In seeking access, the Department or Bureau shall comply with the provisions of Article II, section I.3.

7. Effect of Modification of Area: It is the intent of the parties that the initial boundaries of the Area set forth in Article IV, section D. and Appendix 2, and initial restrictions set forth in Article IV, section E. may be modified pursuant to Article IV, section J., or with respect to a single appropriation pursuant to Article IV, section G.2.c. and shall not be deemed to be a modification of this Compact. Any other modification of this Article shall be considered a modification of this Compact and is subject to the terms of Article VI, section A.2.

8. It is the intention of the Department of the Interior to protect the hydrothermal resources of Yellowstone National Park through the system established by Article IV.

a. The National Park Service agrees, consistent with 43 U.S.C. § 666, that enforcement will not be sought against the holder of a water right recognized under state law with a priority date on or after January 1, 1993, unless the NPS has, in the first instance, sought enforcement through the state under the terms of this Compact.

b. Notwithstanding the preceding subparagraph, if the National Park Service, in its judgment, determines that circumstances warrant, nothing in this Compact prohibits the United States from petitioning a state or federal court of competent jurisdiction for injunctive or declarative relief. Nothing in this Compact shall alter the courts' application of the test for injunctive relief; neither shall the administrative determination by the National Park Service to seek relief in said court be deemed to establish or preclude any determination in such judicial proceedings. Prior to such an administrative determination, the National Park Service agrees that it will provide the State written notice and will identify a time frame during which it will await the State's efforts to address the concern.

c. As to an action against the holder of a right to withdraw groundwater recognized under state law with a priority date before January 1, 1993, the United States agrees that this Compact shall not be used or relied upon as evidence to show that: (1) a reserved water right of the United States exists appurtenant to any land other than the reserved land of YNP; or (2) the priority date associated with any portion of reserved land of YNP is other than the date on which that portion of land was actually reserved.

D. Initial Boundaries of the Yellowstone Controlled Groundwater Area

The initial boundaries of the Yellowstone Controlled Groundwater Area and Subareas are defined to include the area in the State of Montana located within the geographic boundaries shown on Appendix 2. Appendix 2 is hereby incorporated in this Compact by this reference as though set forth here in full.

1. Subarea I:

The initial geographic boundaries of the subarea referred to as Yellowstone Controlled Groundwater Subarea I shall include all of the area in Montana North and West of YNP within the boundary delineated as subarea I on Appendix 2.

2. Subarea II:

The initial geographic boundaries of the subarea referred to as Yellowstone Controlled Groundwater Subarea II shall include all the area in Montana North and West of YNP within the boundary delineated as subarea II on Appendix 2.

E. Initial Restrictions on Groundwater Development within the Yellowstone Controlled Groundwater Area

Until the initial boundaries or restrictions set forth in this Article are modified pursuant to Article IV, section J., the restrictions set forth in this section shall apply to groundwater appropriations within the Area with a priority date on or after January 1, 1993. Such appropriations shall follow the procedural requirements of Article IV, section G.

1. The parties agree that the initial restrictions on development of groundwater and any modification thereof, shall not apply to appropriations with a priority date before January 1, 1993. The sole provisions of this Article applicable to such appropriations shall be those providing for inventory and sampling of current use set forth in Article IV, section H. Groundwater appropriations with a priority date before January 1, 1993 are subject to applicable state law including, but not limited to, issuance of a certificate of water right following final adjudication of existing water rights. Nothing herein waives the right of the United States to seek protection of its reserved water right for protection of the hydrothermal features within the reserved land of YNP from groundwater appropriations with a priority date before January 1, 1993 in a state or federal court of competent jurisdiction, provided that the limitation on use of this Compact in an action by the United States against any such appropriator set forth in Article IV, section C.8.c. shall apply.

2. The Department shall not issue a permit to appropriate groundwater that is hydrothermal discharge water as defined by this Compact unless either: (1) modification occurs pursuant to Article IV, section J. altering pertinent boundaries or restrictions; or (2) an application is approved pursuant to Article IV, section G.2.c. Unless modification occurs pursuant to Article IV, section J., the Department shall not limit an appropriation of groundwater that is not hydrothermal discharge water unless required to do so by Article II and III of this Compact or any other provision of state law.

F. General Notice of Establishment of the Yellowstone Controlled Groundwater Area

1. Notice: Within 120 days after the effective date of this Compact and within 60 days of any decision by the Department to modify the Area as set forth in Article IV, section J., the Department shall publish a notice of establishment or modification of the Area setting forth:

a. the description by legal subdivisions of all lands included in the controlled groundwater area;

b. the purpose of the controlled groundwater area or modification; and

c. the permit requirements, restrictions, inventory, sampling and monitoring applicable within each subarea.

2. Publication and Service: Such notice shall be published in a newspaper of general circulation in the county or counties in which the Area is located. The Department shall also serve a copy of the notice by mail on each well driller licensed in Montana whose address is within any county in which any part of the Area is located; on each well driller known by the Department to operate in the Area; on the Montana State Bureau of Mines and Geology; on the mayor or chair of the governing body of each county or incorporated municipality located in whole or in part within the Area; and on the United States. The Department may also serve notice on any other person or state or federal agency that the Department believes may be interested in or affected by the proposed designation or modification of the Area. A copy of the notice shall be mailed to each person's last known address according to the records of the Department.

G. Appropriations of Groundwater within the Yellowstone Controlled Groundwater Area With a Priority Date on or After January 1, 1993

1. Appropriation of Groundwater within the Area with a Priority Date on or after January 1, 1993 and before the Effective Date of this Compact:

The initial restrictions on groundwater development set forth in Article IV, section E. apply to appropriations of groundwater with a priority date on or after January 1, 1993 and before the effective date of this Compact provided that the following procedural requirements are met:

a. Within 120 days after the effective date of this Compact or the receipt of adequate funds from Congress, whichever occurs later, the Department shall provide the United States with notice of all groundwater appropriations within the Area that, according to the records of the Department, have a priority date on or after January 1, 1993 and before the effective date of this Compact.

b. Subsequent to the notice provided for in Article IV, section G.1.a. and up to 120 days following mailing of the report on inventory provided in Article IV, section H.1.b.iii., the United States may provide the Department with credible information on any groundwater appropriation within the Area with a priority date on or after January 1, 1993 and before the effective date of this Compact, showing that the appropriation is of water with a temperature of 60F. or more.

c. If the United States provides the information set forth in Article IV, section G.1.b., the Department shall, within 60 days of receipt of the information, issue an order requiring that the appropriator comply with the applicable restrictions. The order is effective within 60 days of issuance unless the appropriator enters an appearance to contest the order.

d. If the appropriator enters an appearance to contest the order, the Department shall: (1) issue an order staying use of the appropriation pending final decision on the matter by the Department; (2) set a date for a hearing; and (3) proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4 of the Montana Code Annotated, provided that in such a proceeding the United States has the burden of proving by a preponderance of the evidence that the appropriation is of groundwater of 60F or more. If the United States meets this burden, the appropriator shall comply with procedures and restrictions set forth in Article IV, section G.2.

2. Appropriations of Groundwater with a Priority Date after the Effective Date of this Compact

a. General Provisions

i. All groundwater appropriations within the Area after the effective date of this Compact are subject to this Article. Applications and registration for a permit for the appropriation of groundwater within the Area after the effective date of this Compact shall include a statement of whether the proposed use requires water with temperature of 60F. or more. In addition, the Department shall not issue a permit for appropriation of groundwater unless the requirements of Articles II and III are met, if applicable.

ii. A permit issued pursuant to this Article shall provide that:

(1) The permittee shall install a device to meter total volume of water use in compliance with rules promulgated by the Department pursuant to Article IV, section I.5. The Department shall specify the metering method and location of installation. On or before January 15 of each year, the permittee shall report annual use to the Bureau at: Montana Bureau of Mines and Geology, Main Hall, Montana Tech, Butte MT, 59701. Meters shall be made available to the permittee at the Department of Natural Resources and Conservation Regional Water Rights Office at: 111 North Tracy, Bozeman, Montana, 59715. Meters shall be acquired for distribution by the Department of Natural Resources and Conservation Regional Water Rights Office as part of the inventory and sampling program authorized by Article IV, section I.

(2) The Department has the authority to modify or revoke a permit if the provisions listed below are applicable, and all other administrative or judicial enforcement authority provided under Title 85, part 2, of the Montana Code Annotated applies to this part. The Department may exercise its enforcement authority if (1) the appropriator fails to allow access for sampling provided for in Article IV, section H.; (2) the character of the groundwater produced changes such that a restriction applies pursuant to this Article; (3) new restrictions imposed pursuant to Article IV, section J. are applicable; or (4) the appropriator violates any other provision of this part.

(3) A permit to appropriate hydrothermal discharge water may include limits and conditions on appropriation including but not limited to (a) limits on total withdrawal by day, month or year; (b) a requirement to adhere to a system of rotation of use within the Area; and (c) a provision adjusting the total withdrawal from two or more wells in the area used by the same appropriator.

(4) A permit to appropriate hydrothermal discharge water shall include any applicable monitoring requirement recommended by the Working Group Report or recommendations by the TOC superseding that report unless the applicant shows by clear and convincing evidence that such monitoring is inappropriate.

iii. If, subsequent to the effective date of this Compact, modification pursuant to Article IV, section J. removes the restrictions set forth in Article IV, section E., the monitoring recommended by the Working Group Report or as superseded by the TOC shall continue to apply unless the applicant shows by clear and convincing evidence that such monitoring is inappropriate, according to the criteria in the Working Group Report or as superseded by the TOC.

b. Appropriations of Groundwater with a Temperature of less than 60F

i. Registration and Application

(1) An applicant for an appropriation of groundwater of 35 gpm or less, not to exceed 10 acre-feet per year shall register for a permit by filing a form prescribed by the Department that shall include, but not be limited to, a statement of whether the proposed use requires water with temperature of 60F. or more, the well location, and intended use and shall comply with the provisions of Article II and III, if applicable. The Department shall provide notice of the registration for a permit to the United States within 30 days of the filing.

(2) An applicant for a permit to appropriate groundwater of greater than 35 gpm or 10 acre-feet per year after the effective date of this Compact, shall comply with existing state law for permits to appropriate water and the limits on groundwater appropriations set forth in Articles II and III, if applicable. The Department may issue an interim permit for the proposed appropriation to an applicant seeking an appropriation for a use that does not require water with a temperature of 60F. or more if the requirements of this section are met.

ii. Drilling

(1) On filing a proper registration form, an applicant for an appropriation of 35 gpm or less, not to exceed 10 acre-feet per year, with a proposed use that does not require water with a temperature of 60F. or more may complete the proposed well subject to state law and the terms of this Compact, but shall not put the water to beneficial use until issuance of a permit.

(2) Upon issuance of an interim permit, an applicant for an appropriation of greater than 35 gpm or 10 acre-feet per year may drill the well subject to state law and the terms of this Compact, but shall not put the water to beneficial use until issuance of a permit.

iii. Within 60 days of drilling of the well, the applicant or registrant shall provide the Department with a well log on a form provided by the Department. The well log shall include well location to the quarter-quarter-quarter-quarter section; ground elevation at the wellhead; well depth; water level; flow rate or maximum pump rate; water temperature measured at the wellhead; and specific conductance of the water produced using a device provided by the Water Resources Regional Office.

iv. The Department shall forward a copy of the well log to the United States and to the Bureau on receipt.

v. Following receipt of the well log, the Department may inspect the well at a reasonable hour of the day to verify the information on the well log report. The United States may request to accompany the inspector as set forth in Article II, section I.4.

vi. The United States has 60 days from the mailing of the report to file an objection setting forth credible information that the appropriation is of groundwater with characteristics to which restrictions established pursuant to this Article apply.

vii. The Department may issue a permit to appropriate if: (1) the well log and any verification confirm that the appropriation is of water to which no restrictions pursuant to this Article apply; and (2) all other requirements of state law and this Compact have been met, unless the United States files an objection pursuant to Article IV, section G.2.b.vi. If the well log or verification indicate appropriation of water to which restrictions pursuant to this Article apply or if the United States files a proper objection, the applicant shall be subject to the provisions of Article IV, section G.2.c.

viii. If a permit is issued, the applicant or registrant may complete the appropriation and apply the water to beneficial use.

ix. Within 60 days of completion of the appropriation, the permittee shall file a notice of completion with the Department pursuant to state law.

c. Appropriation of Groundwater with a Temperature of 60F. or Greater

If an application or registration for a permit within the Area is for a use requiring groundwater with a temperature of 60F. or more or the well log or any verification indicates water of 60F. or more, the following provisions apply:

i. Subarea I - groundwater with a temperature of 85F. or more:

Groundwater of 85F. or more in Subarea I is presumed to be hydrothermal discharge water. The Department shall not process or grant an application for a permit to appropriate water with a temperature of 85F. or more in Subarea I, unless the appropriation is consistent with modification of restrictions pursuant to Article IV, section J., or pursuant to the procedures set forth below. An application for an appropriation that proposes to do no more than divert the unenhanced natural surface flow of a spring that is not located in the mainstem of the reserved portion of a stream to which a reserved water right for instream flow is described in Article III of this Compact is not subject to these restrictions.

(1) The application shall set forth credible information that the proposed appropriation does not include contribution by hydrothermal discharge water;

(2) Within 30 days of receipt of the information the Department shall seek review of the application by the TOC.

(3) The TOC shall review the report to determine if the appropriation can take place without adverse effect on the hydrothermal system within YNP. In performing the review, the TOC shall utilize the best available scientific information. The TOC shall resolve doubt in favor of protection of the hydrothermal system within YNP.

(4) Within 60 days of the request by the Department, the TOC shall recommend, in a report to the Department, if, and under what conditions the appropriation could be allowed without adverse effect on the hydrothermal system within YNP. The TOC may recommend limits or conditions on the proposed appropriation that, in the opinion of the TOC, would allow the development while protecting the hydrothermal system within YNP. The TOC shall also provide the Department with a dissenting report pursuant to Article IV, section J.1., if applicable.

(5) On receipt of the report or reports, the Department shall provide a copy to the United States and the applicant and shall schedule a hearing no less than 60 and no more than 90 days from mailing of the report.

(6) The hearing shall proceed as a contested case under the Montana Administrative Procedure Act, Title 2, Chapter 4 of the Montana Code Annotated.

(7) The report or reports, data and other written information produced by the TOC shall be admissible in the hearing without further foundation and not subject to the hearsay objection, subject to the rights of any party or claimant to cross-examine the producer or drafter of the written material and to controvert the same by other evidence. The hearing officer may request that members of the TOC appear to provide expert testimony in the case.

(8) The report and recommendations provided by the TOC have a rebuttable presumption of validity for the purposes of Article IV. The dissenting report, if any, may be used as rebuttal evidence.

(9) If the report recommends denial of the application, the applicant may overcome the presumption by proving by clear and convincing evidence that the proposed appropriation does not include hydrothermal discharge water.

(10) If the application is denied, the Department shall order that the well be temporarily abandoned; or, if multiple water zones are encountered, the zone of excess temperature be closed to production. Abandonment shall be according to the rules of the Montana Board of Water Well Contractors unless alternative procedures are recommended by the TOC. The abandonment order shall not be lifted until a modification order pursuant to Section IV.J. allows the appropriation or until the department determines that the well should be permanently abandoned.

(11) Within 30 days of an order by the Department pursuant to this section, appeal on the record may be made to a state or federal court of competent jurisdiction. For an appeal to state court, venue shall be the First Judicial District in Helena and the review must be conducted according to the procedures for judicial review of a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

ii. Subarea I - groundwater with a temperature of 60F. or more, but less than 85F:

Appropriation of groundwater with a temperature of 60F. or more, but less than 85F. in subarea I is subject to the following provisions.

(1) The applicant shall provide credible information that the water meets the following criteria:

(a) the proposed appropriation will do no more than divert the unenhanced natural surface flow of a spring that is not located in the mainstem of the reserved portion of a stream to which a reserved water right for instream flow is described in Article III of this Compact, or

(b) the proposed appropriation meets all of the following criteria:

(i) The water temperature is the result of the normal thermal gradient of the earth plus the mean annual air temperature at the site plus 14F. Unless modified by the TOC, the Department shall use the following equation to estimate the water temperature expected:

(0.01646 x the depth of the production zone in feet) + 59.3F.

If the temperature measured at the wellhead is equal to or less than the temperature estimated by this equation, the appropriation meets this criteria.

(ii) the concentration of soluble chloride is less than ten parts per million; and

(iii) the well does not contain a production zone completed within the Madison Group of formations as defined by the Catalog of Stratigraphic Names for Montana, Bureau of Mines and Geology, Special Publication 54, March 1971.

(2) The Department may issue a permit to appropriate groundwater with a temperature of 60F or more, but less than 85F. to an applicant that meets the above criteria and is in compliance with the provisions of Article IV, section G.2.c. unless (a) restrictions are consistent with modification pursuant to Article IV, section J.; or (b) the United States objects and shows by a preponderance of the evidence that the criteria have not been met or, for another scientific reason, the temperature is the result of contribution by hydrothermal discharge water.

(3) If the applicant fails to meet the above criteria or the United States meets its burden, the applicant shall comply with the provisions of Article IV, section G.2.c.i. for water or 85F or more.

(4) The three criteria set forth in Article IV, section G.2.c.ii.(1)(b) may be modified on recommendation by the TOC.

iii. Subarea II:

(1) Groundwater of 85F. or more in subarea II is presumed to be hydrothermal discharge water. The applicant shall follow the procedures of Article IV, section G.2.c.i. including review by the TOC, provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.

(2) An applicant who encounters groundwater of 60F. or more but less than 85F. shall comply with the provisions of Article IV, section G.2.c.ii., provided that, if a permit to appropriate is issued the monitoring recommended in the Working Group Report or as superseded by the TOC for subarea II, not subarea I, shall apply.

3. Change in Character of Groundwater: Within 60 days of the receipt of information indicating a change in the character of the groundwater appropriated under a permit issued in the Area on or after January 1, 1993 that indicates the production of groundwater for which a restriction applies, the Department shall issue an order requiring that the appropriator comply with the limitations on appropriation of hydrothermal groundwater authorized in this Article. The order shall take affect 60 days following the date issued unless the appropriator appears to contest the order. If the appropriator appears to contest the order, the Department shall set a date for a hearing and proceed pursuant to the provisions for a contested case under the Montana Administrative Procedures Act, title 2, Chapter 4, of the Montana Code Annotated, provided that the appropriator shall have the burden to prove by a preponderance of the evidence that the water produced does not meet the criteria to which restrictions apply.

H. Inventory and Sampling of Groundwater

1. Initial Inventory

All groundwater appropriations in the Area with a priority date before the effective date of this Compact shall be inventoried as set forth below:

a. Notice of Inventory

Within 120 days after the effective date of this Compact or the receipt of funding from the United States, whichever occurs later, the Department shall serve notice by mail on each person or public agency known from an examination of the records in the Department's office to be an appropriator of groundwater with a priority date before the effective date of this Compact. The notice shall set forth:

i. the contents of the notice required in Article IV, section F.; and

ii. a statement that within 3 years from the date of notice the Bureau may visit the wellsite to measure temperature; flow rate or maximum pump capacity; water level, or pump level if the well cannot be entered; and may collect a water sample for additional analysis.

b. Inventory

i. Within 3 years of notice pursuant to Article IV, section H.1.a., a representative of the Bureau shall inventory each well drilled pursuant to an appropriation recognized under state law with a priority date before the effective date of this Compact. The inventory shall be considered complete when the Bureau has inventoried substantially all of the wells that can be located and accessed with reasonable diligence. The inventory shall include, but not be limited to, the following:

(1) well location to the quarter-quarter-quarter-quarter section;

(2) ground elevation at the wellhead;

(3) flow rate or maximum pump capacity;

(4) water level, or pump level if the well cannot be entered;

(5) water temperature at the wellhead;

(6) specific conductance of the water at the wellhead;

(7) chloride content of the water at the wellhead;

(8) water samples from a representative number of wells selected by the Bureau. The water samples shall be analyzed by the Bureau, or by a qualified lab contracted by the Bureau. Samples shall be analyzed for chemistry, and, if applicable, gas and isotopes. Choice of analyses shall be at the discretion of the Bureau using the Working Group Report or a report by the TOC superseding the Working Group Report as a guideline. The Bureau may consult with the TOC concerning well selection and analysis; and,

(9) any additional information deemed necessary for implementation of this Article by the Bureau in consultation with the TOC.

ii. The inventory shall be prioritized to complete Subarea I first.

iii. Within 6 months of completion of the inventory in each Subarea, the Bureau shall provide a report to the Department, the TOC, and the United States, verifying that the inventory is complete and setting forth the data obtained in the inventory. The report shall be made available to the public by the Department. In addition, the Bureau shall maintain an adequate database pursuant to Article IV, section H.2.

2. Sampling Program and Database

a. Following the initial inventory of all current groundwater appropriations in the Area provided for in Article VI, section H.1., the Bureau shall sample wells selected in consultation with the TOC and at a frequency determined in consultation with the TOC. The wells may include appropriations made prior to, on or after January 1, 1993. The number of wells sampled and the analyses performed shall be as determined by the Bureau in consultation with the TOC. Until superseded due to recommendation by the TOC, the Working Group Report shall be used as a guideline in making this determination. Within 6 months of the completion of each inventory and sampling program, the Bureau shall provide the Department, the TOC and the United States with a report on the results.

b. The Bureau shall maintain an adequate database on the Yellowstone Controlled Groundwater Area which shall include, at a minimum, analyses of water chemistry, temperature, well depth, well capacity and well location.

c. The United States agrees to provide an annual report to the Bureau for incorporation into the database on the water chemistry, temperature and flow rate of any well in use or spring sampled in the portion of YNP within the state, and may include such information for any well or spring in the portion of YNP outside the state.

d. The information in the database shall be available to the public through the Natural Resources Information System, currently located at 1515 E. Sixth Avenue, Helena, Montana 59620-1800.

I. Administration of the Yellowstone Controlled Groundwater Area

1. The Yellowstone Controlled Groundwater Area established by this Compact shall be administered pursuant to applicable state law and the terms of this Compact.

2. In addition to the requirements imposed by state law, the Department shall provide the United States with notice of any application or registration for a permit to appropriate groundwater within the Area in the same manner and time as required by state law for notice to groundwater appropriators in a controlled groundwater area.

3. The United States may be an objector to any application or registration for a permit to appropriate groundwater or in a hearing for modification of a permit to appropriate groundwater within the Area pursuant to the provisions of Article IV, section G.

4. The Department shall, whenever possible, consolidate any proceedings on groundwater applications or registration pursuant to Articles II and III with any proceeding made necessary by this Article.

5. Within 2 years after the effective date of this Compact or the receipt of the requested funding from the United States, whichever occurs later, the Department is directed to promulgate such additional rules necessary to effectuate this Compact and to establish criteria which may be necessary to implement this Article. Said rules shall not alter the rights or obligations of the parties hereto. In doing so, the Department shall consult with the United States and the TOC. Until modified by the TOC, the Department shall adopt the Working Group Report to govern sampling, reporting and monitoring requirements, except as modified by Article IV, section G. In reviewing any permit to appropriate hydrothermal discharge water the Department shall consider the criteria set forth in the Working Group Report or a subsequent report by the TOC, including, but not limited to, the identification of risk associated with volume of appropriation and distance from the reserved land of YNP.

J. Modification of the Yellowstone Controlled Groundwater Area

1. Technical Oversight Committee: Establishment and Authority

a. A joint federal-state Technical Oversight Committee is hereby established to review scientific evidence related to the Yellowstone Controlled Groundwater Area; to advise the Department on administration of the Area, including review of applications to appropriate water of 60F. or more; to consult with the Bureau on inventory and sampling; and to recommend modification of boundaries and restrictions.

b. The committee shall consist of five qualified scientists with experience related to hydrothermal systems. The committee members shall be appointed within six months following the effective date of this Compact: one appointed by the National Park Service; one appointed by the United States Geological Survey; one appointed by the Department; one appointed from the Montana University system by the Montana State Geologist; and one selected by the other four members. Appointments and selections shall be made, to the extent possible, to ensure that three of the qualified scientists with experience related to hydrothermal systems also have experience in (1) geochemistry; (2) geophysics; and (3) hydrogeology. Vacancies due to expiration of terms or resignation of a member shall be filled in the same manner. Should the four members fail to agree on the selection of additional members within 60 days after appointment of all four members or within 30 days after a vacancy occurs, the following procedure shall be utilized:

(i) Within 5 days each member shall nominate one person for each vacancy and submit the nominations to a judge of the First Judicial District in Helena; and

(ii) A judge of the First Judicial District in Helena shall fill the vacancy by selecting a member from each set of nominations.

c. Each member shall serve a five-year term and shall be eligible for reappointment. Expenses of the members shall be born by the entity appointing the member. The per diem or salary, and travel expenses of the three members-at-large shall be born equally by the United States and the state, subject to the availability of funds. All other expenses of the TOC shall be born by the United States subject to Congressional appropriation as set forth in Article IV, section C.

d. The recommendation of any of the following by the TOC shall be based on a supermajority of four to one: (1) modification of the Area pursuant to Article IV, section J; (2) review of an application to appropriate groundwater with a temperature of 60F. or more; and (3) removal of any of the criteria specified in Article IV, section G.c.ii.(1)(b). Failure to achieve a supermajority shall result in a recommendation of no modification or no permit approval. In the absence of a unanimous decision, the TOC shall provide both a report supporting the recommendation that there be no modification or no permit approval, and a dissenting report to the Department. In all other instances in which the TOC consults with or makes recommendations to the Department or the Bureau, recommendations shall be made by a simple majority of the entire committee.

e. The TOC shall:

i. review the boundaries of the Area and the Subareas;

ii. review the initial restrictions on groundwater development imposed pursuant to this Article, and future modifications of those restrictions;

iii. assess the cumulative impact of all development in the Area;

iv. review changes in the groundwater and hydrothermal systems revealed by inventory and analyses done by the Bureau, and any other pertinent scientific evidence;

v. review new scientific evidence pertinent to the Area;

vi. consult with the Bureau or the Department on request;

vii. present evidence and make recommendations to the Department in accordance with Article IV, section J.2.

viii. review applications for a permit to appropriate groundwater on request by the Department as set forth in Article IV, section G.2.c.; and

ix. take any additional action necessary to implement this Article.

f. The Department and the Bureau shall provide the TOC with all information in their records regarding appropriations of groundwater within the Area including reports required by this Article.

g. The initial review shall take place within 1 year of the receipt of the inventory report done by the Bureau pursuant to Article IV, section H. Subsequent reviews shall take place every 5 years following the initial inventory or following the issuance of 75 permits to appropriate water within the Area by the Department, whichever occurs first. Additional review shall also take place on request by the United States or the state.

h. Within 6 months of initiation of a review, the TOC shall provide a report of the review, including any recommendation for modification, and a dissenting report, if any, to the Department and the United States. Recommendations shall be based on a determination by a supermajority of the entire TOC that the modification is necessary to prevent adverse effect to the hydrothermal system within the reserved land of YNP, or that modification may be made without the threat of adverse effect on the hydrothermal system within the reserved land of YNP. The recommendation shall be made in good faith and based on scientific evidence including, but not limited to, the following:

i. in the case of extension of boundaries, the criteria set out in the Working Group Report for designation of the boundary of the Area to be enlarged is found to exist within the proposed extension;

ii. the cumulative effect of groundwater development within the Area or a portion of the Area has resulted in declining hydraulic head and modification of boundaries or restrictions are necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

iii. changes in groundwater revealed by the inventory and sampling program are such that modification is necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

iv. scientific evidence indicates that modification is necessary to prevent adverse effect on the hydrothermal system within the reserved land of YNP;

v. based on scientific evidence, restrictions can be removed or boundary modifications made without the threat of adverse effect to the hydrothermal system within the reserved land of YNP.

2. Modification Pursuant to Review

a. Within 60 days of mailing of the report in Article IV, section J.1.h., and if (1) the TOC recommends modification; (2) the United States, state or a person with property or water rights within the Area petitions for a hearing; or (3) a person with an interest that would be adversely affected by the recommendation, petitions for a hearing, the Department shall provide for notice of a hearing pursuant to state law.

b. The Department shall follow the rules for a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4 of the Montana Code Annotated. In addition, the Department shall apply the following provisions:

i. The report or reports, data and other written information produced by the TOC shall be admissible in the hearing without further foundation and not subject to the hearsay objection, subject to the rights of any party or claimant to cross-examine the producer or drafter of the written material and to controvert the same by other evidence. The hearing officer may request that members of the TOC appear to provide expert testimony in the case. The hearing officer shall also hear any oral and written scientific evidence presented by the state, the United States, any applicant for a permit to appropriate who has requested review, and any person with property or water rights in the Area, or an interest that would be adversely affected by the recommended modification.

ii. The scientific evidence and recommendations presented in the report by the TOC have a rebuttable presumption of validity for the purposes of Article IV. The Department shall adopt the recommendations of the TOC unless the recommendation by the TOC is refuted by clear and convincing scientific evidence. The dissenting report of the TOC, if any, may be used as rebuttal evidence.

iii. The Department shall issue an order stating findings of fact and conclusions of law.

c. Within 30 days of an order by the Department, a person aggrieved by the order may appeal on the record to a state or federal court of competent jurisdiction. For an appeal to state court, venue shall be the First Judicial District in Helena and the review must be conducted according to the procedures for judicial review of a contested case under the Montana Administrative Procedures Act, Title 2, Chapter 4, of the Montana Code Annotated.

ARTICLE V

GENERAL PROVISIONS

A. No Effect on Tribal Rights or Other Federal Reserved Water Rights:

1. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member. The relationship between the water rights of the National Park Service described herein and any rights to water of an Indian Tribe in Montana, or of a water right of an individual that is derivative of such right, or of the United States on behalf of such tribe or tribal member shall be determined by the rule of priority.

2. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of an Indian Tribe regarding boundaries or property interests in the State of Montana.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the National Park Service. The exercise of a water right of the United States, if any, to water for a consumptive use on land administered by the United States Forest Service upstream of a water right to instream flow described in this Compact

shall be allocated from the United States' share for instream flow, not the state's share for consumptive use.

B. State Water Rights

Nothing in this Compact may limit the exclusive authority of the state, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the reserved land covered by this Compact, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that granted under federal law.

C. General Disclaimers

Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation or the interpretation or administration of future compacts between the United States and the state; or of the United States and any other state;

2. as a waiver by the United States of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Compact;

4. to establish a precedent for other agreements between the state and the United States or an Indian tribe;

5. to determine the relative rights, inter sese, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

6. to create or deny substantive rights through headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the state to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights. This Compact is only binding on the United States with regard to the water rights of the National Park Service, and does not affect the water rights of any other federal agency.

D. Use of Water Right

Except as otherwise provided in this Compact, the rights of the United States described in this agreement are federal reserved water rights. Non-use of all or a part of the federal reserved water rights described in this Compact shall not constitute abandonment of the right. The federal reserved water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the associated reserved land.

E. Appropriation Pursuant to State Law

Nothing in this Compact may prevent the United States from seeking a permit to appropriate water under state law for use outside the boundaries of the federal reservations for which a water right is described in this Compact, provided that, no such use may be included in the calculation of total current or future consumptive use rights allocated to use pursuant to state law by this Compact, and provided further that, a water right obtained in this manner shall be considered a state water right and shall be administered pursuant to general provisions of state law as provided in Article II, section J.2.b.

F. Reservation of Rights

The parties expressly reserve all rights not granted, described or relinquished in this Compact.

G. Severability

Except as provided in Article IV, the provisions of this Compact are not severable.

H. Multiple Originals

This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures shall be deemed an original.

I. Notice

Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. State: Upon the Director of the Department and such other officials as he or she may designate in writing.

2. United States: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE VI

FINALITY OF COMPACT AND DISMISSAL OF PENDING CASES

A. Binding Effect

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on:

a. The state and a person or entity of any nature whatsoever using, claiming or in any manner asserting a right under the authority of the state to the use of water; and

b. except as otherwise provided in Article V, section A., the United States, a person or entity of any nature whatsoever using, claiming, or in any manner asserting a right under the authority of the United States to the use of water.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Except as provided in Article IV concerning the appropriation of funds, attempt to unilaterally modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming the rights described herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. Disposition of Actions

Subject to the following stipulations and within one hundred eighty (180) days of the effective date, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. § 666, for approval in accordance with state law and for the incorporation of the reserved water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expeand [sic] the jurisdiction of the state court or expand in any manner the limited waiver or sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. §666 or other provision of federal law.

1. Dismissal of Filed Claims: At the time the state courts approve the reserved water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts shall dismiss, with prejudice, all of the water right claims specified in Appendix 3 to this Compact. If this Compact fails approval or a reserved water right described herein is not confirmed, the specified claims shall not be dismissed.

2. Disposition of Federal Suits: Within ninety (90) days of the issuance of a final decree or decrees by the state courts approving this Compact and confirming the reserved water rights described herein, and the completion of any direct appeals therefrom or the expiration of the time for filing such appeal, the parties shall execute and file joint motions pursuant to Rule 41(a) Fed. R. Civ. P. to dismiss with prejudice those claims made by the United States for Glacier National Park in United States v. Aageson, No. CV-79-21-GF (D. Mont.); United States v. Abell, No. CV-79-33M (D. Mont.); and United States v. AMS Ranch, Inc., No. CV-79-22-GF (D. Mont.). This Compact may be filed as a consent decree in those federal suits, only if, prior to the dismissal of the federal suits as provided in this Article, it is finally determined in a judgement binding on the State of Montana that the state courts lack jurisdiction over some or all of the reserved water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in

the federal district court for the District of Montana as may be necessary to judicially confirm the reserved water rights described herein which are not included within an existing action.

C. Settlement of Claims

The parties intend that, with the exceptions noted herein, the water rights described in this Compact are in full and final settlement of the water right claims for the reserved land administered by the National Park Service in Montana on the effective date of this Compact. Pursuant to this settlement, by which certain federal reserved water rights are expressly recognized by the state in this Compact and other water rights claims of the United States are expressly retained in Article III, sections B., D., E, and F., the United States hereby and in full settlement of any and all claims filed by the United States or which could have been filed by the United States for reserved land administered by the National Park Service in Montana relinquishes forever all said claims on the effective date of this Compact to water within the State of Montana for reserved land administered by the National Park Service. The state agrees to recognize the reserved water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

D. The parties agree to seek enactment of legislation and to recommend appropriation of federal funds necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____________, 19__.

FOR THE STATE OF MONTANA

MONTANA RESERVED WATER RIGHTS COMPACT COMMISSION

FOR THE UNITED STATES

Section 2. **Statutory appropriation of federal funds.** (1) There must be created those accounts that are necessary within the federal special revenue fund established under 17-2-102 for the purposes of this part.

(2) Federal funds deposited in the accounts and interest and earnings on the accounts are statutorily appropriated, as provided in 17-7-502, and must be used for the following purposes or to reimburse the state for expenditures incurred for the following purposes:

(a) establishment, administration, and enforcement of the Yellowstone controlled ground water area;

(b) inventory, sampling, reporting, and data base management;

(c) provision for administrative costs and the cost of any study or any other necessary activity by the technical oversight committee; and

(d) any other necessary activity pursuant to this part.

Section 3. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; *[section 2];* 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. *(In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)* "

Section 4. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 and 2].

Approved May 12, 1993.

CHAPTER NO. 636

[HB 693]

AN ACT INCREASING THE MEMBERSHIP OF THE COMMITTEE ON INDIAN AFFAIRS; AMENDING SECTION 5-19-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-19-102, MCA, is amended to read:

"**5-19-102. Committee on Indian affairs — appointment and composition.** (1) There is a committee on Indian affairs.

(2) The committee consists of ~~two~~ *four* members of the senate, appointed by the committee on committees on a bipartisan basis, and ~~two~~ *four* members of the house of representatives, appointed by the speaker of the house on a bipartisan basis.

(3) Appointments must be made before final adjournment of a regular session."

Section 2. **Appointments — 1993.** If [this act] is not approved before final adjournment of the 53rd legislature and in time for the senate committee on committees and the speaker of the house to make appointments, the committee on committees and the speaker of the house may make the appointments within 30 days after [the effective date of this act], and for this purpose, 5-19-102(3) does not apply and the committee on committees may meet by teleconference.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved May 11, 1993.

CHAPTER NO. 637

[HB 504]

AN ACT CREATING THE WORKERS' COMPENSATION OLD FUND LIABILITY TAX BY INCREASING THE EMPLOYER PAYROLL TAX AND EXPANDING THE TAX BASE TO INCLUDE EMPLOYEES AND OTHERS RECEIVING COMPENSATION IN MONTANA; DIRECTING THAT THE TAX PROCEEDS BE USED TO ELIMINATE THE STATE FUND'S OLD FUND UNFUNDED LIABILITY; PROVIDING APPROPRIATIONS; REVISING THE INTEREST RATE OF LOANS FROM THE TAX USED TO FINANCE THE OLD FUND UNFUNDED LIABILITY; AMENDING SECTIONS 15-30-207, 39-71-406, 39-71-2351, 39-71-2354, 39-71-2501, 39-71-2502, 39-71-2503, AND 39-71-2504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2351, MCA, is amended to read:

"**39-71-2351. Purpose of separation of state fund liability as of July 1, 1990, and of separate funding of claims before and on or after that date.** (1) An unfunded liability exists in the state fund. It has existed since at least the mid-1980s and has grown each year. There have been numerous attempts to solve the problem by legislation and other methods. These attempts have alleviated the problem somewhat, but the problem has not been solved.

(2) The legislature has determined that it is necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability. The legislature has determined that the most cost-effective and efficient way to provide a source of funding for and to ensure payment of the unfunded liability and the best way to administer the unfunded liability is to:

(a) separate the liability of the state fund on the basis of whether a claim is for an injury resulting from an accident that occurred before July 1, 1990, or an accident that occurs on or after that date;

(b) ~~extend~~ ~~the payroll tax imposed by~~ *create an old fund liability tax provided for in* 39-71-2503 and dedicate the tax money first to the repayment of bonds issued under 39-71-2354 and 39-71-2355 and then to the repayment of loans given under 39-71-2354 and 39-71-2355 and the direct payment of the costs of administering and paying claims for injuries from accidents that occurred before July 1, 1990.

(3) The legislature further determines that in order to prevent the creation of a new unfunded liability with respect to claims for injuries for accidents that occur on or after July 1, 1990, certain duties of the state fund should be clarified and legislative oversight of the state fund should be increased."

Section 2. Section 39-71-2501, MCA, is amended to read:

"**39-71-2501. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of revenue provided for in 2-15-1301.

(2) "Employee" includes an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or the state of Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or the state of Montana. The term "employee" also includes an officer of a corporation.

~~(2)~~*(3) (a)* "Employer" ~~has the meaning set forth in 39-71-117~~ *means, except as provided in subsection (3)(b), the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person.*

(b) If the person for whom the individual performs or performed the service does not have control of the payment of the wages for the service, the term employer means the person who has control of the payment of wages.

~~(3)~~*(4)* "~~Payroll~~ *Employer's payroll*" means ~~the payroll of an employer~~ *wages paid* for each of the calendar quarters ending March 31, June 30, September 30, and December 31~~, for all employments covered under 39-71-401~~.

~~(4)~~*(5)* "State fund" means the state compensation mutual insurance fund.

~~(5)~~*(6)* "Tax" means the workers' compensation ~~payroll~~ *old fund liability* tax provided for in 39-71-2503, *created to address the unfunded liability for claims for injuries resulting from accidents that occurred before July 1, 1990.*

~~(6)~~*(7)* "Tax account" means the workers' compensation tax account created by 39-71-2504.

(8) "Wages" means all remuneration for services performed by an employee for an employer, including the cash value of all remuneration paid in any medium other than cash. The term does not include remuneration paid:

(a) for casual labor not in the course of the employer's trade or business performed in any calendar quarter by an employee unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. For purposes of this subsection (8)(a), an individual is considered to be regularly employed by an employer during a calendar quarter only if:

(i) on each of 24 days during the calendar quarter, the individual performs service not in the course of the employer's trade or business for the employer for some portion of the day; and

(ii) the individual was regularly employed, as determined under subsection (8)(a)(i), by the employer in the performance of service during the preceding calendar quarter;

(b) for services not in the course of the employer's trade or business, to the extent that remuneration is paid in any medium other than cash, when the payments are in the form of lodging or meals and the payments are received by the employee at the request of and for the convenience of the employer;

(c) to or for an employee as a payment for or a contribution toward the cost of any group plan or program that benefits the employee, including but not limited to life insurance, hospitalization insurance for the employee or the employee's dependents, and employees' club activities;

(d) as wages or compensation, the taxation of which is prohibited by federal law."

Section 3. Section 39-71-2502, MCA, is amended to read:

"**39-71-2502. Findings and purpose.** (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund with regard to claims for injuries resulting from accidents that occurred before July 1, 1990, and it may increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide ~~a source~~ *other sources* of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all ~~employers who have workers' compensation coverage.~~ *those receiving compensation in Montana. This unfunded liability should not be borne only by employers.* Therefore, all employers, *employees, sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies* ~~who have employments covered by the workers' compensation laws~~ should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide ~~a~~ supplemental ~~source~~ *sources* of financing for the unfunded liability."

Section 4. Section 39-71-2503, MCA, is amended to read:

"**39-71-2503. Workers' compensation ~~payroll~~ *old fund liability* tax.** (1) (a) There is imposed on each employer a workers' compensation ~~payroll~~ *old fund liability* tax in an amount equal to 0.28%, *plus the additional amount of old fund liability tax provided in [section 5],* of the employer's payroll in the preceding calendar quarter ~~for all employments covered under 39-71-401~~, except that if an employer is subject to 15-30-204(2), the tax is an amount equal to 0.28%, *plus the additional amount of old fund liability tax provided in [section 5],* of the employer's payroll in the preceding week. ~~This payroll~~

(b) There is imposed on each employee, except workers engaged in the rail industry who are under the jurisdiction of the federal railroad administration, United States department of transportation, an old fund liability tax, as provided in [section 5], on the employee's wages in the preceding calendar quarter.

(c) There is imposed on each business of a sole proprietor, on each subchapter S. corporation shareholder, on each partner of a partnership, and on each member or manager of a limited liability company a workers' compensation old fund liability tax, as provided in [section 5], on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each shareholder, partner, or member or manager.

(d) A corporate officer of a subchapter S. corporation who receives wages as an employee of the corporation shall pay the old fund liability tax on both the wages and any distributive share of ordinary income at the employee rate. The subchapter S. corporation is not liable for the tax on the corporate officer's wages.

(e) A corporate officer of a closely held corporation who meets the stock ownership test under section 542(a)(2) of the Internal Revenue Code and receives wages as an employee of the corporation is required to pay the old fund liability tax only on the wages received. The corporation is not liable for the tax on the corporate officer's wages.

(f) This old fund liability tax must be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990. If one or more loans or bonds are outstanding, ~~the tax must be continued at the 0.28% rate and~~ the legislature may not ~~modify the tax rate, the use of the tax proceeds, or this section in a manner that reduces~~ *reduce* the security for repayment of the outstanding loans or bonds, except that the legislature may forgive payment of ~~the~~ *a* tax or reduce ~~the~~ *a* tax rate for any 12-month period if the workers' compensation bond repayment account contains on the first day of that period an amount, regardless of the source, that is in excess of the reserve maintained in the account and that is equal to the amount needed to pay and dedicated to the payment of the principal, premium, and interest that must be paid during that period on the outstanding loans or bonds. ~~The legislature may not increase the tax rate except upon a two-thirds vote of each house.~~

~~(b)~~*(g)* Each employer shall maintain the records the department requires concerning the ~~employer's payroll~~ *old fund liability tax.* The records are subject to inspection by the department and its employees and agents during regular business hours.

(h) An employee does not have any right of action against an employer for any money deducted and withheld from the employee's wages and paid to the state in compliance or intended compliance with this section.

(i) The employer is liable to the state for any amount of old fund liability taxes, plus interest and penalty, when the employer fails to withhold from an employee's wages or fails to remit to the state the old fund liability tax required by this section.

(j) A sole proprietor, subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company is liable to the state for the old fund liability tax, plus interest and penalty, when the sole proprietor, shareholder, partner, or member or manager fails to remit to the state the old fund liability tax required by this section.

(2) All collections of the tax ~~are appropriated to and~~ must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against ~~employers~~ *persons* subject to the tax.

(3) (a) On or before the last day of April, July, October, and January, each employer subject to the tax shall file a return in the form and containing the information required by the department and, except as provided in subsection (3)(b), pay the amount of tax required by this section to be paid on the employer's payroll for the preceding calendar quarter *and in addition shall remit withholdings for employees' old fund liability taxes at the same time.*

(b) An employer subject to 15-30-204(2) shall remit to the department a weekly payment with its weekly withholding tax payment in the amount required by subsection (1)(a) *and shall remit withholdings for employees' old fund liability taxes at the same time.*

(c) ~~A tax payment~~ *Tax payments* required by ~~subsection~~ *subsections* (1)(a) *and (1)(b)* must be made with the return filed pursuant to 15-30-204. The department shall first credit a payment to the liability under 15-30-202 and credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(d) Tax payments due from sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members or managers of limited liability companies must be made with and at the same time as the returns filed pursuant to 15-30-144 and 15-30-241. The department shall first credit a payment to the liability under 15-30-103 or 15-30-202 and shall then credit any remainder to the workers' compensation tax account provided in 39-71-2504.

(4) An employer's officer or employee with the duty to collect, account for, and pay to the department the amount~~s~~ due under this section who ~~willfully~~ fails to pay an amount is liable to the state for the unpaid amount and any penalty and interest relating to that amount.

(5) Returns and remittances under subsection (3) and any information obtained by the department during an audit are subject to the provisions of 15-30-303, but the department may disclose the information to the department of labor and industry under circumstances and conditions that ensure the continued confidentiality of the information.

(6) The department of labor and industry and the state fund shall, on July 1, 1991, or as soon after that date as possible, give the department a list of all employers having coverage under any plan administered or regulated by the department of labor and industry and the state fund. After the lists have been given to the department, the department of labor and industry and the state fund shall update the lists weekly. The department of labor and industry and the state fund shall provide the department with access to their computer data bases and paper files and records for the purpose of the department's administration of the tax imposed by this section.

(7) The provisions of Title 15, chapter 30, not in conflict with the provisions of this part regarding administration, remedies, enforcement, collections, hearings, interest, deficiency assessments, credits for overpayment, statute of limitations, penalties, *estimated taxes,* and department rulemaking authority apply to the tax, to employers, *to employees, to sole proprietors, to subchapter S. corporation shareholders, to partners of partnerships, to members or managers of limited liability companies,* and to the department."

Section 5. **Payment of unfunded liability for injuries resulting from accidents occurring before July 1, 1990.** (1) Beginning July 1, 1993, the state fund shall pay for the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, not covered by any other funding source, by borrowing from the reserves accumulated from premiums paid to the state fund, based upon wages payable on or after July 1, 1990, and invested by the board of investments, from time to time, the amount that the state fund determines and the budget director certifies, as provided in 39-71-2354, will be needed to pay for administering and paying the claims for the ensuing year.

(2) (a) In January of each year, prior to the start of the following fiscal year, the state fund shall forward to the budget director information pertaining to the amount that the state fund will borrow for the ensuing fiscal year to pay for the cost of administering and paying claims for the injuries provided for in subsec-

tion (1), except that for fiscal year 1994, the information on the amount to be borrowed by the state fund must be forwarded to the budget director no later than 45 days prior to the start of the fiscal year. In addition, the state fund shall forward to the budget director the schedule of projected liability payments and cash needs on which the amount to be borrowed is based. The schedule must include but is not limited to total projected liability payments, loans and bond debt payments, revenue from the old fund liability tax provided for in 39-71-2503, projected fiscal yearend cash, and the projected fiscal yearend cash for the year 2007.

(b) (i) There is imposed on each employer a workers' compensation old fund liability tax as provided in 39-71-2503. For fiscal year 1994, the employer old fund liability tax is an amount equal to 0.5% of the employer's payroll in the preceding calendar quarter.

(ii) For fiscal year 1994, the employee old fund liability tax is an amount equal to 0.2% of the employee's wages in the preceding calendar quarter.

(iii) For the tax year beginning after December 31, 1992, the old fund liability tax is an amount equal to 0.1% on the profit of each separate business of a sole proprietor and on the distributive share of ordinary income of each subchapter S. corporation shareholder, partner of a partnership, or member or manager of a limited liability company. For tax years beginning after December 31, 1993, the old fund liability tax rate is increased from 0.1% to 0.2%. Every person subject to taxation under this subsection (2)(b)(iii) shall pay a minimum tax of not less than $25 per entity.

(iv) The rate of the employer old fund liability tax determined by this section includes the 0.28% employer old fund liability tax provided for in 39-71-2503.

(v) (A) The employer old fund liability tax that is in excess of the 0.28% tax provided for in 39-71-2503 terminates at the end of fiscal year 2007.

(B) If the debt service account has sufficient funds to pay outstanding bonds or if no bonds are outstanding, the old fund liability tax may not be imposed after the end of fiscal year 2007.

(vi) The old fund liability tax described in this section must be collected and deposited as provided in 39-71-2503 and 39-71-2504.

(3) If in any January the cumulative projected amount to be borrowed by the state fund from reserves accumulated from premiums paid to the state fund based on wages payable on or after July 1, 1990, to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, not including any outstanding bonds as of [the effective date of this act] exceeds $80 million for the following fiscal year, the tax rate on the persons subject to the old fund liability tax must be increased by 0.05% for the following fiscal year over the current tax rate. If in any January the projected fiscal yearend cash balance for the current fiscal year exceeds $25 million, the tax rate on the persons subject to the old fund liability tax must be reduced by 0.05% from the current tax rate for the following fiscal year.

(4) The total tax on the persons subject to the old fund liability tax may not exceed 0.75%.

(5) The budget director shall certify the cash flow projections of the state fund required by this section and shall notify the department of revenue no later than April 1 of the rate of tax to be collected pursuant to this section.

Section 6. Section 39-71-2504, MCA, is amended to read:

"**39-71-2504. Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund. The workers' compensation tax account consists of a tax account and a workers' compensation bond repayment account.

(2) All collections of the tax *imposed under 39-71-2503*, interest and penalties on the tax, and revenue appropriated to the workers' compensation tax account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the workers' compensation tax account. All ~~such~~ money deposited in the workers' compensation tax account must be credited to the workers' compensation bond repayment account to the extent necessary to pay the principal of and redemption premium and interest due on workers' compensation bonds issued under 39-71-2354 and 39-71-2355 and to establish and maintain a reserve for the bonds equal to the maximum annual principal of and interest on the bonds in any future year. The balance in the workers' compensation bond repayment account must be credited to the tax account within the workers' compensation tax account and is statutorily appropriated, as provided in 17-7-502, to the state fund to be used to reduce the unfunded liability in the state fund incurred for claims for injuries resulting from accidents that occurred before July 1, 1990."

Section 7. Section 15-30-207, MCA, is amended to read:

"**15-30-207. Annual statement by employer.** (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in such form and summarizing such information as the department requires, including the total wages paid to the employee during the preceding calendar year or any part thereof and showing the total amount of the federal income tax deducted and withheld from such wages and the total amount of the tax deducted and withheld therefrom under the provisions of 15-30-201 through 15-30-209 *and 39-71-2503.*

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and no additional information return is required with respect to such wage payments.

(3) In addition to any other penalty provided by law, the failure of an employer to furnish a statement as required by subsection (1) subjects the employer to a penalty of $5 for each failure, provided that the minimum penalty for failure to file the statements required on or before February 28 of each year shall be $50. This penalty may be abated by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts."

Section 8. Section 39-71-406, MCA, is amended to read:

"**39-71-406. Deduction from wages of any part of premium a misdemeanor.** It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of ~~his~~ *the employer's* workers, and the making or attempt to make any such deduction is a misdemeanor. *The workers' compensation old fund liability tax under 39-71-2503 is not a premium for the purpose of this section.*"

Section 9. Section 39-71-2354, MCA, is amended to read:

"**39-71-2354. Use of ~~payroll~~ *old fund liability* tax proceeds — loans — bonds.** (1) Taxes collected under 39-71-2503 may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990, including the cost of repaying bonds issued and loan proceeds given under 39-71-2355 and this section. If the state fund determines that, for the next 1 or more years following the date of the determination, the tax revenue, together with funds in the account required by 39-71-2321 for claims for injuries resulting from accidents that occurred before July 1, 1990, will be insufficient to administer and pay those claims, the state fund may, through its board of directors, request the budget director to certify to the board of investments that additional funding is necessary. If the budget director agrees with the state fund's board of directors that additional funding is necessary, the budget director shall certify to the board of investments the amount that the budget director determines is necessary to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Except as provided in subsection (2), the board of investments shall, at times and in amounts it considers necessary or advisable, finance the amount certified by the budget director by giving the state fund the proceeds of a loan or a bond issue to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Loans must be from reserves accumulated from premiums paid to the state fund based upon wages payable on or after July 1, 1990. The board of investments shall choose the method of financing that is most cost-effective for the state fund. A loan must bear interest at the rate *that the board of investments determines* the money would earn ~~in the pooled investment fund required by 17-6-203~~ *if invested on behalf of the state fund.* The board of investments may also, upon request of the board of directors of the state fund, give the state fund the proceeds of a bond issue, to be used to pay off loans made under 39-71-2355 and this section. Bonds for the state fund must be workers' compensation bonds issued under 39-71-2355.

(2) The total amount of loan proceeds given to the state fund plus workers' compensation bonds issued under 39-71-2355, except bonds issued to repay loans as provided for in subsection (1), may not exceed $220 million. All loan and bond proceeds given to the state fund must be repaid to the board of investments before July 1, 2020."

Section 10. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. **Appropriations.** (1) There is appropriated $65,000 from the workers' compensation tax account to the state auditor for fiscal year 1993 for the purpose of making modifications to the state payroll system for an employee old fund liability tax. The unexpended balance of this appropriation is reappropriated for the same purpose to the department of administration for fiscal year 1994.

(2) There is appropriated $47,190 from the workers' compensation tax account to the department of revenue for fiscal year 1993 for the purpose of implementing an employee old fund liability tax.

(3) There is appropriated $170,000 in fiscal year 1994 and $120,000 in fiscal year 1995 from the workers' compensation tax account to the department of revenue for the purpose of administering an employee old fund liability tax.

Section 12. **Codification instruction.** [Section 5] is intended to be codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [section 5].

Section 13. **Applicability.** The employers' and the employees' portions of the old fund liability tax imposed by [sections 4 and 5] commence on July 1, 1993.

Section 14. **Retroactive applicability.** The workers' compensation old fund liability tax imposed on sole proprietors, subchapter S. corporation shareholders, partners of partnerships, and members and managers of limited liability companies applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1992.

Section 15. **Name change — directions to code commissioner.** Wherever the phrase "payroll tax" appears in Title 39, chapter 71, or in legislation enacted by the 1993 legislature that is intended to be codified in Title 39, chapter 71, the code commissioner is directed to change the phrase to "old fund liability tax".

Section 16. **Effective date.** [This act] is effective on passage and approval.

Approved May 13, 1993.

CHAPTER NO. 638

[HB 562]

AN ACT EXPANDING THE SCOPE OF THE CRIME OF SEXUAL ABUSE OF CHILDREN; PROVIDING THAT POSSESSION OF CERTAIN MATERIAL IS A CRIME; AND AMENDING SECTION 45-5-625, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-625, MCA, is amended to read:

"**45-5-625. Sexual abuse of children.** (1) A person commits the offense of sexual abuse of children if ~~he~~ *the person* knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual ~~contact~~ *conduct*, actual or simulated;

(b) photographs, films, videotapes, *develops or duplicates the photographs, films, or videotapes,* or records a child engaging in sexual ~~contact~~ *conduct*, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual ~~contact~~ *conduct*, actual or simulated, for use as designated in *subsection* (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises ~~material consisting of or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual contact~~ *any visual or print medium in which children are engaged in sexual conduct*, actual or simulated; ~~or~~

(e) possesses material referred to in subsection (1)(d); or

~~(e)~~*(f)* finances any of the activities described in subsections (1)(a) through (1)(d), knowing that the activity is of the nature described in those subsections.

(2) *(a)* ~~A~~ *Except as provided in subsections (2)(b) and (2)(c), a* person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(b) If the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 50 years, or both.

(c) A person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

~~(3) For the purposes of this section, "child" means any person less than 16 years old.~~

(3) An offense is not committed under subsections (1)(d) through (1)(f) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if such an activity is financed, as part of a sex offender information or treatment course or program conducted or approved by the department of corrections and human services."

Section 2. **Definitions.** As used in 45-5-625, the following definitions apply:

(1) "Sexual conduct" means actual or simulated:

(a) sexual intercourse, whether between persons of the same or opposite sex;

(b) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(c) bestiality;

(d) masturbation;

(e) sadomasochistic abuse;

(f) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(g) defecation or urination for the purpose of the sexual stimulation of the viewer.

(2) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(3) "Visual medium" means any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 45, chapter 5, part 6, and the provisions of Title 45, chapter 5, part 6, apply to [section 2].

Approved May 13, 1993.

CHAPTER NO. 639

[HB 567]

AN ACT ESTABLISHING ADDITIONAL REQUIREMENTS FOR AN AIR QUALITY PERMIT FOR COMMERCIAL MEDICAL WASTE AND COMMERCIAL HAZARDOUS WASTE INCINERATORS; REQUIRING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADOPT RULES; COORDINATING THE PERMITTING PROCESS FOR AIR QUALITY AND SOLID AND HAZARDOUS WASTE PERMITS; REQUIRING A DISCLOSURE STATEMENT; ESTABLISHING CRITERIA FOR THE DENIAL OR ALTERATION OF A PERMIT; AMENDING SECTIONS 75-2-103, 75-2-211, AND 75-2-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

A statement of intent is required for this bill because [section 4] directs the board of health and environmental sciences to adopt rules establishing additional permit requirements for commercial medical waste and commercial hazardous waste incinerators. The rules adopted must ensure that the public is protected from potential exposure to chlorinated dioxins, furans, heavy metals, and carcinogens as a result of the incineration of medical waste and hazardous waste and must provide for the implementation of the additional permit requirements contained in 75-2-211, 75-2-215, and [sections 4 through 6], as well as the coordination of those requirements with the permitting requirements contained in 75-2-211 and 75-2-215.

It is the intent of the legislature that the department coordinate the application review process and issuance of permits between the air quality bureau and the solid and hazardous waste bureau for incinerators that must receive both an air quality permit and a solid waste management license or a hazardous waste permit. In coordinating the permitting process of these two bureaus, the department shall also coordinate the environmental review process conducted pursuant to Title 75, chapter 1, part 1. At the discretion of the department, this coordination may be accomplished by preparing a joint environmental review document.

The legislature has not provided for definitions of lowest achievable emission rate and best available control technology in this legislation. It is the intent of the legislature that these terms be construed and applied in a manner that is consistent with the definitions contained in the federal Clean Air Act, 42 U.S.C. 7401, et seq. In adopting rules to implement this legislation, the board shall include rules defining these terms.

Finally, the legislature understands that the retroactive applicability of this bill will subject permit applicants, who have begun but not completed the permitting process, to the provisions of this bill. While the legislature understands that compliance with the provisions of this bill will require additional time and resources from the applicant, it is not the intent of the legislature that this legislation unnecessarily delay the permitting process or unnecessarily increase the permitting costs.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-103, MCA, is amended to read:

"**75-2-103. Definitions.** Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advisory council" means the air pollution control advisory council provided for in 2-15-2106.

(2) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(3) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which are or tend to be injurious to human health or welfare, animal or plant life, or property or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(4) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(5) (a) "Commercial hazardous waste incinerator" means:

(i) an incinerator that burns hazardous waste; or

(ii) a boiler or industrial furnace subject to the provisions of 75-10-406.

(b) Commercial hazardous waste incinerator does not include a research and development facility that receives federal or state research funds and that burns hazardous waste primarily to test and evaluate waste treatment remediation technologies.

~~(5)~~*(6)* "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

~~(6)~~*(7)* "Emission" means a release into the outdoor atmosphere of air contaminants.

(8) "Environmental protection law" means a law contained in or an administrative rule adopted pursuant to Title 75, chapter 2, 5, 10, or 11.

(9) "Hazardous waste" means:

(a) a substance defined as hazardous under 75-10-403 or defined as hazardous in department administrative rules adopted pursuant to Title 75, chapter 10, part 4; or

(b) a waste containing 2 parts or more per million of polychlorinated biphenyl (PCB).

(10) (a) "Incinerator" means any single- or multiple-chambered combustion device that burns combustible material, alone or with a supplemental fuel or with catalytic combustion assistance, primarily for the purpose of removal, destruction, disposal, or volume reduction of all or any portion of the input material.

(b) Incinerator does not include:

(i) safety flares used to combust or dispose of hazardous or toxic gases at industrial facilities, such as refineries, gas sweetening plants, oil and gas wells, sulfur recovery plants, or elemental phosphorus plants;

(ii) space heaters that burn used oil;

(iii) wood-fired boilers; or

(iv) wood waste burners, such as tepee, wigwam, truncated cone, or silo burners.

(11) "Medical waste" means any waste that is generated in the diagnosis, treatment, or immunization of human beings or animals, in medical research on humans or animals, or in the production or testing of biologicals. The term includes:

(a) cultures and stocks of infectious agents;

(b) human pathological wastes;

(c) waste human blood or products of human blood;

(d) sharps;

(e) contaminated animal carcasses, body parts, and bedding that were known to have been exposed to infectious agents during research;

(f) laboratory wastes and wastes from autopsy or surgery that were in contact with infectious agents; and

(g) biological waste and discarded material contaminated with blood, excretion, exudates, or secretions from humans or animals.

~~(7)~~*(12)* "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity and includes persons resident in Canada.

(13) "Principal" means a principal of a corporation, including but not limited to a partner, associate, officer, parent corporation, or subsidiary corporation."

Section 2. Section 75-2-211, MCA, is amended to read:

"**75-2-211. Permits for construction, installation, alteration, or use.** (1) The department shall provide for the issuance, suspension, revocation, and renewal of a permit issued under this part.

(2) For all sources of air contaminants that are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, the provisions of this section apply in addition to the other applicable provisions of this chapter.

(a) The board shall by rule require that permits issued to sources described in subsection (2) be of limited duration, but it may not limit the duration of the permits beyond that required by the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended.

(b) The board shall by rule provide for the renewal of permits issued to the sources.

(c) The board shall by rule establish a transition schedule for air quality permits held by sources of air contaminants subject to the provisions of subsection (2). The transition schedule must specify dates for the expiration of the permits, absent an application for renewal by the source. The transition schedule may not specify expiration dates that are earlier in time than those required by Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended. The transition schedule established by the board also applies to existing sources of air contaminants that are subject to the provisions of Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that do not hold an air quality permit from the department as of November 2, 1992.

(3) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility ~~which~~ *that* the board finds may directly or indirectly cause or contribute to air pollution or ~~which~~ *that* is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(4) Concurrent with the submittal of a permit application required by subsection (3) and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, both direct and indirect, of developing and administering the permitting requirements in this chapter, including the reasonable costs of:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit if the permit is issued. However, this amount does not include any court costs or other costs associated with any enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations; and

(f) preparing inventories and tracking emissions.

(5) In addition to the fee required under subsection (4), the board may order the assessment of additional fees required to fund specific activities of the department that are directed at a particular geographic area if the legislature authorizes the activities and appropriates the funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on those sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the assessments, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, that the assessments apportion the required funding in an equitable manner, and that the department has obtained legislative authorization for the expenditure and the necessary appropriation.

(6) As a condition of the continuing validity of permits issued by the department under this part prior to October 1, 1991, the department may require the permitholder to pay an annual fee sufficient to cover the costs identified in subsection (4).

(7) For any existing source of air contaminants that is subject to Title V of the federal Clean Air Act, 42 U.S.C. 7401, et seq., as amended, and that is not required to hold an air quality permit from the department as of October 1, 1991, the board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the annual fee provided for in subsection (4). ~~Nothing in this~~ *This* subsection may *not* be construed as allowing the department to charge any source of air contaminants more than one annual fee that is designed to cover the costs identified in subsection (4).

(8) The fees collected by the department pursuant to this section must be deposited in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements in this chapter.

(9) (a) The department shall give written notice of the amount of the fee to be assessed and the basis for the department's fee assessment under this section to the owner or operator of the air contaminant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based only on the amount of the fee schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upon receipt of the notice in subsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act provided for in Title 2, chapter 4, apply to any hearing before the board under this subsection (9).

(10) ~~Nothing in this~~ *This* section ~~shall~~ *does not* restrict the board's authority to adopt regulations providing for a single air quality permit system.

(11) The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

(12) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it considers necessary.

(13) An application is not considered filed until the applicant has submitted all fees and information and completed all application forms required by subsections (3) through (7) and (12). However, if the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(14) (a) ~~Where~~ *If* an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days of the receipt of a filed application, as defined in subsection (13), if the department prepares the environmental impact statement; or

(ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement.

(b) However, ~~where~~ *when* an application does not require the ~~compilation~~ *preparation* of an environmental impact statement, the department shall notify the applicant in writing within 60 days of the receipt of a filed application, as ~~defined~~ *provided* in subsection (13), of the approval or denial of the application. Notification of approval or denial may be served personally or by ~~registered or~~ certified mail on the applicant or ~~his~~ *the applicant's* agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(2)(e).

(15) When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds ~~therefor~~, a hearing before the board. A hearing ~~shall~~ *must* be held under the provisions of the Montana Administrative Procedure Act.

(16) The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 3. Section 75-2-215, MCA, is amended to read:

"**75-2-215. Solid or hazardous waste incineration — additional permit requirements.** (1) A person may not construct, modify, or operate a solid or hazardous waste incinerator of any of the following categories until the department has issued an air quality permit pursuant to this chapter, including the conditions provided in this section:

(a) a new solid or hazardous waste incinerator that is designed to burn more than 200 pounds an hour of solid or hazardous waste; or

(b) an existing or permitted solid or hazardous waste incinerator that is designed to burn more than 200 pounds an hour of solid or hazardous waste and that incinerates or would incinerate solid or hazardous waste in an amount, form, kind, or content different from its designed or permitted operation or that incinerates or would incinerate any solid or hazardous waste that changes the nature, character, or composition of its emissions.

(2) The department may not issue a permit to a facility described in subsection (1) until:

(a) the owner or operator has provided to the department's satisfaction:

(i) a characterization of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from any existing incineration at the facility; and

(ii) an estimate of emissions and ambient concentrations of air pollutants, including hazardous air pollutants, from the incineration of solid or hazardous waste as proposed in the permit application or modification;

(b) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the applicant has published, in the county where the project is proposed, at least three notices, in accordance with the procedures identified in 7-1-4127(2) and 7-1-4128(2), describing the proposed project;

~~(b)~~*(c) if a license is required pursuant to 75-10-221 or a permit is required pursuant to 75-10-406, the department has conducted a public hearing on an environmental review prepared pursuant to Title 75, chapter 1, and, as appropriate, provided additional opportunities for* the public ~~has had an opportunity~~ to review and comment on the permit application or modification; ~~and~~

~~(c)~~*(d)* the department has reached a determination that the projected emissions and ambient concentrations will constitute a negligible risk to the public health, safety, and welfare and to the environment*; and*

(e) the department has issued a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, if a license or permit is required. The decision to issue, deny, or alter a permit pursuant to 75-2-211 and 75-2-215 must be made within 30 days from when the department issues a license pursuant to 75-10-221 or a permit pursuant to 75-10-406 or within 90 days after the receipt of a complete application for a permit or a permit alteration under 75-2-211, 75-2-215, and this section, whichever is later.

(3) The department shall require the application of air pollution control equipment, engineering, or other operating procedures as necessary to provide

reductions of air pollutants, including hazardous air pollutants, equivalent to or more stringent than those achieved through the best available control technology.

(4) This section does not relieve an owner or operator of a solid or hazardous waste incinerator that is not included under subsection (1) from the obligation to obtain any permit otherwise required under this chapter or rules implementing this chapter."

Section 4. **Medical waste and hazardous waste incineration — additional permit requirements.** (1) Because of the potential formation of chlorinated dioxins, furans, heavy metals, and carcinogens as a result of the incineration of medical waste and hazardous waste and the potential health risk these chemicals pose, the board shall adopt rules establishing additional permit requirements for commercial medical waste and commercial hazardous waste incinerators. For the purposes of this section, the term "commercial medical waste incinerator" does not include hospital or medical facility incinerators that primarily incinerate medical waste generated onsite. The board shall adopt rules that:

(a) regulate the type and amount of plastic and other materials in the medical waste stream and hazardous waste stream that may be a source of chlorine, in order to minimize the potential creation of chlorinated dioxins, furans, heavy metals, and carcinogens;

(b) require commercial medical waste and commercial hazardous waste incinerators to achieve the lowest achievable emission rate, except when best available control technology is adequate to prevent exceeding the allowable daily intake standards, as determined pursuant to subsection (3), for dioxins, furans, heavy metals, and other carcinogens;

(c) implement the requirements of subsection (2), including establishing procedures and standards for the collection of high quality scientific information and for the submission of the information by the applicant;

(d) establish procedures for the monitoring, testing, and inspection of:

(i) the medical waste stream and hazardous waste stream, including possible precursors to the formation of chlorinated dioxins, furans, heavy metals, and carcinogens;

(ii) combustion, including destruction and removal efficiencies; and

(iii) emissions, including continuous emission monitoring and air pollution control devices; and

(e) are necessary to implement the provisions of this section and to coordinate the requirements under this section with the requirements contained in 75-2-211 and 75-2-215.

(2) A person who applies for an air quality permit or alteration pursuant to 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator shall provide, to the satisfaction of the department, the following information:

(a) a dispersion model of emissions, using approved methods, and those studies that are necessary to identify the potential community exposure;

(b) an analysis of the potential pathways for human exposure to air contaminants, particularly chlorinated dioxins, furans, heavy metals, and other carcinogens, including the potential for inhalation, ingestion, and physical contact by the affected communities; and

(c) a quantitative analysis of the estimated total possible human exposure to chlorinated dioxins, furans, heavy metals, and carcinogens for the affected communities.

(3) The department may not issue or alter an air quality permit pursuant to this chapter until the department has determined, based upon an analysis of the information provided by the applicant pursuant to subsection (2) and other necessary and relevant data, that the public health risk from chlorinated dioxins, furans, heavy metals, and other carcinogens will not exceed appropriate federal standards for allowable daily intake, as determined by the department after a review of established and relevant federal standards and guidelines.

(4) This section may not be construed in any way to:

(a) require the board to promulgate standards for the allowable daily intake of any substances for which the federal government has not established standards;

(b) allow the board to promulgate standards for the allowable daily intake of any substances for which the federal government has established standards that are more stringent than the federal standards; or

(c) limit or otherwise impair the duty of the department under 75-2-215 to determine that emissions and ambient concentrations will constitute a negligible risk as required by 75-2-215(2)(d), including emissions and ambient concentrations of dioxins, furans, heavy metals, and carcinogens, before issuing an air quality permit pursuant to 75-2-211 and 75-2-215.

Section 5. **Disclosure statement required.** (1) An air quality permit for a commercial medical waste or commercial hazardous waste incinerator may not be issued, transferred, or altered pursuant to 75-2-211 and 75-2-215 without an application under this section. Before an application for the issuance, transfer, or alteration of a permit under 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator may be approved, the applicant and each principal with respect to the applicant shall submit to the department a disclosure statement containing the following information:

(a) the name, business address, and social security number of the applicant and each principal;

(b) a description of any civil and administrative complaint filed within 5 years before the date of the application against the applicant or a principal for the violation of an environmental protection law and whether the complaint resulted in a civil or administrative penalty;

(c) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application; and

(d) a description of all judgments of criminal conviction entered against the applicant or a principal for the violation of an environmental protection law within 5 years before the date of the application in another state that resulted from the operation of a medical waste incinerator or a commercial hazardous waste incinerator. For the purposes of this subsection (d), an environmental protection law of another state means a law or administrative rule adopted pursuant to a law regulating solid or hazardous waste or underground storage tanks or protecting the air or water resource.

(2) A disclosure statement, as required in subsection (1), must be executed under oath or affirmation and is subject to the penalty for perjury. The department may verify and investigate the information contained in a statement required under this section.

(3) A person required to file a disclosure statement under this section shall provide assistance or information requested by the department that is related to the statement and shall cooperate in an inquiry or investigation conducted by the department under subsection (2).

Section 6. **Denial or modification of permit — mitigating factors.** (1) The department may deny an application for the issuance, transfer, or alteration of a permit under 75-2-211 and 75-2-215 for a commercial medical waste or commercial hazardous waste incinerator or impose additional conditions on a permit pursuant to subsection (2) if within 5 years before the date of the application:

(a) a judgment of criminal conviction of an environmental protection law has been entered against the applicant or a principal;

(b) a civil or administrative complaint for a violation of an environmental protection law has resulted in the assessment of a penalty against the applicant or a principal;

(c) the applicant or a principal has a history of repeated violations of environmental protection laws; or

(d) a judgment or criminal conviction for a violation described in [section 5(1)(d)] has been entered against the applicant or a principal.

(2) As provided under subsection (1), the department may impose additional conditions on a permit related to permit length, inspections, monitoring, recordkeeping, and reporting.

(3) In making the decision to deny an application or to impose conditions on a permit pursuant to subsection (1), the department shall consider the following mitigating factors:

(a) the nature and gravity of the violation of environmental protection laws or violations described in [section 5(1)(d)];

(b) the degree of culpability of the applicant or a principal;

(c) the applicant's or principal's cooperation with the state or federal agencies involved in the complaints and convictions referred to in [section 5]; and

(d) the applicant's or principal's dissociation from other persons or entities convicted of acts referred to in [section 5].

Section 7. **Codification instruction.** [Sections 4 through 6] are intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [sections 4 through 6].

Section 8. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. **Retroactive applicability.** (1) [This act] applies retroactively, within the meaning of 1-2-109, to all commercial medical waste incinerators that have applied for but have not received by [the effective date of this act] a permit under Title 75, chapter 2, and a license under 75-10-221.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all commercial hazardous waste incinerators that have applied for but not received by [the effective date of this act] a permit under Title 75, chapter 2, and a permit under 75-10-406.

Section 10. **Effective date.** [This act] is effective on passage and approval.

Approved May 13, 1993.

CHAPTER NO. 640

[HB 198]

AN ACT ESTABLISHING STATE EMPLOYEE COMPENSATION PLANS AND BENEFIT LEVELS; PROVIDING PAY SCHEDULES FOR FISCAL YEARS 1994 AND 1995; APPROPRIATING MONEY TO IMPLEMENT THE SCHEDULES; REMOVING RESTRICTIONS ON RECEIVING PAY DUE TO THE LACK OF A COLLECTIVE BARGAINING AGREEMENT; PROVIDING LIMITED SEVERANCE PAY TO STATE EMPLOYEES TERMINATED UNDER CERTAIN CONDITIONS; PROVIDING A LIMITATION ON THE CHOICE OF BENEFITS; AMENDING SECTIONS 2-6-110, 2-18-301, 2-18-303, 2-18-305, 2-18-312, 2-18-313, 2-18-314, 2-18-315, 2-18-622, AND 2-18-703, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-301, MCA, is amended to read:

"**2-18-301. Purpose and intent of part — rules.** (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and

excluding employees compensated under 2-18-313, 2-18-314, and 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey report to the legislature at the start of each legislative session.

(3) Except as provided in 2-18-110 and 2-18-305(4), pay schedules provided for in 2-18-312 through 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the ~~52nd~~ *53rd* legislature.

(4) Pay levels provided for in 2-18-312 through 2-18-315 may not be increased through collective bargaining after adjournment of the ~~52nd~~ *53rd* legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312 through 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the ~~52nd~~ *53rd* legislature.

(6) The department shall administer the pay program established by the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part."

Section 2. Section 2-18-303, MCA, is amended to read:

"**2-18-303. Procedures for utilizing pay schedules.** (1) The pay schedules provided in 2-18-312 must be implemented as follows:

(a) The pay schedules provided in 2-18-312 indicate the entry salary and market salary for the fiscal years ending June 30, ~~1992~~ *1994*, and June 30, ~~1993~~ *1995*, for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections ~~(7) and (8)~~ *(6) and (7)*.

(c) Except as provided in subsection ~~(1)(g)~~ *(1)(e)*, on the first day of the first complete pay period in fiscal year ~~1992~~ *1994*, each employee hired before July 1, ~~1991~~ *1993*, is entitled to the amount of ~~his~~ *the employee's* base salary as it was on June 30, ~~1991~~ *1993.*~~, plus the following increases:~~

~~(i) an increase of 60 cents an hour above the employee's base salary as it was on June 30, 1991; and~~

~~(ii) an additional increase of 1/8 of 1% of his base salary as it is after the 60-cent-an-hour increase, for each full percentage point that the employee's base salary, as it is after the 60-cent-an-hour increase, is below the market salary for the employee's assigned grade.~~

(d) Except as provided in subsection ~~(1)(g)~~ *(1)(e)*, on the first day of the first *complete* pay period in ~~fiscal year 1993, each employee hired before July 1, 1992, is entitled to the amount of the employee's base salary as it was on June 30, 1992~~ *January 1995, each employee hired before January 1, 1995, is entitled to* *the amount of the employee's base salary as it was on December 31, 1994, plus 1.5%.*~~, plus an increase calculated as follows:~~

~~(i) add 45 cents an hour to the employee's base salary as it was on June 30, 1992; then~~

~~(ii) add an amount equal to 1/8 of 1% of the amount computed in subsection (1)(d)(i) for each full percentage point that the employee's base salary, as it is after the 45-cent-an-hour increase, is below the market salary for the employee's assigned grade; then~~

~~(iii) from the sum calculated in subsection (1)(d)(ii), subtract 20 cents an hour.~~

~~(e) Except as provided in subsection (1)(g), on the first day of the first pay period in January 1993, each employee hired before January 1, 1993, is entitled to the amount of the employee's base salary as it was on December 31, 1992, plus an increase of 20 cents an hour above the employee's base salary as it was on December 31, 1992.~~

~~(f) The department shall determine the number of full percentage points that an employee's base salary is below the market salary by dividing the employee's base salary by the market salary for his assigned grade, multiplying the result by 100, and subtracting that total from 100.~~

~~(g)~~*(e)* An employee's base salary may be no less than the entry salary for ~~his~~ *the employee's* assigned grade.

~~(h)~~*(f)* ~~Except as provided in subsections (5) through (8), an~~ *An* employee's base salary may not exceed the ~~market~~ *maximum* salary ~~by a percentage greater than the percentage that the market salary~~ for the employee's ~~grade exceeds the entry salary for that~~ grade. The salary of an employee may not be reduced because of this provision.

(g) The maximum salary for each grade is determined by subtracting the entry salary from the market salary and adding that amount to the market salary.

(2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) do not apply to those teachers, liquor store occupations, or blue-collar occupations compensated under the pay schedules provided in 2-18-313 through 2-18-315.

(3) The pay schedules provided in 2-18-313 through 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for the contracted school term for teachers employed under the authority of the department of corrections and human services or the department of family services for fiscal years ~~1992~~ *1994* and ~~1993~~ *1995.*

(ii) The compensation of each teacher on the first day of the first pay period in July ~~1991~~ *1993* is ~~that amount corresponding to~~ *determined by* the teacher's level of academic achievement and years of experience.

(iii) On the first day of the first *complete* pay period of each fiscal year, each teacher shall advance one step on the appropriate pay schedule adopted in 2-18-313.

(iv) On the first day of the first complete pay period of each fiscal year, each teacher employed by the Montana school for the deaf and blind shall advance one step on the teacher pay matrix used by the school.

(b) (i) The pay schedules provided in 2-18-314 indicate the maximum hourly compensation for fiscal years ending June 30, ~~1992~~ *1994*, and June 30, ~~1993~~ *1995*, for those employees in liquor store occupations who have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year ~~1992~~ *1994* or ~~1993~~ *1995* is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(c) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, ~~1992~~ *1994*, and June 30, ~~1993~~ *1995*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in fiscal year ~~1992~~ *1994* or ~~1993~~ *1995* is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

~~(4) (a) (i) A member of a bargaining unit may not receive the amounts indicated in the respective pay schedules provided in 2-18-312 through 2-18-315 until the bargaining unit of which he is a member ratifies a completely integrated collective bargaining agreement covering the biennium ending June 30, 1993.~~

~~(ii) If negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) are not completed by July 1, 1991, retroactivity to that date may be negotiated.~~

~~(iii) If negotiation and ratification of a completely integrated collective bargaining agreement as required by subsection (4)(a)(i) are not completed by July 1, 1991, members of the bargaining unit involved must continue to receive the compensation they were receiving as of June 30, 1991.~~

~~(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules provided in 2-18-312 through 2-18-315 may be provided for in collective bargaining agreements.~~

~~(5)~~*(4)* The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312 through 2-18-315.

~~(6)~~*(5)* The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians at the state institutions.

~~(7)~~*(6)* The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. Insofar as the program may apply to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305. ~~To maintain the internal equity of the statewide pay plan provided for in 2-18-312 and subsection (1) of this section, when a majority of registered nurses classified under the provisions of part 2 of this chapter have been granted a pay plan exception through a collectively bargained agreement, then all other classified registered nurses, including those employed in the university system, must be paid a salary equivalent to the salary negotiated in the negotiated agreement, except that in no case may the salary of a classified registered nurse be reduced by this provision.~~

~~(8)~~*(7)* The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. Insofar as these adjustments may apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

Section 3. Section 2-18-305, MCA, is amended to read:

"**2-18-305. Allocation between wages and group benefits.** (1) The dollar amounts shown in the respective pay schedules provided in 2-18-313, 2-18-314, and 2-18-315 represent the maximum amount allocated by the state for wages and group benefits, exclusive of longevity as defined in 2-18-304 for an employee covered by a pay schedule provided in 2-18-313, 2-18-314, or 2-18-315.

(2) Except as provided in subsection (4), the amount specifically allocated for group benefits must be determined by 2-18-703.

(3) (a) An employee covered under the pay schedules provided in 2-18-312 who elects not to be covered by a state employee group benefit plan under the provisions of 2-18-703 must receive as wages ~~his~~ *the employee's* base salary, including adjustments provided in 2-18-303(1)(c) ~~through~~ *and* ~~(1)(e)~~ *(1)(d)* and 2-18-304.

(b) An employee covered under the pay schedules provided in 2-18-313, 2-18-314, or 2-18-315 who elects not to be covered by a state employee group benefit plan shall, under the provisions of 2-18-703, receive as wages the amount shown in the appropriate pay schedule less the state contribution for group benefits as determined by 2-18-703.

(4) Employees may, through collective bargaining, determine the allocation between wages and group benefits, except that in no case may the group benefits allocation be less than the amounts provided in 2-18-703."

Section 4. Section 2-18-312, MCA, is amended to read:

"**2-18-312. Statewide pay schedules for fiscal years ~~1992~~ *1994* and ~~1993~~ *1995*.** (1) The statewide classification pay schedule for fiscal year ~~1992~~ *1994* is as follows:

Annual Hours — 2080
Pay Matrix — State

Note: Does Not Include Insurance
Matrix Type — Annual

Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
~~1~~	~~8,426~~	~~9,913~~
~~2~~	~~9,077~~	~~10,704~~
~~3~~	~~9,777~~	~~11,557~~
~~4~~	~~10,536~~	~~12,484~~
~~5~~	~~11,385~~	~~13,522~~
~~6~~	~~12,303~~	~~14,647~~
~~7~~	~~13,289~~	~~15,858~~
~~8~~	~~14,404~~	~~17,230~~
~~9~~	~~15,596~~	~~18,701~~
~~10~~	~~16,916~~	~~20,332~~
~~11~~	~~18,353~~	~~22,112~~
~~12~~	~~19,946~~	~~24,090~~
~~13~~	~~21,674~~	~~26,240~~
~~14~~	~~23,588~~	~~28,626~~
~~15~~	~~25,694~~	~~31,258~~
~~16~~	~~28,044~~	~~34,200~~
~~17~~	~~30,665~~	~~37,488~~
~~18~~	~~33,555~~	~~41,122~~
~~19~~	~~36,793~~	~~45,201~~
~~20~~	~~40,406~~	~~49,761~~
~~21~~	~~44,421~~	~~54,841~~
~~22~~	~~48,906~~	~~60,527~~
~~23~~	~~53,965~~	~~66,954~~
~~24~~	~~59,645~~	~~74,185~~
~~25~~	~~65,930~~	~~82,206~~
1	*8,679*	*10,210*
2	*9,349*	*11,025*
3	*10,070*	*11,903*
4	*10,852*	*12,858*
5	*11,727*	*13,927*
6	*12,672*	*15,086*
7	*13,688*	*16,334*
8	*14,836*	*17,747*
9	*16,064*	*19,262*
10	*17,424*	*20,942*
11	*18,904*	*22,775*
12	*20,545*	*24,812*
13	*22,325*	*27,027*
14	*24,295*	*29,485*
15	*26,465*	*32,196*
16	*28,885*	*35,226*
17	*31,585*	*38,613*
18	*34,562*	*42,355*
19	*37,897*	*46,557*
20	*41,618*	*51,254*

21	*45,754*	*56,487*
22	*50,373*	*62,343*
23	*55,584*	*68,963*
24	*61,434*	*76,410*
25	*67,907*	*84,673*

(2) The statewide classification pay schedule for fiscal year ~~1993~~ *1995* is as follows:

Annual Hours — 2080	Note: Does Not Include Insurance
Pay Matrix — State	Matrix Type — Annual

Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
1	8,679	10,210
2	9,349	11,025
3	10,070	11,903
4	10,852	12,858
5	11,727	13,927
6	12,672	15,086
7	13,688	16,334
8	14,836	17,747
9	16,064	19,262
10	17,424	20,942
11	18,904	22,775
12	20,545	24,812
13	22,325	27,027
14	24,295	29,485
15	26,465	32,196
16	28,885	35,226
17	31,585	38,613
18	34,562	42,355
19	37,897	46,557
20	41,618	51,254
21	45,754	56,487
22	50,373	62,343
23	55,584	68,963
24	61,434	76,410
25	67,907	84,673"

Section 5. Section 2-18-313, MCA, is amended to read:

"**2-18-313. Teachers' pay schedules.** (1) (a) The 12-month pay schedule for teachers for fiscal year ~~1992~~ *1994 and for the first 6 months of fiscal year 1995* is as follows:

Annual Hours — 2080

Term — Twelve Months

Note: ~~Includes~~ *Does Not Include* Insurance

Matrix Type — Annual

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
~~1~~	~~23,516~~	~~24,175~~	~~24,817~~	~~25,138~~	~~25,461~~	~~26,120~~
~~2~~	~~24,271~~	~~24,987~~	~~25,704~~	~~26,063~~	~~26,426~~	~~27,169~~
~~3~~	~~25,026~~	~~25,817~~	~~26,599~~	~~27,013~~	~~27,427~~	~~28,242~~
~~4~~	~~25,782~~	~~26,660~~	~~27,525~~	~~27,982~~	~~28,438~~	~~29,312~~
~~5~~	~~26,542~~	~~27,525~~	~~28,457~~	~~28,952~~	~~29,450~~	~~30,384~~
~~6~~	~~27,330~~	~~28,401~~	~~29,392~~	~~29,926~~	~~30,462~~	~~31,456~~
~~7~~	~~28,120~~	~~29,270~~	~~30,321~~	~~30,897~~	~~31,471~~	~~32,524~~
~~8~~	~~28,914~~	~~30,143~~	~~31,257~~	~~31,871~~	~~32,485~~	~~33,594~~
~~9~~	~~29,707~~	~~31,014~~	~~32,189~~	~~32,841~~	~~33,498~~	~~34,665~~
~~10~~	~~30,500~~	~~31,890~~	~~33,120~~	~~33,813~~	~~34,507~~	~~35,737~~
~~11~~	~~31,295~~	~~32,732~~	~~34,049~~	~~34,784~~	~~35,519~~	~~36,806~~
~~12~~	~~31,295~~	~~32,732~~	~~34,049~~	~~34,784~~	~~35,519~~	~~36,806~~
~~13~~	~~31,295~~	~~32,732~~	~~34,049~~	~~34,784~~	~~35,519~~	~~36,806~~
1	*22,412*	*23,071*	*23,713*	*24,034*	*24,357*	*25,016*
2	*23,167*	*23,883*	*24,600*	*24,959*	*25,322*	*26,065*
3	*23,922*	*24,713*	*25,495*	*25,909*	*26,323*	*27,138*
4	*24,678*	*25,556*	*26,421*	*26,878*	*27,334*	*28,208*
5	*25,438*	*26,421*	*27,353*	*27,848*	*28,346*	*29,280*
6	*26,226*	*27,297*	*28,288*	*28,822*	*29,358*	*30,352*
7	*27,016*	*28,166*	*29,217*	*29,793*	*30,367*	*31,420*
8	*27,810*	*29,039*	*30,153*	*30,767*	*31,381*	*32,490*
9	*28,603*	*29,910*	*31,085*	*31,737*	*32,394*	*33,561*
10	*29,396*	*30,786*	*32,016*	*32,709*	*33,403*	*34,633*
11	*30,191*	*31,628*	*32,945*	*33,680*	*34,415*	*35,702*
12	*30,191*	*31,628*	*32,945*	*33,680*	*34,415*	*35,702*
13	*30,191*	*31,628*	*32,945*	*33,680*	*34,415*	*35,702*

(b) The 9-month pay schedule for teachers for fiscal year ~~1992~~ *1994 and for the first 6 months of fiscal year 1995* is as follows:

Annual Hours — 1560

Term — Nine Months

Note: ~~Includes~~ *Does Not Include* Insurance

Matrix Type — Annual

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
~~1~~	~~19,262~~	~~19,770~~	~~20,291~~	~~20,545~~	~~20,800~~	~~21,321~~
~~2~~	~~19,859~~	~~20,425~~	~~20,992~~	~~21,275~~	~~21,560~~	~~22,126~~
~~3~~	~~20,455~~	~~21,080~~	~~21,693~~	~~22,008~~	~~22,320~~	~~22,932~~
~~4~~	~~21,054~~	~~21,739~~	~~22,394~~	~~22,738~~	~~23,081~~	~~23,738~~
~~5~~	~~21,649~~	~~22,394~~	~~23,095~~	~~23,468~~	~~23,842~~	~~24,545~~
~~6~~	~~22,247~~	~~23,053~~	~~23,799~~	~~24,200~~	~~24,603~~	~~25,351~~
~~7~~	~~22,841~~	~~23,706~~	~~24,498~~	~~24,931~~	~~25,363~~	~~26,155~~

~~8~~	~~23,439~~	~~24,364~~	~~25,202~~	~~25,663~~	~~26,126~~	~~26,960~~
~~9~~	~~24,036~~	~~25,019~~	~~25,903~~	~~26,394~~	~~26,887~~	~~27,781~~
~~10~~	~~24,633~~	~~25,677~~	~~26,604~~	~~27,124~~	~~27,659~~	~~28,630~~
~~11~~	~~25,230~~	~~26,312~~	~~27,306~~	~~27,875~~	~~28,457~~	~~29,473~~
~~12~~	~~25,230~~	~~26,312~~	~~27,306~~	~~27,875~~	~~28,457~~	~~29,473~~
~~13~~	~~25,230~~	~~26,312~~	~~27,306~~	~~27,875~~	~~28,457~~	~~29,473~~
1	*17,924*	*18,432*	*18,953*	*19,207*	*19,462*	*19,983*
2	*18,521*	*19,087*	*19,654*	*19,937*	*20,222*	*20,788*
3	*19,117*	*19,742*	*20,355*	*20,670*	*20,982*	*21,594*
4	*19,716*	*20,401*	*21,056*	*21,400*	*21,743*	*22,400*
5	*20,311*	*21,056*	*21,757*	*22,130*	*22,504*	*23,207*
6	*20,909*	*21,715*	*22,461*	*22,862*	*23,265*	*24,013*
7	*21,503*	*22,368*	*23,160*	*23,593*	*24,025*	*24,817*
8	*22,101*	*23,026*	*23,864*	*24,325*	*24,788*	*25,622*
9	*22,698*	*23,681*	*24,565*	*25,056*	*25,549*	*26,443*
10	*23,295*	*24,339*	*25,266*	*25,786*	*26,321*	*27,292*
11	*23,892*	*24,974*	*25,968*	*26,537*	*27,119*	*28,135*
12	*23,892*	*24,974*	*25,968*	*26,537*	*27,119*	*28,135*
13	*23,892*	*24,974*	*25,968*	*26,537*	*27,119*	*28,135*

~~(2) (a) The 12-month pay schedule for teachers for the first 6 months of fiscal year 1993 is as follows:~~

~~Annual Hours 2080 Note: Includes Insurance~~
~~Term Twelve Months Matrix Type Annual~~

~~Education Level~~

~~STEP~~	~~BA~~	~~BA+1~~	~~BA+2~~	~~BA+3~~	~~MA~~	~~MA+1~~
~~1~~	~~24,276~~	~~24,935~~	~~25,577~~	~~25,898~~	~~26,221~~	~~26,880~~
~~2~~	~~25,031~~	~~25,747~~	~~26,464~~	~~26,823~~	~~27,186~~	~~27,929~~
~~3~~	~~25,786~~	~~26,577~~	~~27,359~~	~~27,773~~	~~28,187~~	~~29,002~~
~~4~~	~~26,542~~	~~27,420~~	~~28,285~~	~~28,742~~	~~29,198~~	~~30,072~~
~~5~~	~~27,302~~	~~28,285~~	~~29,217~~	~~29,712~~	~~30,210~~	~~31,144~~
~~6~~	~~28,090~~	~~29,161~~	~~30,152~~	~~30,686~~	~~31,222~~	~~32,216~~
~~7~~	~~28,880~~	~~30,030~~	~~31,081~~	~~31,657~~	~~32,231~~	~~33,284~~
~~8~~	~~29,674~~	~~30,903~~	~~32,017~~	~~32,631~~	~~33,245~~	~~34,354~~
~~9~~	~~30,467~~	~~31,774~~	~~32,949~~	~~33,601~~	~~34,258~~	~~35,425~~
~~10~~	~~31,260~~	~~32,650~~	~~33,880~~	~~34,573~~	~~35,267~~	~~36,497~~
~~11~~	~~32,055~~	~~33,492~~	~~34,809~~	~~35,544~~	~~36,279~~	~~37,566~~
~~12~~	~~32,055~~	~~33,492~~	~~34,809~~	~~35,544~~	~~36,279~~	~~37,566~~
~~13~~	~~32,055~~	~~33,492~~	~~34,809~~	~~35,544~~	~~36,279~~	~~37,566~~

~~(b) The 9-month pay schedule for teachers for the first 6 months of fiscal year 1993 is as follows:~~

~~Annual Hours 1560 Note: Includes Insurance~~
~~Term Nine Months Matrix Type Annual~~

~~Education Level~~

~~STEP~~	~~BA~~	~~BA+1~~	~~BA+2~~	~~BA+3~~	~~MA~~	~~MA+1~~

~~1~~	~~19,892~~	~~20,400~~	~~20,921~~	~~21,175~~	~~21,430~~	~~21,951~~
~~2~~	~~20,489~~	~~21,055~~	~~21,622~~	~~21,905~~	~~22,190~~	~~22,756~~
~~3~~	~~21,085~~	~~21,710~~	~~22,323~~	~~22,638~~	~~22,950~~	~~23,562~~
~~4~~	~~21,684~~	~~22,369~~	~~23,024~~	~~23,368~~	~~23,711~~	~~24,368~~
~~5~~	~~22,270~~	~~23,024~~	~~23,725~~	~~24,098~~	~~24,472~~	~~25,175~~
~~6~~	~~22,877~~	~~23,683~~	~~24,429~~	~~24,830~~	~~25,233~~	~~25,981~~
~~7~~	~~23,471~~	~~24,336~~	~~25,128~~	~~25,561~~	~~25,993~~	~~26,785~~
~~8~~	~~24,069~~	~~24,994~~	~~25,832~~	~~26,293~~	~~26,756~~	~~27,590~~
~~9~~	~~24,666~~	~~25,649~~	~~26,533~~	~~27,024~~	~~27,517~~	~~28,411~~
~~10~~	~~25,263~~	~~26,307~~	~~27,234~~	~~27,754~~	~~28,289~~	~~29,260~~
~~11~~	~~25,860~~	~~26,942~~	~~27,936~~	~~28,505~~	~~29,087~~	~~30,103~~
~~12~~	~~25,860~~	~~26,942~~	~~27,936~~	~~28,505~~	~~29,087~~	~~30,103~~
~~13~~	~~25,860~~	~~26,942~~	~~27,936~~	~~28,505~~	~~29,087~~	~~30,103~~

~~(3)~~*(2)* (a) The 12-month pay schedule for teachers for the last 6 months of fiscal year ~~1993~~ *1995* is as follows:

Annual Hours — 2080	Note: ~~Includes~~ *Does Not Include* Insurance
Term — Twelve Months	Matrix Type — Annual

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
~~1~~	~~24,692~~	~~25,351~~	~~25,993~~	~~26,314~~	~~26,637~~	~~27,296~~
~~2~~	~~25,447~~	~~26,163~~	~~26,880~~	~~27,239~~	~~27,602~~	~~28,345~~
~~3~~	~~26,202~~	~~26,993~~	~~27,775~~	~~28,189~~	~~28,603~~	~~29,418~~
~~4~~	~~26,958~~	~~27,836~~	~~28,701~~	~~29,158~~	~~29,614~~	~~30,488~~
~~5~~	~~27,718~~	~~28,701~~	~~29,633~~	~~30,128~~	~~30,626~~	~~31,560~~
~~6~~	~~28,506~~	~~29,577~~	~~30,568~~	~~31,102~~	~~31,638~~	~~32,632~~
~~7~~	~~29,296~~	~~30,446~~	~~31,497~~	~~32,073~~	~~32,647~~	~~33,700~~
~~8~~	~~30,090~~	~~31,319~~	~~32,433~~	~~33,047~~	~~33,661~~	~~34,770~~
~~9~~	~~30,883~~	~~32,190~~	~~33,365~~	~~34,017~~	~~34,674~~	~~35,841~~
~~10~~	~~31,676~~	~~33,066~~	~~34,296~~	~~34,989~~	~~35,683~~	~~36,913~~
~~11~~	~~32,471~~	~~33,908~~	~~35,225~~	~~35,960~~	~~36,695~~	~~37,982~~
~~12~~	~~32,471~~	~~33,908~~	~~35,225~~	~~35,960~~	~~36,695~~	~~37,982~~
~~13~~	~~32,471~~	~~33,908~~	~~35,225~~	~~35,960~~	~~36,695~~	~~37,982~~
1	*22,748*	*23,417*	*24,069*	*24,395*	*24,722*	*25,391*
2	*23,515*	*24,241*	*24,969*	*25,333*	*25,702*	*26,456*
3	*24,281*	*25,084*	*25,877*	*26,298*	*26,718*	*27,545*
4	*25,048*	*25,939*	*26,817*	*27,281*	*27,744*	*28,631*
5	*25,820*	*26,817*	*27,763*	*28,266*	*28,771*	*29,719*
6	*26,619*	*27,706*	*28,712*	*29,254*	*29,798*	*30,807*
7	*27,421*	*28,588*	*29,655*	*30,240*	*30,823*	*31,891*
8	*28,227*	*29,475*	*30,605*	*31,229*	*31,852*	*32,977*
9	*29,032*	*30,359*	*31,551*	*32,213*	*32,880*	*34,064*
10	*29,837*	*31,248*	*32,496*	*33,200*	*33,904*	*35,152*
11	*30,644*	*32,102*	*33,439*	*34,185*	*34,931*	*36,238*
12	*30,644*	*32,102*	*33,439*	*34,185*	*34,931*	*36,238*
13	*30,644*	*32,102*	*33,439*	*34,185*	*34,931*	*36,238*

(b) The 9-month pay schedule for teachers for the last 6 months of fiscal year ~~1993~~ *1995* is as follows:

Annual Hours — 1560

Term — Nine Months

Note: ~~Includes~~ *Does Not Include* Insurance

Matrix Type — Annual

Education Level

STEP	BA	BA+1	BA+2	BA+3	MA	MA+1
~~1~~	~~20,204~~	~~20,712~~	~~21,233~~	~~21,487~~	~~21,742~~	~~22,263~~
~~2~~	~~20,801~~	~~21,367~~	~~21,934~~	~~22,217~~	~~22,502~~	~~23,068~~
~~3~~	~~21,397~~	~~22,022~~	~~22,635~~	~~22,950~~	~~23,262~~	~~23,874~~
~~4~~	~~21,996~~	~~22,681~~	~~23,336~~	~~23,680~~	~~24,023~~	~~24,680~~
~~5~~	~~22,591~~	~~23,336~~	~~24,037~~	~~24,410~~	~~24,784~~	~~25,487~~
~~6~~	~~23,189~~	~~23,995~~	~~24,741~~	~~25,142~~	~~25,545~~	~~26,293~~
~~7~~	~~23,783~~	~~24,648~~	~~25,440~~	~~25,873~~	~~26,305~~	~~27,097~~
~~8~~	~~24,381~~	~~25,306~~	~~26,144~~	~~26,605~~	~~27,068~~	~~27,902~~
~~9~~	~~24,978~~	~~25,961~~	~~26,845~~	~~27,336~~	~~27,829~~	~~28,723~~
~~10~~	~~25,575~~	~~26,619~~	~~27,546~~	~~28,066~~	~~28,601~~	~~29,572~~
~~11~~	~~26,172~~	~~27,254~~	~~28,248~~	~~28,817~~	~~29,399~~	~~30,415~~
~~12~~	~~26,172~~	~~27,254~~	~~28,248~~	~~28,817~~	~~29,399~~	~~30,415~~
~~13~~	~~26,172~~	~~27,254~~	~~28,248~~	~~28,817~~	~~29,399~~	~~30,415~~
1	*18,193*	*18,708*	*19,237*	*19,495*	*19,754*	*20,283*
2	*18,799*	*19,373*	*19,949*	*20,236*	*20,525*	*21,100*
3	*19,404*	*20,038*	*20,660*	*20,980*	*21,297*	*21,918*
4	*20,012*	*20,707*	*21,372*	*21,721*	*22,069*	*22,736*
5	*20,616*	*21,372*	*22,083*	*22,462*	*22,842*	*23,555*
6	*21,223*	*22,041*	*22,798*	*23,205*	*23,614*	*24,373*
7	*21,826*	*22,704*	*23,507*	*23,947*	*24,385*	*25,189*
8	*22,433*	*23,371*	*24,192*	*24,690*	*25,160*	*26,006*
9	*23,038*	*24,036*	*24,933*	*25,432*	*25,932*	*26,840*
10	*23,644*	*24,704*	*25,645*	*26,173*	*26,716*	*27,701*
11	*24,250*	*25,349*	*26,358*	*26,935*	*27,526*	*28,557*
12	*24,250*	*25,349*	*26,358*	*26,935*	*27,526*	*28,557*
13	*24,250*	*25,349*	*26,358*	*26,935*	*27,526*	*28,557*"

Section 6. Section 2-18-314, MCA, is amended to read:

"**2-18-314. Liquor store occupations pay schedules.** (1) The pay schedule for liquor store occupations for fiscal year ~~1992~~ *1994 and for the first 6 months of fiscal year 1995* is as follows:

Annual Hours — 2080

Pay Matrix — Retail Clerk

Note: ~~With~~ *Does Not Include* Insurance

Matrix Type — Hourly

Grade	$/Hour ~~W/Ins.~~
~~L1~~	~~9.000~~
~~L2~~	~~9.140~~
~~L3~~	~~9.640~~
~~L4~~	~~9.920~~
~~L5~~	~~10.210~~

~~L6~~	~~10.820~~
~~L7~~	~~11.480~~
~~L8~~	~~12.230~~

~~(2) (a) The pay schedule for liquor store occupations for the first 6 months of fiscal year 1993 is as follows:~~

~~Annual Hours — 2080~~ ~~Note: With Insurance~~
~~Pay Matrix — Retail Clerk~~ ~~Matrix Type — Hourly~~

~~Grade~~	~~$/Hour~~ ~~W/Ins.~~
~~L1~~	~~0.000~~
~~L2~~	~~9.505~~
~~L3~~	~~10.005~~
~~L4~~	~~10.285~~
~~L5~~	~~10.575~~
~~L6~~	~~11.185~~
~~L7~~	~~11.845~~
~~L8~~	~~12.595~~
L1	*0.000*
L2	*8.609*
L3	*9.109*
L4	*9.389*
L5	*9.679*
L6	*10.289*
L7	*10.949*
L8	*11.699*

~~(b)~~*(2)* The pay schedule for liquor store occupations for the last 6 months of fiscal year ~~1993~~ *1995* is as follows:

Annual Hours — 2080 Note: ~~With~~ *Does Not Include* Insurance
Pay Matrix — Retail Clerk Matrix Type — Hourly

Grade	$/Hour ~~W/Ins.~~
~~L1~~	~~0.000~~
~~L2~~	~~9.705~~
~~L3~~	~~10.205~~
~~L4~~	~~10.485~~
~~L5~~	~~10.775~~
~~L6~~	~~11.385~~
~~L7~~	~~12.045~~
~~L8~~	~~12.795~~
L1	*0.000*
L2	*8.754*
L3	*9.254*
L4	*9.534*
L5	*9.824*
L6	*10.434*

L7	*11.094*
L8	*11.844*"

Section 7. Section 2-18-315, MCA, is amended to read:

"**2-18-315. Blue-collar pay schedules.** (1) The pay schedule for blue-collar workers for fiscal year ~~1992~~ *1994 and for the first 6 months of fiscal year 1995* is as follows:

Annual Hours — 2080
Note: ~~With~~ *Does Not Include* Insurance
Pay Matrix — Blue-Collar
Matrix Type — Hourly

Grade	$/Hour ~~W/Ins.~~
~~B1~~	~~9.615~~
~~B2~~	~~10.015~~
~~B3~~	~~10.415~~
~~B4~~	~~10.815~~
~~B5~~	~~11.215~~
~~B6~~	~~11.615~~
~~B7~~	~~12.015~~
~~B8~~	~~12.415~~
~~B9~~	~~12.815~~
~~B10~~	~~13.215~~
~~B11~~	~~13.615~~
~~B12~~	~~14.015~~
~~B00~~	~~14.415~~
B1	*9.084*
B2	*9.484*
B3	*9.884*
B4	*10.284*
B5	*10.684*
B6	*11.084*
B7	*11.484*
B8	*11.884*
B9	*12.284*
B10	*12.684*
B11	*13.084*
B12	*13.484*
B00	*13.884*

~~(2) The pay schedule for blue-collar workers for the first 6 months of fiscal year 1993 is as follows:~~

~~Annual Hours — 2080~~
~~Note: With Insurance~~
~~Pay Matrix — Blue-Collar~~
~~Matrix Type — Hourly~~

~~Grade~~	~~$/Hour~~ ~~W/Ins.~~
~~B1~~	~~9.980~~
~~B2~~	~~10.380~~

~~B3~~	~~10.780~~
~~B4~~	~~11.180~~
~~B5~~	~~11.580~~
~~B6~~	~~11.980~~
~~B7~~	~~12.380~~
~~B8~~	~~12.780~~
~~B9~~	~~13.180~~
~~B10~~	~~13.580~~
~~B11~~	~~13.980~~
~~B12~~	~~14.380~~
~~B00~~	~~14.780~~

~~(3)~~*(2)* The pay schedule for blue-collar workers for the last 6 months of fiscal year ~~1993~~ *1995* is as follows:

Annual Hours — 2080

Note: ~~With~~ *Does Not Include* Insurance

Pay Matrix — Blue-Collar

Matrix Type — Hourly

Grade	$/Hour ~~W/Ins.~~
~~B1~~	~~10.180~~
~~B2~~	~~10.580~~
~~B3~~	~~10.980~~
~~B4~~	~~11.380~~
~~B5~~	~~11.780~~
~~B6~~	~~12.180~~
~~B7~~	~~12.580~~
~~B8~~	~~12.980~~
~~B9~~	~~13.380~~
~~B10~~	~~13.780~~
~~B11~~	~~14.180~~
~~B12~~	~~14.580~~
~~B00~~	~~14.980~~
B1	*9.266*
B2	*9.666*
B3	*10.066*
B4	*10.466*
B5	*10.866*
B6	*11.266*
B7	*11.666*
B8	*12.066*
B9	*12.466*
B10	*12.866*
B11	*13.266*
B12	*13.666*
B00	*14.066*"

Section 8. Section 2-18-622, MCA, is amended to read:

"**2-18-622. Reduction in force — severance pay and retraining allowance ~~required~~.** *(1)* If a reduction in force is necessary, the state ~~may~~ *shall* provide severance pay, *as provided in subsection (2),* and *may provide* a retraining allowance. Within a collective bargaining unit, severance pay and the retraining allowance are negotiable subjects under 39-31-305.

(2) A state employee whose employment is terminated because of a reduction in force is entitled to 1 week of severance pay for each year the employee has been employed by the state, not to exceed a total of 2 weeks of severance pay. Payment of the severance pay is to be made in a lump sum to the employee on the employee's termination date."

Section 9. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701, other than members of collective bargaining units, and for members of the legislature, the employer contribution for group benefits shall be ~~$170~~ *$210* per month for the fiscal year ending June 30, ~~1992~~ *1994*, and ~~$190~~ *$230* per month for the fiscal year ending June 30, ~~1993~~ *1995*, and for each fiscal year thereafter. When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution as wages. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act of 1965, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 per month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group."

Section 10. Section 2-6-110, MCA, is amended to read:

"**2-6-110. Electronic information — public access.** (1) Except as provided by law, each person is entitled to a copy of information compiled, created, or otherwise in the custody of public agencies that is in electronic format, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic information.

(2) Except as provided by law, an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media; or

(b) expenses incurred by the agency as a result of mainframe processing charges or other out-of-pocket expenses directly associated with the request for information.

(3) An agency may also charge an hourly fee for each hour, or fraction of an hour, after one-half hour of copying service has been provided. The hourly fee may not exceed the hourly rate for the current fiscal year for a state employee classified as grade 10, ~~step 2~~ *market salary*, under 2-18-312.

(4) For the purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) This section does not authorize the release of electronic security codes giving access to private information."

Section 11. **Appropriation.** (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement [this act]:

	FISCAL 1994		FISCAL 1995	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Auditor	7,113	7,705	22,301	24,200
Legislative Fiscal Analyst	3,792	-0-	12,751	-0-
Legislative Council	6,593	3,247	26,374	5,631
Environmental Quality Council	1,543	-0-	4,682	30
Consumer Counsel	-0-	1,200	-0-	4,400
Judiciary	19,286	2,587	70,178	7,174
Montana University System	605,746	293,708	1,926,552	865,268
Office of Budget and Program Planning for Distribution to All Other Agencies	975,226	1,581,230	2,811,663	4,755,679

(2) The appropriation to the Montana university system includes funding for university system units as defined in 17-7-102(16). The legislature recognizes that the Montana university system will need to increase tuition and fees to fund the increases authorized by [this act].

Section 12. **Coordination instruction.** If [this act] is passed and approved and if it includes a section that amends 2-18-622 to provide for lump-sum severance pay for state employees, then sections 44, 112, and 158 of Senate Bill No. 385 [Chapter 265, Laws of 1993] are amended as follows:

Section 44. **Definitions.** Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer. Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a).

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

(4) "Employer contributions" means payments to the pension trust fund pursuant to 19-3-801 from appropriations of the state of Montana and from contracting employers.

(5) "Final average salary", except as provided in 19-3-907, means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for *severance pay*, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

Section 112. Section 19-6-101, MCA, is amended to read:

"**19-6-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

~~(1) "Account" means the Montana highway patrol officers' retirement pension trust fund.~~

~~(2) "Accumulated deductions" means the total of the amounts deducted from the salary of a member, paid into the account, and standing to his credit in the account, together with the regular interest thereon.~~

~~(3) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.~~

~~(4) "Beneficiary" means a surviving spouse or dependent child or, if there is no surviving spouse or dependent child, a person nominated to receive benefits under 19-6-602.~~

~~(5) "Board" means the public employees' retirement board provided for in 2-15-1009.~~

~~(6) "Department" means the public employees' retirement division of the department of administration.~~

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any deductions have been made and exclusive of maintenance, allowances, and expenses.

~~(7)~~*(2)* "Dependent child" means an unmarried child of a deceased retired ~~patrol officer~~ *member,* who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

~~(8)~~*(3)* "Final *average* salary" means the average ~~annual~~ *monthly* compensation received by a member~~, before any deductions have been made and exclusive of maintenance, allowances, and expenses,~~ for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of ~~years~~ *months* served. Lump-sum payments for *severance pay,* sick leave, and annual leave paid to an employee upon termination of ~~employment~~ *service* may be used in the calculation of a retirement ~~allowance~~ *benefit* only to the extent that they are used to replace, on a ~~month for month~~ *month-for-month* basis, the normal compensation for a month or months included in the calculation of the final *average* salary. A lump-sum payment may not be added to a single month's compensation.

~~(9) "Member" means a person who has accumulated deductions in the account standing to his credit.~~

~~(10) "Member's annuity" means payments for life derived from contributions made by the member.~~

~~(11) "Retired patrol officer" means a person in receipt of a retirement allowance under this chapter.~~

~~(12) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol.~~

~~(13) "Retirement allowance" means the state annuity plus the member's annuity.~~

~~(14) "State annuity" means payments for life derived from contributions made by the state of Montana.~~

~~(15)~~*(4)* "Surviving spouse" means the spouse married to a retired ~~patrol officer~~ *member* at the time of the retired ~~patrol officer's~~ *member's* death.

(5) "Survivor" means a surviving spouse or dependent child of a member."

Section 158. Section 19-8-101, MCA, is amended to read:

"**19-8-101. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

~~(1) "Account" means the Montana state game wardens' retirement pension trust fund.~~

~~(2) "Accumulated deductions" or "accumulated contributions" means the sum of all contributions standing to the credit of a member's individual account together with the regular interest thereon.~~

~~(3) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.~~

~~(4) "Beneficiary" means a person nominated to receive benefits under this chapter by a member's written designation, witnessed and filed with the board.~~

~~(5) "Board" means the public employees' retirement board.~~

~~(6) "Contributor" means any person who has accumulated deductions in the account standing to his credit.~~

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any deductions are made and exclusive of maintenance, allowances, and expenses.

~~(7)~~*(2)* "Final *average* salary" means the average ~~annual~~ *monthly* compensation received by a ~~contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses,~~ *member* for any 3 years of continuous service upon which contributions ~~have been~~ *were* made or, in the event a member has not served 3 years, the total ~~retirement~~ compensation earned divided by the number of ~~years~~ *months* served. Lump-sum payments for *severance pay,* sick leave, and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement ~~allowance~~ *benefit* only to the extent that they are used to replace, on a ~~month for month~~ *month-for-month* basis, the normal compensation for a month or months included in the calculation of the final *average* salary. A lump-sum payment may not be added to a single month's compensation.

~~(8) "Member's annuity" means payments for life derived from contributions made by the contributor.~~

~~(9) "Retired state game warden" means any person in receipt of a retirement allowance under this chapter.~~

~~(10) "Retirement allowance" means the state annuity plus the member's annuity.~~

~~(11) "State annuity" means payments for life derived from contributions made by the state from department of fish, wildlife, and parks moneys.~~

~~(12)~~*(3)* "State game warden" means ~~all~~ *a* state fish and game ~~wardens~~ *warden* hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fish, wildlife, and parks ~~moneys~~ *money.*"

Section 13. **Limitation on choice of benefits.** A state employee who chooses to accept severance pay as provided under 2-18-622(2) is not eligible for any of the benefits provided for in House Bill No. 522 except those provided in [section 3(1)(b)] of that bill.

Section 14. **Effective dates.** (1) Except as provided in subsection (2), [this act] is effective July 1, 1993.

(2) [Sections 8, 12, and 13 and this section] are effective on passage and approval.

Section 15. **Termination.** [Sections 8, 12, and 13] terminate June 30, 1995.

Approved May 17, 1993.

CHAPTER NO. 641

[SB 196]

AN ACT EXEMPTING NONCOMMERCIAL FARM AND RESIDENTIAL UNDERGROUND STORAGE TANKS THAT ARE 1,100 GALLONS OR LESS IN CAPACITY FROM THE CLOSURE REQUIREMENTS OF THE MONTANA HAZARDOUS WASTE AND UNDERGROUND STORAGE TANK ACT; AMENDING SECTIONS 75-11-209 AND 75-11-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Exemptions — tank closure.** (1) For the purposes of this section, a tank is a farm or residential underground storage tank with a capacity of 1,100 gallons or less that is used either for storing motor fuel for noncommercial purposes or for storing heating oil for consumptive use on the premises where stored.

(2) An owner or operator may close a tank without a license required under 75-11-212 or without the services of a licensed installer, provided that:

(a) on or before the date of the next tank registration period, the owner or operator notifies the department of the date of the tank's removal;

(b) when closing a tank, if the owner or operator discovers or suspects that there has been a leak, the owner or operator notifies the department immediately and performs initial response and abatement procedures; and

(c) the county health department is notified, at least 48 hours in advance, that the owner or operator intends to close a tank.

Section 2. Section 75-11-209, MCA, is amended to read:

"**75-11-209. Permits — requirement for licensed installer.** (1) ~~An~~ *Except as provided in [section 1], an* owner or operator of an underground storage tank may not install or close, or cause to be installed or closed, an underground storage tank without a permit issued by the department as provided in 75-11-212.

(2) In addition to obtaining a permit, an owner or operator shall obtain the services of a licensed installer for the installation or closure of an underground storage tank unless the installation or closure is:

(a) inspected by a department inspector or a designated local inspector as provided in 75-11-213; or

(b) exempt from the requirement for a licensed installer, as provided in 75-11-217."

Section 3. Section 75-11-212, MCA, is amended to read:

"**75-11-212. Permits — application procedure — issuance.** (1) ~~Before~~ *Except as provided in [section 1], before* the installation or closure of an underground storage tank, the owner or operator shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the tank installation or closure;

(b) the location of the tank installation or closure;

(c) the type of construction of the tank;

(d) the contents of the tank being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank or, if the owner or operator is not going to have the underground storage tank installed or closed by a licensed installer, the estimated date for inspection by the department.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under 75-11-204(1), the department shall issue the permit."

Section 4. **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 75, chapter 11, part 2, and the provisions of Title 75, chapter 11, part 2, apply to [section 1].

Section 5. **Effective date.** [This act] is effective on passage and approval.

Section 6. **Termination.** [This act] terminates January 1, 1994.

Approved May 20, 1993.

CHAPTER NO. 642

[HB 645]

AN ACT ALLOWING THE BOARD OF AERONAUTICS TO PROVIDE LOANS TO LOCAL GOVERNMENTS AND STATE AGENCIES FOR AERONAUTICAL PURPOSES; ALLOWING GRANTS TO BE MADE TO MUNICIPALITIES

FOR AIRPORT DEVELOPMENT AND IMPROVEMENT PROGRAMS; PROVIDING NAVIGATIONAL AIDS, SAFETY IMPROVEMENTS, WEATHER REPORTING SERVICES, AND OTHER AERONAUTICAL SERVICES FOR AIRPORTS AND LANDING FIELDS AND FOR THE STATE'S AIRWAYS; INCREASING THE TAX ON AVIATION FUEL BY 2 CENTS A GALLON FOR LOANS AND GRANTS; PROVIDING THE TAX IS REDUCED BY 1 CENT A GALLON WHEN DEPOSITS INTO THE SPECIAL AERONAUTICAL LOAN ACCOUNT REACH $1 MILLION; PROVIDING FOR REFUNDS AND CREDITS UNDER CERTAIN CONDITIONS FOR AVIATION FUEL TAXES PAID; CREATING ACCOUNTS IN WHICH TO DEPOSIT THE PROCEEDS OF THE AVIATION FUEL TAX; AMENDING SECTIONS 15-70-201, 15-70-204, 15-70-205, 15-70-221, 15-70-225, 15-70-231, 67-1-301, AND 67-1-303, MCA; AND PROVIDING EFFECTIVE DATES AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-201, MCA, is amended to read:

"**15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person whose major endeavor and primary source of earned income is from the business of farming or ranching.

(2) "Aviation dealer" means any person in this state engaged in the business of selling aviation ~~gasoline~~ *fuel*, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as ~~herein~~ provided ~~for~~ *in this section.*

(3) "Aviation ~~gasoline~~ *fuel*" means gasoline or any other liquid fuel by ~~whatsoever~~ *whatever* name ~~such~~ *the* liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all ~~such~~ gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks ~~thereat or~~, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, ~~thereat~~ or gasoline imported into this state and placed in storage at refineries or pipeline terminals ~~shall be deemed~~ *is considered* to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from ~~such~~ *the* tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from ~~such~~ *the* tanks, refinery, or terminal, ~~such~~ *the* gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, ~~shall be deemed~~ *is considered* to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) any person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) any person who imports gasoline for sale, use, or distribution;

(c) any person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) any exporter as defined in subsection (8);

(e) any dealer licensed as of January 1, 1969, except a dealer at an established airport;

(f) any person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) "Gasoline" includes all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation ~~gasoline~~ *fuel*, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines. Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" includes and means to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of any gasoline shipped or transported into this state from *a* point of origin ~~without~~ *outside of* this state other than in the fuel supply tank of a motor vehicle.

(11) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(12) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(13) "Use" includes and means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision ~~thereof~~ *of the state.*"

Section 2. Section 15-70-204, MCA, is amended to read:

"**15-70-204. Gasoline license tax — rate.** (1) Every distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to ~~1 cent~~ *3 cents* for each gallon of aviation ~~gasoline~~ *fuel*, which ~~shall be~~ *is* allocated to the department of transportation as provided by 67-1-301, ~~as amended,~~ and 20 cents for each gallon of all other gasoline distributed by ~~him~~ *the distributor* within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported ~~shall~~ *may* not be included in the measure of the distributor's license tax.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 3. Section 15-70-204, MCA, is amended to read:

"**15-70-204. Gasoline license tax — rate.** (1) Every distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to ~~1 cent~~ *2 cents* for each gallon of aviation ~~gasoline~~ *fuel,* which ~~shall be~~ *is* allocated to the department of transportation as provided by 67-1-301, ~~as amended,~~ and 20 cents for each gallon of all other gasoline distributed by ~~him~~ *the distributor* within the state and upon which the gasoline license tax has not been paid by any other distributor.

(2) Gasoline exported ~~shall~~ *may* not be included in the measure of the distributor's license tax.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 4. Section 15-70-205, MCA, is amended to read:

"**15-70-205. Distributor's statement and payment — confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, render a true *signed* statement~~, duly signed,~~ to the department of transportation of all gasoline distributed and received by ~~him~~ *the distributor* in this state during the preceding calendar month and containing any other information the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by the distributor; however, ~~no~~ *an* allowance may *not* be deducted from the ~~1 cent~~ *3-cent* tax on aviation ~~gasoline~~ *fuel.*

(2) A distributor engaged in or carrying on ~~his~~ *a* business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. ~~Nothing in this~~ *This* section may *not* be construed to prohibit:

(a) the delivery to a distributor or ~~his~~ *the distributor's* authorized representative of a certified copy of any return or report filed in connection with ~~his~~ *the* tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or ~~his~~ *the officer's* representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 5. Section 15-70-205, MCA, is amended to read:

"**15-70-205. Distributor's statement and payment — confidentiality.** (1) Each distributor shall, not later than the 25th day of each calendar month, render a true *signed* statement~~, duly signed,~~ to the department of transportation of all gasoline distributed and received by ~~him~~ *the distributor* in this state during the preceding calendar month and containing any other information the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for evaporation and other loss of gasoline distributed by the distributor; however, ~~no~~ *an* allowance may *not* be deducted from the ~~1-cent~~ *2-cent* tax on aviation ~~gasoline~~ *fuel.*

(2) A distributor engaged in or carrying on ~~his~~ *a* business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. ~~Nothing in this~~ *This* section may *not* be construed to prohibit:

(a) the delivery to a distributor or ~~his~~ *the distributor's* authorized representative of a certified copy of any return or report filed in connection with ~~his~~ *the* tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or ~~his~~ *the officer's* representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 6. Section 15-70-221, MCA, is amended to read:

"**15-70-221. Refund or credit authorized.** (1) Any person who ~~shall purchase~~ *purchases* and ~~use~~ *uses* any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol or operating or propelling stationary gasoline engines, tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state ~~shall be~~ *is* allowed a refund of the amount of tax paid directly or indirectly on the gasoline ~~so used~~. ~~Such~~ *The* refund ~~or drawback should in no instance~~ *may not* exceed the tax paid or to be paid to the state. ~~and no~~ *Except as provided in subsection (5) or (6), a* refund ~~shall be~~ *is not* allowed ~~of that portion of~~ *for* the tax per gallon upon aviation ~~gasoline~~ *fuel* allocated to the department of transportation by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously ~~shall be~~ *is* allowed a credit or refund of the amount of tax ~~so~~ paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline for which the distributor has *not* received ~~no~~ consideration from or on behalf of the purchaser. The distributor shall have declared the accounts of the purchaser worthless and claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due on the collected amount must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) Any person who purchases and exports for sale, use, or consumption outside Montana any gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax ~~so~~ paid upon completion of the information reports required under 15-70-209 and presentation to the

department of ~~such~~ other proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid.

(6) A Montana refinery or distributor who sells JP-4 or JP-8 jet fuel to the federal defense fuel supply center is entitled to a credit or refund of 2 cents a gallon for each gallon that is sold to the supply center and on which the gasoline license tax has been paid."

Section 7. Section 15-70-221, MCA, is amended to read:

"**15-70-221. Refund or credit authorized.** (1) Any person who ~~shall purchase~~ *purchases* and ~~use~~ *uses* any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol or operating or propelling stationary gasoline engines, tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state ~~shall be~~ *is* allowed a refund of the amount of tax paid directly or indirectly on the gasoline ~~so used~~. ~~Such~~ *The* refund ~~or drawback should in no instance~~ *may not* exceed the tax paid or to be paid to the state. ~~and no~~ *Except as provided in subsection (5) or (6), a* refund ~~shall be~~ *is not* allowed ~~of that portion of~~ *for* the tax per gallon upon aviation ~~gasoline~~ *fuel* allocated to the department of transportation by 67-1-301.

(2) Any distributor paying the gasoline license tax to this state erroneously ~~shall be~~ *is* allowed a credit or refund of the amount of tax so paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline for which the distributor has *not* received ~~no~~ consideration from or on behalf of the purchaser. The distributor shall have declared the accounts of the purchaser worthless and claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due on the collected amount must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) Any person who purchases and exports for sale, use, or consumption outside Montana any gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax ~~so~~ paid upon completion of the information reports required under 15-70-209 and presentation to the department of ~~such~~ other proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 1 cent on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid.

(6) A Montana refinery or distributor who sells JP-4 or JP-8 jet fuel to the federal defense fuel supply center is entitled to a credit or refund of 1 cent a gallon for each gallon that is sold to the supply center and on which the gasoline license tax has been paid."

Section 8. Section 15-70-225, MCA, is amended to read:

"**15-70-225. Application for refund or credit — filing — correction by department.** (1) The application for refund ~~shall be~~ *is* a signed statement, on a form furnished by the department of transportation. Except for a claim for a credit of taxes paid on unpaid accounts, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased *or aviation fuel purchased by a certified scheduled passenger air carrier*, the total amount of gasoline *or aviation fuel* on which a refund is claimed, and the amount of the tax claimed for refund.

(2) A claim for a credit for taxes paid on accounts for which the distributor ~~received no~~ *did not receive* compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim ~~shall~~ *must* be furnished as required by the department.

~~(2)~~*(3)* A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.

~~(3)~~*(4)* All applications for refunds ~~shall~~ *must* be filed with the department within 14 months after the date on which the gasoline *or aviation fuel* was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by ~~him~~ *the distributor* on unpaid accounts within 3 years after the date of payment.

~~(4)~~*(5)* ~~Should~~ *If* the department ~~find~~ *finds* that the statement contains errors ~~which~~ *that* are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement."

Section 9. Section 15-70-231, MCA, is amended to read:

"**15-70-231. Unlawful use of aviation ~~gasoline~~ *fuel*.** It ~~shall be~~ *is* unlawful for any person to use aviation ~~gasoline~~ *fuel* or to sell ~~such gasoline~~ *aviation fuel* for use in any motorized vehicle operated upon the public highways or streets of this state. Violation of this section ~~shall be~~ *is* a misdemeanor subject to the penalties provided in 15-70-232."

Section 10. Section 67-1-301, MCA, is amended to read:

"**67-1-301. Money — receipt and disbursement.** (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, ~~shall~~ *must* be paid out of the following ~~revenues~~ *revenue*:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all ~~moneys~~ *money* received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All ~~such moneys shall~~ *money collected under subsection (1) must* be deposited in the state treasury to the credit of the department.

(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.

(4) *(a)* ~~There shall~~ *The following amounts must* be deposited ~~in the state special revenue fund to the credit of the department~~ *from* the proceeds of ~~1 cent~~ *the 3-cent-per-gallon* ~~per gallon out of the amount per gallon of gasoline~~ license tax imposed *on aviation fuel* by ~~the laws of this state upon purchases of gasoline used for the operation of aircraft.~~ *15-70-204(1):*

(i) ~~Moneys~~ *in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 1 cent a gallon collected under 15-70-204(1)* ~~so deposited shall be spent by the department~~ for the sole purpose of carrying out its functions pertaining to aeronautics~~.~~*;*

(ii) in the aeronautical loan account created in [section 11] to the credit of the department, an amount equal to the proceeds of 1 cent a gallon for loans to local governments and state agencies; and

(iii) in a separate account in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 1 cent a gallon to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways.

(b) Money deposited in the account created in [section 11] may, with the approval of the board, be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport improvement. The board shall establish procedures, including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest, made under this subsection (b) must be deposited in the account created in [section 11].

(c) Money deposited in the separate account established in subsection (4)(a)(iii) may, with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.

(5) ~~No part of the 1 cent per gallon of~~ *Except as provided in 15-70-221, the* gasoline license tax imposed by the laws of this state on ~~gasoline~~ *aviation fuel* purchased and used for the operation of airplanes or aircraft may *not* be refunded."

Section 11. **Special aeronautical loan account.** There is a special aeronautical loan account in the state special revenue fund. Money deposited in the account may be used only for providing loans specified in 67-1-301(4)(b).

Section 12. Section 67-1-301, MCA, is amended to read:

"**67-1-301. Money — receipt and disbursement.** (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, ~~shall~~ *must* be paid out of the following ~~revenues~~ *revenue*:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all ~~moneys~~ *money* received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All ~~such moneys shall~~ *money collected under subsection (1) must* be deposited in the state treasury to the credit of the department.

(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.

(4) *(a)* ~~There shall~~ *The following amounts must* be deposited ~~in the state special revenue fund to the credit of the department~~ *from* the proceeds of ~~1 cent~~ *the 2-cent-per-gallon* ~~per gallon out of the amount per gallon of gasoline license~~ tax imposed *on aviation fuel* by ~~the laws of this state upon purchases of gasoline used for the operation of aircraft.~~ *15-70-204(1):*

(i) ~~Moneys~~ *in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 1 cent a gallon collected under 15-70-204(1)* ~~so deposited shall be spent by the department~~ for the sole purpose of carrying out its functions pertaining to aeronautics~~.~~*; and*

(ii) in a separate account in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 1 cent a gallon for grants to municipalities and for other aeronautical purposes as provided in subsection (4)(b).

(b) Money deposited in the separate account established in subsection (4)(a)(ii) may, with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.

(5) ~~No part of the 1 cent per gallon of~~ *Except as provided in 15-70-221, the* gasoline license tax imposed by the laws of this state on ~~gasoline~~ *aviation fuel* purchased and used for the operation of airplanes or aircraft may *not* be refunded."

Section 13. **Special aeronautical loan account.** There is a special aeronautical loan account in the state special revenue fund. Principal and interest payments deposited in the account may be used only for providing loans specified in [section 14].

Section 14. **Aeronautical loans.** Money deposited in the account created in [section 13] may, with the approval of the board, be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport improvement. The board shall establish procedures, including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest, made under this section must be deposited in the account created in [section 13].

Section 15. Section 67-1-303, MCA, is amended to read:

"**67-1-303. Airline property tax — state airports.** (1) Within 30 days of receipt, the county treasurer shall transmit to the state treasury 90% of the property tax collected on property of airline companies by reason of a state airport being located in the county.

(2) The state treasurer shall place the money in the state special revenue fund to the credit of the department of transportation for the purposes provided for in 67-1-301*(4)(a)(i)*."

Section 16. **Codification instruction.** [Sections 11, 13, and 14] are intended to be codified as an integral part of Title 67, chapter 1, part 3, and the provisions of Title 67, chapter 1, part 3, apply to [sections 11, 13, and 14].

Section 17. **Effective dates — contingent termination.** (1) [Sections 1, 2, 4, 6, 8 through 11, 15, 16, and this section] are effective July 1, 1993.

(2) [Sections 3, 5, 7, and 12 through 14] are effective on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million.

(3) [Sections 2, 4, 6, 10, and 11] terminate on the first day of the month 60 days after the balance in the aeronautical loan account, after deposits and less refunds, reaches $1 million.

Approved May 24, 1993.

RESOLUTIONS

Enacted by the

FIFTY-THIRD LEGISLATURE IN REGULAR SESSION

Held at Helena, the Seat of Government
January 4, 1993, through April 24, 1993

COMPILED BY MONTANA LEGISLATIVE COUNCIL

SENATE JOINT RESOLUTIONS

SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING FEDERAL AGENCIES INVOLVED IN THE GRAY WOLF RECOVERY PROGRAM TO PROVIDE THE NECESSARY RESOURCES AND ASSISTANCE TO STATE WILDLIFE MANAGEMENT AGENCIES TO CONDUCT BIG GAME HABITAT POPULATION STUDIES IN AREAS AFFECTED BY THE RECOVERY PROGRAM; REQUESTING THAT AFFECTED STATE AND FEDERAL AGENCIES ANALYZE THE IMPACTS OF WOLF RECOVERY ON OTHER MULTIPLE-USE INTERESTS; ENCOURAGING THE APPROPRIATE FEDERAL AGENCIES TO PROVIDE THE NECESSARY RESOURCES TO STATE WILDLIFE MANAGEMENT AGENCIES TO IMPLEMENT HABITAT IMPROVEMENT PROJECTS IN COOPERATION, COORDINATION, AND CONSULTATION WITH OTHER MULTIPLE-USE INTERESTS; ENCOURAGING CONTINUED FEDERAL FUNDING OF A WOLF SPECIALIST IN MONTANA; AND URGING FEDERAL AGENCIES TO PERSUADE CONGRESS TO AMEND THE ENDANGERED SPECIES ACT TO GIVE STATE WILDLIFE MANAGEMENT AGENCIES THE NECESSARY FLEXIBILITY TO MANAGE THE GRAY WOLF.

WHEREAS, federal recovery of gray wolf populations and expansion of gray wolf range may affect and possibly reduce big game hunting opportunities in Montana and other states through increased predation of native big game species; and

WHEREAS, hunters in Montana and other states should not suffer reduced hunting opportunities as a result of federal government efforts to increase predator populations; and

WHEREAS, the expertise to flexibly manage gray wolves, big game animals, habitat, and hunting opportunities lies with state wildlife management agencies; and

WHEREAS, the effect on multiple-use interests in areas affected by wolf recovery programs is of economic and social concern to all Montana citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That federal land and wildlife management agencies be strongly encouraged to provide the resources to state wildlife management agencies to initiate and complete big game population studies in areas affected by the recovery of gray wolf populations and the expansion of gray wolf range and that affected state and federal agencies cooperatively analyze the impacts of wolf recovery on other multiple-use interests.

(2) That the appropriate federal agencies be strongly encouraged to provide the financial resources to state wildlife management agencies to implement habitat improvement projects in cooperation, coordination, and consultation

with other multiple-use interests in areas affected by gray wolf recovery projects.

(3) That the U.S. Department of Agriculture Animal and Plant Health Inspection Service be strongly encouraged to continue funding of a wolf specialist in their Animal Damage Control Division in Montana.

(4) That the appropriate federal agencies be strongly encouraged to persuade the United States Congress to amend the Endangered Species Act of 1973 to ensure that state wildlife management agencies have the necessary flexibility to manage the gray wolf in areas affected by the expansion of its habitat.

(5) That the Secretary of State send copies of this resolution to the U.S. Secretary of the Interior, the Director of the National Park Service, the Director of the federal Bureau of Land Management, the Chief of the U.S. Forest Service, the Director of the U.S. Fish and Wildlife Service, and the members of the Montana Congressional Delegation.

Adopted April 13, 1993.

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES RELATING TO THE APPROPRIATE USE OF ACID-FREE, ALKALINE-BASED, OR PERMANENT PAPER IN THE PUBLICATION OF STATE DOCUMENTS.

WHEREAS, the 1991 Legislature adopted House Joint Resolution No. 22, urging the Montana State Library and the Montana Legislative Council to work together to produce guidelines for the use of appropriate durable paper in the publication of state documents; and

WHEREAS, the State Library and the Legislative Council met with librarians and archivists in state government to discuss issues related to the use of durable paper for state publications of enduring value; and

WHEREAS, the Legislature finds it appropriate that the State of Montana respond to initiatives in the Congress of the United States and the American Library Association that encourage the adoption of policies for the appropriate use of durable paper; and

WHEREAS, section 18-4-232, MCA, authorizes the Department of Administration to adopt rules governing specifications for supplies and services, including printing services, required by the state; and

WHEREAS, section 18-4-233, MCA, authorizes the use of expert advice from other agencies in developing specifications; and

WHEREAS, the Department of Administration has established a Procurement and Printing Division with both formal responsibility and expertise in establishing rules relating to the appropriate specifications for paper used in printing state documents; and

WHEREAS, the State Librarian, the Montana Historical Society Librarian, and the State Law Librarian have expertise in the types of documents published by the state that should be prepared using durable paper.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Administration be requested to adopt rules that establish criteria to determine which state publications must be printed on acid-free, alkaline-based, or permanent paper and, to the extent possible, that specifically list those publications meeting the criteria.

BE IT FURTHER RESOLVED, that the Department of Administration be requested to adopt rules establishing specifications for the paper to be used in state publications that are required to be printed on acid-free, alkaline-based, or permanent paper.

BE IT FURTHER RESOLVED, that the Department of Administration adopt rules requiring that appropriate paper that meets established specifications be used for publications printed by and for the state that meet the criteria established in the rules.

BE IT FURTHER RESOLVED, that the Department of Administration consult with the State Librarian, the Montana Historical Society Librarian, and the State Law Librarian in establishing specifications and criteria to be included in the rules.

Adopted March 11, 1993.

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING JOINT RULES TO GOVERN THEIR PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules be adopted:

JOINT RULES OF THE MONTANA SENATE AND HOUSE OF REPRESENTATIVES

CHAPTER 10
Administration

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

10-50. Access of press. Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs.

10-70. Telephone calls. (1) Long distance telephone calls made by a member while the Legislature is in session or the member is in travel status are considered official legislative business. These include, but are not limited to, calls made to constituencies, places of business, and family members.

(2) Session staff, including aides and interns, may use telephones for long distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones by their staff, including aides and interns, and may not authorize others to use state phones.

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-85. Harassment prohibited. Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender be employer, employee, legislator, lobbyist, or member of the public. A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate. If the offended party is an employee, the violation must be reported to the employee's supervisor or, if the offender is the supervisor, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. If the offended party is a supervisor, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate. The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee, the employee is subject to discipline or discharge.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Council. (1) The staff of the Legislative Council shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

10-110. Compensation of legislative employees. The Legislature by joint resolution shall prescribe the compensation of the employees of each house.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Council shall hire all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House and to the sponsor of the bill or amendment. Any of these may register an

objection to the correction by filing the objection in writing within 24 hours after receipt of the notice.

(4) If a committee is the sponsor of a bill or resolution, any committee member designated by the chair may be the principal sponsor for the purpose of this section. If a committee has proposed an amendment, the chair is the principal sponsor for the purpose of this section.

10-130. Bills. (1) A bill draft request must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) introduced in duplicate, with an additional title page; and

(d) for the original copy, covered with a cover page of a substantial material.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title, except in general appropriation bills and bills for the codification and general revision of the laws.

(5) Introduced bills must be reproduced on white paper and distributed to members.

10-140. Voting. (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a bill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any bill or joint resolution, the vote must be taken by ayes and noes and the names entered on the journal.

(2) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence; or

(d) indefinitely postpone.

(3) A roll call vote must be taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must be filed with the Montana Historical Society.

10-160. Journal. Each house shall:

(1) supply the Legislative Council with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) distribute a daily journal to all members.

10-170. Journals — authentication — distribution. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives by the signature of the Speaker.

(2) The Legislative Council shall distribute the completed journals (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 30
Committees

30-10. Committee chair. Except as provided in Joint Rule 30-50, the chair of the Senate committee is the chair of all joint committees.

30-20. Voting in joint committees. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house to which the committee member belongs.

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee must agree before any action may be taken, unless otherwise specified by individual house rules.

30-30. Conference committees. (1) If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

30-40. Conference committee — enrolling. A conference committee report shall give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of appropriation bills. (1) All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Committee on Finance and Claims and the House Committee on Appropriations, and then by each separately.

(2) Meetings of the joint committee must be held upon call of the chair of the House Committee on Appropriations, who is chair of the joint committee.

30-60. Estimation of revenue. (1) The Revenue Oversight Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature.

(2) Meetings of the Revenue Oversight Committee for purposes of estimating revenue must be held upon the call of the chair. The Revenue Oversight Committee shall issue periodic reports to each of the houses, indicating the committee's current revenue projections.

30-70. Oversight of joint legislative agencies and committees. The President of the Senate, the Speaker of the House, and the minority leaders of the Senate and the House comprise a legislative management committee which shall meet from time to time at the request of one of its members to review and oversee the activities of joint agencies and committees of the legislative branch established by law or resolution. The committee may consider, without limitation, matters concerning jurisdictional disputes between joint agencies and committees, agency salary schedules and employment policies, and any other matter bearing upon the efficient operation of the legislative branch. The committee may make such recommendations as it chooses to the appropriate authority or the Legislature.

CHAPTER 40
Legislation

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

40-20. Appropriation bills. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Committee on Appropriations.

40-30. Effective dates. (1) Every statute, except one that provides for appropriation by the Legislature of public funds for a public purpose, takes effect on October 1 following its passage and approval, unless a different time is prescribed therein.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval, unless a different time is prescribed therein.

(3) A joint resolution takes effect on its passage unless a different time is prescribed therein (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduction — limits and procedures. (1) Prior to a regular session, a person entitled to serve in that session, hereafter referred to as a "member", is entitled to request bill drafting services from the Legislative Council, subject to the following limits:

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Council for introduction in the regular session.

(b) After 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Council. At least two of the seven bills or resolutions must be requested before the regular session convenes.

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so designated.

(2) Bills and resolutions must be reviewed by the staff of the Legislative Council prior to introduction for proper format, style, and legal form. The staff of the Legislative Council shall store bills on the automated bill drafting equipment and shall print and deliver them in duplicate to the requesting members. The original bill cover must be signed to indicate review by the Legislative Council. A bill may not be introduced unless it is so signed.

(3) During a session, a bill may be introduced by endorsing it with the name of a member and presenting it in duplicate to the Chief Clerk of the House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name. In each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(4) Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of the sponsors the phrase "By Request of the .... (Name of committee or agency)".

(5) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Council. Actual signatures of persons entitled to serve as members in the ensuing session may appear on the face of the preintroduced bill, or signatures may be obtained on a consent form from the Legislative Council and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

(6) All preintroduced bills must be made available to the public.

40-50. Schedules for drafting requests and bill introduction. The following schedules must be followed for submission of drafting requests and introduction of bills and resolutions.

	Request Deadline 5:00 P.M. Legislative Day	Introduction Deadline 5:00 P.M. Legislative Day
· General Bills and Resolutions	10	14
· Revenue Bills	17	21
· Committee Bills and Resolutions	36	40
· Committee Revenue Bills	62	66
· Committee Bills implementing provisions of a general appropriation act	75	78
· Bills and Resolutions delivered after the applicable introduction deadline must be introduced within 2 legislative days after delivery.		
· Appropriation Bills	No Deadline	No Deadline
· Interim study resolutions	No Deadline	No Deadline
· Resolutions to express confirmation of appointments	No Deadline	No Deadline
· Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline	No Deadline

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt, amend, or repeal the joint rules;

(d) set salaries and other terms of employment for legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution; or

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(2) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(3) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction, shall determine the need for the note, based on the Legislative Council staff recommendation.

(2) Unless the requesting member directs otherwise, the Legislative Council shall deliver three copies of any bill for which it has been determined a fiscal note may be necessary to the state Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request.

(3) The Budget Director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note. The Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) A completed fiscal note must be submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall refer it to the committee considering the bill. All fiscal notes must be reproduced and placed on the members' desks.

(5) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may be absorbed without additional funds; and

(c) long-range financial implications.

(6) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(7) A fiscal note also may be requested on a bill and on an amendment by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor, through the presiding officer.

(8) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

40-110. Sponsor's fiscal note. (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, the sponsor shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note

must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Council shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the bill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage a bill must be read three times in the house in which it is under consideration. It may be read either by title or by summary of title.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed. Committee of the Whole amendments must be included in the engrossed bill. The bill must be placed on the calendar for third reading on the succeeding legislative day.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended by the Committee of the Whole and contains no clerical errors, it may be engrossed without reprinting. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

(3) If a bill is amended by a standing committee or Committee of the Whole in the second house, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading consideration. The amendments also must be reproduced and attached to the reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments must be distributed in the original house.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken. The history of the bill also must be enrolled and placed with the bill in a white manuscript cover, upon which is written the number of the bill and the title. The Legislative Council staff shall file a copy of the history with the law library.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must be permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(b) clerically corrected by the presiding officers, if necessary;

(c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must be filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Council.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. When a bill being heard by the second house has received its third reading or has been rejected, the second house must transmit it as soon as possible to the original house with notice of the second house's action.

40-190. Transmittal of bills between houses. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

40-200. Transmittal deadlines. (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills originating in the Senate must be transmitted to the House on or before the 71st legislative day.

(ii) House amendments to Senate revenue bills must be transmitted by the House to the Senate on or before the 82nd legislative day.

(iii) Revenue bills originating in the House must be transmitted to the Senate on or before the 71st legislative day.

(iv) Senate amendments to House revenue bills must be transmitted by the Senate to the House on or before the 82nd legislative day.

(v) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted no later than the 60th legislative day.

(b) Amendments to the resolutions must be transmitted to the house of origin no later than the 82nd legislative day.

(3) Interim study resolutions, bills repealing or directing the amendment or adoption of administrative rules, and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may be transmitted at any time during a session.

40-210. Governor's veto. (1) Each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

(a) bills proposing amendments to The Constitution of the State of Montana;

(b) bills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referendum measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 5 days after its delivery if the Legislature is in session or within 25 days if the Legislature is adjourned, the bill becomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the members of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor shall return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the members present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment. (1) The Governor may return any bill to the Legislature with recommendations for amendment.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration.

The Governor may not return a bill to the Legislature a second time for amendment.

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60
Rules

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Council:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Council shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Council shall distribute copies as directed by the Senate and the House of Representatives.

CHAPTER 70

Statement of Legislative Intent

70-10. Definition. (1) For the purpose of compliance with the Legislative History Act (Title 5, chapter 4, part 4, MCA), a statement of legislative intent regarding a bill must express the common understanding of those components of the Legislature voting on the bill.

(2) This statement differs from a purpose clause, which is used in general to describe the broad overall objectives of a bill. A statement of intent is used to guide the details of interpretation by those charged with implementation of the bill and is phrased in terms of contingencies, examples, or other matter inappropriate for expression as statutory language.

70-20. Limitation. A statement of intent may not accompany any bill that does not statutorily require one unless a committee (standing committee, Committee of the Whole or conference committee) agrees by a two-thirds vote to attach the statement.

70-30. Statement of intent to accompany bill — when — how. A statement of intent must accompany a bill as follows:

(1) A statement of intent is required for a bill delegating new rulemaking or licensing authority.

(2) A statement of intent must be included with the introduced bill for a bill requiring one. If a bill is found to require a statement of intent at any time in the legislative process, a statement of intent may be added under the procedure for amending a bill.

(3) A statement of intent must be included as a part of the bill between the title and the enacting clause under the heading "Statement of Intent".

70-40. Modification. Any committee considering a bill may recommend amendment of a previous statement of intent or recommend inclusion of a statement of intent. The statement of intent must be reflected in the history of the bill.

70-50. Conference committee on statement of intent only. (1) If the second house concurs in a bill without amendments but amends or supersedes a previous statement of intent, the bill may not be enrolled until both houses have agreed on a statement of intent. If the statement of intent is attached to a bill that does not statutorily require one, the conference committee can delete the statement in its entirety.

(2) A new statement of intent written by the second house must be processed in the same manner as a second house amendment.

(3) A regular conference committee may be appointed solely to resolve differences of intent if the second house's statement of intent is not so accepted.

Adopted January 21, 1993.

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO REGULATE THE COST OF PRESCRIPTION DRUGS.

WHEREAS, the cost of prescription drugs has risen at an alarming rate far surpassing inflation; and

WHEREAS, prescription drugs are a necessity of life for the individuals who are required to take them; and

WHEREAS, many pharmaceutical manufacturers sell the same drug at widely varying prices to different distributors, charging the highest prices and making the greatest profits on drugs sold to community pharmacies; and

WHEREAS, classes of drug distributors other than community pharmacies do not often pass on their lower prices from pharmaceutical manufacturers but retain much of the differential as profit; and

WHEREAS, the simple principle of the Robinson-Patman Anti-Discrimination Act, that sellers' prices to different customers should not vary for other than good commercial reasons, would cure much of what is wrong with pharmaceutical pricing were that Act not weakened by unduly broad exemptions; and

WHEREAS, Congress has forced pharmaceutical manufacturers to rebate a portion of the excess profits they realize from differential pricing to the states' Medicaid programs, and these rebates to the Montana Medicaid program have approached $2.8 million a year; and

WHEREAS, extension of the principles of the Act to all pharmaceutical pricing would extend similar benefits to all consumers; and

WHEREAS, the cost of prescription drugs often falls most heavily on those least able to afford the runaway cost increases in the price of prescription drugs, including senior citizens and others on fixed incomes; and

WHEREAS, the affordability of prescription drugs is a problem impacting every American.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress be urged to pass legislation extending the Robinson-Patman Anti-Discrimination Act to the pricing of prescription drugs by pharmaceutical manufacturers and to otherwise regulate excessive pricing of prescription drugs so that all Americans have access to affordable health care that allows them to live in a manner that does not involve forgoing other necessities of life.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of the Montana Congressional Delegation, the Secretary of Health and Human Services, and Senator David Pryor of Arkansas.

Adopted March 31, 1993.

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO RENAME THE LABOR AND INDUSTRY BUILDING THE "WALT SULLIVAN BUILDING" IN RECOGNITION OF THE DEDICATED SERVICE OF WALT SULLIVAN ON BEHALF OF THE MONTANA BUSINESS COMMUNITY.

WHEREAS, the Department of Labor and Industry, provided for by Article XII, section 2, of the Montana Constitution, was founded to represent the working people of the State of Montana; and

WHEREAS, Walt Sullivan was a dedicated employee of the Department for 17 years; and

WHEREAS, Walt Sullivan for 12 years served the State of Montana as a field representative in the Audit Bureau in the Department and diligently worked to protect the rights of workers, employers, and business owners; and

WHEREAS, Walt Sullivan, in 1989, was murdered while performing a duty to the citizens of Montana and the Department; and

WHEREAS, Walt Sullivan's memory will always be honored by co-workers, friends, and the Sullivan family; and

WHEREAS, the State of Montana desires to recognize the dedicated service of Walt Sullivan.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Administration rename the Labor and Industry Building the "Walt Sullivan Building".

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Department of Administration and to the Department of Labor and Industry so that appropriate plaques or signs designating the building as the "Walt Sullivan Building" may be prepared.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor, the Director of the Department of Labor and Industry, Mrs. Linda Sullivan, and the publisher of each newspaper in the state.

Adopted March 11, 1993.

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MONTANA HIGH SCHOOLS TO COMMEMORATE MONTANA LOCAL GOVERNMENT DAY.

WHEREAS, the operations of city and county governments profoundly affect the day-to-day lives of Montana citizens; and

WHEREAS, city and county officials are more accessible to local citizens than state or federal officials; and

WHEREAS, city and county governments provide excellent opportunities for citizens to participate in government through numerous boards and commissions; and

WHEREAS, the study of city and county governments is essential for the high school students of today who will become the voters and the elected officials of tomorrow.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Montana high schools be encouraged to set aside one day each spring as Montana Local Government Day.

(2) That each high school create a program within its government class to improve student awareness of city and county governmental operations.

(3) That city and county governments assist in establishing a local government program in local high schools.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Superintendent of Public Instruction, the Montana School Boards Association, the Montana Association of Counties, and the Montana League of Cities and Towns for inclusion in their respective newsletters.

Adopted March 16, 1993.

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF ALTERNATIVE METHODS FOR ENFORCING THE STATE HUMAN RIGHTS LAWS IN MONTANA; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 54TH LEGISLATURE.

WHEREAS, the current administrative system for enforcing the Montana human rights laws is cumbersome and creates long delays for all parties in cases involving complaints of unlawful discrimination; and

WHEREAS, the current administrative system is not completely effective at ensuring that the state's interest in eliminating discrimination is carried out; and

WHEREAS, there are alternative enforcement models; and

WHEREAS, the Legislature has not studied alternatives to the present enforcement system; and

WHEREAS, in order to best serve the public, a thorough study of alternative methods of enforcing the state human rights laws should be conducted.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study:

(1) the need for an alternative to the procedural provisions of Title 49, chapter 2, part 5, and Title 49, chapter 3, part 3, for enforcing the state human rights laws;

(2) alternative methods available for enforcing the state human rights laws, including but not limited to the prosecutorial model employed by the federal government or use of a professional administrative law judge similar to the system used by the state Workers' Compensation Court;

(3) the effects of changing the present system for enforcing the state human rights laws; and

(4) the appropriate levels of staff and funding to be committed to enforcement of the state human rights laws.

BE IT FURTHER RESOLVED, that the interim committee report the findings of the study, including any recommendations, to the 54th Legislature.

Adopted April 1, 1993.

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF REGENTS TO REQUIRE THE REPRESENTATIVES OF CREDIT CARD ISSUERS THAT SOLICIT CREDIT APPLICATIONS IN PERSON FROM STUDENTS ON UNIVERSITY AND COLLEGE CAMPUSES TO SUBMIT A SCRIPT OF THE VERBAL REPRESENTATIONS THAT WILL BE MADE TO THE STUDENTS AND REQUIRING THAT THE VERBAL REPRESENTATIONS DISCLOSE THE SAME INFORMATION AS REQUIRED BY FEDERAL LAW FOR WRITTEN CREDIT CARD SOLICITATIONS.

WHEREAS, an issuer of credit cards is required by Federal Regulation Z, 12 CFR 226.1, et seq., to disclose to potential cardholders all pertinent information concerning interest rates and costs associated with obtaining and using the issuer's credit card; and

WHEREAS, the federal disclosure requirements apply to written solicitation; and

WHEREAS, some credit card issuers send representatives onto university and college campuses to solicit credit card applications from students; and

WHEREAS, an effort should be made to ensure that these representatives are properly disclosing pertinent information to the students concerning the costs of obtaining and using the credit cards; and

WHEREAS, the Board of Regents is in a position to exert some control over the credit card representatives soliciting credit card applications on the campuses of this state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Board of Regents is urged to require representatives of credit card issuers that go onto campuses to solicit credit card applications to submit to the administration department of each university or college, prior to any solicitation, a script of the verbal representations that will be made by the representatives to the students.

(2) That the verbal representations include disclosure of the same pertinent information required by federal law.

Adopted March 18, 1993.

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF TRANSPORTATION TO ASSESS THE NEED FOR REVISIONS TO MONTANA'S STATUTES AND ADMINISTRATIVE RULES AS A RESULT OF CHANGES IN FEDERAL LAW AND TO PROPOSE TO THE 54TH LEGISLATURE, IN BILL FORM, RECOMMENDED REVISIONS; REQUESTING THE DEPARTMENT OF TRANSPORTATION TO RESEARCH METHODS THAT WILL ALLOW THE STATE OF MONTANA TO MAXIMIZE REVENUE TO THE STATE FROM THE LEASE OR RENTAL OF HIGHWAY INFORMATION SIGNS; REQUESTING THE DEPARTMENT OF TRANSPORTATION TO COLLABORATE WITH LOCAL GOVERNMENTS IN STUDYING THE CURRENT RESPONSIBILITIES FOR MAINTAINING PUBLIC HIGHWAYS AND TO WORK TOWARD MORE EFFICIENT ALLOCATION OF RESPONSIBILITIES FOR MAINTAINING THE PUBLIC HIGHWAYS; URGING THE DEPARTMENT OF TRANSPORTATION TO REVIEW THE HIGHWAY LEADING MOST DIRECTLY BETWEEN BILLINGS AND GREAT FALLS; AND REQUESTING THE DEPARTMENT OF TRANSPORTATION TO REPORT ALL OF ITS FINDINGS, RECOMMENDATIONS, AND OPTIONS FOR FURTHER CONSIDERATION TO THE 54TH LEGISLATURE.

WHEREAS, in 1991 the United States Congress enacted Public Law 102-240, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), that made substantial changes to the procedures by which the construction and maintenance of public highways are funded and in the ways in which public highways are designated; and

WHEREAS, Montana's statutes and administrative rules rely on federal restrictions, requirements and guidelines that existed prior to the enactment of ISTEA, which reliance becomes confusing within the context of the current federal restrictions, requirements, and guidelines; and

WHEREAS, Montana has enacted laws allowing the lease or rental of highway information signs; and

WHEREAS, the lease or rental of highway information signs is becoming an increasingly lucrative endeavor; and

WHEREAS, the State of Montana, through the Department of Transportation, should do everything within its authority to maximize the income to Montana from the lease or rental of highway information signs; and

WHEREAS, the responsibility for maintaining various highways and streets was established by statute in 1977; and

WHEREAS, over the years inefficiencies have developed whereby counties and cities are maintaining sections of highways that could be more efficiently maintained by the Department of Transportation; and

WHEREAS, the Department of Transportation maintains sections of highways that could be more efficiently maintained by counties or cities; and

WHEREAS, the highway system between Billings and Great Falls has the potential to greatly enhance the economic vitality of both communities and the state in general; and

WHEREAS, without substantial upgrades to the existing highway system between Billings and Great Falls, the state risks forfeiting significant improvements to the Montana transportation system and the potential economic benefits attendant to a highly usable transportation system between two of the state's largest urban and economic centers that stand as gateways to other economic centers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Transportation is hereby requested to review, prior to October 1, 1994:

(1) the federal restrictions, requirements, and guidelines resulting from the enactment of ISTEA and prepare recommendations to the 54th Legislature for revising Montana's statutes and administrative rules to comport with ISTEA;

(2) the manner in which the State of Montana currently participates in the proceeds from the lease or rental of highway information signs and prepare recommendations to and options for consideration by the 54th Legislature for maximizing the financial return to the State of Montana from the lease or rental of highway information signs; and

(3) the responsibilities of the state, counties, and cities for maintaining the various sections of public highways throughout the state and, after consultation and collaboration with representatives of counties, cities, and towns, report its findings and recommendations to the 54th Legislature.

BE IT FURTHER RESOLVED, that the Department of Transportation include as an additional section of the report a section that specifically addresses collaboration with and the impact on federally recognized Indian tribes and their lands.

BE IT FURTHER RESOLVED, that the Department of Transportation is hereby further requested, in making recommendations to the 54th Legislature and where appropriate, to have legislation prepared to implement the Department's recommendations.

BE IT FURTHER RESOLVED, that the Legislature urge the Department of Transportation to review the highway leading most directly between Billings and Great Falls. This corridor is important to the economic well-being of the State of Montana and instrumental in economic development of international trade. The Department shall prepare a written report encompassing the condition of the highway and the improvements made and planned to be made. The report must include cost estimates, a tentative schedule, the types of improvements, and a means of financing the construction or reconstruction. This report must be made available to the Legislature on or before December 1, 1994.

BE IT FURTHER RESOLVED, that the Department of Transportation is further requested to recommend implementing legislation, which is to be initially prepared by the Department and formally requested before October 1, 1994, for introduction in the 54th Legislative Session.

Adopted April 19, 1993.

SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING COLONEL DEAN ANDREW POGREBA.

WHEREAS, Dean Andrew Pogreba spent his formative years in the city of Three Forks, Montana, and participated with distinction in scholastic affairs and as an outstanding athlete in programs of this state; and

WHEREAS, Colonel Dean Andrew Pogreba spent most of his adult life in the service of the United States of America as a pilot in the United States Air Force, serving in World War II, the Korean War, and the Vietnam War; and

WHEREAS, that service was with great distinction and honor, and its course took him in defense of the principles for which this nation stands into combat in Indochina, Korea, and Southeast Asia; and

WHEREAS, during the course of his duty there, it was announced that he was "missing in action, believed captured by hostile forces"; and

WHEREAS, in recent months, Colonel Dean Andrew Pogreba's military identification and Geneva Convention cards and fingerprints were found in the archives of a war museum in Hanoi, Vietnam; and

WHEREAS, the State of Montana and all the citizens of this nation owe Colonel Dean Andrew Pogreba a debt of gratitude for the forthrightness and courage with which he faced his nation's obligations and with which he served and defended them.

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MONTANA:

That the government of this nation be called upon to start a meaningful dialogue with the government of Vietnam to resolve the fate of Colonel Dean Andrew Pogreba.

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to the family of Colonel Dean Andrew Pogreba as a token of the high esteem and respect given by the citizens of the State of Montana.

BE IT FURTHER RESOLVED, that a copy of this resolution be transmitted to United States Senators Max Baucus and Conrad Burns, to United States Representative Pat Williams, and to United States President William J. Clinton.

Adopted March 15, 1993.

SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA CONGRESSIONAL DELEGATION, THE CONGRESS, AND THE PRESIDENT TO OPPOSE THE NORTH AMERICAN FREE TRADE AGREEMENT UNTIL CERTAIN PROVISIONS ARE INCLUDED IN THE AGREEMENT AND ITS ENACTING LEGISLATION.

WHEREAS, the State of Montana has a vital interest in protecting and expanding the growth of jobs and industry in Montana and the United States; and

WHEREAS, the State of Montana has seen a "free trade" agreement with Canada result in the decline of Montana's durum wheat and natural gas markets; and

WHEREAS, the North American Free Trade Agreement (NAFTA) is designed to create a "free trade" bloc between the United States, Canada, and Mexico; and

WHEREAS, the United States, Canada, and Mexico have vastly different standards of living, wage structures, workers-rights protections, health standards, safety standards, environmental standards, and regulatory climates; and

WHEREAS, the NAFTA may threaten U.S. workers by permitting inexpensive, largely unregulated Mexican labor to produce duty-free goods, which are now produced in U.S. factories, for export into the United States; and

WHEREAS, many agricultural issues remain unresolved with Canada from the U.S.-Canada Free Trade Agreement, such as transportation and energy resource subsidies, the maintenance of import licenses that block U.S. wheat and barley export to Canada, and the Canadian Wheat Board's secretive control of prices and exclusion of imports, and a new agreement should not be signed until those issues are resolved; and

WHEREAS, the NAFTA, as currently negotiated, would adversely affect Montana and U.S. agriculture by:

(1) allowing Mexico to flood U.S. markets with cheap sugar, unfairly competing with Montana's sugar beet industry;

(2) allowing Mexican commodities produced with 58 pesticides banned in the United States, such as DDT, to compete with Montana agricultural producers whose pesticide use is regulated;

(3) encouraging U.S. meat packing plants to move their operations to Mexico to take advantage of lower safety and sanitation standards because NAFTA exempts Mexico from the Meat Import Act of 1979; and

(4) unduly limiting the ability of the United States to implement domestic programs to foster the farm and rural economy;

(5) immediately eliminating the tariff on feeder cattle imported from Mexico and potentially increasing imports of Mexican feeder cattle by 100%, which would equal 10% of all cattle on feed in the U.S., thereby preempting the Meat Import Act of 1979, which limits beef imports in the U.S. and, as a result, allows Mexico to ship more of its current domestic production to the U.S. and to supply Mexico's domestic demand with cheaper imported beef and undermines consumer confidence in the safety of the imported beef, thereby placing greater strain on the already overburdened and underfunded U.S. border inspection system and threatens livestock feeding operations by driving closely associated meatpacking plants to Mexico; and

WHEREAS, NAFTA, as currently negotiated, would drive down U.S. per capita income, tax revenue, and standards of living by pitting U.S. workers against exploited workers in Mexico where workers:

(1) are routinely paid less than $1 an hour compared with an average wage of $14.31 an hour for U.S. workers;

(2) do not have minimum wage and hour protection;

(3) are forced to work in unsafe and unsanitary conditions and do not have occupational health and safety protections;

(4) do not have protection against the exploitation of child labor; and

(5) are routinely blacklisted for organizing to better their working conditions; and

WHEREAS, NAFTA, as currently negotiated, contains no provisions to correct lax Mexican environmental standards or to address the existing environmental degradation of the United States/Mexican border where:

(1) carcinogens, such as methylene chloride at levels 215,000 times the U.S. standards, are found in irrigation channels around existing industrial parks;

(2) hazardous breakdowns, such as styrene and ethylbenzene from industrial plants and industrial pesticides, are found in biologic testing of stillborn infants; and

(3) air emissions have contained toxic chemicals, such as benzene at levels of 200 times and toluene at 56 times U.S. standards; and

WHEREAS, state environmental laws could be undermined by unrelated foreign policy concerns because states are not included in any dispute mechanisms between the federal government and foreign governments; and

WHEREAS, state laws on banking and insurance may be in conflict with the final agreement and would have to be changed, with possible detriment to the citizens of the State of Montana; and

WHEREAS, NAFTA, as currently negotiated, contains no provisions to discourage U.S. companies from relocating to Mexico; and

WHEREAS, NAFTA, as currently negotiated, contains no provisions for retraining of U.S. workers displaced by the effects of "free trade"; and

WHEREAS, U.S. workers have already lost more than 500,000 jobs to Mexico; and

WHEREAS, projections show that at least another 500,000 jobs will be lost to Mexico under the current NAFTA.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the members of the Montana Delegation to the United States Congress be urged to oppose the North American Free Trade Agreement as currently negotiated.

BE IT FURTHER RESOLVED, that the Montana Legislature strongly urge the Montana Delegation to the United States Congress to continue to oppose the North American Free Trade Agreement until the agreement and its enacting legislation provide for:

(1) protection of worker rights, minimum wage and hour standards, occupational safety and health standards;

(2) the elimination of child labor;

(3) remedial action to address environmental degradation of the border area;

(4) increased enforcement of environmental laws and regulations in the United States, Canada, and Mexico;

(5) protection against imports of food products exposed to agricultural chemicals that are banned in the United States;

(6) protection for import-sensitive industries in the United States;

(7) the denial of trade benefits to U.S. companies that transfer production to Mexico;

(8) programs to provide real help to U.S. workers displaced by trade policies; and

(9) increased border inspections for meat safety, protection against Mexican imports of beef from Europe and South America and Canadian imports of beef from Australia, and protection against the flooding of the U.S. feeder market.

BE IT FURTHER RESOLVED, that the Secretary of State forward copies of this resolution to the United States Senate, the United States House of Representatives, the President, and each member of the Montana Congressional Delegation.

Adopted April 5, 1993.

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONTINUED FEDERAL SUPPORT AND FUNDING OF THE VISITOR CENTER OF THE UPPER MISSOURI.

WHEREAS, the Upper Missouri River is both a state and a national treasure that offers many historical and recreational opportunities; and

WHEREAS, on October 12, 1976, Congress passed Public Law 94-486, which added the Upper Missouri River to the Wild and Scenic River System and provided for a visitor center for interpretation of the area; and

WHEREAS, Congress subsequently passed Public Law 100-552, which assigned responsibility for the visitor center to the Bureau of Land Management; and

WHEREAS, an interpretive prospectus and a cooperative agreement for the development of the visitor center was adopted in February 1992 by the Bureau of Land Management, the city of Fort Benton, and the Community Improvement Association; and

WHEREAS, $1.6 million has been contracted by the Bureau of Land Management for the architecture and interpretive design for the visitor center; and

WHEREAS, Fort Benton has been a national historic landmark since 1965; and

WHEREAS, the purpose of the visitor center is to enhance existing interpretive services for visitors to historic Fort Benton, the Upper Missouri National Wild and Scenic River, the Lewis and Clark National Historical Trail complex, and the Nez Perce National Historical Trail; and

WHEREAS, tourism is a growing economic force in Montana, and the state is actively promoting a healthy tourism industry to meet visitors' needs and to improve its economic situation; and

WHEREAS, the visitor center would complement the state's efforts to strengthen and expand tourism and recreation and would contribute to economic diversification within the state; and

WHEREAS, the visitor center is expected to contribute $300,000 to $480,000 to the Montana economy and 15 to 25 new jobs by the year 2000.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Director of the Bureau of Land Management, the Montana Congressional Delegation, and the U.S. Congress be urged to continue to support the Visitor Center of the Upper Missouri.

BE IT FURTHER RESOLVED, that the U.S. Congress be urged to pass legislation to fund completion of the visitor center project.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of the Montana Congressional Delegation, the U.S. Secretary of the Interior, and the Director of the Bureau of Land Management.

Adopted March 15, 1993.

SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING ALL MONTANA SCHOOL DISTRICT BOARDS OF TRUSTEES TO ENCOURAGE ALL PUBLIC ELEMENTARY SCHOOLS, MIDDLE SCHOOLS, AND HIGH SCHOOLS THAT TEACH SEX EDUCATION TO CONTINUE TO EMPHASIZE ABSTINENCE FROM SEXUAL INTERCOURSE AS THE MOST EFFECTIVE PROTECTION AGAINST PREGNANCY OR SEXUALLY TRANSMITTED DISEASES.

WHEREAS, the existence of over 20 sexually transmitted diseases presents a public health concern in Montana; and

WHEREAS, the social and economic costs of these diseases and of the rate of teen pregnancy are a concern of the people of Montana; and

WHEREAS, abstinence from sexual intercourse is the most effective way to prevent teen pregnancy and the transmission of sexual diseases among our young people; and

WHEREAS, sex education programs that emphasize sexual abstinence are an important part of addressing society's concern with teen pregnancy and sexually transmitted diseases among teens.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Superintendent of Public Instruction and the Board of Public Education issue educational guidelines that affirm sexual abstinence as the

most effective method of preventing teen pregnancy and sexually transmitted diseases among our teens.

(2) That, in addition, all material and instruction in classes that teach sex education and discuss sexual intercourse:

(a) include statistics based on the latest medical information that cites the failure and success rates, including the theoretical and actual effectiveness rates, of each contraceptive method in preventing pregnancy and sexually transmitted diseases;

(b) include information on sexually transmitted diseases;

(c) discuss the emotional and psychological dimensions of sexual intercourse and adolescent pregnancy;

(d) advise students of the laws relating to support of children born outside of marriage and the criminal laws relating to sexual intercourse; and

(e) continue to emphasize abstinence, responsibility, and respect for oneself and others.

(3) That the Secretary of State send a copy of this resolution to each member of the Board of Public Education, to the Superintendent of Public Instruction, and to each school district superintendent in the State of Montana with the request that the superintendent of each district distribute this resolution to each elementary and high school district board of trustees in the State of Montana.

Adopted March 30, 1993.

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE FORESTRY OFFICE OF THE MONTANA COOPERATIVE EXTENSION SERVICE OF MONTANA STATE UNIVERSITY TO DEVELOP VOLUNTARY WILDLIFE HABITAT MANAGEMENT GUIDELINES FOR THE CONDUCT OF ALL MONTANA FORESTRY PRACTICES.

WHEREAS, Chapter 608, Laws of 1991, created streamside management zones in order to maintain the integrity of forest streams; and

WHEREAS, one purpose of the law was to provide voluntary guidelines for the management of wildlife habitat within streamside management zones; and

WHEREAS, subsequent development of the guidelines identified the need to apply wildlife management practices beyond the streamside management zones; and

WHEREAS, it is in the public interest to encourage timber harvest that is generally compatible with wildlife and wildlife habitat.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Forestry Office of the Montana Cooperative Extension Service of Montana State University be urged to develop voluntary wildlife habitat management guidelines for the conduct of all forestry practices in Montana.

Adopted April 7, 1993.

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE LEGISLATURE'S OPPOSITION TO SECTION 333 OF THE FEDERAL DEPARTMENT OF TRANSPORTATION AND RELATED AGENCIES APPROPRIATION ACT FOR FISCAL YEAR 1991.

WHEREAS, section 333 of the federal Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1991 mandates the withholding of certain federal-aid highway funds from states that, by October 31, 1993, fail to either:

(1) enact legislation requiring suspension of an individual's driver's license upon conviction of any violation of the federal Controlled Substances Act or any drug offense; or

(2) certify that the Governor is opposed to the enactment of such a law and that the Legislature has adopted written certification expressing its opposition to such a law; and

WHEREAS, failure of this Legislature to take either mandated action will result in the withholding of federal-aid highway funds; and

WHEREAS, the Senate Committee on Highways and Transportation has considered and tabled Senate Bill No. 309, which would have enacted statutory provisions consistent with the federal requirement to suspend a driver's license for certain drug-related offenses; and

WHEREAS, current Montana law provides that driving-related acts are the only basis upon which a driver's license may be suspended; and

WHEREAS, the provisions of section 333 of the federal Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1991 would require the suspension of a driver's license for actions not related to driving; and

WHEREAS, current Montana law provides for the suspension or revocation of a driver's license for driving under the influence of drugs; and

WHEREAS, the Senate and the House of Representatives of the 53rd Montana Legislature believe that the granting or withholding of driving privileges is and always has been a state prerogative; and

WHEREAS, the Senate and the House of Representatives of the 53rd Montana Legislature believe that the federal government should not coerce or attempt to coerce states into passing legislation involving subjects traditionally left to the states.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That this Senate Joint Resolution is intended to certify Montana's opposition to the enactment of driver's license suspension provisions consistent with section 333 of the federal Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1991.

BE IT FURTHER RESOLVED, that the Secretary of State provide a copy of this resolution to the Governor of the State of Montana.

BE IT FURTHER RESOLVED, that the 53rd Montana Legislature, in order to avoid the impending loss of federal-aid highway funds, respectfully requests the Governor to submit a copy of this resolution to the Secretary of the United States Department of Transportation and, with the copy, to simultaneously submit his comments concurring in the Legislature's opposition to the enactment of driver's license suspension provisions consistent with section 333 of the federal Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1991.

Adopted March 30, 1993.

SENATE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE UNITED STATES GOVERNMENT TO TAKE A MORE ACTIVE ROLE IN A MULTINATIONAL EFFORT TO END THE TRAGIC PATTERN OF VIOLENCE IN THE FORMER COUNTRY OF YUGOSLAVIA.

WHEREAS, Eastern European countries, so long under the oppression of totalitarianism, now strive to achieve the blessings and advantages of democratic government; and

WHEREAS, this struggle, like our own struggle for independence and unity, is often marked by violence to persons and property; and

WHEREAS, in the particular case of the former country of Yugoslavia, that violence has every possibility of spreading to serious conflicts in bordering Eastern European countries; and

WHEREAS, the conflict has the potential to spread beyond Eastern Europe and to negatively impact the security and well-being of countries throughout the international community; and

WHEREAS, because the United States, the birthplace of democracy, has the moral duty and the diplomatic resources and stature to help countries strive for freedom and democracy, we should act, with other concerned nations and international bodies, to mediate the crisis.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Senate and the House of Representatives of the United States urge President Clinton to join the United Nations in taking decisive diplomatic

action to halt the conflict between and among warring parties and to gain agreement of the border countries surrounding the former Yugoslavia to actively participate in the realization of a stable peace.

(2) That military action is not the answer, and military action should be considered only after all diplomatic efforts have been utterly exhausted.

(3) That, among the alternative actions, an international peace conference including all parties to the conflict should be the centerpiece of efforts promoted by the United States.

(4) That a delegation of American-born persons of Slavic and Muslim descent should be selected to help mediate the conflict.

(5) That the efforts should be carried forward in an open attitude of fairness to all parties with no prejudice in favor of or against a particular party to the conflict.

(6) That the Montana Congressional Delegation join with President Clinton in supporting these efforts and that the members of the Delegation actively monitor all executive decisions in order to guarantee a fair and wise peacemaking process, fully mindful of the nearly unimaginable suffering of all men, women, and children caught up in this tragic conflict.

(7) That a copy of this resolution be sent to the President of the United States, the Secretary of State, the Secretary of Defense, the presiding officers of the Foreign Relations Committees of the United States Senate and House of Representatives, and the members of the Montana Congressional Delegation.

Adopted March 12, 1993.

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO FULLY FUND COMPLETION OF THE LEWIS AND CLARK NATIONAL HISTORIC TRAIL INTERPRETIVE CENTER NEAR GREAT FALLS, MONTANA.

WHEREAS, the United States Congress enacted Public Law 100-552, authorizing the Secretary of Agriculture to establish the Lewis and Clark National Trail Interpretive Center in the vicinity of Giant Springs Heritage State Park near Great Falls, Montana; and

WHEREAS, development of the center will provide the State of Montana and the United States with a unique interpretation of the Lewis and Clark Expedition and its encounters in Indian Country and will establish a logical and essential link between the center at St. Louis, Missouri, the beginning of the expedition, and the center at Fort Clatsop, Oregon, the ending point of the Lewis and Clark Trail; and

WHEREAS, development of the center will allow historians to preserve and protect the very spirit of discovery in a location where one is still able to experience the physical, mental, and emotional challenges encountered by the

Corps of Discovery and will provide all Americans an opportunity to fully examine and interpret the real challenges of westward expansion; and

WHEREAS, completion of the center will provide a valuable economic contribution to the area through increased tourism and expanded educational resources; and

WHEREAS, the State of Montana has committed to the donation of up to 50 acres of land to the federal government for the center site, the city of Great Falls and Cascade County have pledged significant financial support, and numerous private citizens have invested both time and resources to achieve the designation of the center in Montana; and

WHEREAS, the required conceptual plan for the development of the center has been completed in a timely manner, and the design package has been submitted to the House Committee on Interior and Insular Affairs and the Senate Committee on Energy and Natural Resources according to the prescribed timetable; and

WHEREAS, the timetable of the planning process having been met, Congress must now appropriate the funds necessary to complete construction of the center.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Congress be urged to support the recommendations of the Forest Service Planning Team and the citizen steering committee by fully funding completion of the Lewis and Clark National Historic Trail Interpretive Center near Great Falls, Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of the Montana Congressional Delegation, the members of the United States House Committee on Interior and Insular Affairs, the members of the United States Senate Committee on Energy and Natural Resources, the President of the United States, and the United States Secretary of Agriculture.

Adopted March 15, 1993.

SENATE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE AUDITOR TO CONDUCT A PERFORMANCE AUDIT OF THE HARD ROCK BUREAU, RECLAMATION DIVISION, DEPARTMENT OF STATE LANDS; REQUESTING THE LEGISLATIVE AUDITOR TO INCLUDE A DETAILED ANALYSIS OF CERTAIN BUREAU FUNCTIONS IN THE AUDITOR'S SCHEDULED BIENNIAL FINANCIAL COMPLIANCE AUDIT OF THE BUREAU; AND REQUIRING THAT A REPORT OF THE RESULTS OF BOTH THE PERFORMANCE AND FINANCIAL COMPLIANCE AUDITS BE SUBMITTED TO THE 54TH LEGISLATURE.

WHEREAS, the citizens of this state desire and deserve a stable and productive economy and protection of the environment; and

WHEREAS, the mining industry has raised concerns regarding the equitable and efficient administration of the state hard-rock mine permitting laws; and

WHEREAS, public interest groups have raised concerns regarding the adequacy of environmental protection associated with the state permitting of hard-rock mines.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Auditor conduct a performance audit of the Hard Rock Bureau, Reclamation Division, Department of State Lands. This performance audit should include an evaluation of the entire hard-rock mine permitting process, including but not limited to the following issues:

(a) permitting, including timeframes, permit application completeness review, and permit revision and amendment review;

(b) permit enforcement; and

(c) permit monitoring.

(2) That the Legislative Auditor include in the scheduled biennial financial compliance audit a specific and detailed component analyzing the Hard Rock Bureau revenue, expenditures, and internal controls.

BE IT FURTHER RESOLVED, that the Legislative Auditor report the findings of both the performance audit and the financial compliance audit to the 54th Legislature and present options for legislative consideration if the Auditor determines that options are necessary.

Adopted April 20, 1993.

SENATE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ENVIRONMENTAL QUALITY COUNCIL TO STUDY THE NONDEGRADATION PROVISIONS OF THE MONTANA WATER QUALITY LAWS AND THE MONTANA CONSTITUTION AND THE IMPLEMENTATION OF THOSE PROVISIONS AND LAWS; AND REQUIRING THE ENVIRONMENTAL QUALITY COUNCIL TO REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE 54TH LEGISLATURE.

WHEREAS, the 53rd Legislature has considered two bills relating to nondegradation provisions of Montana's water quality laws, which bills have attempted to address unresolved issues; and

WHEREAS, the implementation of the nondegradation provisions of the water quality laws involves complex issues of law, technology, and public policy; and

WHEREAS, the implementation of exceptions to a strict interpretation of a nondegradation policy has been characterized as impacting all environmental life-support systems, including but not limited to air, water, and land, and therefore is of significant interest to all Montanans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Environmental Quality Council give priority to the study of the nondegradation provisions of the Montana water quality laws and the implementation of those provisions.

(2) That the study include a review of:

(a) the definitions of "nondegradation" and "high-quality waters";

(b) the social and economic development factors and the public interest in maintaining high-quality waters;

(c) the procedures for the review of proposed exemptions from the nondegradation provisions;

(d) the designation of mixing zones;

(e) the appropriateness of the application of nondegradation provisions to all point and nonpoint sources of pollution to both ground water and surface water;

(f) the environmental, economic, and social effects of allowing any degradation or specific levels of degradation to high-quality ground waters and surface waters;

(g) the relationship between the nondegradation policy provisions contained in Montana water quality laws and the various interpretations of applicable sections of the Montana Constitution;

(h) the capabilities of and the cost to state agencies to implement the nondegradation policy and to assess the resources that will be needed to implement the policy equitably for all segments of society;

(i) the social and economic costs of nondegradation compliance or noncompliance to individuals and entities in various industries and endeavors that would be affected;

(j) the potential utilization, in response to exceptions from nondegradation provisions, of mitigation measures to improve overall water quality in the state, in the source, or in a specific affected portion of the source; and

(k) the identification of possible statutory and regulatory changes that would help clarify the nondegradation policy and provide for a more effective and efficient implementation and enforcement of the policy.

(3) That the Environmental Quality Council consult with federal, state, and local officials, industries, citizens, and other persons or groups with expertise or interest in water quality protection.

(4) That the Environmental Quality Council report its findings and recommendations to the 54th Legislature.

Adopted April 22, 1993.

SENATE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE RECOGNITION OF FLAG DAY AND THE PAUSE FOR THE PLEDGE OF ALLEGIANCE PROGRAM.

WHEREAS, the Pause for the Pledge of Allegiance on June 14 is recognized at 5 p.m. mountain daylight time as an event on Flag Day; and

WHEREAS, June 14 should be set aside to honor the Flag and those who stand up for it; and

WHEREAS, such an event promotes national pride and patriotism; and

WHEREAS, National Flag Day gives individuals a chance to think about what the Flag symbolizes to them; and

WHEREAS, the Pause for the Pledge of Allegiance Program was created to promote public awareness and to ensure our nation's traditions and values; and

WHEREAS, the entire American population will be joined in a patriotic spirit for one moment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the members of the Senate and the House of Representatives join with the Governor and encourage citizens of Montana and the department heads of state agencies to set aside 1 minute on June 14, 1993, and 1994, for Flag Day and the Pause for the Pledge of Allegiance and to participate in local community programs honoring National Flag Day and the Pause for the Pledge of Allegiance Program.

Adopted April 22, 1993.

SENATE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF INSURANCE-RELATED PROBLEMS, INCLUDING THE HIGH COST OF MEDICAL MALPRACTICE INSURANCE, PROPOSALS FOR GENERAL TORT REFORM, AND GENERAL QUESTIONS INVOLVING PUBLIC AND PRIVATE LIABILITY ISSUES; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 54TH LEGISLATURE.

WHEREAS, several bills have been introduced in the 53rd Legislative Session requesting immunity from liability for various groups, including private enterprises relating to various occupations as well as governmental agencies; and

WHEREAS, several bills relating to tort reform have been introduced in the 53rd Legislative Session; and

WHEREAS, it is reported that, in Montana, many rural and urban areas are having difficulty in obtaining and retaining health providers, particularly those practicing in the area of obstetrics and gynecology; and

WHEREAS, there is evidence that doctors and other health care providers, businesses, and others may have difficulty obtaining insurance coverage and liability protection at reasonable rates; and

WHEREAS, as the cost of insurance continues to grow, it continues to consume a larger percentage of income and is approaching the point of placing liability protection out of the reach of businesses and individuals in Montana; and

WHEREAS, the high cost of insurance may seriously threaten the provision of certain goods and services to the state's citizens; and

WHEREAS, proposed solutions to the complex problems of insurance coverage and protection and public and private tort liability are not easily identified and adequate and effective solutions may not be obtainable within the pressures of a legislative session; and

WHEREAS, a thoughtful and reasoned study of the myriad aspects of insurance costs and availability, tort reform proposals, and public and private liability, in addition to other studies that are specific to other subject matters that are being proposed in this 53rd Legislative Session, would aid in the solution of these complex issues.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That a special joint interim committee, to which the full subpoena power of the Legislature and the Legislative Council is extended, be assigned to study and to prepare legislation, if recommended, to address:

(a) insurance problems, including the cost of medical malpractice insurance and how to make insurance coverage and protection available to Montana citizens at a reasonable cost;

(b) the effectiveness of various tort reform proposals; and

(c) general questions involving public and private liability, including but not limited to the issues of public and private immunity, punitive damages, structured settlements, joint and several liability, caps on damage awards, attorney fees, reinsurance, and penalties for bringing frivolous lawsuits.

(2) That, when appropriate, the study be coordinated with the study of tort reform and defensive medicine provided for in Senate Bill No. 285.

Adopted April 21, 1993.

SENATE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE REVENUE OVERSIGHT COMMITTEE CONDUCT AN INTERIM STUDY OF SPECIAL IMPROVEMENT DISTRICT FINANCING AND RURAL SPECIAL IMPROVEMENT DISTRICT FINANCING; AND DIRECTING THE COMMITTEE TO REPORT ITS FINDINGS TO THE 54TH LEGISLATURE.

WHEREAS, counties and cities and towns typically establish revolving funds for the purpose of securing bonds issued for special improvement districts and rural special improvement districts; and

WHEREAS, a recent District Court opinion determined that a county is not liable for the payment of bond and warrant principal and interest when a special improvement district or a rural special improvement district is insolvent and when loans made from the revolving fund have no chance of being repaid; and

WHEREAS, other states use different methods to protect bondholders and taxpayers if an improvement district is unable to meet its bond obligations, and these methods should be examined by the Legislature; and

WHEREAS, the Legislature last substantively addressed the financing of special improvement districts and rural special improvement districts 12 years ago; and

WHEREAS, major changes have occurred in the use of bonds and warrants for the financing of improvement districts during the last 12 years; and

WHEREAS, the Revenue Oversight Committee is an appropriate committee to conduct an interim study of improvement district financing.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee be assigned to conduct an interim study of special improvement district and rural special improvement district financing in Montana.

BE IT FURTHER RESOLVED, that the Committee in its study:

(1) review Montana's special improvement district and rural special improvement district financing laws, including legislative histories and judicial interpretations; and

(2) consider other methods used by other states, including methods used by Utah, Wyoming, and Colorado, for securing bonds issued by improvement districts.

BE IT FURTHER RESOLVED, that the Committee, in its deliberations, solicit the knowledge and advice of bond experts and local government officials.

BE IT FURTHER RESOLVED, that the Committee report the findings of the study to the 54th Legislature and present options for legislative consideration if the Committee determines that options are necessary.

Adopted April 20, 1993.

SENATE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ENVIRONMENTAL QUALITY COUNCIL TO CONDUCT AN INTERIM STUDY OF THE MANAGEMENT AND DISPOSAL OF HAZARDOUS WASTE IN MONTANA AND TO REPORT ITS FINDINGS TO THE 54TH LEGISLATURE.

WHEREAS, the 1993 Legislature has addressed a variety of waste management issues, including regulation of waste incineration, medical waste, waste facility siting, funding for waste management permitting and enforcement, air quality aspects of waste management, and public involvement in waste management decisions; and

WHEREAS, all nonexempt quantities of hazardous waste generated in the State of Montana are exported for disposal elsewhere; and

WHEREAS, the burning of hazardous waste in cement kilns has been a contentious and divisive issue throughout the 53rd Legislative Session; and

WHEREAS, because Montana's waste management laws have been adopted in a piecemeal fashion, there has been no comprehensive examination of the integration of all of Montana's hazardous and special waste management regulations; and

WHEREAS, the Environmental Quality Council has longstanding involvement in solid and hazardous waste management issues, including discussions nearly 10 years ago of the need for a state facility for hazardous waste disposal and including the successful completion of a comprehensive solid waste management study that resulted in the adoption of extensive legislation during the 1991 Legislative Session.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Environmental Quality Council be requested to give priority to the study of the management and disposal of hazardous waste.

(2) That the study include but not be limited to a review of:

(a) hazardous waste reduction and recycling strategies;

(b) the feasibility of both public and private hazardous waste disposal options;

(c) the need for siting criteria for hazardous waste management facilities;

(d) the status of Montana's position within the regional hazardous waste capacity assurance plan;

(e) the relationship between federal and state authority over various hazardous waste management issues, including regulation of the transportation of hazardous waste; and

(f) the adequacy of the current regulatory framework for the management and disposal of hazardous waste in Montana.

(3) That the Environmental Quality Council consult with federal, state, and local officials, industries, citizens, and other persons or groups with expertise or interest in hazardous waste management.

(4) That the Environmental Quality Council report its findings and recommendations to the 54th Legislature.

Adopted April 22, 1993.

HOUSE JOINT RESOLUTIONS

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONCERNING THE CLASSIFICATION, PAY, AND OTHER CONDITIONS OF EMPLOYMENT OF LEGISLATIVE EMPLOYEES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A TERMINATION DATE, AND A RETROACTIVE APPLICABILITY PROVISION.

WHEREAS, it is necessary to establish a pay plan for legislative employees that compensates those employees on a basis similar to other state employees; and

WHEREAS, it is necessary that legislative employees know of their conditions of employment and that those conditions be uniform for the Senate and the House of Representatives.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) (a) That the legislative employee positions listed in subsection (1)(b) be classified at the grades indicated and be entitled to be paid according to the pay matrix included in subsection (1)(c). Because legislative employees receive no additional benefits, 50 cents an hour has been added to the hourly compensation shown in the pay matrix.

(b) That an employee with no qualifying legislative experience be paid at level 1 of the appropriate grade. A person who has served as a legislator or an employee of the Montana Senate or House of Representatives for at least one-half of a regular session is entitled to be advanced one step for each session served.

Grade 20

Chief Clerk of the House
Secretary of the Senate

Grade 17

Sergeant-at-Arms

Grade 14

Chaplain

Grade 13

Assistant Chief Clerk of the House
Assistant Secretary of the Senate
Aide to the Speaker of the House
Aide to the President of the Senate

Aide to the House Minority Leader
Aide to the Senate Minority Leader

Grade 11

Training Coordinator
System Coordinator
Legislative Assistant
Word Processing Center Supervisor
Bills Clerk
Journal Clerk
Bills Coordinator
Amendments Coordinator
Assistant Sergeant-at-Arms
Secretary to the Following:
    President, Speaker, Secretary of the Senate, Chief Clerk, and Majority and Minority Leaders and Whips in both the Senate and the House

Grade 10

Assistant Word Processing Center Supervisor
Assistant Bills Clerk
Assistant Journal Clerk
Committee Secretary
Bills Distributor
Legislative Telephone Operator
Status Input Technician
Assistant Bills Coordinator
Assistant Amendments Coordinator

Grade 9

Assistant Bills Distributor

Grade 8

Word Processor

Grade 7

Assistant Status Input Technician
Reading Clerk
Supply Clerk
Typist
Security Guard
Doorman

Grade 6

Proofreader
Clerk-Typist
Steno Aide

Grade 5

Distribution Clerk
Page Supervisor

Grade 3

Committee Aide
Permanent Page

Minimum Wage

Page

(c) That the following legislative pay matrix, shown in dollars per hour and including 50 cents an hour for benefits, be adopted:

			Level		
Grade	1	2	3	4	5
1	6.280	6.377	6.476	6.577	6.680
2	6.529	6.631	6.736	6.842	6.950
3	6.800	6.908	7.018	7.130	7.244
4	7.097	7.210	7.326	7.444	7.564
5	7.423	7.543	7.666	7.791	7.918
6	7.798	7.917	8.038	8.170	8.305
7	8.232	8.341	8.459	8.591	8.734
8	8.713	8.818	8.945	9.065	9.197
9	9.236	9.350	9.486	9.602	9.733
10	9.811	9.944	10.079	10.205	10.345
11	10.441	10.572	10.717	10.865	11.015
12	11.126	11.280	11.437	11.598	11.760
13	11.880	12.047	12.216	12.389	12.564
14	12.807	12.990	13.164	13.378	13.564
15	13.790	14.015	14.212	14.428	14.648
16	14.931	15.160	15.392	15.609	15.849
17	16.172	16.401	16.654	16.909	17.169
18	17.523	17.793	18.069	18.348	18.631
19	19.047	19.328	19.628	19.909	20.242
20	20.848	21.006	21.333	21.640	22.004

(2) (a) That each employee record the number of hours worked each day on a timesheet provided by the employer. A completed timesheet must be turned in each Friday that ends a pay period. Each chamber shall adopt a procedure for review, approval, and collection of the timesheets and for timely filing with the Legislative Council.

(b) That the Sergeants-at-Arms review and approve the timesheets for the following employees: Assistant Sergeants-at-Arms, Doormen, Security Guards, Distribution Clerks, and Pages.

(c) That the Speaker and Minority Leader of the House review and approve the timesheets for their employees.

(d) That the Secretary of the Senate and the Chief Clerk of the House review all timesheets and approve those not otherwise provided for.

(3) That the positions classified at Grade 17 and above be exempt from overtime pay. During a regular legislative session, employees in those positions must be paid for 48 hours a week regardless of the number of hours worked. Whenever such employees are preparing for or closing a regular or special session or otherwise working at the direction of their respective presiding officers during an interim, they must be paid for each hour worked at the hourly compensation determined under subsection (1) and their timesheets must be reviewed and approved by their presiding officers.

(4) That the positions classified below Grade 17 be subject to overtime pay. Hours over 40 a week worked by an employee so classified must be compensated at the rate of 1 ½ times the employee's regular hourly wage.

(5) That the legislative employees listed in subsection (1)(b) are not entitled to additional benefits, including sick leave, vacation leave, holiday pay, time off with pay, health insurance, or longevity allowances. Section 2-18-617(3), MCA, relating to assumption of liability for accrued vacation credits, does not apply to the Legislature and its employees.

(6) That a Chaplain be entitled to be paid for 2 hours for each legislative day served.

(7) That membership in the Public Employees' Retirement System be made available to legislative employees upon written request under the provisions of section 19-3-403(5), MCA.

(8) That the Legislature intend that this Joint Resolution apply to the employees hired to prepare for the 54th Legislature by the leadership elected at the November 1994 caucuses.

(9) (a) That this Joint Resolution be effective upon passage and be effective until January 2, 1995.

(b) That this resolution apply retroactively to all employees of the 53rd Legislature.

(10) That the Legislature recommend that Legislative Branch agencies offer session temporary personnel the additional compensation provided in this Joint Resolution in lieu of benefits.

Adopted March 29, 1993.

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 1994-95 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING A JUNE 30, 1992, GENERAL FUND AND STATE EQUALIZATION ACCOUNT BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ES-

TIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 1993-94 AND 1994-95; AND ESTABLISHING AN ESTIMATE OF THE NONGENERAL FUND REVENUES FOR THE STATE EQUALIZATION ACCOUNT.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail for all operating funds the proposed expenditures and estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution prohibits the Legislature from appropriating funds in excess of the anticipated revenue of the state; and

WHEREAS, section 5-18-107(5), MCA, requires the Revenue Oversight Committee to estimate the amount of revenue projected to be available for legislative appropriation and to introduce a house joint resolution setting forth the Committee's current revenue estimate for the biennium; and

WHEREAS, section 5-12-302(6), MCA, requires the Office of the Legislative Fiscal Analyst to assist the Revenue Oversight Committee in its revenue estimating duties; and

WHEREAS, due to the complexity of economic variables involved in revenue forecasting and the diversity of sources from which state revenues are obtained, it has become increasingly difficult to project revenues in order to prepare a balanced budget for the ensuing biennium; and

WHEREAS, the Office of the Legislative Fiscal Analyst has projected a current law general fund budget deficit of $215 million; and

WHEREAS, the revenue estimates contained in this resolution provide the basis for a comprehensive analysis of the state's financial condition; and

WHEREAS, it is in the best interests of the state that revenue forecasts be discussed and arrived at in public hearings at which all the people may attend and participate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state general fund revenue for fiscal years 1993, 1994, and 1995 is estimated to be $533,587,000, $474,821,000, and $488,540,000, respectively. The school foundation revenue for fiscal years 1993, 1994, and 1995 is estimated to be $404,603,000, $393,186,000, and $401,535,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accept for budget purposes the unreserved fund balance of $24,486,000 for the general fund and $2,552,000 for the state equalization account, prepared according to generally accepted accounting principles as published in the audited state financial statements as of June 30, 1992.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use the revenue estimates (and the underlying assumptions) contained in this resolution as the official revenue estimates for fiscal years 1993-94 and 1994-95.

BE IT FURTHER RESOLVED, that the Legislature, in considering House Bill No. 671, intends that the inflation factor applied to personal exemptions and the standard deductions be one-half of the change in the consumer price index.

BE IT FURTHER RESOLVED, that if House Bill No. 671 is passed and approved in substantially the same form as it passed the Senate on April 20, 1993, and if Senate Bill No. 235 is not passed and approved by the electorate, then it is the intention of the Legislature, in order to accurately reflect the financial condition of the state, that adjustments to the revenue estimates contained in this resolution take into account the inflation factor of one-half of the change in the consumer price index as intended in House Bill No. 671.

GENERAL FUND AND STATE EQUALIZATION ACCOUNT REVENUE

The projections for total general fund and state equalization account revenue during the 1994-95 biennium are based on an assumption of a continuation of Montana law as it existed on January 1, 1993.

The revenue estimates contained in the following tables are based on the assumptions stated previously in this resolution and those listed in the following tables.

ECONOMIC ASSUMPTIONS

Revenue Oversight Committee

Year	Assumption	CY/FY 1992	CY/FY 1993	CY/FY 1994	CY/FY 1995
Montana Population & Employment					
	Population July 1 (Millions)	0.811	0.817	0.823	0.829
	Population = 16 July 1 (Millions)	0.602	0.604	0.606	0.608
	Population 18-24 July 1 (Millions)	0.067	0.064	0.061	0.059
CY	Nonfarm Employment (Thousands)	317.100	322.400	327.500	332.300
Montana Income					
CY	Total Personal Income (Millions)	$13,023.773	$13,530.190	$14,134.475	$14,781.061
CY	Net Farm Income (Millions)	$492.529	$496.568	$500.488	$503.730
CY	Disposable Personal Income (Millions)	$11,419.184	$11,863.118	$12,392.840	$12,959.639
CY	Nonfarm Wage & Salary Income (Millions)	$6,452.000	$6,770.729	$7,130.932	$7,504.592
Montana Individual Income Tax					
CY	Nonfarm Wage & Salary (Percent Change)	6.68%	4.94%	5.32%	5.24%
CY	Interest & Dividend (Percent Change)	-2.55%	2.08%	6.05%	7.37%
CY	Net Business Income (Percent Change)	7.80%	7.60%	8.60%	8.70%
CY	Capital Gains/Losses Income (Percent Change)	1.68%	1.66%	1.65%	1.63%
CY	Rent/Royalty/Partnership Income (Percent Change)	7.80%	7.60%	8.60%	8.70%
CY	All Other Income (Percent Change)	4.70%	5.10%	5.48%	5.38%
FY	Individual Income Tax Audits (Millions)	$14.077	$16.397	$12.000	$12.000

Year	Assumption	CY/FY 1992	CY/FY 1993	CY/FY 1994	CY/FY 1995
Montana Corporate Income Tax					
CY	US Corporate Profits Before Taxes (Billions)	$375.800	$415.300	$431.500	$428.300
CY	MT Corporate Taxable Income (Millions)	$784.883	$875.712	$916.452	$912.254
FY	Corporate Income Tax Audits (Millions)	$15.317	$23.338	$7.800	$7.800
Inflation & Interest Rates					
CY	Consumer Price Index (Percent Change)	3.0%	3.0%	3.1%	3.6%
CY	Short-Term Interest Rate (Percent)	3.55%	2.88%	4.09%	4.89%
CY	Long-Term Interest Rate (Percent)	8.06%	7.29%	7.76%	8.06%
FY	TCA Blended Interest Rate (Percent)	6.17%	4.44%	4.40%	4.65%
FY	TRANS Interest Spread (Percent)	0.80%	0.00%	0.00%	0.00%
FY	Treasury Cash Average Balance (Millions)	$267.461	$314.992	$200.090	$194.390
FY	TRANS Issue Size (Millions)	$85.000	$135.600	$60.000	$60.000
FY	Permanent Trust Gains/Losses (Millions)	$3.626	$6.018	$1.843	$1.843
FY	Common School Trust Gains/Losses (Millions)	$2.339	$4.198	$1.791	$1.885
FY	Resource Indemnity Trust Gains (Millions)	$0.845	$0.845	$0.845	$0.845
FY	Parks Trust Gains/Losses (Millions)	$0.000	$0.102	$0.102	$0.102
FY	Arts Trust Gains/Losses (Millions)	$0.119	$0.119	$0.119	$0.119
Natural Resource Tax					
CY	Total Oil Production (Million bbls.)	18.867	18.278	17.756	17.241
CY	Severance Tax Oil Production (Million bbls.)	17.752	17.314	16.822	16.320
CY	Montana Oil Price (Per bbl.)	$17.283	$17.700	$18.199	$18.500
CY	Total Coal Production (Million tons)	36.248	34.993	34.447	34.347
CY	Montana Coal Price (CSP per ton)	7.415	7.554	7.610	7.780
FY	Coal Tax Credits (Millions)	$3.331	$0.627	$0.000	$0.000
CY	Total Natural Gas Production (MMCF)	47.360	47.940	48.756	49.388
CY	Montana Natural Gas Price ($/MCF)	$1.512	$1.663	$1.862	$2.079
CY	Total Liquid Gas Production (Million gallons)	9.460	9.576	9.739	9.865
CY	Montana Liquid Gas Price ($/Gallon)	$0.175	$0.193	$0.216	$0.241
CY	Copper Production (Million lbs.)	130.590	126.389	136.789	137.744
CY	Silver Production (Million ozs.)	5.828	5.793	5.708	5.748
CY	Gold Production (Million ozs.)	0.402	0.415	0.421	0.424
CY	Lead Production (Million lbs.)	9.620	9.620	9.620	9.687
CY	Zinc Production (Million lbs.)	23.140	23.140	23.140	23.301
CY	Molybdenum Production (Million lbs.)	9.600	7.860	10.280	10.352
CY	Palladium Production (Million ozs.)	0.208	0.206	0.206	0.207
CY	Platinum Production (Million ozs.)	0.062	0.061	0.061	0.061
CY	Nickel Production (Million lbs.)	0.313	0.310	0.310	0.312
CY	Rhodium Production (Million ozs.)	0.002	0.002	0.002	0.002
CY	Copper Price ($/lbs.)	$0.850	$0.850	$0.850	$0.850
CY	Silver Price ($/ozs.)	$3.800	$3.800	$3.800	$3.800
CY	Gold Price ($/ozs.)	$340.000	$340.000	$340.000	$340.000
CY	Lead Price ($/lbs.)	$0.250	$0.250	$0.250	$0.250

Year	Assumption	CY/FY 1992	CY/FY 1993	CY/FY 1994	CY/FY 1995
CY	Zinc Price ($/lbs.)	$0.500	$0.500	$0.500	$0.500
CY	Molybdenum Price ($/lbs.)	$2.380	$2.380	$2.380	$2.380
CY	Palladium Price ($/ozs.)	$100.000	$100.000	$100.000	$100.000
CY	Platinum Price ($/ozs.)	$350.000	$350.000	$350.000	$350.000
CY	Nickel Price ($/lbs.)	$4.270	$4.270	$4.270	$4.270
CY	Rhodium Price ($/ozs.)	$3,245.000	$3,245.000	$3,245.000	$3,245.000
FY	Federal Forest Receipts (Millions)	$36.038	$46.833	$40.610	$47.147
Property Value					
FY	Total Statewide Taxable Valuation (Millions)	$1,559.407	$1,612.780	$1,640.208	$1,666.001
FY	Net/Gross Proceeds Taxable Valuation (Millions)	$20.549	$19.248	$19.492	$19.310
FY	All Other Taxable Valuation (Millions)	$1,538.858	$1,593.532	$1,620.716	$1,646.692
FY	Statewide Vehicle Valuation (Millions)	$2,139.656	$2,224.442	$2,319.864	$2,426.280
Consumption Tax					
FY	Liquor Unit Sales (Millions)	4.952	4.987	5.022	5.058
FY	Wine Unit Sales (Millions)	0.053	0.041	0.031	0.024
FY	Liquor Cost Per Unit	$9.602	$10.006	$10.244	$10.622
FY	Wine Cost Per Unit	$5.798	$6.177	$6.307	$6.577
FY	Liquor Division Budget (Percent Change)	6.54%	4.78%	3.00%	3.00%
FY	Gallons of Beer (Millions)	0.741	0.771	0.790	0.811
FY	Wine Liters (Millions)	5.075	5.013	4.987	5.023
FY	Cigarette Packs (Millions)	69.182	68.462	67.676	66.827
FY	Tobacco Value (Millions)	$9.237	$9.752	$10.854	$12.117
FY	Gallons of Gasoline (Millions)	446.404	446.286	446.229	446.588
FY	Gallons of Diesel (Millions)	128.272	130.631	133.032	135.478
FY	Video Machine Net Income (Millions)	$160.343	$175.388	$193.279	$208.080
FY	Total Lottery Sales (Millions)	$27.922	$29.268	$30.899	$32.665
FY	Insurance Premiums Growth (Percent Change)	2.38%	7.50%	5.52%	5.52%
FY	Insurance Premiums Tax Credit (Millions)	$2.757	$3.774	$4.530	$3.024
FY	Police & Firemen Retirement (Millions)	$6.516	$7.073	$7.374	$7.691
CY	Telephone Taxable Income (Millions)	$260.803	$263.932	$269.739	$275.673
CY	Kilowatt-Hours Produced (Millions)	21,185.258	21,394.332	21,589.242	21,571.699
Other					
FY	Medicaid Reimbursements (Millions)	$10.366	$11.845	$11.548	$12.039

Current Law
General Fund Revenue Estimates
(In Millions)

Source of Revenue	Estimated FY 1993	Estimated FY 1994	Estimated FY 1995
Individual Income Tax	$224.579	$198.872	$205.373

Source of Revenue	Estimated FY 1993	Estimated FY 1994	Estimated FY 1995
Corporation License Tax	45.106	38.631	37.035
Coal Severance Tax	13.653	5.994	5.990
Oil Severance Tax	16.815	15.160	15.328
Interest on Investments	13.097	9.464	9.737
Long-Range Bond Excess	48.995	45.106	46.203
Coal Trust Interest Income	43.157	40.317	41.393
Insurance Premiums Tax	23.284	21.154	24.167
Public Institutions Reimbursement	15.893	14.291	14.839
Liquor Profits	4.190	4.340	4.620
Liquor Excise Tax	6.720	6.533	6.823
Inheritance Tax	10.484	10.405	10.679
Metal Mines Tax	4.172	3.526	3.692
Electrical Energy Tax	4.255	3.994	4.021
Driver's License Tax	1.722	1.800	1.805
Telephone License Tax	4.222	4.003	4.091
Beer License Tax	1.621	1.422	1.459
Natural Gas Severance Tax	1.233	1.249	1.264
Rail Car Tax	3.310	3.349	3.349
Wine Tax	0.897	0.798	0.804
Video Gaming Income Tax	10.611	9.664	10.404
Motor Vehicle Account	9.653	9.911	10.175
Vehicle Fees	3.114	3.248	3.397
Public Contractor's Tax	1.230	1.242	1.252
Other Revenue Sources	21.524	20.348	20.640
Grand Total	$533.587	$474.821	$488.540

Current Law
Foundation Program Revenue Estimates
(In Millions)

Source of Revenue	Estimated FY 1993	Estimated FY 1994	Estimated FY 1995
State Revenue			
Individual Income Tax	$101.919	$106.288	$109.762
Corporation License Tax	20.352	17.047	17.303
Coal Severance Tax	4.511	4.440	4.437
Interest & Income	41.842	37.756	39.288
US Oil & Gas Royalties	20.892	20.664	20.968
Education Trust Interest	0.138	0.139	0.143
State Equalization Account Interest	0.000	0.000	0.000
Coal Tax Trust Interest	7.616	7.115	7.305
Lottery	5.314	5.612	5.938
Statewide 40 Mills	72.612	74.006	75.379

Source of Revenue	Estimated FY 1993	Estimated FY 1994	Estimated FY 1995
Miscellaneous	0.000	0.000	0.000
County Levy Surplus	0.000	0.000	0.000
Total State	$275.196	$273.067	$280.523
Statewide Taxable Valuation	$1,612.780	$1,640.208	$1,666.001
County Revenue			
Statewide 55 Mills	$88.703	$90.211	$91.630
Elementary Transport	0.000	0.000	0.000
Cash Reappropriated	10.842	0.000	0.000
Forest Funds	2.997	2.599	3.017
Taylor Grazing	0.150	0.150	0.150
Miscellaneous	27.844	28.288	27.344
High School Tuition	(1.129)	(1.129)	(1.129)
Total County	$129.407	$120.119	$121.012
Total State and County	$404.603	$393.186	$401.535
Total General Fund and State Equalization Account	$938.190	$868.007	$890.075

Adopted April 24, 1993.

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING MONTANA STATE UNIVERSITY'S FAMILY NURSE PRACTITIONER PROGRAM DEVELOPMENT.

WHEREAS, there is a growing need for well-prepared primary health care providers in Montana; and

WHEREAS, years of effort to provide rural areas with physicians have not been successful; and

WHEREAS, properly prepared nurse practitioners can provide, independently or in collaboration with physicians, comprehensive health care services, such as wellness screens, health counseling, illness management, and early disease detection for all age groups; and

WHEREAS, national and state-level initiatives, such as the approval of third-party reimbursement and prescriptive privileges for nurse practitioners, have begun to remove the barriers to nurse practitioners providing health care services; and

WHEREAS, quality nursing care has dramatically reduced mortality and morbidity rates; and

WHEREAS, nurse practitioners can help reduce the costs of health care by emphasizing illness prevention and providing home health care; and

WHEREAS, the Montana State University College of Nursing has an accredited master's degree nursing program that is nationally recognized for excellence in rural health care, which can provide the basis for a family nurse practitioner program in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state encourage the citizens of Montana to endorse and support the efforts of the Montana State University College of Nursing to develop a family nurse practitioner program in Montana.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Board of Regents, the President of Montana State University, the Dean of the College of Nursing at Montana State University, and the publisher of each daily newspaper in the state.

Adopted March 25, 1993.

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA MAKING RECOMMENDATIONS TO THE MONTANA DISTRICTING AND APPORTIONMENT COMMISSION FOR THE REDRAWING OF THE PLAN FOR LEGISLATIVE DISTRICTS.

WHEREAS, a Montana Districting and Apportionment Commission was appointed in 1989; and

WHEREAS, Article V, section 14, of the Montana Constitution provides for legislative review of and recommendations on the plan for reapportionment of legislative districts prior to the plan becoming law; and

WHEREAS, the constitutionally stated time for legislative recommendations on the plan for the reapportionment of legislative districts is within 30 days of the plan being submitted to the Legislature; and

WHEREAS, the plan for reapportionment of legislative districts directly impacts every citizen of Montana; and

WHEREAS, substantial public comment and objections were received concerning the legislative reapportionment plan; and

WHEREAS, the Legislature recognizes the concerns of Native Americans and is committed to their expanded involvement in the political process; and

WHEREAS, the Legislature recognizes the Districting and Apportionment Commission's effort to enhance and maintain Native American majority districts by adopting five house districts and a senate district in which Native Americans constitute a majority of the district population; and

WHEREAS, the Legislature has reviewed the plan for the reapportionment of legislative districts and chooses to return its recommendations to the Montana Districting and Apportionment Commission in the form of a joint resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Districting and Apportionment Commission be requested to consider and adopt the recommendations of the Legislature. The Legislature recommends that the Commission consider the amendments:

(1) requested by Senator Rea in Gallatin County to move the eastern boundary of House District 33 in Gallatin County from Bench Road and Table Mountain Road to the east side of the Madison River using the Buffalo Jump Road north to Logan, skirting Logan on the southwest and following the Gallatin River to the headwaters of the Missouri River. This amendment moves 281 people from House District 32 to House District 33. The reason for this amendment is to maintain a community of interest and to use a boundary that is easier to identify. (Exhibit #1)

(2) requested by Senator Hockett and Representative Bachini in Hill County to move the western boundary of House District 92 in Hill County from the current district boundary to Highway 87 south to just north of Box Elder where House District 92 includes a small area west of Highway 87. This amendment moves 37 people from House District 92 to House District 90. The percentage of Native Americans in House District 92 improves slightly to 58.82% of total population and 52.37% of voting-age population. The reason for this amendment is to use a boundary that is easier to identify. (Exhibit #2)

(3) requested by Representative McCaffree in Rosebud County to move the western boundary of House District 3 from Highway 14 and the road north of Vananda to the Yellowstone River west of Forsyth and the county line. This amendment moves 259 people from House District 7 to House District 3. The reason for this amendment is to maintain the community of interest that these people share with Forsyth. (Exhibit #3)

(4) requested by Representative Sayles in Missoula County to move the northern boundary of House District 62 from South Avenue to North Avenue and Edwards Avenue. This amendment moves 300 people from House District 70 to House District 62. The reason for this amendment is to place these people within the district that is most similar to the current district represented by Representative Sayles. (Exhibit #4)

(5) requested by Senator Bartlett in Lewis and Clark County to move the southern boundary of House District 54 from La Grande Cannon Boulevard to a ridge line on Mount Helena. This amendment moves 59 people from House District 53 to House District 54. The reason for this amendment is to keep a neighborhood in the same district and move the district boundary to a better geographical boundary. (Exhibit #5)

(6) requested by Representative Elliott in Sanders County to move the boundary of House District 72 south of Plains from the Clark Fork River to follow Highway 200 past Paradise to where it intersects the Clark Fork River at which point the boundary follows the river south. This amendment moves 32 people from House District 71 to House District 72. The reason for this amendment is to keep people from the community of Plains in the same district. (Exhibit #6)

(7) requested by Senator Pipinich in Missoula County to move a portion of the southern boundary of House District 69 from I-90 to north of Highway 200 east of East Missoula and to have the boundary follow the Clark Fork River to the adopted boundary. This amendment moves 257 people from House District 69 to House District 58. The reason for this amendment is to keep Senator Pipinich in the district to which the Commission assigned him as a holdover Senator. If the amendment is not adopted he will have no right to run in the district to which he has been assigned. (Exhibit #7)

(8) requested by Representative Wagner in Flathead County to move the southwest boundary of House District 83 from Highway 2 (east/west) and Hilltop Road to Highway 2 (north/south) and Brunner Road. This amendment moves 183 people from House District 79 to House District 83. The reason for this amendment is to keep people together currently in the same district. (Exhibit #8)

(9) requested by Representative Molnar in Yellowstone County to move the northwest boundary of House District 22 from King Avenue and Canyon Creek to the Molt Road. This amendment also brings the southern boundary of House District 8 in Yellowstone County to Molt Road. Both of these amendments move the western boundary of House District 9 east toward Billings. This amendment moves 268 people from House District 9 and places 23 people in House District 8 and 245 people in House District 22. The reason for this amendment is to keep people with a community of interest together and to use a boundary that is easier to identify. (Exhibit #9)

(10) requested by Representative Galvin in Cascade County to move the northern boundary of House District 48 to I-15 west of Great Falls and place the fairgrounds in House District 48. This amendment moves 81 people from House District 47 to House District 48. The reason for this amendment is to place people with a community of interest in the same district. (Exhibit #10)

(11) requested by Representative Driscoll in Yellowstone County to move the eastern boundary of House District 17 from I-90 and Washington Avenue south of I-90 to follow King Avenue to Sugar Avenue and follow Garden Avenue east and north to Belknap Avenue to the Yellowstone River where it meets the adopted boundary. This amendment moves 141 people from House District 13 to House District 17. The reason for this amendment is to place people with a community of interest in the same district. (Exhibit #11)

All of the above amendments to the plan maintain a plus or minus 5% deviation which is one of the mandatory criteria adopted by the Commission.

Adopted February 9, 1993.

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING IMMEDIATE CONSTRUCTION OF NURSING HOME FACILITIES AT THE VETERANS' CENTER AT FORT HARRISON, MONTANA.

WHEREAS, the population of elderly citizens of the United States is growing steadily, and this growth is reflected in the increased number of aged veterans of military service; and

WHEREAS, the State of Montana sent more of its citizens per capita into military service during World War I, World War II, the Korean Conflict, and the Vietnam War than any other state; and

WHEREAS, the need for care for elderly citizens, including veterans, is an ever more urgent concern that is particularly manifested in the increasing need among veterans, because of their advancing age, for nursing home beds; and

WHEREAS, the 26 nursing home beds in the Veterans' Center at Miles City are the only nursing home beds available in Montana to answer the needs of the 108,000 veterans who live in Montana; and

WHEREAS, there are no other veterans' nursing home bed facilities within 500 miles of the Veterans' Center at Fort Harrison, Montana; and

WHEREAS, in July 1980, 361 additional veterans in 65 towns and cities in the Veterans' Medical and Regional Office Center's Catchment Area were identified by name, address, and diagnosis for which the veteran required nursing home care; and

WHEREAS, this deplorable lack of nursing home beds has been ignored by federal officials for the past 33 years, and the situation is acute, disgraceful, and costly; and

WHEREAS, responsible federal officials of the veterans' central office have ignored the need for additional nursing home beds and have delayed the commencement of construction at the Veterans' Center at Fort Harrison, Montana, of nursing home facilities, which construction was first scheduled to begin in 1979 and has since been postponed approximately six times, with the latest target date having been 1992 or some time in the future; and

WHEREAS, more than 50% of Montana's veterans reside within 135 miles of the Veterans' Center at Fort Harrison, Montana, making it the ideal central location for the nursing home, which common sense should dictate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana's Congressional Delegation be urged to press for immediate construction of adequate nursing home facilities adjacent to the Veterans' Center at Fort Harrison, Montana, in order that Montana's battle-scarred and disabled veterans will not be forced to sell their homes and exhaust their savings to pay out-of-pocket costs for care that they are entitled to receive from the government they served.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Secretary of the Department of Veterans' Affairs, each member of Montana's Congressional Delegation, the presiding officers of the Committees on Veterans' Affairs of the United States Senate and House of Representatives, and the Governor of the State of Montana.

Adopted March 29, 1993.

HOUSE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CANADIAN GOVERNMENT TO KEEP THE ENTRY STATION AT CARWAY OPEN 16 HOURS A DAY.

WHEREAS, although U.S. Highway 89 is an important route from the State of Montana into the Province of Alberta, the port of entry station at Carway is open only one-third of each day; and

WHEREAS, the nearest alternate 24-hour highway crossing of the boundary between the United States and the Province of Alberta is located 135 miles away at Sweetgrass; and

WHEREAS, U.S. Highway 89 is a principal avenue of commercial traffic, interruption of which for any period of time seriously impedes economic activity; and

WHEREAS, U.S. Highway 89 is a major thoroughfare for skiers, business people, tourists, and other traffic between Alberta and Montana, encouragement of which is a significant factor in stimulating the economies of both Montana and the Province of Alberta; and

WHEREAS, the Montana Department of Transportation is proposing to the Federal Highway Administration that U.S. Highway 89 north of Browning, Montana, be included as part of the National Highway System; and

WHEREAS, the restriction of hours at the port of entry station at Carway often cuts off the residents of Babb, Montana, from emergency medical services in Cardston, Alberta, during the winter months when the highway south to Browning, Montana, is frequently impassable because of bad weather; and

WHEREAS, because the port of entry station at Carway is open for only one-third of each day, students in Montana and students in Alberta cannot compete in extracurricular activities or sports unless they stay overnight in either Montana or Alberta; and

WHEREAS, the lack of staffing at the Canadian port of entry station at Carway contributes to serious law enforcement problems concerning illegal crossings; and

WHEREAS, any restriction of interchange between the United States and Canada hinders the enhancement of good neighborliness that has long been the distinguishing attribute of the relationship between the two countries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Canadian Immigration and Naturalization Service and the Canadian Customs Service be encouraged to operate the port of entry station at Carway 16 hours each day.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Governor of the State of Montana, the Premier of the Province of Alberta, the Director General of Employment and Immigration Canada, the Minister of Employment and Immigration Canada, the United States Commissioner of Immigration and Naturalization Service, the United States Commissioner of Customs Service, the United States Department of Transportation, and each member of Montana's Congressional Delegation.

Adopted March 22, 1993.

HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING AND URGING CONTINUED SUPPORT FOR THE NATIONAL ENVIRONMENTAL WASTE TECHNOLOGY TESTING EVALUATION CENTER IN BUTTE.

WHEREAS, the National Environmental Waste Technology Testing Evaluation Center (NEWTTEC) was established in Butte, Montana, to investigate, develop, and demonstrate cost-effective treatment technologies for mining, energy, defense-related, and other environmental wastes; and

WHEREAS, the United States Congress and federal agencies are providing increased financial and technical support for NEWTTEC in order to meet the critical national need to develop and test environmental waste remediation technology; and

WHEREAS, NEWTTEC provides increased economic benefits to Montana and environmental benefits to communities around the world that are adversely affected by waste and pollution; and

WHEREAS, NEWTTEC intends to provide facilities necessary for environmentally sound technology development in accordance with all applicable environmental requirements; and

WHEREAS, NEWTTEC promotes technology transfer to the private and public sectors and encourages the participation of industry, government agencies, the scientific community, and the public in activities at the Center; and

WHEREAS, NEWTTEC will examine and evaluate technologies to minimize the volume and toxicity of environmentally damaging waste currently being produced by industry; and

WHEREAS, there is a critical need for new environmental remediation technology; and

WHEREAS, NEWTTEC has a nucleus of scientific personnel drawn from government agencies, private industry, and institutions of higher education in Montana; and

WHEREAS, the further development of NEWTTEC can contribute significantly to environmental cleanup and economic development in the region, especially with regard to developing technology-based industries and associated opportunities; and

WHEREAS, the State of Montana wishes to be an important participant in the development of environmental technologies contributing to a cleaner United States and an enhanced global environment.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature acknowledge and support the creation and development of the National Environmental Waste Technology Testing and Evaluation Center in Butte, Montana, and recognize the importance of continued support for its further development.

(2) That the Legislature urge the United States Congress and appropriate federal agencies to continue full funding for the growth and development of NEWTTEC at the United States Department of Energy Component Development and Integration Facility in Butte, Montana.

(3) That copies of this resolution be sent by the Secretary of State to members of the Montana Congressional Delegation, to the Administrator of the United States Environmental Protection Agency, and to the Secretaries of the United States Departments of Energy, Defense, and the Interior.

Adopted March 22, 1993.

HOUSE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES GOVERNMENT TO GRANT COMMONWEALTH STATUS TO GUAM.

WHEREAS, Guam seeks to protect the inalienable rights of its citizens through greater self-determination as part of the American territories through the establishment of a just political relationship between the people of Guam and the United States government; and

WHEREAS, Guam seeks to protect the rights of its people in areas of vital economic interest, such as land use, immigration, taxation, and the applicability of U.S. laws that constrain Guam's economic development; and

WHEREAS, it is in the interest of the United States that America's states, commonwealths, and territories be able to determine the course of their own communities within the American system; and

WHEREAS, the right to self-government is cherished and championed as a founding principle of the United States of America; and

WHEREAS, commonwealth status for Guam would guarantee citizenship status and protect the rights of and give a voice to the people of Guam in order that Guam may determine its own destiny under the principles and protection of the U.S. Constitution.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana support Guam's quest to become a commonwealth of the United States of America and strongly encourage the U.S. Congress and the President of the United States to grant commonwealth status to the people of Guam.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Speaker of the U.S. House of Representatives, the President of the U.S. Senate, and the President of the United States.

Adopted March 4, 1993.

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING ESTABLISHMENT OF AN INTERIM COMMITTEE TO STUDY SOLUTIONS TO MISREPRESENTATIONS THAT OCCUR DURING POLITICAL CAMPAIGNS.

WHEREAS, an increasing number of campaigns for election of state or local public officials include untrue statements concerning the record of the incumbent or other untrue statements concerning the candidates made by the candidates themselves or political action committees; and

WHEREAS, the current deterrents to misrepresentations are primarily the candidate's signing of the code of fair campaign practices and the possible prosecution of a candidate for criminal libel; and

WHEREAS, these deterrents are without meaningful effect because the signing of the code of fair campaign practices is voluntary and its violation carries no criminal penalty and because there are few prosecutions for criminal libel; and

WHEREAS, the adoption of laws for the prior restraint of or penalty for factual misrepresentations in a political campaign must be done in a careful and thoughtful manner because of the implications for the first amendment rights of candidates.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council establish an appropriate interim committee to study various means of preventing or controlling misrepresentations of fact in the course of campaigns for the election of public officials.

BE IT FURTHER RESOLVED, that the study include an examination of the methods used by other states in controlling misrepresentations of fact that occur during political campaigns.

BE IT FURTHER RESOLVED, that the study and recommendations of the committee be mindful of the protection afforded by the first amendment to the free expression of opinions and of other aspects of first amendment protections applicable during the course of a political campaign.

BE IT FURTHER RESOLVED, that the Commissioner of Political Practices be made a nonvoting member of the committee.

BE IT FURTHER RESOLVED, that the committee report its findings, conclusions, and options for legislation to the 54th Legislature.

Adopted April 2, 1993.

HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE STATE FUND TO REDUCE THE WORKERS' COMPENSATION INSURANCE PREMIUMS FOR YEW BARK PEELERS AND TRANSPORTERS TO A LEVEL CONSISTENT WITH ACTIVITIES CARRYING SIMILAR RISKS TO WORKERS; AND REQUIRING A REPORT BY THE STATE FUND TO THE 54TH LEGISLATURE.

WHEREAS, taxol is used by Montana women and other women in the United States who are afflicted with ovarian cancer when other drugs are often not effective; and

WHEREAS, taxol is very scarce in the United States; and

WHEREAS, taxol is produced from the bark of yew brush, and the bark of yew brush can now be peeled in Montana to yield enough taxol to treat annually approximately 3,400 American women with ovarian cancer; and

WHEREAS, yew brush in Montana is a renewable resource; and

WHEREAS, a Montana harvester of yew bark employs approximately 250 people, and the bulk of the employees merely remove the bark from branches with putty knives; and

WHEREAS, the cost of peeling and transporting yew bark in Montana is double the cost in Washington, Oregon, and Idaho; and

WHEREAS, the State Fund is collecting $48 per $100 of paid wages in 1992, and the workers' compensation claims were only 12 cents per $100 of wages paid in 1992; and

WHEREAS, the cost for workers' compensation insurance is passed on to the cancer patients needing taxol, and the insurance cost represents 18% of the $695 cost per treatment or $124.06 of the cost of each treatment; and

WHEREAS, some women may be precluded from receiving taxol treatments because of the unnecessarily inflated price of the drug.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the peeling and transporting of yew bark is a desirable economic and humanitarian activity.

(2) That the State Fund is collecting unwarranted premiums by charging yew bark peelers and transporters the same rate as a logging and lumbering enterprise.

(3) That the unwarranted rates charged by the State Fund are a hardship on cancer victims and discourage the development of environmentally safe yew bark peeling in Montana.

(4) That the State Fund be directed to evaluate the premiums charged to yew bark peelers and transporters and to reduce the premiums to a level consistent with activities carrying a similar risk to workers and that the Legislature recognize that similar activities include hand carving and picking pine cones or mushrooms in the forest.

BE IT FURTHER RESOLVED, that the State Fund present a report on its activities consistent with this resolution to the 54th Legislature during its first month of assembly.

Adopted April 13, 1993.

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMENDING THE CLINTON ADMINISTRATION FOR ITS DECISION GRANTING A WAIVER OF FEDERAL MEDICAID REQUIREMENTS FOR THE OREGON HEALTH PLAN; AND URGING FLEXIBILITY FOR OTHER STATES SEEKING WAIVERS UNDER THE MEDICAID PROGRAM.

WHEREAS, on August 3, 1992, the Bush administration denied Oregon's request for a waiver of the federal Medicaid requirements needed for the Oregon Health Plan to take effect; and

WHEREAS, many decisions regarding health care reform are subject to federal approval, and the denial of Oregon's request for a waiver was discouraging to other states working on progressive reform to provide their citizens with needed health care; and

WHEREAS, the federal government has opened the possibility of waivers on federal requirements, but the initial refusal to approve a waiver for Oregon's plan showed a reluctance to allow the states to take the lead in health care reform; and

WHEREAS, Oregon submitted a revised plan on November 13, 1992, seeking reconsideration of its waiver request; and

WHEREAS, on March 19, 1993, the Clinton administration granted Oregon's waiver request, allowing the state to implement the Oregon Health Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the President of the United States and the United States Secretary of Health and Human Services be commended for their decision granting the request for waiver of federal requirements for the Oregon Health Plan to reform the Oregon health care system.

(2) That the Clinton administration grant other states seeking waivers the flexibility needed to enable these states to try new or different approaches to the delivery of health care services or to reform the health care system.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to each member of Montana's Congressional Delegation, the United States Secretary of Health and Human Services, and the President of the United States.

Adopted April 13, 1993.

HOUSE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND PERTINENT FEDERAL AGENCIES TO RECOGNIZE THE SIGNIFICANT HISTORIC, MINING, SMELTING, LABOR, AND CULTURAL RESOURCES OF THE ANACONDA-BUTTE REGION OF MONTANA THROUGH APPROPRIATE NATIONAL DESIGNATION.

WHEREAS, Anaconda-Deer Lodge and Butte-Silver Bow are the sites of more than 100 years of living history of the early development of natural resources and the industrialization of America; and

WHEREAS, the cities of Anaconda and Butte have been recognized for their rich mining, smelting, social, labor, and ethnic history at the state and national levels; and

WHEREAS, Anaconda-Deer Lodge and Butte-Silver Bow make a significant contribution to understanding and interpreting the history of the great State of Montana; and

WHEREAS, the natural and cultural resources of the region have been inventoried, and an assessment has been made of the suitability of these resources for protection and interpretation; and

WHEREAS, Butte-Silver Bow has been designated a National Historic Landmark District by the United States Department of the Interior and is listed on the National Register of Historic Places, as are many sites in Anaconda-Deer Lodge; and

WHEREAS, consideration is currently being given to a more significant national designation of Anaconda-Deer Lodge and Butte-Silver Bow by the United States Department of the Interior under a variety of its programs; and

WHEREAS, many of these nationally significant mining and smelting sites are threatened by demolition, vandalism, natural deterioration, and proposed reclamation; and

WHEREAS, natural and cultural resources of Anaconda-Deer Lodge and Butte-Silver Bow can make a substantial contribution to economic development in the region, especially in regard to enhancing tourism opportunities; and

WHEREAS, there exists a critical need to develop a comprehensive and coordinated plan of action to protect and interpret the historic and cultural future of Anaconda-Deer Lodge and Butte-Silver Bow; and

WHEREAS, the successful implementation of a comprehensive and coordinated plan of action to protect and interpret the historic and cultural resources of Anaconda-Deer Lodge and Butte-Silver Bow will rely on a collaborative effort among a number of partners, including the federal government.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the State of Montana support the efforts of Anaconda-Deer Lodge and Butte-Silver Bow to secure the necessary federal designation by the United States Congress to ensure their participation in those applicable federal programs, including but not limited to:

(a) the National Labor Landmarks program; and

(b) the National Heritage Partnerships program.

(2) That the State of Montana encourage the United States Congress to authorize an alternative study to be conducted by the National Park Service. The purpose of the alternative study is to determine the suitability, significance, and feasibility of National Park Service involvement in the Anaconda-Butte cultural heritage program.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of the Montana Congressional Delegation, to the Secretary of Interior, to the director of the National Park Service, and to the presiding officer of the Senate Committee on Interior and Insular Affairs.

Adopted March 22, 1993.

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT AN APPROPRIATE INTERIM OR STATUTORY COMMITTEE STUDY THE BENEFIT STRUCTURE AND POTENTIAL REVISIONS IN RETIREMENT BENEFIT OPTIONS FOR PUBLIC SAFETY AND SECURITY PERSONNEL.

WHEREAS, it is the Legislature's duty to provide Montana's public employees with financial security in retirement; and

WHEREAS, Montana has four separate retirement systems for certain public safety and security professions in recognition of the fact that certain professions have unique demands within the workplace and require special consideration in providing for retirement; and

WHEREAS, there are public safety and security occupations under the Public Employees' Retirement System that have professional demands that differ from the demands placed on general public employees; and

WHEREAS, a study of the retirement systems covering employees' public safety and security occupations will assist the Legislature in determining appropriate options for ensuring that retirement policy and benefits for public safety and security personnel are equitable and consistent.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council assign an appropriate interim or statutory committee to:

(1) identify the public safety and security occupations, such as the security positions at the Montana State Prison, that should be included in a review and considered for possible revisions in retirement benefit options;

(2) determine the appropriate benefit structure, service requirements, benefit formula, funding sources, and other relevant elements that are required to provide potential benefit options;

(3) solicit input from the Public Employees' Retirement Division, the general public, retirees and employees, and all public agencies that have public safety and security personnel;

(4) develop recommendations to address retirement issues affecting public safety and security personnel; and

(5) provide enabling legislation and any recommendations to the 54th Legislature.

BE IT FURTHER RESOLVED, that the committee may contract for the consulting services of a qualified actuary, if necessary.

Adopted April 2, 1993.

HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ALLOW CERTAIN STATE AGENCIES TO BE SELECTED FOR A PILOT PROJECT ON LUMP-SUM BUDGETING FOR THE BIENNIUM BEGINNING JULY 1, 1995.

WHEREAS, government exists to provide to people services that the private sector cannot or will not provide; and

WHEREAS, the Legislature is the policymaking body that decides on behalf of the people of Montana which services state government can and must provide, consistent with the provisions of the Montana Constitution; and

WHEREAS, the Legislature enables the provision of these services by determining the missions and goals for Executive Branch agencies and by providing the fiscal resources necessary to achieve the missions and goals through agency budgets; and

WHEREAS, the Executive Branch agencies are responsible and accountable for achieving their missions and goals for providing services to Montana people within the constraints of their budgets; and

WHEREAS, the budget-setting process cannot anticipate and detail the individual actions necessary to achieve agency missions and goals in providing services to people; and

WHEREAS, state agency managers are hired specifically to bring about the individual actions necessary to achieve agency missions and goals in providing services to people; and

WHEREAS, the Legislature's present practice of establishing Executive Branch budgets includes detailed line items that direct and restrict agency spending; and

WHEREAS, the detailed spending directions and restrictions inhibit achievement of agency missions and goals by preventing agency managers from identifying and implementing creative alternatives for reaching their missions and goals and restrict the ability to respond to changed circumstances; and

WHEREAS, line-item budgets become an end rather than a means because they focus the energy, talents, and attention of agency managers on complying with the details of their budgets rather than pursuing the agency missions and goals in providing services to people; and

WHEREAS, line-item budgets encourage agency managers to spend their budget allotments because they cannot redirect savings to other necessary activities and, more importantly, because there is the risk of having future budgets reduced by the amount of the unspent line item; and

WHEREAS, lump-sum budgets without line items allow agency managers the flexibility to create incentive systems that encourage achievement of agency missions and goals with greater efficiency and less spending; and

WHEREAS, the existing accounting and audit systems in state government can ensure that the increased flexibility would not be abused through any spending that is not directed at achieving agency missions and goals; and

WHEREAS, the Legislature can direct the Governor and Executive Branch agency directors to increase the reporting by agencies to the public and the Legislature regarding the missions and goals to be achieved and the manner in which agencies are allocating budgets to achieve the missions and goals; and

WHEREAS, changing from a line-item approach to a lump-sum budgeting process throughout state government would be impractical during the current biennium; and

WHEREAS, a demonstration of the advantages of lump-sum budgeting in a carefully selected and limited number of agencies for which the Legislature has clearly established missions and goals would be practical and beneficial.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the 53rd Legislature create a pilot project in lump-sum budgeting for state agencies for presentation to the 54th Legislature and allow no more than 10 Executive Branch agencies or subdivisions of Executive Branch agencies to apply for lump-sum budgeting for the biennium beginning July 1, 1995, based on the following provisions:

(a) that each agency that applies agrees to a voluntary 10% reduction in general fund dollars for the biennium beginning July 1, 1995;

(b) that each agency that applies proposes a performance contract to be made with the Senate Finance and Claims Committee and the House Appropriations Committee and for any standards of performance to which the agency agrees;

(c) that instead of the line-item review of spending levels, the appropriations process becomes a negotiation of the performance standards acceptable to the Senate Finance and Claims Committee, the House Appropriations Committee, and the agency; and

(d) that the proposed performance standards must include measurable objectives and the consequences for staff for achieving or failing to meet the objectives.

(2) That based on the applications submitted, the Senate Finance and Claims Committee and the House Appropriations Committee will qualify up to 10 Executive Branch agencies or subdivisions of agencies for the lump-sum budget process.

BE IT FURTHER RESOLVED, that each agency selected to participate in lump-sum budgeting report to the 55th Legislature the results of the pilot project, including the measurement of the performance contract completion.

Adopted April 15, 1993.

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION TO PROVIDE FOR INDIVIDUAL MEDICAL CARE SAVINGS ACCOUNTS.

WHEREAS, it is estimated that 145,000 Montanans and 37 million Americans are without health insurance, many while between jobs; many more people are underinsured because of the effects of rising health care costs and spending; and these rising health care costs are forcing employers to trim the level and availability of health care benefits to their employees; and

WHEREAS, overuse of health care services for relatively small claims is one of the most significant causes of health care cost and spending increases; and currently, more than two-thirds of all insurance claims for medical spending are less than $3,000 per family per year in this country; and

WHEREAS, in response to the runaway cost increases on health care spending in this country, the private sector has developed the concept of individual medical care savings accounts; this initiative is designed to ensure health insurance availability for Americans; and it is predicated on providing incentives to more efficiently use medical treatment, encourage competition, and reduce cost in the health care industry; and

WHEREAS, through employer and employee-funded individual medical care savings account arrangements and reduced costs of qualified higher deductible insurance policies, millions of Americans could insure themselves for both routine and major medical services; under the concept of individual medical care savings accounts, an employer or individuals could instead purchase lower cost, high deductible major medical policies; an employer and individuals could then set aside the saved premium differential in an individual medical care savings account; participating individuals would use the money in the account to pay their medical care expenses up to the deductible; however, any account money unspent by the participating individuals in a plan year would then belong to the individuals to save, spend on medical care, or use otherwise; and this would be a strong incentive for people not to abuse health care expenditures and to institute "cost-shopping" for medical care services; and

WHEREAS, by setting aside money to spend on health care, employees could change jobs and use the money they had so far saved to buy interim health insurance or to cover health care expenses, thereby eliminating the problem of uninsureds between jobs and helping reduce "job-lock"; and

WHEREAS, by making their own medical care decisions, individual policyholders would have a strong stake in reducing costs; this simple financial mechanism would expand health insurance options to others who presently have no insurance; and most importantly, this move to decrease health care cost burdens in this country would require no new federal bureaucracy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States be urged to enact legislation swiftly and in good faith to enable Montanans and all Americans to establish individual medical care savings accounts.

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and all members of the Montana Congressional Delegation.

Adopted April 15, 1993.

HOUSE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA STRONGLY URGING THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE UNITED STATES CONGRESS TO GIVE HIGHEST PRIORITY TO CLEANUP OF THE BERKELEY PIT AND TO PROTECTION OF ALLUVIAL AQUIFERS UNDERLYING THE SILVER BOW CREEK SUPERFUND SITE.

WHEREAS, the Berkeley Pit, located at the headwaters of the Columbia River, is included in the nation's largest Superfund complex, which includes the Silver Bow Creek Site/Butte Addition Site, and is the site of the world's largest mine flooding; and

WHEREAS, mining activity for the past 112 years has resulted in soil and water contamination and changes in the way ground water and surface water flow in and near Butte; and

WHEREAS, mining companies installed an elaborate pumping and bulkhead system during the active mining period to dewater the underground mines and the Berkeley Pit; and

WHEREAS, when active mining ended, the pumps were turned off on April 22, 1982, and the underground mines, and subsequently the Berkeley Pit, began to flood, with water rising 2,918 feet in the mines and to a depth of 774 feet in the pit; and

WHEREAS, according to the Montana Department of Health and Environmental Sciences, the Berkeley Pit currently contains approximately 20 billion gallons of water and fills at an average rate of 5 million to 7.5 million gallons a day; and

WHEREAS, mine flooding in the Butte area is of significant concern because the water is highly acidic and contains high concentrations of iron, manganese, arsenic, lead, cadmium, copper, zinc, and sulfates that far exceed state and federal standards, conditions that prevented water in the pit from freezing even when temperatures fell to minus 40 degrees Fahrenheit in 1989; and

WHEREAS, water in the West Camp of the Butte mining area did discharge into the Silver Bow Creek alluvium and into basements in the central Butte area when the West Camp was sealed off with bulkheads in 1959; and

WHEREAS, according to the Montana Department of Health and Environmental Sciences, water in the Berkeley Pit rose 30.5 feet in 1989, 33.2 feet in 1990, 32.8 feet in 1991, and 25.2 feet in 1992 and the water in the pit is within 199 feet of contacting the alluvium on the east wall of the pit; and

WHEREAS, many citizens of Butte believe that the United States Environmental Protection Agency has ignored preliminary documentation indicating that the surrounding aquifers may be contaminated in the near future, but the agency instead has negotiated an administrative order on consent that sets water level targets well above previously established levels; and

WHEREAS, despite these alarming developments, residents of Butte and the Silver Bow Creek drainage have been frustrated by the lack of progress by the United States Environmental Protection Agency in developing a plan that will adequately treat the contaminated water and protect the environment and citizens of the area from the potential threat to the alluvial aquifer surrounding Butte; and

WHEREAS, the Montana Department of Health and Environmental Sciences is also involved in the cleanup of the Berkeley Pit and has in the past reported to the Environmental Quality Council on the progress of that cleanup.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Environmental Protection Agency and the United States Congress be strongly urged to give the Silver Bow Creek, Butte Area Superfund Site the highest priority for cleanup and action to prevent disastrous environmental damage and human health problems.

(2) That the United States Environmental Protection Agency and potentially responsible parties proceed with haste to develop and implement plans and design criteria for a facility to treat contaminated water before it reaches the alluvial aquifers surrounding the Berkeley Pit.

(3) That the Montana Department of Health and Environmental Sciences make periodic reports to the Environmental Quality Council on the progress of the cleanup of the Berkeley Pit and the protection of alluvial aquifers underlying the Silver Bow Creek Superfund Site.

(4) That copies of this resolution be sent by the Secretary of State to the President of the United States, the Administrator of the United States Environmental Protection Agency, the Director of the Montana Environmental Protection Agency Office, the Governor of the State of Montana, and the Montana Congressional Delegation.

Adopted March 22, 1993.

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE MONTANA SUPREME COURT TO ADMINISTER THE W.A. CLARK TRUST FOR THE PAUL CLARK HOME, INC., FOUNDATION IN BUTTE, MONTANA, WHICH IS NOW THE PAUL CLARK HOME/MCDONALD FAMILY PLACE IN BUTTE, MONTANA.

WHEREAS, the last will and testament of Senator William Andrews Clark, dated May 29, 1922, which was probated in the District Court of Judge J.J. Lynch in the City of Butte, County of Silver Bow, State of Montana, directs in part the following:

"WHEREAS, upon the death of the survivor of the persons named at the beginning of this 5th clause, said trust to the Commercial Trust Company of New Jersey, shall cease, and determine, and the principal, and any unexpected income shall be paid to the state of Montana, primarily for the purpose of supporting and continuing said Paul Clark Home as a home for homeless and orphan children, and for any and all of the other purposes above mentioned. I desire that the administration of said fund, after payment to the state of Montana, shall be in the hands of the Justice of the Supreme Court of Montana."; and

WHEREAS, the present trustees of the Paul Clark Home, Inc., Foundation in Butte, Montana, are aware that the remaining survivor of this will is very near demise because of advanced age; and

WHEREAS, death of the remaining survivor will trigger enactment of the trust provision referred to in the will; and

WHEREAS, the Paul Clark Home/McDonald Family Place provides care and lodging for patients and the families of patients who are receiving medical care in southwestern Montana's medical centers, which is a use similar to that provided for in the will; and

WHEREAS, upon the death of the last survivor of the will, the principal investment in the present trust maintained by Commercial Trust of New Jersey should be reinvested in Montana and governed by the trustees of the Paul Clark Home, Inc., Foundation; and

WHEREAS, the Paul Clark Home, Inc., Foundation Board of Directors and trustees will continue to lease the real property and home and continue to provide investment proceeds of the original trust to support the present Paul Clark Home/McDonald Family Place in Butte, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the trustees of the Paul Clark Home/McDonald Family Place and the 53rd Montana Legislature urge the Montana Supreme Court to, at the time the court begins to administer the trust under the will as provided in the will, administer the trust for the benefit of the Paul Clark Home/McDonald Family Place and to further the present and continued use of the property in Butte, Montana.

Adopted March 26, 1993.

HOUSE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE NATIONAL PARK SERVICE OF THE UNITED STATES DEPARTMENT OF THE INTERIOR AND GLACIER PARK INCORPORATED TO SUPPORT GLACIER COUNTY'S LOCAL ECONOMY.

WHEREAS, Glacier National Park is one of the nation's most cherished parks whose priceless beauty should be preserved for the benefit of present and future generations; and

WHEREAS, Glacier National Park is located in Glacier County, Montana; and

WHEREAS, Glacier County covers much of the Blackfeet Reservation for Americans native to the Glacier Park area; and

WHEREAS, Glacier County ranks 95th among the 100 poorest counties in the nation, with more than one-half of the Indian population living below the poverty level; and

WHEREAS, Glacier Park Incorporated, under contract with the National Park Service of the United States Department of the Interior, has exclusive operation of lodging and concessions for Glacier National Park.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the National Park Service of the United States Department of the Interior and Glacier Park Incorporated be urged to:

(1) hire local Montanans, especially Native Americans of the area, to work in Glacier Park;

(2) allow Glacier Park Incorporated employees to purchase goods and services from local establishments; and

(3) contract with local Native American entrepreneurs and with local businesses.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the National Park Service of the United States Department of the Interior, to Glacier Park Incorporated in West Glacier, Montana, and to each member of Montana's Congressional Delegation.

Adopted March 22, 1993.

HOUSE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING LANDOWNERS, OUTFITTERS, THE SPORTING COMMUNITY, AND THE PUBLIC TO WORK TOGETHER TO ADDRESS COMMON GOALS THAT WILL MUTUALLY BENEFIT THE INTERESTS OF ALL PARTIES AS WELL AS THE INTERESTS OF MONTANA WILDLIFE RESOURCES; AND REQUESTING THAT THESE EFFORTS BE COORDINATED THROUGH THE OFFICE OF THE GOVERNOR.

WHEREAS, landowner/outfitter/sportsperson relations have become increasingly strained over the past several years, leading to increased polarization between the groups; and

WHEREAS, landowners feel victimized and helpless to control increasing game populations and feel that their contributions to wildlife habitat are overlooked or insufficiently acknowledged; and

WHEREAS, sportspersons resent diminishing access to private and public land for hunting opportunities and increasingly view commercialization as a threat to the long-term viability of wildlife management and our hunting heritage; and

WHEREAS, there is growing frustration among the sporting public concerning the outfitter industry and frustration within the industry regarding how the industry is perceived; and

WHEREAS, proposals presented to the 53rd Legislature have been largely one-sided, with little sensitivity to other groups with equal interest in wildlife resources; and

WHEREAS, this approach has intensified polarization, rather than being conducive to lasting solutions; and

WHEREAS, many of these matters involve complex, emotional, and philosophical issues that do not easily lend themselves to legislative solutions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That landowners, outfitters, the sporting community, and the public be strongly urged to work together to address these issues in a sustained, cooperative, and positive manner and to mitigate the tension arising from polarization by:

(1) recognizing the contributions of:

(a) private landowners, who provide wildlife habitat and hunting opportunities;

(b) the sporting community, which provides financial and political support for sound wildlife management; and

(c) the outfitting industry, which provides a valid service and is an important industry in Montana; and

(2) defining common goals, including but not limited to:

(a) achieving optimum hunter access;

(b) protecting wildlife habitat;

(c) minimizing impacts on and inconvenience to landowners;

(d) encouraging the continuance of a viable outfitting industry; and

(e) providing additional tangible benefits to landowners who allow hunter access.

BE IT FURTHER RESOLVED, that the Office of the Governor, through the Department of Fish, Wildlife, and Parks, be requested to coordinate a sustained, ongoing, cooperative effort to address these issues by establishing statewide, regional, and local groups to develop mutually satisfactory solutions that will preserve Montana's hunting and wildlife heritage. The Department of Fish, Wildlife, and Parks is encouraged to provide administrative assistance as necessary to enhance the cooperative effort.

BE IT FURTHER RESOLVED, that solutions developed by statewide, regional, and local groups be reported to future Legislatures and that legislation introduced by any of these groups reflect the mutual interests of landowners, outfitters, and the sporting community.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to any sporting, landowner, public access, agricultural, outfitter, or other group or organization that is interested or involved in the issues outlined in this resolution, including but not limited to the Montana Wildlife Federation, Montana Stockgrowers Association, Montana Wool Growers Association, Montana Farm Bureau, Montana Outfitters and Guides Association, Montana Audubon Council, Montana Trout Unlimited, Rocky Mountain Elk Foundation, Montanans for Multiple-Use, and Northern Plains Resource Council, for inclusion in their respective newsletters.

Adopted April 12, 1993.

HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE GOVERNOR AND THE ATTORNEY GENERAL TO STUDY THE DELIVERY OF LEGAL AND LAW ENFORCEMENT SERVICES TO THE STATE OF MONTANA AND TO MAKE RECOMMENDATIONS AND SUBMIT A PLAN FOR IMPLEMENTATION TO THE 54TH LEGISLATURE.

WHEREAS, the Attorney General is the chief legal officer of the State of Montana and employs attorneys in the Department of Justice, which also provides law enforcement services; and

WHEREAS, the Governor, through the Executive Branch agencies, employs attorneys for state agencies and boards; and

WHEREAS, other attorneys are employed or retained by the state for various other Executive Branch agencies, boards, and commissions; and

WHEREAS, there may be a need for better coordination between the Department of Justice and other Executive Branch agencies in the delivery of legal services.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Attorney General and the Governor be urged to study the delivery of legal and law enforcement services to the Executive Branch agencies, boards, and commissions of the State of Montana and to submit a report to the 54th Legislature with recommendations for improving the efficiency and cost-effectiveness of state legal and law enforcement services.

BE IT FURTHER RESOLVED, that the Attorney General and the Governor present to the 54th Legislature a plan for the implementation of any recommendations made as a result of the study.

Adopted April 15, 1993.

HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONGRATULATING THE NORTHERN MONTANA COLLEGE SKYLIGHTS WOMEN'S BASKETBALL TEAM ON WINNING THE NAIA WOMEN'S BASKETBALL CHAMPIONSHIP.

WHEREAS, participation in intercollegiate athletic competition is an important part of the college experience; and

WHEREAS, intercollegiate athletic competition promotes the values of discipline, perseverance, commitment, and teamwork; and

WHEREAS, 9 of the 12 members of the Northern Montana College Skylights women's basketball team are Montanans from the communities of Big Sandy, Big Timber, Conrad, Dutton, Fairview, Kalispell, Sidney, and Wibaux; and

WHEREAS, four Skylights, Kim Fike, Kari Fike, Charna Ophus, and Sheila Ausmus, are 1992-93 Academic All-American; and

WHEREAS, senior Kristy Kincaid received second team All-Frontier Conference, first team All-NAIA Tournament, and NAIA Most Valuable Player honors; sophomore Kristin Lawrence received first team All-Frontier Conference, All-District 12, and first team All-NAIA Tournament honors; senior Kari Fike received first team All-Frontier Conference and first team All-District 12 honors; and senior Charna Ophus received second team All-Frontier Conference honors; and

WHEREAS, this year marked the Skylights' fourth appearance at an NAIA National Tournament and the Skylights' first finish in the top 10; and

WHEREAS, the Northern Montana College Skylights were ranked first in the nation prior to the NAIA National Tournament in Monmouth, Oregon; and

WHEREAS, Northern Montana College Skylights coach Sherry Winn was named Frontier Conference Coach of the Year, District 12 Coach of the Year, and NAIA National Coach of the Year and was ably assisted by Lynn Fitzgeralde, Jerry Wier, and Julie Kieckbusch; and

WHEREAS, the Northern Montana College Skylights won their first National Championship by defeating 20 colleges from throughout the United States, a major accomplishment for a small school in a sparsely populated state; and

WHEREAS, the NAIA National Women's Basketball Championship brings recognition and honor to Montana and to Montana's student athletes.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That all Montanans join in recognizing and honoring the Northern Montana College Skylights for their NAIA National Women's Basketball Championship.

Adopted April 15, 1993.

HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE NEEDS OF MONTANA VETERANS; AND REQUIRING A REPORT OF FINDINGS AND RECOMMENDATIONS OF THE STUDY TO THE 54TH LEGISLATURE.

WHEREAS, Montana has the third highest per capita number of veterans in the United States; and

WHEREAS, 26%, or 26,291, of Montana's veterans are 65 years of age or older; and

WHEREAS, Montana currently provides a total of 90 beds for veterans who require nursing home care, which are insufficient to provide for the nursing care needs of Montana's veterans; and

WHEREAS, federal guidelines suggest that Montana needs between 255 and 408 state nursing home beds, and the guidelines provide that these beds can be built and operated with federal funding assistance from the federal Department of Veterans Affairs; and

WHEREAS, the state veterans' nursing home at Columbia Falls serves veterans in northwestern Montana, leaving southwestern and central Montana unserved, and the area of Deer Lodge and Silver Bow Counties would provide an ideal location in which to establish a state veterans' nursing home that is accessible to veterans in the southwestern and central regions of Montana; and

WHEREAS, the 1993 Legislature has considered substantial policy decisions regarding the care of veterans, and the changes must be studied to determine if they fulfill the needs of Montana veterans and if they reflect a new direction in the state's policy on veterans' care or if the traditional policy should be pursued; and

WHEREAS, consideration of shifting 2 cents of the tax on cigarettes revenue from capital construction to operational expenses reflects a change in state policy; and

WHEREAS, another change in state policy has been considered that would allow the use of insurance to pay for community-based, long-term nursing care or home health care, rather than providing for additional long-term nursing care in state-owned facilities; and

WHEREAS, there may be a significant effect on the health care of veterans because of changes in national health care policy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council assign an interim committee to study the needs of Montana veterans and that the study include:

(1) the feasibility of providing long-term nursing home care and home health care as it relates to Montana veterans and the role of the federal Department of Veterans Affairs;

(2) a review of the extent of access, geographically and otherwise, of veterans to health and nursing home care within Montana;

(3) the continuum of veterans' services available throughout the state, identification of gaps in the services, and determination of the role and potential for federally funded veterans' programs in Montana; and

(4) a review of state policy regarding veterans' affairs and the development of recommendations to further clarify state policy guidelines relative to veterans' affairs.

BE IT FURTHER RESOLVED, that the interim committee may request staff assistance and information from the Department of Military Affairs, the Veterans' Affairs Division, the Department of Corrections and Human Services, and other legislative or executive agencies that may have information relevant to veterans' affairs.

BE IT FURTHER RESOLVED, that the interim committee be appointed in the manner provided for in section 5-5-211, MCA.

BE IT FURTHER RESOLVED, that the interim committee report its findings, conclusions, and recommendations to the 54th Legislature.

Adopted April 21, 1993.

HOUSE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONDEMNING ALL ACTS OF VIOLENCE AND TERRORISM IN MONTANA AND URGING FEDERAL LAW ENFORCEMENT AGENCIES TO ASSIST IN INVESTIGATING THE FIREBOMBING OF THE BLUE MOUNTAIN MEDICAL CLINIC IN MISSOULA.

WHEREAS, on March 29, 1993, arsonists firebombed and destroyed the Blue Mountain Medical Clinic in Missoula, Montana; and

WHEREAS, Governor Marc Racicot and Attorney General Joe Mazurek have publicly condemned the violent attack on the Blue Mountain Medical Clinic; and

WHEREAS, in the past year, acts of terrorism directed at Montana medical facilities and staffs that provide abortions have increased; and

WHEREAS, these increases in terrorist activities have threatened the lives and liberties of Montana citizens and their families; and

WHEREAS, these acts of violence and terrorism directly violate sections 3, 4, and 10 of the Declaration of Rights provisions of Article II of the Montana Constitution; and

WHEREAS, the acts of terrorism committed in Montana are markedly similar to acts of terrorism occurring in other parts of the United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the members of the 53rd Legislature encourage Montana's Attorney General and all state law enforcement agencies to use all available resources to pursue and bring to justice the perpetrators of terrorist violence in Montana.

(2) That Montana law enforcement agencies be encouraged to increase security to protect the property, staff, and clients at medical facilities providing abortions.

(3) That the United States Attorney General be requested to actively investigate the terrorist actions occurring at the Blue Mountain Medical Clinic and to direct that additional security be provided at Montana medical facilities providing abortions.

(4) That the United States Department of Justice, the Federal Bureau of Investigation, and other federal law enforcement agencies be strongly urged to assist Montana law enforcement agencies in investigating the Blue Mountain Medical Clinic arson case and any similar incidents of terrorist violence occurring in Montana.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to Attorney General Joe Mazurek, to United States Attorney General Janet Reno, to all federal, state, local, and tribal law enforcement agencies, and to the Montana Congressional Delegation.

Adopted April 21, 1993.

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING A STUDY OF THE GOVERNANCE OF THE MONTANA SCHOOL FOR THE DEAF AND BLIND; AND REQUIRING THAT THE RESULTS OF THE STUDY BE REPORTED DIRECTLY TO THE LEGISLATIVE FINANCE COMMITTEE, THE BOARD OF PUBLIC EDUCATION, THE OFFICE OF BUDGET AND PROGRAM PLANNING, AND THE OFFICE OF PUBLIC INSTRUCTION.

WHEREAS, the Montana School for the Deaf and Blind is a residential facility serving the needs of hearing impaired and visually impaired children; and

WHEREAS, the Montana School for the Deaf and Blind also serves as a consultative resource for parents of hearing impaired or visually impaired children who are not yet enrolled in an educational program and for the public schools of the state in which hearing impaired or visually impaired children are enrolled; and

WHEREAS, since 1943 the school has been under the general supervision, direction, and control of the Board of Public Education; and

WHEREAS, other states have successfully implemented governance models different from Montana's for similar institutions; and

WHEREAS, a determination has never been made that governance by the Board of Public Education is the best possible governance model for the Montana School for the Deaf and Blind.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That since the Office of Special Education and Rehabilitative Services of the U.S. Department of Education provides funding to regional resource centers to provide technical assistance to states regarding services for students with disabilities and since the centers are directed to be responsive to the identified technical assistance needs of the Montana Office of Public Instruction, the Office of Public Instruction be directed to seek the assistance of a federally funded regional resource center to conduct an independent study of the governance of the Montana School for the Deaf and Blind.

(2) That the study explore options for the governance of residential schools that provide services to hearing and visually impaired children, including but not limited to:

(a) governance by the Board of Public Education;

(b) governance by an independent entity;

(c) governance by the Office of Public Instruction;

(d) governance by a public school district; and

(e) governance by the department of corrections and human services.

(3) That the center conducting the study prepare a written report that identifies governance options and the advantages and disadvantages of each option and provide a recommended option with supportive rationale.

BE IT FURTHER RESOLVED, that the center conducting the study report directly to the Legislative Finance Committee, the Board of Public Education, the Office of Budget and Program Planning, and the Office of Public Instruction no later than August 1994.

Adopted April 24, 1993.

HOUSE JOINT RESOLUTION NO. 30

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE REVENUE OVERSIGHT COMMITTEE TO CONDUCT AN INTERIM STUDY OF TAX EXPENDITURES IN MONTANA; AND REQUESTING THE COMMITTEE TO REPORT ITS FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS TO THE GOVERNOR AND THE 54TH LEGISLATURE.

WHEREAS, the Legislature has the responsibility to review budgets with respect to spending programs and revenue sources; and

WHEREAS, Montana's Legislature and most state Legislatures systematically overlook a major component of government finance, which consists of reductions in state revenue that are attributable to exemptions, deductions, exclusions, credits, deferrals, and other preferential treatment in the tax code; and

WHEREAS, the component of revenue reductions represents indirect government spending programs that result in foregone revenue, commonly referred to as "tax expenditures"; and

WHEREAS, the purpose of tax expenditures is ostensibly to provide financial assistance to certain groups of taxpayers or to provide an economic incentive that encourages specific taxpayer behavior; and

WHEREAS, the 50th Legislature passed House Bill No. 387 (Chapter 500, Laws of 1987), which required the Department of Revenue to report on certain tax expenditures, including their purpose and effectiveness, and on similar information from other states; and

WHEREAS, many states regularly publish partial or comprehensive tax expenditure reports that examine the value and effectiveness of various tax expenditures.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Revenue Oversight Committee be assigned to perform a thorough and indepth study of all tax expenditures in Montana.

BE IT FURTHER RESOLVED, that the Committee, in its study:

(1) evaluate the purpose and effectiveness of all tax expenditures in the Tax Expenditure Report for the State of Montana: Fiscal Years 1994 and 1995, published by the Montana Department of Revenue;

(2) evaluate the tax expenditure report and make recommendations for changes in reporting procedures or on tax expenditures that may not be included in the report;

(3) compare Montana's tax expenditures to those of other states, particularly neighboring states; and

(4) develop options for consideration and recommendations, including legislation, if considered appropriate, for changes in existing statutes on tax expenditures.

BE IT FURTHER RESOLVED, that the Committee, in its deliberations, solicit the knowledge and advice of tax policy experts, local government officials and representatives, taxpayer groups, Department of Revenue staff, and any other entity considered by the Committee to have relevant information or insights.

BE IT FURTHER RESOLVED, that the Committee report to the Governor and to the 54th Legislature by November 1, 1994, the findings and conclusions of the study, options for further consideration, and recommendations of the Committee, including draft legislation, if appropriate.

Adopted April 24, 1993.

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMEMORATING THE LONG AND DISTINGUISHED SERVICE OF REPRESENTATIVE FRANCIS BARDANOUVE TO THE STATE OF MONTANA.

WHEREAS, the Dean of the Montana House of Representatives, Francis Bardanouve, has served continuously in the Montana House of Representatives since 1959; and

WHEREAS, as a member of the Legislative Council from 1965 through his chairmanship in 1972, Francis Bardanouve helped to shape the legislative institution; and

WHEREAS, as Chairman of the Appropriations Committee in 1965, 1973, 1974, 1975, 1977, 1979, 1983, 1985, 1989, and 1991, Francis Bardanouve touched the lives of all Montanans; and

WHEREAS, a sense of fairness, the willingness to listen, and the ability to make informed decisions have marked the career of Francis Bardanouve; and

WHEREAS, a genuine concern for the State of Montana and its people have been the guiding influence throughout his long and distinguished career; and

WHEREAS, Francis Bardanouve has always faced the legislative challenge with energy, wisdom, keen wit, and a dedication to the common good; and

WHEREAS, Francis Bardanouve has never sought personal distinction or reward, but has had his leadership role cast upon him; and

WHEREAS, Francis Bardanouve, a strong believer in equality, fairness, and integrity, is a true role model for the youth of Montana; and

WHEREAS, the strong hands of Francis Bardanouve have played a major role in shaping the destiny of Montana, a destiny in which all Montanans share equally.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Francis Bardanouve be acknowledged as one of the Treasure State's living treasures and that he be fittingly honored and revered for his long and dedicated service to the people and the State of Montana.

Adopted April 21, 1993.

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF 24-HOUR HEALTH CARE COVERAGE AND OTHER ALTERNA-

TIVES TO THE PRESENT WORKERS' COMPENSATION SYSTEM AND A REVIEW OF WORKERS' COMPENSATION LEGISLATION PASSED BY THE 53RD LEGISLATURE; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY TO THE 54TH LEGISLATURE.

WHEREAS, rising medical costs are contributing to the problems in the workers' compensation system and have outpaced increases in the general health care system; and

WHEREAS, the workers' compensation system could incorporate many of the cost-containment measures found in private health insurance plans in order to hold down costs and still provide the necessary medical coverage to workers; and

WHEREAS, there is a national movement toward health care reform that could include mandated employer-provided coverage and government participation in health care coverage and that could include other reforms that may have certain cost-containment advantages but that may also have duplicative coverage and overlapping benefits and administrative needs with the workers' compensation system; and

WHEREAS, other disability programs, including Social Security and programs providing assistance for long-term disability, combined with the passage of the Americans with Disabilities Act of 1990, bring forth other issues that may indicate the need for more comprehensive health care coverage; and

WHEREAS, 24-hour coverage is currently under study in many states as an alternative system for providing cash, medical benefits, or both, to injured workers; and

WHEREAS, 24-hour coverage could remove many medical issue disputes by providing no-fault medical coverage without affecting other workers' compensation benefits; and

WHEREAS, there are many forms of 24-hour coverage that could be explored, including combining workers' compensation and group health insurance claims, while maintaining separate policies, combining work-related and non-work-related coverage in the same policy, examining employer and worker participation in health care coverage and employer participation in disability coverage, and examining other forms to be explored.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council assign an appropriate interim committee to study the feasibility of a 24-hour health care coverage program in lieu of the medical portion of workers' compensation and any necessary corresponding changes in liability coverage and that the study include:

(1) the impact, advantages, and disadvantages to Montana businesses, Montana workers, the existing workers' compensation fund and insurers, and health care initiatives;

(2) possible coordination with any national and state health care reform or with existing health care programs, such as managed care networks;

(3) possible integration with other disability programs, such as Social Security;

(4) a review of the effects of the Americans with Disabilities Act of 1990 on the needs of the workers' compensation system;

(5) a review of the other states that have explored 24-hour health care coverage, such as Florida, Maine, California, Iowa, Colorado, Missouri, Georgia, and Oregon;

(6) an exploration of any pilot projects that could be implemented in Montana;

(7) a review of funding sources available for pilot projects and for other means of implementing workers' compensation alternatives;

(8) a review of the practical and legal problems, such as federal preemption of the Employee Retirement Income Security Act of 1974 (ERISA), and the exclusive remedy component;

(9) a review of options to provide incentives for private sector development of specific plans for 24-hour health care coverage;

(10) a summary of the short-term and long-term fiscal impacts of any proposals;

(11) a review of any studies on 24-hour health care coverage by other workers' compensation departments, the insurance industry, or other groups knowledgeable in health and disability insurance; and

(12) a review of the safety program created under Senate Bill No. 163, the fraud program created under Senate Bill No. 164, the cost containment program created under Senate Bill No. 347, and other programs created and improved by legislation adopted in the 53rd session.

BE IT FURTHER RESOLVED, that the committee report the findings of the study, conclusions, and options for legislative consideration to the 54th Legislature.

Adopted April 24, 1993.

SENATE RESOLUTIONS

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN SENATE PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA SENATE

CHAPTER 1
Administration

S10-10. Officers of the Senate. The officers of the Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established by law shall be until the succeeding Legislature is organized. Nothing in this rule shall be construed to mean the staff will be full-time employees during an interim.

S10-30. President pro tempore and other officers. (1) The Senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect a Senator President pro tempore.

(2) The Senate shall choose its other officers and shall be the judge of the elections, returns, and qualifications of the Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate shall be the President of the Senate who shall be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during such time with all the powers of the President.

(4) The President shall have general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall issue cards to the media to allow floor access, and reporters holding such passes shall be subject to placement on the floor by the

President. The President may administer this rule through the office of the Secretary of the Senate.

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the President's political party shall have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for two or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act when the President is absent, the President may do so, or the members of the President's political party shall have the right to immediately nominate and elect an acting President of the same party.

(c) An acting President of the Senate shall have the powers of the President and supersede the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, shall have the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension and/or retention of such employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Council.

S10-90. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) A standing committee chair shall designate a secretary to take and transcribe minutes of committee meetings. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) (a) The President and floor leaders may each appoint a private secretary.

(b) The whips may each appoint a private secretary whose duties will include assisting other staff on an assigned basis when authorized by their respective whip.

S10-100. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

S10-110. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform such duties as required by other rules and the Senate.

S10-120. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

S10-130. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal under the direction of the President.

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide such information as may be necessary for the preparation of the daily journal for printing by the Legislative Council. Upon approval by the President, the daily journal shall be reproduced and distributed.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Council to be prepared for publication and distribution in accordance with law.

CHAPTER 2
Decorum

S20-10. Questions of order. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. No Senator may speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Questions of privilege. Questions of privilege in order of precedence are those:

(1) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(2) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

S20-30. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer, and once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

S20-40. Senators called to order. When a Senator has been called to order, the Senator shall sit down until the presiding officer determines whether the Senator is in order or not. If the Senator is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the Secretary of the Senate.

S20-50. Communications to Senate. A communication to the Senate shall be addressed to the President and shall bear the name of the person submitting it. The President shall decide if the communication bears including in the calendar.

S20-60. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) accredited members of the news media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1).

S20-70. Distribution of materials on floor. No materials may be distributed on the Senators' desks in the chamber unless such material bears the signature of the bearer and a Senator and has been approved by the President.

CHAPTER 3
Committees

S30-10. Committee appointments. (1) The Senate shall elect a Committee on Committees consisting of five members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from each party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the floor leaders.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees. The standing committees of the Senate are as follows:

(1) Agriculture, Livestock, and Irrigation

(2) Bills and Journal

(3) Business and Industry

(4) Education and Cultural Resources

(5) Finance and Claims

(6) Fish and Game

(7) Highways and Transportation

(8) Judiciary

(9) Labor and Employment Relations

(10) Legislative Administration

(11) Local Government

(12) Natural Resources

(13) Public Health, Welfare, and Safety

(14) Rules

(15) State Administration

(16) Taxation

S30-30. Members of Select Committee on Long-Range Planning. Members of the Select Committee on Long-Range Planning may participate and vote as members of the Committee on Finance and Claims on issues considered by them as members of the select committee.

S30-40. Ex officio members. Each floor leader is an ex officio member of all committees in order to establish a quorum.

S30-50. Chair's duties. (1) The chair of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and authenticating committee reports and minutes by signing them.

(2) After adjournment of the session, the chair shall turn the original and two complete copies of the minutes over to the Secretary of the Senate who shall deliver them unbound to the Legislative Council librarian who will arrange to have them copied on microform. A microform copy will be provided to the Legislative Council and the State Law Library of Montana. The Legislative Fiscal Analyst will receive a microform copy of the minutes of the Committee on Finance and Claims. After microforming, the original minutes will be delivered to the Montana Historical Society.

S30-60. Committee reports to Senate. (1) Reports of standing committees shall be read on Order of Business No. 2, and no debate may be had on any report unless a minority report has been submitted.

(2) Committee reports may recommend approval, disapproval, or placement on consent calendar, with or without amendment. They may not be reported to the Senate without recommendation.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make such motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary.

(4) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken.

S30-70. Pairs. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators to vote in absentia while engaged in other legislative business. Authorization for such voting shall be reflected in the committee minutes.

S30-80. Committee hearings. (1) No bill or resolution shall be considered or become a law unless referred to a committee and returned therefrom.

(2) A bill may be rereferred at any time before its passage.

S30-90. Notice of committee hearings — exceptions. (1) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the 3rd legislative day;

(b) less than 7 legislative days before the transmittal deadline applicable to the subject of the hearing; or

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session.

(2) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(3) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

S30-100. Majority/minority reports. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the Senate.

S30-110. Consent calendar eligibility. (1) To be eligible for the consent calendar, legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended).

(2) A motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report.

(3) Appropriations or revenue bills may not be recommended for the consent calendar.

S30-120. Reconsideration in committee. Except for the Committee of the Whole, a committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-130. Committee requested legislation. (1) At least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the introduction of legislation.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee.

(3) When a committee has proposed an amendment, the chair is the principal sponsor.

CHAPTER 4
Legislation

S40-10. Types of legislation. The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Council and signed by a Senator. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for legislative employees; and

(e) accomplish other legislative duties required by law; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments;

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction. (1) Upon receiving a bill or resolution in duplicate from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation.

(2) Bills and resolutions may be preintroduced, assigned to committee, and printed prior to the legislative session. The Legislative Council shall be responsible for assuring the preintroduction intent from each Senator and presenting such legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Council with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Except for consent calendar bills, every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) No bill or resolution shall have more than one reading on the same day except the last legislative day.

(3) No amendment may be offered on third reading.

S40-50. Rules for questions requiring other than a majority vote. (1) When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill shall again be placed on third reading in the Senate to determine if the required number of votes has been cast.

S40-60. Scheduling for second reading. (1) All bills and resolutions, except those recommended for the consent calendar, which have been reported by a committee, accepted by the Senate and reproduced shall be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

(3) Legislation shall be arranged on the agenda in numerical order unless bills are grouped as companion bills or are placed in order otherwise by the Senate or Committee of the Whole.

S40-70. Consent calendar procedure. (1) Legislation reported by committee for placement on the consent calendar shall be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Legislation shall be immediately posted (as soon as it is received as a third reading version) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the President of the Senate will announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate will be allowed.

(3) Any three Senators may submit written objections to the Secretary of the Senate, and the legislation must then be removed from the consent calendar and added to the regular second reading agenda.

(4) Consent calendar legislation must be added to the end of the third reading agenda and clearly identified as "consent calendar" and voted on individually.

(5) Consent calendar legislation passed on third reading will then be transmitted to the House of Representatives.

CHAPTER 5
Floor Action

S50-10. Attendance. Unless excused, Senators shall be present at every sitting of the Senate and shall vote on questions put before the Senate.

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of the Whole);

(9) third reading of bills and consent calendar bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. No Senator may speak more than twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed the motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it shall be restated by the presiding officer. If requested by the presiding officer or a Senator, it shall be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedence of motions. (1) When a question is under debate only the following privileged and subsidiary motions shall be made:

(a) to adjourn;

(b) for a call of the Senate;

(c) to recess;

(d) question of privilege;

(e) to lay on the table;

(f) for the previous question;

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) of this section have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration.

(4) No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

S50-60. Nondebatable motions. The following motions are not debatable:

(1) to adjourn;

(2) for a call of the Senate;

(3) to recess;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the table;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undebatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

S50-80. Previous question. (1) Except as provided in subsection (2) of this rule, the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count by the presiding officer that a quorum is not present.

S50-90. Reconsideration. (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question.

(2) A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there shall be no further action until the succeeding legislative day.

S50-100. Dividing a question. A Senator may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

S50-110. Conference committee reports. When a conference committee report is filed with the Secretary of the Senate, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

S50-120. Second reading. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in Committee of the Whole shall be read by a summary of its title. Proposed amendments shall be considered; then the bill shall be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation shall remain on second reading.

S50-130. Committee of the Whole amendments. (1) All Committee of the Whole amendments shall be prepared, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, shall be printed in the journal, along with the name of the sponsor and the vote on each.

S50-140. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(h) rise and report progress and ask leave to sit again.

S50-150. Committee of the Whole — generally. (1) The committee may not appoint subcommittees.

(2) The committee may not punish its members for misconduct, but may report disorder to the Senate.

S50-160. Voting on second reading. On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S50-170. Third reading procedure. (1) All legislation passing second reading shall be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding

officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

S50-180. Senate voting. (1) A roll call vote shall be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators shall be called alphabetically, unless an electronic voting system is used. A Senator may not vote or change a vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

S50-190. Pairs. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it shall bind the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-200. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of such Senators present shall direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator shall not be paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of the Senate, all business shall be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

CHAPTER 6
Rules

S60-10. Senate rules. (1) A motion to amend or adopt a rule of the Senate shall be referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate in all cases not covered by these rules.

S60-30. Quorum. A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in such manner and under such penalties as the Senate may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

CHAPTER 7
Nominations from the Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any such office, the Governor shall appoint some fit person to discharge the duties thereof until the next meeting of the Senate, when the Governor shall nominate a person to fill such office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor are:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messages from the Governor; and

(d) referred to committee.

(2) The above procedure constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

S70-30. Committee process. (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request for a simple resolution to include the nominees specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has been prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been made.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator must request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report shall include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator, the committee chair shall submit a bill draft request for a simple resolution to include only the nominee so separated. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, no additional hearing need be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) Thereafter, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A
List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum (five Senators);

(2) a motion to lift a call of the Senate (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds);

(4) a motion to override the Governor's veto (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature); and

(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators).

Adopted January 13, 1993.

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 5, 1993, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As Director of the Department of State Lands, in accordance with the provisions of sections 2-15-111 and 2-15-3201, MCA:

Mr. Arthur R. Clinch, of Columbia Falls, Montana, appointed to serve a term at the pleasure of the Governor.

(2) As Director of the Department of Health and Environmental Sciences in accordance with the provisions of sections 2-15-111 and 2-15-2101, MCA:

Mr. Robert J. Robinson, of Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(3) As Director of the Department of Corrections and Human Services in accordance with the provisions of sections 2-15-111 and 2-15-2301, MCA:

Mr. Nels Richard Day, of Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(4) As Director of the Department of Fish, Wildlife, and Parks in accordance with the provisions of sections 2-15-111 and 2-15-3401, MCA:

Mr. Patrick J. Graham, of Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(5) As Director of the Department of Transportation in accordance with the provisions of sections 2-15-111 and 2-15-2501, MCA:

Mr. Marvin W. Dye, of Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(6) As Director of the Department of Military Affairs in accordance with the provisions of sections 2-15-111 and 2-15-1201, MCA:

Mr. John E. Prendergast, of Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(7) As Director of the Department of Revenue in accordance with the provisions of sections 2-15-111 and 2-15-1301, MCA:

Mr. Michael J. Robinson, of Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(8) As Director of the Department of Labor and Industry in accordance with the provisions of sections 2-15-111 and 2-15-1701, MCA:

Ms. Laurie Ekanger, of Clancy, Montana, appointed to serve a term at the pleasure of the Governor.

(9) As Director of the Department of Agriculture in accordance with the provisions of sections 2-15-111 and 2-15-3001, MCA:

Mr. Leo A. Giacometto, of Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(10) As Director of the Department of Family Services in accordance with the provisions of sections 2-15-111 and 2-15-2401, MCA:

Mr. Henry Hudson, of Clancy, Montana, appointed to serve a term at the pleasure of the Governor.

(11) As Director of the Department of Administration in accordance with the provisions of sections 2-15-111 and 2-15-1001, MCA:

Ms. Lois Menzies, of Helena, Montana, appointed to serve a term at the pleasure of the Governor.

(12) As Director of the Department of Social and Rehabilitation Services in accordance with the provisions of sections 2-15-111 and 2-15-2201, MCA:

Mr. Peter Blouke, of Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted January 28, 1993.

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE 53RD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 7, 1993, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations, below designated, of appointments that have been submitted to the Senate by the Governor, to wit:

(1) As Director of the Department of Natural Resources and Conservation, in accordance with section 2-15-3301, MCA:

Mr. Mark Simonich, Woodbridge, Virginia, appointed to serve a term at the pleasure of the Governor.

(2) As members of the Pacific Northwest Electric Power and Conservation Planning Council, in accordance with section 90-4-402, MCA:

Mr. Stan Grace, Helena, Montana, appointed to serve a term at the pleasure of the Governor.

Mr. John N. Etchart, Fort Worth, Texas, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 9, 1993.

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 21, 1993, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

As Director of the Department of Commerce, in accordance with the provisions of sections 2-15-111 and 2-15-1801, MCA:

Mr. Jon D. Noel, of Helena, Montana, appointed to serve a term at the pleasure of the Governor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted February 16, 1993.

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE FIFTY-THIRD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 5, FEBRUARY 1, AND FEBRUARY 5, 1993, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, designated below, that have been submitted to the Senate by the Governor:

(1) As members of the Alternative Health Care Board, in accordance with section 2-15-1840, MCA:

Ms. Dolly Browder, Missoula, Montana, appointed for a term ending September 1, 1995.

Dr. Daniel M. Molloy, Billings, Montana, appointed for a term ending September 1, 1995.

Dr. Michael Bergkamp, Helena, Montana, appointed for a term ending September 1, 1995.

Dr. Tom Rasmussen, Helena, Montana, appointed for a term ending September 1, 1995.

Dr. Willow Moore, Bozeman, Montana, appointed for a term ending September 1, 1997.

Ms. Ollie Hamilton Guerreo, Billings, Montana, appointed for a term ending September 1, 1997.

(2) As members of the Montana Arts Council, in accordance with section 2-15-1513, MCA:

Ms. Beth Collier, Shelby, Montana, appointed for a term ending February 2, 1997.

Ms. Carol Brenden, Scobey, Montana, appointed for a term ending February 1, 1997.

Mr. John Dudis, Kalispell, Montana, appointed for a term ending February 1, 1997.

(3) As members of the Board of Athletics, in accordance with section 2-15-1882, MCA:

Mr. Andrew Vandolah, Conrad, Montana, appointed for a term ending April 25, 1995.

Mr. Gary Langley, Helena, Montana, appointed for a term ending April 25, 1995.

(4) As members of the State Banking Board, in accordance with section 2-15-1803, MCA:

Mr. Gary Rebal, Great Falls, Montana, appointed for a term ending July 1, 1995.

Mr. Jerry L. Wiedebush, Plentywood, Montana, appointed for a term ending July 1, 1994.

Mr. Tom Ryan, Hamilton, Montana, appointed for a term ending July 1, 1994.

(5) As members of the State Electrical Board, in accordance with section 2-15-1874, MCA:

Mr. Gene Kolstad, Billings, Montana, appointed for a term ending July 1, 1996.

Ms. Louise Glimm, Conrad, Montana, appointed for a term ending July 1, 1997.

(6) As members of the State Lottery Commission, in accordance with section 23-7-201, MCA:

Mr. Larry O'Toole, Plentywood, Montana, appointed for a term ending January 1, 1997.

Mr. Cliff Brophy, Columbus, Montana, appointed for a term ending January 1, 1997.

Ms. Becky Erickson, Glasgow, Montana, appointed for a term ending January 1, 1997.

(7) As members of the Board of Nursing, in accordance with section 2-15-1844, MCA:

Ms. Denise Hochberger, Chester, Montana, appointed for a term ending July 1, 1996.

Ms. Jean E. Ballantyne, Billings, Montana, appointed for a term ending July 1, 1996.

Ms. Nancy Heyer, Missoula, Montana, appointed for a term ending July 1, 1995.

(8) As members of the Board of Pardons, in accordance with section 2-15-2302, MCA:

Mr. David Hoffman, Sheridan, Montana, appointed for a term ending January 1, 1995.

Mr. John G. Thomas, Helena, Montana, appointed for a term ending January 2, 1997.

(9) As a member of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Mr. Don Klepper, Missoula, Montana, appointed for a term ending January 1, 1995.

(10) As members of the Board of Pharmacy, in accordance with section 2-15-1843, MCA:

Mr. Ed J. Harrington, Belgrade, Montana, appointed for a term ending July 1, 1996.

Ms. Judy Coldwell, Jordan, Montana, appointed for a term ending July 1, 1997.

(11) As a member of the Board of Physical Therapy Examiners, in accordance with section 2-15-1858, MCA:

Ms. Charlotte Fannon, Billings, Montana, appointed for a term ending July 1, 1994.

(12) As members of the Board of Plumbers, in accordance with section 2-15-1875, MCA:

Mr. Elmer Lazure, Helena, Montana, appointed for a term ending July 1, 1995.

Mr. Lloyd Linden, Helena, Montana, appointed for a term ending July 1, 1995.

Mr. Roy A. Wells, Helena, Montana, appointed for a term ending July 1, 1995.

(13) As members of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1891, MCA:

Mr. Bill Slaughter, Bozeman, Montana, appointed for a term ending August 1, 1994.

Ms. Gay Ann Masolo, Townsend, Montana, appointed for a term ending August 1, 1993.

(14) As a member of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1873, MCA:

Mr. David E. Bowman, Ennis, Montana, appointed for a term ending July 1, 1995.

(15) As members of the Board of Psychologists, in accordance with section 2-15-1851, MCA:

Dr. Evan Lewis, Jefferson City, Montana, appointed for a term ending September 1, 1996.

Pastor Jeff Olsgaard, Rudyard, Montana, appointed for a term ending September 1, 1997.

(16) As members of the Board of Public Accountants, in accordance with section 2-15-1866, MCA:

Ms. Elizabeth Hallowell, Helena, Montana, appointed for a term ending July 1, 1997.

Mr. Marvin Stephens, Lewistown, Montana, appointed for a term ending July 1, 1993.

(17) As a member of the Board of Public Education, in accordance with section 2-15-1507, MCA:

Mr. Wilber Anderson, Dillon, Montana, appointed for a term ending February 1, 1999.

(18) As a member of the Board of Radiologic Technologists, in accordance with section 2-15-1848, MCA:

Ms. Sandra Curtiss, Havre, Montana, appointed for a term ending July 1, 1994.

(19) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1868, MCA:

Mr. A. Farrell Rose, Helena, Montana, appointed for a term ending May 1, 1994.

Ms. Connie G. Clarke, Miles City, Montana, appointed for a term ending May 1, 1995.

Ms. Janet Davis, Billings, Montana, appointed for a term ending May 1, 1995.

Ms. Linda Cunningham, Fairfield, Montana, appointed for a term ending May 1, 1994.

Mr. Patrick Asay, Cardwell, Montana, appointed for a term ending May 1, 1993.

(20) As a member of the Board of Realty Regulation, in accordance with section 2-15-1867, MCA:

Mr. Steven Cummings, Kalispell, Montana, appointed for a term ending May 9, 1995.

(21) As a member of the Board of Regents of Higher Education, in accordance with section 2-15-1505, MCA:

Mr. Travis Belcher, Helena, Montana, appointed for a term ending June 1, 1993.

(22) As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Mr. Patrick McKelvey, Helena, Montana, appointed for a term ending March 1, 1999.

(23) As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Mr. George Hageman, Jordan, Montana, appointed for a term ending May 18, 1997.

Mr. Thaddeus Mayer, Missoula, Montana, appointed for a term ending May 18, 1996.

(24) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1852, MCA:

Dr. Kenneth Joe Bruchez, Hobson, Montana, appointed for a term ending July 31, 1996.

Dr. W. Dean Holmes, Harlowton, Montana, appointed for a term ending July 31, 1997.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 7, 1993.

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE FIFTY-THIRD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 5, 1993, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination of appointment, below designated, that has been submitted to the Senate by the Governor:

As Commissioner of Political Practices, in accordance with section 13-37-102, MCA:

Mr. Ed Argenbright, Helena, Montana, appointed for a term ending January 1, 1999.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 14, 1993.

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE FIFTY-THIRD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 5 AND FEBRUARY 5, 1993, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor:

(1) As a member of the Hard Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Mr. John F. Gardner, Butte, Montana, appointed for a term ending January 1, 1995.

(2) As a member of the Montana Health Facility Authority, in accordance with section 2-15-1815, MCA:

Ms. Gayle Marie Carpenter, Helena, Montana, appointed for a term ending January 1, 1995.

(3) As members of the Montana Historical Society Board of Trustees, in accordance with section 2-15-1512, MCA:

Ms. Jean Birch, Great Falls, Montana, for a term ending July 1, 1995.

Ms. Jeanne Eder, Dillon, Montana, for a term ending July 1, 1997.

Ms. Virginia Lucht, Bigfork, Montana, for a term ending July 1, 1995.

(4) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Mr. Troy McGee, Helena, Montana, for a term ending January 1, 1997.

Mr. Bill Price, Lewistown, Montana, for a term ending January 1, 1997.

Ms. Sharon Walker, Helena, Montana, for a term ending January 1, 1997.

Mr. James Cowan, Seeley Lake, Montana, for a term ending January 1, 1997.

Mr. Warren Vaughan, Billings, Montana, for a term ending January 1, 1997.

(5) As a member of the Board of Landscape Architects, in accordance with section 2-15-1872, MCA:

Mr. Ted Wirth, Billings, Montana, for a term ending July 1, 1996.

(6) As members of the Montana State Board of Medical Examiners, in accordance with section 2-15-1841, MCA:

Dr. James Bonnet, Kalispell, Montana, for a term ending September 1, 1994.

Ms. Esther Larson, Helena, Montana, for a term ending September 1, 1994.

(7) As members of the Board of Morticians, in accordance with section 2-15-1853, MCA:

Mr. Dale M. Stevenson, Miles City, Montana, for a term ending July 1, 1997.

Mr. John A. Anderson, Superior, Montana, for a term ending July 1, 1997.

(8) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1845, MCA:

Ms. Ferne Prather, Big Timber, Montana, for a term ending May 28, 1996.

Ms. Leona Petro, Bigfork, Montana, for a term ending May 28, 1997.

(9) As members of the Board of Sanitarians, in accordance with section 2-15-1861, MCA:

Ms. Joanne C. Chance, Helena, Montana, for a term ending July 1, 1994.

Ms. Melissa Tuemmler, Ulm, Montana, for a term ending July 1, 1995.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 14, 1993.

SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT OF HONORABLE JOHN WALTER LARSON AS DISTRICT JUDGE, FOURTH JUDICIAL DISTRICT, MISSOULA, MONTANA, MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

As District Judge, Fourth Judicial District, Missoula, Montana, to replace former Judge Jack Green, John Walter Larson.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary, to the Secretary of State and a copy, certified by the Secretary, to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 1993.

SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE 53RD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED JANUARY 5 AND MARCH 10, 1993, TO THE SENATE PURSUANT TO 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor:

(1) As a member of the Board of Barbers, in accordance with section 2-15-1856, MCA:

Ms. Amy S. Adler, Drummond, Montana, appointed for a term ending July 1, 1994.

(2) As a member of the Board of Cosmetologists, in accordance with section 2-15-1857, MCA:

Mr. Dick Meyers, Billings, Montana, appointed for a term ending July 1, 1995.

(3) As members of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Mr. Charles R. Decker, Libby, Montana, for a term ending January 1, 1997.

Mr. David W. Simpson, Hardin, Montana, for a term ending January 1, 1997.

Mr. Stanley F. Meyer, Great Falls, Montana, for a term ending January 1, 1997.

(4) As members of the Highway Commission, in accordance with section 2-15-2502, MCA:

Ms. Patricia Abelin, Bozeman, Montana, for a term ending January 1, 1997.

Mr. Thorm R. Forseth, Billings, Montana, for a term ending January 1, 1997.

Mr. Wally R. Bell, Helena, Montana, for a term ending January 1, 1997.

(5) As members of the Board of Milk Control, in accordance with section 2-15-1802, MCA:

Ms. Dixie Hertel, Moore, Montana, for a term ending January 1, 1997.

Mr. Jesse Russell Gleason, Fairfield, Montana, for a term ending January 1, 1997.

Mr. Milton Olson, Whitewater, Montana, for a term ending January 1, 1997.

(6) As members of the Board of Natural Resources and Conservation, in accordance with section 2-15-3302, MCA:

Mr. Barton Cooper, Boulder, Montana, for a term ending January 1, 1997.

Dr. John Brower, Butte, Montana, for a term ending January 1, 1997.

Ms. Mary Ann Sharon, Dillon, Montana, for a term ending January 1, 1997.

Ms. Mary L. Hinebauch, Rosebud, Montana, for a term ending January 1, 1997.

(7) As members of the Board of Pardons, in accordance with section 2-15-2302, MCA:

Ms. Julene P. Kennerly, Browning, Montana, for a term ending January 2, 1997.

Mr. Patrick T. Flemming, Butte, Montana, for a term ending January 2, 1997.

(8) As members of the Montana Board of Science and Technology Development, in accordance with section 2-15-1818, MCA:

Mr. Ken Thuerbach, Victor, Montana, for a term ending January 1, 1997.

Mr. Ray Tilman, Butte, Montana, for a term ending January 1, 1997.

Mr. Raymon F. Thompson, Kalispell, Montana, for a term ending January 1, 1997.

Mr. Tom Breum, Missoula, Montana, for a term ending January 1, 1997.

Mr. Will Brooke, Bozeman, Montana, for a term ending January 1, 1997.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 1993.

SENATE RESOLUTION NO. 10

A RESOLUTION OF THE SENATE OF THE FIFTY-THIRD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED FEBRUARY 5 AND MARCH 10, 1993, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Mr. Fred Booth, Highwood, Montana, for a term ending January 1, 1997.

Mr. Ronald S. Mercer, Helena, Montana, for a term ending January 1, 1997.

Mr. Byron Bayers, Twin Bridges, Montana, for a term ending January 1, 1997.

Mr. Joel Fenger, Chester, Montana, for a term ending January 1, 1997.

Mr. Douglas Freeman, Hardin, Montana, for a term ending January 1, 1997.

(2) As members of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Dr. Christopher Buzan, Missoula, Montana, for a term ending January 1, 1996.

Mr. Marvin S. Harris, Great Falls, Montana, for a term ending January 1, 1995.

(3) As members of the Coal Board, in accordance with section 2-15-1821, MCA:

Mr. Roger Knapp, Hysham, Montana, for a term ending January 1, 1997.

Mr. James W. Royan, Missoula, Montana, for a term ending January 1, 1997.

Mr. Gerald Feda, Glasgow, Montana, for a term ending January 1, 1997.

Mr. Alan Evans, Roundup, Montana, for a term ending January 1, 1997.

(4) As members of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Mr. Mark O'Keefe, Helena, Montana, for a term ending January 1, 1997.

Mr. Leo Giacometto, Helena, Montana, for a term ending January 1, 1997.

Mr. Lanny Christman, Dutton, Montana, for a term ending April 18, 1996.

(5) As members of the Hard-Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Ms. Carol Kienenberger, Malta, Montana, for a term ending January 1, 1997.

Mr. James McCauley, Boulder, Montana, for a term ending January 1, 1997.

Mr. Roger W. Kornder, Lincoln, Montana, for a term ending January 1, 1997.

(6) As members of the Board of Health and Environmental Sciences, in accordance with section 2-15-2104, MCA:

Dr. Lorette I. Meske, Helena, Montana, for a term ending January 1, 1997.

Dr. Raymond W. Gustafson, Conrad, Montana, for a term ending January 1, 1997.

Ms. Verna Green, Helena, Montana, for a term ending January 1, 1997.

Dr. P.L. Kathrein, Great Falls, Montana, for a term ending January 1, 1997.

(7) As a member of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Dr. Skip Score, Helena, Montana, for a term ending January 20, 1996.

(8) As members of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Mr. Daniel Johns, Kalispell, Montana, for a term ending January 1, 1997.

Mr. Joseph E. Thares, Helena, Montana, for a term ending January 2, 1997.

(9) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Mr. Jerry E. Leep, Amsterdam, Montana, for a term ending March 1, 1997.

Mr. Leonard Grove, Judith Gap, Montana, for a term ending March 1, 1997.

(10) As members of the Board of Science and Technology Development, in accordance with section 2-15-1818, MCA:

Mr. Rick Hill, Helena, Montana, for a term ending January 1, 1995.

Mr. Robert B. Noble III, Great Falls, Montana, for a term ending January 1, 1995.

(11) As members of the Board of Social and Rehabilitation Appeals, in accordance with section 2-15-2203, MCA:

Mr. Dick Heineman, Wibaux, Montana, for a term ending January 1, 1997.

Ms. Gloria Paladichuk, Sidney, Montana, for a term ending January 1, 1997.

(12) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1854, MCA:

Mr. Patrick Wolberd, Billings, Montana, for a term ending January 2, 1997.

Mr. Ervin Booth, Roundup, Montana, for a term ending January 2, 1997.

Mr. C. James Armstrong, Ft. Harrison, Montana, for a term ending January 2, 1997.

Ms. Mary Meis, Shelby, Montana, for a term ending January 2, 1997.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 1993.

SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT OF THE HONORABLE JAMES CRIDER NELSON AS JUSTICE OF THE MONTANA SUPREME COURT, MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

As Justice, Montana Supreme Court, to replace retiring Justice R.C. McDonough, James Crider Nelson.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary, to the Secretary of State and a copy, certified by the Secretary, to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 1993.

SENATE RESOLUTION NO. 12

A RESOLUTION OF THE SENATE OF THE 53RD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION ON APRIL 15, 1993, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor:

(1) As members of the Montana Health Facility Authority, in accordance with sections 2-15-124 and 2-15-1815, MCA:

Mr. Michael P. Varone, Helena, Montana, appointed for a term ending January 1, 1997.

Ms. Joyce Asay, Forsyth, Montana, appointed for a term ending January 1, 1997.

(2) As members of the Board of Architects, in accordance with section 2-15-1871, MCA:

Mr. Tom Geelan, Havre, Montana, appointed for a term ending July 1, 1995.

Mr. Keith Rupert, Billings, Montana, appointed for a term ending March 27, 1997.

(3) As members of the Commission for Human Rights, in accordance with sections 2-15-124 and 2-15-1706, MCA:

Ms. S. Jane Lopp, Kalispell, Montana, appointed for a term ending January 1, 1997.

Ms. Gloria "Patt" Pattison Etchart, Glasgow, Montana, appointed for a term ending January 1, 1997.

(4) As members of the Board of Oil and Gas Conservation, in accordance with sections 2-15-124 and 2-15-3303, MCA:

Mr. George Galuska, Billings, Montana, appointed for a term ending January 1, 1997.

Mr. David Ballard, Billings, Montana, appointed for a term ending January 1, 1997.

Ms. Judy Feland, Shelby, Montana, appointed for a term ending January 1, 1997.

Mr. Stanley Lund, Reserve, Montana, appointed for a term ending January 1, 1997.

(5) As members of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Mr. Donald O. Nordstrom, Missoula, Montana, appointed for a term ending March 29, 1998.

Ms. Lisa Hinebaugh, Chinook, Montana, appointed for a term ending March 29, 1997.

Mr. Jack Traxler, Missoula, Montana, appointed for a term ending March 29, 1997.

(6) As members of the Board of Personnel Appeals, in accordance with sections 2-15-124 and 2-15-1705, MCA:

Mr. Brad Talcott, Great Falls, Montana, appointed for a term ending January 1, 1997.

Mr. Thomas Schneider, Helena, Montana, appointed for a term ending January 1, 1997.

Mr. Steven R. Henry, Billings, Montana, appointed for a term ending January 1, 1997.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 1993.

SENATE RESOLUTION NO. 13

A RESOLUTION OF THE SENATE OF THE FIFTY-THIRD LEGISLATURE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS AND APPOINTMENTS TO THE BOARD OF HOUSING MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED FEBRUARY 5 AND MARCH 10, 1993, TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor as members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Mr. Michael E. McKee, Hamilton, Montana, for a term ending January 1, 1997.

Mr. Paul Bankhead, Heron, Montana, for a term ending January 1, 1997.

Mr. William H. Oser, Billings, Montana, for a term ending January 1, 1997.

Mr. Robert J. Savage, Sidney, Montana, for a term ending January 1, 1997.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 53rd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 24, 1993.

HOUSE RESOLUTIONS

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ADOPTING RULES TO GOVERN THE PROCEEDINGS OF THE HOUSE.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA HOUSE OF REPRESENTATIVES

CHAPTER 1
Administration

H10-10. House officers. (1) House officers include a Speaker, a Speaker pro tempore, majority and minority floor leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, and decorum.

(2) The Speaker may order the galleries or lobbies cleared in case of disturbance or disorderly conduct.

(3) The Speaker shall appoint and may remove the members of all standing and select committees not otherwise specified by law or rule.

(4) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(5) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

(6) The Speaker is the chief administrative officer of the House, with authority for supervising all House employees. The Speaker may seek the advice and counsel of the Legislative Administration Committee regarding employees.

H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Speaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

H10-40. Speaker pro tempore duties. The Speaker pro tempore shall act as the presiding officer in the absence of the Speaker and shall carry out other duties assigned by the Speaker.

H10-50. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions. It may delegate specific duties to a legislative agency.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the House, subject to the approval of the Speaker.

(4) The committee shall comprise the House membership of the Joint Legislative Administration Committee.

H10-60. Employees. (1) The Speaker shall appoint a Chief Clerk, Sergeant-at-Arms, and Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall recommend to the Legislative Administration Committee employment of necessary staff.

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority floor leaders may each appoint a private secretary.

H10-70. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is responsible to:

(1) have custody of all records and documents of the House;

(2) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and deliver them, unbound, to the Legislative Council librarian who will arrange to have them copied on microform. A microform copy will be provided to the Legislative Council and the State Law Library of Montana. The Legislative Fiscal Analyst will receive a microform copy of the minutes from the appropriation committee and subcommittees. After microforming, the original minutes will be delivered to the Montana Historical Society.

H10-80. Sergeant-at-Arms duties. The Sergeant-at-Arms, under the supervision of the Speaker, has the responsibility to:

(1) maintain order under the direction of the presiding officer;

(2) execute commands and serve all processes of the House; and

(3) receive, distribute, and have custody of House supplies and equipment.

H10-90. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-100. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-110. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Council such information as may be required for the publication of the daily journal. Upon approval by the Speaker, the daily journal shall be reproduced and distributed.

(4) Any representative may examine the daily journal and propose corrections. The speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Council shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-120. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in committee of the whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-130. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier.

CHAPTER 2
Decorum

H20-10. Questions of order and privilege. (1) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(2) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives.

H20-20. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-30. Admittance to the House floor. The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

H20-40. Dilatory motions or questions. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-50. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

H20-60. Lobbying by employees. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker or the Legislative Administration Committee may discipline or discharge any House employee violating this prohibition. The Speaker or the committee may withdraw the privileges of any House aide or intern violating this prohibition.

H20-70. Papers distributed on desks. A paper concerning proposed legislation may not be placed on representatives' desks unless it is signed and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution.

CHAPTER 3
Committees

H30-10. House standing committees. The following are the House standing committees: Agriculture, Livestock, and Irrigation; Appropriations; Business and Economic Development; Education and Cultural Resources; Fish and Game; Highways and Transportation; Human Services and Aging; Judiciary; Labor and Employment Relations; Legislative Administration; Local Government; Natural Resources; Rules; State Administration; and Taxation.

H30-20. Chair's duties. The chair of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and certifying committee reports and minutes.

H30-30. Officers as members. The Speaker, majority leader, and minority leader are ex officio, nonvoting members of all House committees. They are not required to be considered in the quorum, but they may count toward establishing a quorum.

H30-40. Committee action. (1) When legislation is referred to a committee, it may recommend approval or disapproval, with or without amendment.

(2) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar.

(3) The committee may not report a bill to the House without recommendation.

(4) If a bill is withdrawn from a committee and brought to the House floor without a committee recommendation, the bill must include amendments formally adopted by committee action as reflected in committee minutes for debate on second reading.

H30-50. Reconsideration in committee. A committee, including the Committee of the Whole, may at any time prior to submitting a report to the Chief Clerk reconsider its previous action on legislation.

H30-60. Legislation requested by a committee. At least two-thirds of all the representatives of a standing committee must have voted in favor of the question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

H30-70. Rules committee makeup. The Speaker will determine the total number of members and the party division, but each party will appoint its own members.

CHAPTER 4
Legislation

H40-10. Introduction deadlines. (1) Except as provided in subsection (2), if a representative accepts drafted legislation from the Legislative Council after the deadline for introduction, the representative may not introduce that legislation after 48 hours from the time the bill was accepted from the Legislative Council.

(2) No bill or resolution may be introduced any later than 5 p.m. 5 legislative days prior to the appropriate transmittal deadline.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the copies.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction — receipt. (1) During a session, proposed House legislation may be introduced in the House by submitting it in duplicate, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. In each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. Senate legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of any applicable time limit. Senate legislation or messages received from the Senate or elected officials are subject to all other rules.

H40-50. First reading. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by the Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of the legislation. Senate legislation received by the House may be referred to a committee prior to being read across the rostrum.

H40-60. One reading per day. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more than one reading.

H40-70. Referral. (1) The Speaker shall refer to a House committee all properly introduced House legislation and transmitted Senate legislation.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee.

H40-80. Rereferral. (1) Except as provided in subsection (2), legislation that is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) Legislation that is in the possession of the House and that has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved by not less than three-fifths of the members present and voting.

H40-100. Standing committee reports. (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be

debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar by a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may be placed on the consent calendar by agreement between the speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any three representatives submit written objections to the placement of legislation on the consent calendar by the action of a standing committee or if any one representative submits a written objection to the placement of legislation on the consent calendar by the speaker and minority leader, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading. (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise.

H40-150. Amendments in the Committee of the Whole. (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Council, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative.

(3) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

H40-160. Motions in the Committee of the Whole. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) reconsider;

(f) pass consideration;

(g) call for cloture;

(h) rise, rise and report, or rise and report progress and beg leave to sit again; and

(i) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(e) through (1)(h) are nondebatable but may be amended.

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may conduct no business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) Except for the representative who makes a motion, no representative may speak more than once on the motion and for no more than 5 minutes. The representative who makes the motion may have 5 minutes to close.

(2) After at least two proponents and two opponents have spoken on a question and 45 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the Speaker and the minority floor leader, a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

H40-180. Special provisions for debate on the general appropriations bill. (1) The Appropriations Committee chair, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chair shall fully present their portion of the bill. A subcommittee chair is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chair, the respective section of the bill is open for debate, questions, and amendments.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

(8) A motion for cloture is not in order during debate on the general appropriations bill.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation has been reported correctly engrossed, it may be placed on third reading on the following legislative day. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day.

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and resolutions passing second reading must be placed on third reading.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation not later than the following legislative day. When enrolled legislation is delivered on the final legislative day, the Speaker shall sign it that day.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation.

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

CHAPTER 5
Floor Actions

H50-10. Attendance. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by his party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may conduct no business without a quorum, except that representatives present may convene, compel the attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel the attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

H50-70. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 15 minutes on the same question, except that a representative may have 5 minutes to close.

H50-80. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to postpone consideration to a day certain;

(j) to suspend the rules; and

(k) all incidental motions, such as motions relating to voting or of a general procedural nature.

H50-90. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-40.

H50-100. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-110. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee;

(i) to propose amendments; and

(j) to postpone indefinitely.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) No more than one substitute motion is in order at any one time.

H50-120. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-130. Dividing a question. A representative may move to divide a question if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed.

H50-140. Previous question. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

H50-150. Questions requiring other than a majority vote. The following questions require the vote specified:

(1) a call of the House with a quorum (one-third of the members present and voting);

(2) a motion to lift a call of the House (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds of the members voting);

(4) a motion to record a vote (one representative);

(5) a motion to spread a vote on the journal (two representatives);

(6) a motion to override the Governor's veto (two-thirds of each house);

(7) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(8) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(9) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature);

(10) a motion to approve a bill to authorize creation of state debt (two-thirds of each house);

(11) an appeal of the ruling of the presiding officer (three representatives);

(12) a motion to speak more than once on a debatable motion (unanimous vote);

(13) a motion to overturn an adverse committee report (three-fifths of the members voting);

(14) a motion to rerefer a bill from one committee to another pursuant to Rule 40-80(1) (three-fifths of the members present and voting);

(15) a motion to withdraw a bill from a committee (three-fifths of the members present and voting);

(16) a motion to add legislation to the second or third reading agenda (three-fifths of the members present and voting);

(17) any motion to remove legislation from its normal progress through the House as provided under these rules and reassign it unless otherwise specifically provided by these rules (three-fifths of the members present and voting);

(18) a motion to change a vote (two-thirds of the members present and voting);

(19) a motion to call for cloture (two-thirds of the members present and voting); and

(20) a motion to approve leave with cause during a call of the house (two-thirds of the members present and voting).

H50-160. Reconsideration. (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced by a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not be renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to the same rules.

H50-170. Renewing procedural motions. The House may renew a procedural motion if further House business has intervened.

H50-180. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tabled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-190. Indefinite postponement. A majority of representatives may indefinitely postpone any matter properly before the House.

H50-200. Voting. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without objection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

H50-210. Changing a vote. (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. Two-thirds of the members present and voting shall consent to the change. The representative making the motion shall first specify the question and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(2) An error caused by a malfunction of the voting system may be corrected without a vote.

H50-220. Absentee votes. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

H50-230. Recess. The House may stand at ease or, by majority vote, may recess under any order of business. The recess may be ended at the call of the chair or at a time specified.

H50-240. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-250. Adjournment sine die. A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

CHAPTER 6
Rules

H60-10. House rules. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H60-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H60-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H60-40. Supplementary rules. Mason's Manual of Legislative Procedure (1989) governs House proceedings in all cases not covered by House rules.

H60-50. Interpreting rules. The Speaker shall interpret all questions on House rules, subject to appeal by any fifteen representatives to the House Rules Committee. The decision of the House Rules Committee may be appealed to the House by any representative.

H60-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Adopted January 16, 1993.

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING EXPENDITURE AND REVENUE TARGETS.

WHEREAS, the State of Montana is facing an unprecedented fiscal crisis; and

WHEREAS, the time in which the Legislature must determine the magnitude of the fiscal crisis and develop the methods for solving the crisis in order to adopt a balanced budget is very limited; and

WHEREAS, the House of Representatives is responsible for preliminary work on the appropriations for the next biennium; and

WHEREAS, the methods for solving the fiscal crisis can be more clearly addressed once expenditure targets and revenue targets are established; and

WHEREAS, the House of Representatives finds the adoption of the following expenditure and revenue targets necessary in order to perform its budgetary responsibilities in a timely manner.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the expenditure target for the general fund and school equalization aid for the ensuing biennium be $1,837,900,000.

That additional revenue necessary to fund the expenditure target for the ensuing biennium be $99,000,000.

BE IT FURTHER RESOLVED:

(1) That the Appropriations Committee be directed to submit to the House a budget for the general fund and school equalization aid account, including budget modifications and miscellaneous appropriations, that does not exceed the expenditure target;

(2) That the Taxation Committee be directed to submit a revenue package that will fund the expenditure target;

(3) That elimination or reduction of specific programs, and not across-the-board cuts, be used to achieve budget reductions;

(4) That state costs not be shifted to local governments or local property taxpayers;

(5) That one-time revenue not be used for any purpose other than creating an ending fund balance;

(6) That expenditures currently budgeted in the general fund not be funded with increased fee revenue in order to meet the expenditure target; and

(7) That temporary solutions to the state's chronic fiscal woes not be used.

Adopted January 15, 1993.

BALLOT ISSUES

BALLOT ISSUES

CONSTITUTIONAL AMENDMENT NO. 22

By Chapter 475, Laws of 1991, the Legislature proposed an amendment to The Constitution of the State of Montana to clarify procedures for election of supreme court justices and district court judges and for the filling of vacancies. Judges appointed to fill a vacancy would be confirmed by the senate and serve until the expiration of the term of the judge whose position is being filled. No appointee could serve past the term of his or her predecessor without standing for election. Incumbent judges unopposed for re-election would be placed on the ballot to allow voters to approve or reject them for another term.

Chapter 475 was approved by the following vote at the General Election held November 3, 1992:

For:	34,913
Against:	15,993

The title and text of Chapter 475 follow:

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 8, OF THE MONTANA CONSTITUTION TO GENERALLY REVISE THE LAW RELATING TO THE SELECTION OF SUPREME COURT JUSTICES AND DISTRICT COURT JUDGES; TO REQUIRE THAT ELECTION, CONFIRMATION, AND RETENTION OF JUSTICES OR JUDGES MUST BE AS PROVIDED BY LAW; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VII, section 8, of The Constitution of the State of Montana is amended to read:

"**Section 8. Selection.** (1) *Supreme court justices and district court judges shall be elected by the qualified electors as provided by law.*

(2) ~~The~~ *For any vacancy in the office of supreme court justice or district court judge, the* governor shall ~~nominate~~ *appoint* a replacement from nominees selected in the manner provided by law ~~for any vacancy in the office of supreme court justice or district court judge~~. If the governor fails to ~~nominate~~ *appoint* within thirty days after receipt of nominees, the chief justice or acting chief justice shall make the ~~nomination~~ *appointment from the same nominees within thirty days of the governor's failure to appoint. Appointments made under this subsection shall be subject to confirmation by the senate, as provided by law.* ~~Each nomination shall be confirmed by the senate, but a nomination made while the senate is not in session shall be effective as an appointment until the end of the next session. If the nomination is not confirmed, the office shall be vacant and another selection and nomination shall be made.~~

~~(2) If, at the first election after senate confirmation, and at the election before each succeeding term of office, any candidate other than the incumbent justice or district judge files for election to that office, the name of the incumbent shall be placed on the ballot. If there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow voters of the state or district to approve or reject him. If an incumbent is rejected, another selection and nomination shall be made.~~

~~(3) If an incumbent does not run, there shall be an election for the office.~~ *If the appointee is not confirmed, the office shall be vacant and a replacement shall be made under the procedures provided for in this section. The appointee shall serve until the election for the office as provided by law and until a successor is elected and qualified. The person elected or retained at the election shall serve until the expiration of the term for which his predecessor was elected. No appointee, whether confirmed or unconfirmed, shall serve past the term of his predecessor without standing for election.*

(3) If an incumbent files for election and there is no election contest for the office, the name of the incumbent shall nevertheless be placed on the general election ballot to allow the voters of the state or district to approve or reject him. If an incumbent is rejected, the vacancy in the office for which the election was held shall be filled as provided in subsection (2)."

Section 2. **Effective date.** This amendment is effective on approval by the electorate.

Section 3. **Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1992 by printing on the ballot the full title of this act and the following:

☐ FOR amending the constitution to mandate the election of justices and judges as provided by law.

☐ AGAINST amending the constitution to mandate the election of justices and judges as provided by law.

CONSTITUTIONAL INITIATIVE 64

By Constitutional Initiative No. 64, the people proposed an amendment to The Constitution of the State of Montana to prohibit certain public officials from seeking re-election if they have already held office for the following number of years: 8 years in any 16-year period for governor, lieutenant governor, secretary of state, state auditor, attorney general, superintendent of public instruction, state representative, or state senator; 6 years in any 12-year period for United States Representative; and 12 years in any 24-year period for United States Senator. An official still could be re-elected by write-in vote. The measure would apply only to terms of office that begin during or after January 1993.

Constitutional Initiative No. 64 was approved by the following vote at the General Election held November 3, 1992:

For:	264,174
Against:	130,695

The text of the Initiative follows:

Be it enacted by the People of the State of Montana:

Section 1. Article IV of the Constitution of the State of Montana is amended by adding a new section 8 that reads:

Section 8. Limitation on terms of office. (1) The secretary of state or other authorized official shall not certify a candidate's nomination or election to, or print or cause to be printed on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, lieutenant governor, secretary of state, state auditor, attorney general, or superintendent of public instruction;

(b) 8 or more years in any 16-year period as a state representative;

(c) 8 or more years in any 16-year period as a state senator;

(d) 6 or more years in any 12-year period as a member of the U.S. house of representatives; and

(e) 12 or more years in any 24-year period as a member of the U.S. senate.

(2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.

(3) Nothing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate.

Section 2. **Severability.** If a part of this amendment is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this amendment is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Applicability.** Section 1 applies to terms that begin during or after January 1993.

Section 4. **Effective date.** If approved by the electorate, this initiative is effective January 1, 1993.

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1-5-101	repealed	Ch. 192	SB 84
1-5-102	repealed	Ch. 192	SB 84
1-5-103	repealed	Ch. 192	SB 84
1-5-104	repealed	Ch. 192	SB 84
1-5-105	repealed	Ch. 192	SB 84
1-5-106	repealed	Ch. 192	SB 84
1-5-107	repealed	Ch. 192	SB 84
1-5-108	repealed	Ch. 192	SB 84
1-5-109	repealed	Ch. 192	SB 84
1-5-110	repealed	Ch. 192	SB 84
1-5-201	repealed	Ch. 192	SB 84
1-5-202	repealed	Ch. 192	SB 84
1-5-203	repealed	Ch. 192	SB 84
1-5-204	repealed	Ch. 192	SB 84
1-5-206	repealed	Ch. 192	SB 84
1-5-207	repealed	Ch. 192	SB 84
1-5-208	repealed	Ch. 192	SB 84
1-5-401	amended	Ch. 192	SB 84
1-5-402	amended	Ch. 192	SB 84
1-5-403	amended	Ch. 192	SB 84
1-5-404	amended	Ch. 192	SB 84
1-5-405	amended	Ch. 192	SB 84
1-5-408	amended	Ch. 192	SB 84
1-5-415	amended	Ch. 192	SB 84
1-5-417	amended	Ch. 192	SB 84
1-5-601	enacted	Ch. 192	SB 84
1-5-602	enacted	Ch. 192	SB 84
1-5-603	enacted	Ch. 192	SB 84
1-5-604	enacted	Ch. 192	SB 84
1-5-605	enacted	Ch. 192	SB 84
1-5-606	enacted	Ch. 192	SB 84
1-5-607	enacted	Ch. 192	SB 84
1-5-608	enacted	Ch. 192	SB 84
1-5-609	enacted	Ch. 192	SB 84
1-5-610	enacted	Ch. 192	SB 84
1-5-611	enacted	Ch. 192	SB 84
1-11-103	amended	Ch. 100	HB 24
1-11-204	amended	Ch. 349	SB 384
1-11-301	amended	Ch. 291	HB 646
1-11-304	amended	Ch. 100	HB 24
1-12-101	amended	Ch. 99	HB 22
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1-12-103	repealed	Ch. 99	HB 22
1-12-104	amended	Ch. 99	HB 22
2-1-212	amended	Ch. 10	SB 1
2-1-306	amended	Ch. 542	SB 368
2-2-201	amended	Ch. 322	HB 550
2-3-203	amended	Ch. 123	SB 250
2-4-313	amended	Ch. 411	HB 549
2-4-401	amended	Ch. 302	HB 21
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2-5-104	enacted	Ch. 400	HB 317
2-5-105	enacted	Ch. 400	HB 317
2-5-106	enacted	Ch. 400	HB 317
2-5-107	enacted	Ch. 400	HB 317
2-5-108	enacted	Ch. 400	HB 317
2-5-109	enacted	Ch. 400	HB 317
2-5-110	enacted	Ch. 400	HB 317
2-6-103	amended	Ch. 411	HB 549
2-6-110	amended	Ch. 640	HB 198
2-6-201	amended	Ch. 420	SB 288
2-6-302	amended	Ch. 420	SB 288
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2-6-403	enacted	Ch. 420	SB 288
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2-15-108	amended	Ch. 349	SB 384
2-15-112	amended	Ch. 601	SB 71
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2-15-127	enacted	Ch. 237	HB 634
2-15-128	enacted	Ch. 237	HB 634
2-15-225	enacted	Ch. 29	SB 34
2-15-231	amended	Ch. 336	HB 659
2-15-232	amended	Ch. 336	HB 659
2-15-1019	amended	Ch. 630	HB 13
2-15-1508	amended	Ch. 52	SB 36
2-15-1708	enacted	Ch. 295	SB 163
2-15-1802	amended	Ch. 52	SB 36
2-15-1803	amended	Ch. 52	SB 36
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2-15-1821	amended	Ch. 52	SB 36
2-15-1822	amended	Ch. 52	SB 36
2-15-1840	amended	Ch. 314	HB 158
2-15-1841	amended	Ch. 419	SB 89
2-15-1846	amended	Ch. 121	SB 209
2-15-1853	amended	Ch. 38	SB 45
2-15-1863	enacted	Ch. 345	HB 241
2-15-1867	amended	Ch. 52	SB 36
2-15-1882	amended	Ch. 11	HB 45
2-15-2011	repealed	Ch. 77	HB 137
2-15-2015	enacted	Ch. 296	SB 164
2-15-2021	amended	Ch. 349	SB 384
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2-15-2110	enacted	Ch. 502	HB 318
2-15-2502	amended	Ch. 87	SB 198

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2-15-3205	repealed	Ch. 10	SB 1
2-16-502	amended	Ch. 64	HB 224
2-17-101	amended	Ch. 7	HB 20
2-17-109	amended	Ch. 7	HB 20
2-17-302	amended	Ch. 2	HB 60
2-17-322	amended	Ch. 166	HB 520
2-17-323	amended	Ch. 166	HB 520
2-17-501	amended	Ch. 76	HB 99
2-17-502	amended	Ch. 76	HB 99
2-18-103	amended	Ch. 395	HB 201
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2-18-209	amended	Ch. 349	SB 384
2-18-301	amended	Ch. 349	SB 384
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2-18-303	amended	Ch. 640	HB 198
2-18-305	amended	Ch. 640	HB 198
2-18-312	amended	Ch. 640	HB 198
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2-18-403	amended	Ch. 188	HB 153
2-18-404	amended	Ch. 188	HB 153
2-18-405	amended	Ch. 188	HB 153
2-18-617	amended	Ch. 115	HB 289
2-18-622	amended	Ch. 640	HB 198
2-18-622(3)	enacted	Ch. 640	HB 198
2-18-702	amended	Ch. 13	SB 24
2-18-703	amended	Ch. 13	SB 24
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2-18-704	amended	Ch. 300	SB 218
2-18-811	amended	Ch. 349	SB 384
2-18-1103	amended	Ch. 349	SB 384
2-18-1201	enacted	Ch. 477	HB 522
2-18-1202	enacted	Ch. 477	HB 522
2-18-1203	enacted	Ch. 477	HB 522
2-18-1204	enacted	Ch. 477	HB 522
2-18-1205	enacted	Ch. 477	HB 522
2-18-1206	enacted	Ch. 477	HB 522
2-89-202	amended	Ch. 10	SB 1
2-89-207	repealed	Ch. 10	SB 1
2-89-301	amended	Ch. 10	SB 1
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3-1-1013	amended	Ch. 377	SB 425
3-1-1014	amended	Ch. 377	SB 425
3-1-1101	amended	Ch. 52	SB 36
3-2-704	amended	Ch. 10	SB 1
3-5-602	amended	Ch. 10	SB 1
3-5-901	amended	Ch. 330	HB 278
3-7-402	amended	Ch. 494	SB 119
3-10-303	amended	Ch. 223	HB 595

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3-12-106	amended	Ch. 10	SB 1
5-1-102	amended	Ch. 52	SB 36
5-4-207	repealed	Ch. 274	HB 107
5-6-106	amended	Ch. 72	SB 99
5-7-207	amended	Ch. 349	SB 384
5-11-112	amended	Ch. 302	HB 21
5-11-210	amended	Ch. 7	HB 20
	amended	Ch. 40	HB 47
	amended	Ch. 274	HB 107
	amended	Ch. 349	SB 384
5-12-303	amended	Ch. 20	SB 101
5-13-304	amended	Ch. 349	SB 384
5-13-310	amended	Ch. 14	SB 66
5-13-403	amended	Ch. 234	HB 373
5-17-101	repealed	Ch. 7	HB 20
5-17-102	amended	Ch. 7	HB 20
5-17-103	amended	Ch. 7	HB 20
	amended	Ch. 349	SB 384
5-17-104	repealed	Ch. 7	HB 20
5-17-202	amended	Ch. 10	SB 1
5-17-301	enacted	Ch. 75	HB 179
5-17-302	enacted and amended	Ch. 75	HB 179
5-17-303	enacted	Ch. 75	HB 179
5-18-107	amended	Ch. 40	HB 47
	amended	Ch. 302	HB 21
5-18-201	repealed	Ch. 40	HB 47
5-18-202	repealed	Ch. 40	HB 47
5-18-203	repealed	Ch. 40	HB 47
5-19-102	amended	Ch. 636	HB 693
5-21-101	enacted	Ch. 549	HB 65
5-21-102	enacted	Ch. 549	HB 65
5-21-103	enacted	Ch. 549	HB 65
5-21-104	enacted	Ch. 549	HB 65
5-21-105	enacted	Ch. 549	HB 65
7-1-4137	amended	Ch. 486	HB 367
7-2-4902	amended	Ch. 319	HB 481
7-3-103	amended	Ch. 319	HB 481
7-3-4305	amended	Ch. 319	HB 481
7-3-4318	repealed	Ch. 486	HB 367
7-3-4325	amended	Ch. 309	HB 368
7-3-4327	amended	Ch. 319	HB 481
7-4-2107	amended	Ch. 28	SB 8
7-4-2221	amended	Ch. 420	SB 288
7-4-2222	amended	Ch. 420	SB 288
7-4-2223	amended	Ch. 420	SB 288
7-4-2502	amended	Ch. 332	HB 474
7-4-2503	amended	Ch. 10	SB 1
7-4-2504	amended	Ch. 10	SB 1
7-4-2612	amended	Ch. 420	SB 288
7-4-2613	amended	Ch. 366	SB 189
	amended	Ch. 420	SB 288
7-4-2905	amended	Ch. 118	SB 137
7-4-4108	repealed	Ch. 486	HB 367
7-5-109	amended	Ch. 597	HB 301
7-5-2109	amended	Ch. 406	HB 478
7-5-2131	amended	Ch. 420	SB 288
7-5-2132	amended	Ch. 420	SB 288

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7-5-2144	amended	Ch. 216	HB 306
7-5-2201	repealed	Ch. 309	HB 368
7-5-2202	repealed	Ch. 309	HB 368
7-5-4104	amended	Ch. 406	HB 478
7-5-4109	amended	Ch. 322	HB 550
7-5-4124	amended	Ch. 420	SB 288
7-5-4203	amended	Ch. 309	HB 368
7-5-4207	amended	Ch. 597	HB 301
7-5-4302	amended	Ch. 475	HB 169
7-5-4306	amended	Ch. 475	HB 169
7-6-202	amended	Ch. 271	SB 139
7-6-204	amended	Ch. 130	SB 52
7-6-206	amended	Ch. 271	SB 139
7-6-2224	enacted	Ch. 204	HB 230
7-6-2348	amended	Ch. 169	HB 631
7-6-2352	amended	Ch. 330	HB 278
7-6-2512	amended	Ch. 561	HB 427
7-6-2513	enacted	Ch. 318	HB 421
7-6-2514	enacted	Ch. 318	HB 421
7-6-2523	amended	Ch. 561	HB 427
7-6-4119	enacted	Ch. 204	HB 230
7-6-4135	amended	Ch. 10	SB 1
7-6-4259	amended	Ch. 169	HB 631
7-6-4407	amended	Ch. 133	SB 178
7-7-103	amended	Ch. 559	HB 372
7-7-2209	amended	Ch. 559	HB 372
7-7-2212	enacted	Ch. 559	HB 372
7-7-2213	enacted	Ch. 559	HB 372
7-7-2214	enacted	Ch. 559	HB 372
7-7-2215	enacted	Ch. 559	HB 372
7-7-2238	amended	Ch. 559	HB 372
7-7-2251	amended	Ch. 559	HB 372
7-7-2253	repealed	Ch. 6	HB 54
7-7-2261	amended	Ch. 559	HB 372
7-7-2265	amended	Ch. 559	HB 372
7-7-2268	amended	Ch. 453	HB 613
7-7-2269	amended	Ch. 453	HB 613
7-7-2302	amended	Ch. 6	HB 54
7-7-4222	amended	Ch. 73	HB 39
7-7-4253	repealed	Ch. 6	HB 54
7-7-4268	amended	Ch. 453	HB 613
7-7-4269	amended	Ch. 453	HB 613
7-7-4302	amended	Ch. 6	HB 54
7-8-2232	amended	Ch. 15	HB 80
7-8-2301	amended	Ch. 316	SB 157
	amended	Ch. 369	SB 215
7-8-2303	amended	Ch. 97	SB 159
7-8-4201	amended	Ch. 305	HB 132
7-11-1102	amended	Ch. 116	SB 25
7-12-2131	amended	Ch. 250	SB 63
7-12-2151	amended	Ch. 269	HB 364
7-12-2172	amended	Ch. 6	HB 54
7-12-2175	amended	Ch. 10	SB 1
	amended	Ch. 101	HB 44
7-12-4102	amended	Ch. 250	SB 63
7-12-4132	amended	Ch. 250	SB 63
7-12-4141	amended	Ch. 250	SB 63

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7-12-4162	amended	Ch. 269	HB 364
7-12-4204	amended	Ch. 6	HB 54
7-12-4207	amended	Ch. 10	SB 1
7-13-236	amended	Ch. 206	HB 414
7-13-308	amended	Ch. 206	HB 414
7-13-2201	amended	Ch. 160	HB 440
7-13-2527	amended	Ch. 267	SB 168
7-13-4301	amended	Ch. 453	HB 613
7-13-4302	repealed	Ch. 453	HB 613
7-13-4303	repealed	Ch. 453	HB 613
7-13-4321	repealed	Ch. 453	HB 613
7-13-4322	repealed	Ch. 453	HB 613
7-13-4323	repealed	Ch. 453	HB 613
7-13-4324	repealed	Ch. 453	HB 613
7-13-4325	repealed	Ch. 453	HB 613
7-13-4326	repealed	Ch. 453	HB 613
7-13-4327	repealed	Ch. 453	HB 613
7-13-4328	repealed	Ch. 453	HB 613
7-13-4329	repealed	Ch. 453	HB 613
7-13-4330	repealed	Ch. 453	HB 613
7-13-4331	repealed	Ch. 453	HB 613
7-13-4332	repealed	Ch. 453	HB 613
7-13-4333	repealed	Ch. 453	HB 613
7-13-4341	repealed	Ch. 453	HB 613
7-13-4342	repealed	Ch. 453	HB 613
7-13-4343	repealed	Ch. 453	HB 613
7-13-4344	repealed	Ch. 453	HB 613
7-13-4345	repealed	Ch. 453	HB 613
7-14-102	amended	Ch. 10	SB 1
7-14-212	amended	Ch. 608	SB 332
7-14-213	repealed	Ch. 608	SB 332
7-14-214	amended	Ch. 608	SB 332
7-14-215	repealed	Ch. 608	SB 332
7-14-216	repealed	Ch. 608	SB 332
7-14-217	repealed	Ch. 608	SB 332
7-14-1601	enacted	Ch. 333	HB 541
7-14-1602	enacted	Ch. 333	HB 541
7-14-1611	enacted	Ch. 333	HB 541
7-14-1612	enacted	Ch. 333	HB 541
7-14-1613	enacted	Ch. 333	HB 541
7-14-1621	enacted	Ch. 333	HB 541
7-14-1622	enacted	Ch. 333	HB 541
7-14-1623	enacted	Ch. 333	HB 541
7-14-1624	enacted	Ch. 333	HB 541
7-14-1625	enacted	Ch. 333	HB 541
7-14-1631	enacted	Ch. 333	HB 541
7-14-1632	enacted	Ch. 333	HB 541
7-14-1633	enacted	Ch. 333	HB 541
7-14-1634	enacted	Ch. 333	HB 541
7-14-1635	enacted	Ch. 333	HB 541
7-14-1636	enacted	Ch. 333	HB 541
7-14-1637	enacted	Ch. 333	HB 541
7-14-1638	enacted	Ch. 333	HB 541
7-14-1639	enacted	Ch. 333	HB 541
7-14-2103	amended	Ch. 253	SB 149
7-14-2524	amended	Ch. 10	SB 1
7-14-2701	amended	Ch. 42	HB 109

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7-14-2704	amended	Ch. 42	HB 109
7-14-2710	amended	Ch. 42	HB 109
7-14-2907	amended	Ch. 269	HB 364
7-14-4714	amended	Ch. 453	HB 613
7-15-4288	amended	Ch. 500	HB 303
7-16-2109	enacted	Ch. 48	SB 10
7-16-2202	amended	Ch. 440	HB 221
7-16-2205	amended	Ch. 440	HB 221
7-16-2403	amended	Ch. 144	SB 92
7-16-2411	amended	Ch. 144	SB 92
7-16-2412	amended	Ch. 144	SB 92
7-16-2413	amended	Ch. 144	SB 92
7-16-2421	amended	Ch. 144	SB 92
7-16-2423	amended	Ch. 144	SB 92
7-16-2431	amended	Ch. 144	SB 92
7-16-4202	amended	Ch. 409	HB 510
7-16-4209	amended	Ch. 409	HB 510
7-16-4224	amended	Ch. 409	HB 510
7-16-4227	amended	Ch. 409	HB 510
7-16-4228	amended	Ch. 409	HB 510
7-31-203	amended	Ch. 437	HB 134
7-32-303	amended	Ch. 437	HB 134
7-32-2109	amended	Ch. 468	HB 174
7-32-2110	amended	Ch. 468	HB 174
7-32-4114	amended	Ch. 124	SB 273
7-32-4132	amended	Ch. 251	SB 103
7-32-4152	amended	Ch. 468	HB 174
7-32-4153	amended	Ch. 468	HB 174
7-32-4155	amended	Ch. 468	HB 174
7-32-4156	amended	Ch. 468	HB 174
7-32-4157	amended	Ch. 468	HB 174
7-32-4158	amended	Ch. 468	HB 174
7-32-4160	amended	Ch. 468	HB 174
7-32-4161	amended	Ch. 468	HB 174
7-32-4162	repealed	Ch. 468	HB 174
7-32-4163	repealed	Ch. 468	HB 174
7-32-4164	amended	Ch. 468	HB 174
7-33-2108	amended	Ch. 149	HB 203
7-33-2301	repealed	Ch. 310	HB 536
7-33-2302	repealed	Ch. 310	HB 536
7-33-2405	enacted	Ch. 149	HB 203
7-33-4112	amended	Ch. 149	HB 203
10-2-411	repealed	Ch. 10	SB 1
10-2-412	amended	Ch. 10	SB 1
	repealed	Ch. 579	HB 685
10-2-413	repealed	Ch. 10	SB 1
	repealed	Ch. 579	HB 685
10-2-414	repealed	Ch. 10	SB 1
10-2-415	repealed	Ch. 10	SB 1
10-2-416	amended	Ch. 10	SB 1
	amended	Ch. 579	HB 685
10-2-417	enacted	Ch. 548	HB 46
10-2-603	enacted	Ch. 159	HB 404
10-4-102	amended	Ch. 349	SB 384
10-4-205	amended	Ch. 229	HB 300
10-4-212	amended	Ch. 10	SB 1
13-1-101	amended	Ch. 390	SB 318

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13-1-112	amended	Ch. 74	HB 86
13-2-102	repealed	Ch. 390	SB 318
13-2-202	amended	Ch. 390	SB 318
13-2-203	amended	Ch. 390	SB 318
13-4-102	amended	Ch. 232	HB 329
13-4-105	amended	Ch. 232	HB 329
13-4-201	amended	Ch. 232	HB 329
13-4-207	amended	Ch. 232	HB 329
13-10-102	repealed	Ch. 52	SB 36
13-10-201	amended	Ch. 74	HB 86
13-10-208	amended	Ch. 74	HB 86
13-10-404	amended	Ch. 52	SB 36
13-10-405	amended	Ch. 390	SB 318
13-10-503	amended	Ch. 390	SB 318
13-10-504	amended	Ch. 390	SB 318
13-10-601	amended	Ch. 390	SB 318
13-12-101	amended	Ch. 113	HB 291
13-12-201	amended	Ch. 74	HB 86
13-13-116	amended	Ch. 390	SB 318
13-25-101	amended	Ch. 390	SB 318
13-27-401	amended	Ch. 390	SB 318
13-27-410	amended	Ch. 390	SB 318
13-35-302	amended	Ch. 128	HB 377
13-37-117	amended	Ch. 113	HB 291
13-37-120	amended	Ch. 349	SB 384
13-37-218	amended	Ch. 634	HB 671
13-37-226	amended	Ch. 10	SB 1
	amended	Ch. 208	HB 247
13-37-301	repealed	Ch. 581	HB 689
13-37-302	repealed	Ch. 581	HB 689
13-37-303	repealed	Ch. 581	HB 689
13-37-304	repealed	Ch. 581	HB 689
13-37-305	repealed	Ch. 581	HB 689
13-37-306	repealed	Ch. 581	HB 689
13-37-307	repealed	Ch. 581	HB 689
13-37-308	repealed	Ch. 581	HB 689
15-1-101	amended	Ch. 379	SB 294
	amended	Ch. 417	HB 648
15-1-111	amended	Ch. 499	HB 196
15-1-201	amended	Ch. 10	SB 1
15-1-202	amended	Ch. 10	SB 1
15-1-205	amended	Ch. 10	SB 1
	amended	Ch. 349	SB 384
15-1-303	amended	Ch. 227	HB 250
15-1-402	amended	Ch. 594	SB 379
15-1-406	amended	Ch. 21	SB 114
	amended	Ch. 594	SB 379
15-1-408	amended	Ch. 594	SB 379
15-1-501	amended	Ch. 455	HB 641
	amended	Ch. 593	SB 378
15-1-502	repealed	Ch. 455	HB 641
15-1-504	amended	Ch. 102	HB 223
15-1-505	repealed	Ch. 451	HB 545
15-2-301	amended	Ch. 594	SB 379
15-2-302	amended	Ch. 59	HB 103
	amended	Ch. 594	SB 379
15-2-303	amended	Ch. 594	SB 379

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15-2-306	amended	Ch. 594	SB 379
15-2-307	repealed	Ch. 594	SB 379
15-2-308	repealed	Ch. 594	SB 379
15-2-309	repealed	Ch. 594	SB 379
15-2-310	repealed	Ch. 594	SB 379
15-6-131	amended	Ch. 506	HB 382
15-6-133	amended	Ch. 267	SB 168
	amended	Ch. 627	HB 643
15-6-134	amended	Ch. 267	SB 168
	amended	Ch. 562	HB 437
15-6-135	amended	Ch. 510	HB 436
15-6-138	amended	Ch. 575	HB 651
15-6-144	repealed	Ch. 267	SB 168
15-6-201	amended	Ch. 54	SB 141
	amended	Ch. 80	HB 160
	amended	Ch. 575	HB 651
15-6-208	amended	Ch. 89	SB 175
15-7-102	amended	Ch. 227	HB 250
	amended	Ch. 594	SB 379
15-7-201	amended	Ch. 267	SB 168
15-7-202	amended	Ch. 627	HB 643
15-7-221	enacted	Ch. 267	SB 168
15-7-222	enacted	Ch. 267	SB 168
15-8-111	amended	Ch. 506	HB 382
15-8-702	amended	Ch. 366	SB 189
15-10-402	amended	Ch. 267	SB 168
15-10-412	amended	Ch. 267	SB 168
	amended	Ch. 333	HB 541
	amended	Ch. 424	SB 396
	amended	Ch. 483	SB 427
	amended	Ch. 561	HB 427
	amended	Ch. 573	HB 588
15-15-101	amended	Ch. 594	SB 379
15-15-102	amended	Ch. 227	HB 250
15-15-103	amended	Ch. 227	HB 250
15-16-117	amended	Ch. 561	HB 427
15-16-118	amended	Ch. 557	HB 327
15-16-601	amended	Ch. 451	HB 545
	repealed	Ch. 539	SB 106
15-16-602	amended	Ch. 539	SB 106
15-16-603	enacted	Ch. 539	SB 106
15-16-604	enacted	Ch. 539	SB 106
15-16-605	enacted	Ch. 539	SB 106
15-16-612	amended	Ch. 539	SB 106
15-16-613	amended	Ch. 539	SB 106
	amended	Ch. 587	SB 438
15-16-701	amended	Ch. 521	HB 402
15-17-319	amended	Ch. 369	SB 215
15-17-911	amended	Ch. 36	HB 88
15-18-114	amended	Ch. 97	SB 159
15-18-212	amended	Ch. 97	SB 159
15-18-213	amended	Ch. 97	SB 159
15-18-215	enacted	Ch. 97	SB 159
15-18-216	enacted	Ch. 97	SB 159
15-23-103	amended	Ch. 506	HB 382
15-23-106	amended	Ch. 506	HB 382
15-23-115	amended	Ch. 506	HB 382

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15-23-211	amended	Ch. 532	HB 640
15-23-502	amended	Ch. 506	HB 382
15-23-503	amended	Ch. 506	HB 382
15-23-517	enacted	Ch. 506	HB 382
15-23-521	amended	Ch. 506	HB 382
15-23-716	amended	Ch. 455	HB 641
15-24-101	amended	Ch. 10	SB 1
	amended	Ch. 39	HB 8
15-24-102	amended	Ch. 10	SB 1
	amended	Ch. 39	HB 8
15-24-303	amended	Ch. 587	SB 438
15-24-920	amended	Ch. 539	SB 106
15-24-921	amended	Ch. 417	HB 648
15-24-1103	amended	Ch. 80	HB 160
15-24-1203	amended	Ch. 104	HB 312
	amended	Ch. 427	SB 412
15-24-1204	amended	Ch. 104	HB 312
	amended	Ch. 256	SB 325
	amended	Ch. 427	SB 412
15-24-1207	amended	Ch. 104	HB 312
15-24-1208	enacted	Ch. 90	SB 183
15-24-1702	amended	Ch. 422	SB 370
15-24-1704	enacted	Ch. 422	SB 370
15-24-2501	enacted	Ch. 575	HB 651
15-25-122	amended	Ch. 455	HB 641
15-30-101	amended	Ch. 10	SB 1
	amended	Ch. 634	HB 671
15-30-103	amended	Ch. 634	HB 671
15-30-105	amended	Ch. 634	HB 671
15-30-111	amended	Ch. 634	HB 671
15-30-112	amended	Ch. 634	HB 671
15-30-117	amended	Ch. 634	HB 671
15-30-121	repealed	Ch. 634	HB 671
15-30-122	amended	Ch. 634	HB 671
15-30-126	amended	Ch. 634	HB 671
15-30-131	amended	Ch. 634	HB 671
15-30-136	amended	Ch. 103	HB 297
15-30-137	amended	Ch. 634	HB 671
15-30-142	amended	Ch. 634	HB 671
15-30-145	amended	Ch. 520	HB 330
15-30-147	amended	Ch. 520	HB 330
15-30-148	amended	Ch. 214	HB 298
15-30-149	amended	Ch. 520	HB 330
15-30-150	amended	Ch. 581	HB 689
15-30-152	amended	Ch. 581	HB 689
15-30-153	enacted	Ch. 581	HB 689
15-30-155	amended	Ch. 581	HB 689
15-30-156	repealed	Ch. 634	HB 671
15-30-157	repealed	Ch. 634	HB 671
15-30-158	amended	Ch. 581	HB 689
15-30-159	repealed	Ch. 634	HB 671
15-30-160	repealed	Ch. 634	HB 671
15-30-164	enacted	Ch. 617	HB 219
15-30-170	enacted	Ch. 634	HB 671
15-30-199	repealed	Ch. 634	HB 671
15-30-207	amended	Ch. 637	HB 504
15-30-215	enacted	Ch. 243	SB 269

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15-30-246	enacted	Ch. 488	SB 428
15-30-247	enacted	Ch. 488	SB 428
15-30-303	amended	Ch. 20	SB 101
	amended	Ch. 245	SB 322
	amended	Ch. 410	HB 526
	amended	Ch. 520	HB 330
15-30-322	repealed	Ch. 520	HB 330
15-30-323	amended	Ch. 634	HB 671
15-31-121	amended	Ch. 634	HB 671
15-31-131	amended	Ch. 634	HB 671
15-31-137	enacted	Ch. 617	HB 219
15-31-202	amended	Ch. 634	HB 671
15-31-204	amended	Ch. 634	HB 671
15-31-406	amended	Ch. 135	SB 234
15-31-502	amended	Ch. 92	SB 227
15-31-507	repealed	Ch. 135	SB 234
15-31-508	repealed	Ch. 135	SB 234
15-31-510	amended	Ch. 92	SB 227
15-31-511	enacted	Ch. 135	SB 234
15-31-702	amended	Ch. 455	HB 641
15-32-107	amended	Ch. 535	HB 680
15-32-201	amended	Ch. 10	SB 1
15-32-303	amended	Ch. 634	HB 671
15-32-601	amended	Ch. 568	HB 519
15-32-603	amended	Ch. 568	HB 519
15-32-609	enacted	Ch. 568	HB 519
15-32-610	amended	Ch. 568	HB 519
15-35-102	amended	Ch. 580	HB 688
15-35-103	amended	Ch. 580	HB 688
15-35-108	amended	Ch. 455	HB 641
	amended	Ch. 536	HB 687
15-36-101	amended	Ch. 299	SB 138
15-36-112	amended	Ch. 10	SB 1
	amended	Ch. 455	HB 641
15-36-126	amended	Ch. 368	SB 206
	amended	Ch. 455	HB 641
15-37-117	amended	Ch. 455	HB 641
15-38-103	amended	Ch. 506	HB 382
15-38-104	amended	Ch. 506	HB 382
15-38-106	amended	Ch. 455	HB 641
	amended	Ch. 478	HB 608
15-38-109	amended	Ch. 135	SB 234
15-38-128	enacted	Ch. 506	HB 382
15-38-136	amended	Ch. 455	HB 641
15-38-202	amended	Ch. 478	HB 608
	amended	Ch. 613	HB 6
15-51-103	amended	Ch. 455	HB 641
15-53-114	amended	Ch. 455	HB 641
15-59-108	amended	Ch. 455	HB 641
15-59-208	amended	Ch. 455	HB 641
15-60-101	amended	Ch. 558	HB 333
15-60-102	amended	Ch. 558	HB 333
15-60-210	amended	Ch. 455	HB 641
	amended	Ch. 558	HB 333
15-65-121	amended	Ch. 455	HB 641
	amended	Ch. 574	HB 642
15-65-136	amended	Ch. 455	HB 641

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15-70-101	amended	Ch. 455	HB 641
	amended	Ch. 605	SB 257
15-70-105	enacted	Ch. 428	SB 417
15-70-123	enacted	Ch. 34	SB 127
15-70-124	enacted	Ch. 438	HB 149
15-70-201	amended	Ch. 231	HB 490
	amended	Ch. 642	HB 645
15-70-202	amended	Ch. 231	HB 490
15-70-204	amended	Ch. 231	HB 490
	amended	Ch. 605	SB 257
	amended	Ch. 642	HB 645
15-70-205	amended	Ch. 642	HB 645
15-70-209	amended	Ch. 231	HB 490
15-70-221	amended	Ch. 231	HB 490
	amended	Ch. 428	SB 417
	amended	Ch. 642	HB 645
15-70-223	amended	Ch. 245	SB 322
15-70-225	amended	Ch. 642	HB 645
15-70-231	amended	Ch. 642	HB 645
15-70-234	amended	Ch. 625	HB 92
15-70-301	amended	Ch. 525	HB 539
15-70-302	amended	Ch. 525	HB 539
15-70-303	amended	Ch. 525	HB 539
15-70-304	amended	Ch. 525	HB 539
15-70-305	amended	Ch. 525	HB 539
15-70-306	amended	Ch. 525	HB 539
15-70-307	amended	Ch. 525	HB 539
15-70-309	amended	Ch. 525	HB 539
15-70-311	amended	Ch. 525	HB 539
	amended	Ch. 575	HB 651
15-70-312	amended	Ch. 525	HB 539
15-70-315	amended	Ch. 525	HB 539
15-70-316	repealed effective 01/01/94	Ch. 525	HB 539
15-70-321	amended	Ch. 525	HB 539
	amended	Ch. 605	SB 257
15-70-322	repealed effective 01/01/94	Ch. 525	HB 539
15-70-323	amended	Ch. 525	HB 539
15-70-324	amended	Ch. 525	HB 539
15-70-325	amended	Ch. 525	HB 539
15-70-326	amended	Ch. 525	HB 539
15-70-327	amended	Ch. 525	HB 539
15-70-328	amended	Ch. 428	SB 417
	amended	Ch. 525	HB 539
15-70-329	amended	Ch. 33	SB 126
	amended	Ch. 525	HB 539
15-70-330	amended	Ch. 525	HB 539
15-70-331	amended	Ch. 525	HB 539
15-70-332	amended	Ch. 525	HB 539
15-70-333	amended	Ch. 525	HB 539
15-70-341	enacted	Ch. 525	HB 539
15-70-342	enacted	Ch. 525	HB 539
15-70-343	enacted	Ch. 525	HB 539
15-70-344	enacted	Ch. 525	HB 539
15-70-345	enacted	Ch. 525	HB 539
15-70-348	enacted	Ch. 525	HB 539
15-70-349	enacted	Ch. 525	HB 539
15-70-351	enacted	Ch. 525	HB 539

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15-70-352	enacted	Ch. 525	HB 539
15-70-353	enacted	Ch. 525	HB 539
15-70-354	enacted	Ch. 525	HB 539
15-70-355	enacted	Ch. 525	HB 539
15-70-356	enacted	Ch. 525	HB 539
15-70-361	enacted	Ch. 525	HB 539
15-70-362	enacted	Ch. 525	HB 539
15-70-363	enacted	Ch. 525	HB 539
15-70-364	enacted	Ch. 525	HB 539
15-70-365	enacted	Ch. 525	HB 539
15-70-366	enacted	Ch. 525	HB 539
15-70-522	amended	Ch. 592	SB 374
15-71-102	amended	Ch. 575	HB 651
15-71-104	amended	Ch. 455	HB 641
15-71-110	enacted	Ch. 428	SB 417
16-1-106	amended	Ch. 228	HB 279
	amended	Ch. 414	HB 609
16-1-302	amended	Ch. 414	HB 609
16-1-303	amended	Ch. 414	HB 609
16-1-304	amended	Ch. 414	HB 609
16-1-306	amended	Ch. 455	HB 641
16-1-401	amended	Ch. 455	HB 641
16-1-404	amended	Ch. 455	HB 641
16-1-408	amended	Ch. 455	HB 641
16-1-410	amended	Ch. 60	HB 119
	amended	Ch. 455	HB 641
16-1-411	amended	Ch. 60	HB 119
	amended	Ch. 455	HB 641
16-1-421	amended	Ch. 455	HB 641
16-1-422	amended	Ch. 455	HB 641
16-1-423	amended	Ch. 455	HB 641
16-2-101	amended	Ch. 228	HB 279
16-3-103	amended	Ch. 599	HB 495
16-3-214	amended	Ch. 122	SB 241
16-3-301(6)	enacted	Ch. 233	HB 340
16-3-311	enacted	Ch. 203	SB 390
16-4-111	enacted	Ch. 599	HB 495
16-4-204	amended	Ch. 599	HB 495
16-4-207	amended	Ch. 414	HB 609
16-4-304	enacted	Ch. 529	HB 593
16-4-402	amended	Ch. 414	HB 609
	amended	Ch. 599	HB 495
16-4-403	amended	Ch. 414	HB 609
16-4-404	amended	Ch. 311	HB 594
	amended	Ch. 414	HB 609
16-4-406	amended	Ch. 414	HB 609
16-6-101	amended	Ch. 414	HB 609
16-6-102	amended	Ch. 414	HB 609
16-6-103	amended	Ch. 414	HB 609
16-6-106	amended	Ch. 414	HB 609
16-6-107	amended	Ch. 414	HB 609
16-6-108	amended	Ch. 414	HB 609
16-6-109	amended	Ch. 414	HB 609
16-11-103	amended	Ch. 414	HB 609
16-11-105	enacted	Ch. 414	HB 609
16-11-111	amended	Ch. 352	HB 283
16-11-118	amended	Ch. 414	HB 609

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16-11-119	amended	Ch. 455	HB 641
	amended	Ch. 548	HB 46
16-11-124	amended	Ch. 414	HB 609
16-11-131	amended	Ch. 352	HB 283
16-11-141	amended	Ch. 414	HB 609
16-11-142	amended	Ch. 414	HB 609
16-11-147	amended	Ch. 352	HB 283
	amended	Ch. 414	HB 609
16-11-149	amended	Ch. 414	HB 609
16-11-155	enacted	Ch. 352	HB 283
16-11-156	enacted	Ch. 352	HB 283
16-11-157	enacted	Ch. 352	HB 283
16-11-158	enacted	Ch. 352	HB 283
16-11-206	amended	Ch. 455	HB 641
16-11-301	enacted	Ch. 569	HB 548
16-11-302	enacted	Ch. 569	HB 548
16-11-303	enacted	Ch. 569	HB 548
16-11-304	enacted	Ch. 569	HB 548
16-11-305	enacted	Ch. 569	HB 548
16-11-306	enacted	Ch. 569	HB 548
16-11-307	enacted	Ch. 569	HB 548
16-11-308	enacted	Ch. 569	HB 548
16-11-311	enacted	Ch. 569	HB 548
16-11-312	enacted	Ch. 569	HB 548
17-1-501	enacted	Ch. 593	SB 378
17-1-502	enacted	Ch. 593	SB 378
17-1-503	enacted	Ch. 593	SB 378
17-1-504	enacted	Ch. 593	SB 378
17-1-505	enacted	Ch. 593	SB 378
17-1-506	enacted	Ch. 593	SB 378
17-2-102	amended	Ch. 433	HB 23
17-2-108	amended	Ch. 4	SB 2
17-3-104	repealed	Ch. 109	HB 111
17-3-106	amended	Ch. 107	HB 93
17-3-108	amended	Ch. 109	HB 111
17-3-1003	amended	Ch. 533	HB 652
17-4-105	amended	Ch. 429	SB 392
17-4-107	amended	Ch. 349	SB 384
17-5-205	amended	Ch. 19	SB 76
17-5-408	amended	Ch. 548	HB 46
17-5-430	enacted	Ch. 624	HB 5
17-5-431	enacted	Ch. 624	HB 5
17-5-432	enacted	Ch. 624	HB 5
17-5-433	enacted	Ch. 624	HB 5
17-5-701	amended	Ch. 478	HB 608
17-5-702	amended	Ch. 478	HB 608
17-5-703	amended	Ch. 515	HB 616
17-5-706	amended	Ch. 478	HB 608
17-5-721	enacted	Ch. 497	HB 12
17-5-1526	amended	Ch. 464	SB 329
17-5-1527	amended	Ch. 464	SB 329
17-5-1604	amended	Ch. 380	SB 298
17-5-1650	amended	Ch. 349	SB 384
17-6-101	amended	Ch. 107	HB 93
	amended	Ch. 131	SB 86
17-6-102	amended	Ch. 10	SB 1
17-6-104	amended	Ch. 10	SB 1

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17-6-201	amended	Ch. 46	HB 130
	amended	Ch. 331	HB 394
17-6-305	amended	Ch. 349	SB 384
17-6-308	amended	Ch. 331	HB 394
17-6-310	repealed	Ch. 46	HB 130
	amended	Ch. 354	HB 401
17-6-406	amended	Ch. 88	SB 161
17-6-407	amended	Ch. 88	SB 161
17-6-408	amended	Ch. 88	SB 161
17-7-111	amended	Ch. 20	SB 101
17-7-112	amended	Ch. 332	HB 474
17-7-114	enacted	Ch. 433	HB 23
17-7-123	amended	Ch. 349	SB 384
17-7-124	enacted	Ch. 349	SB 384
17-7-140	amended	Ch. 633	HB 667
17-7-301	amended	Ch. 357	HB 500
17-7-304	amended	Ch. 10	SB 1
17-7-311	amended	Ch. 357	HB 500
17-7-402	amended	Ch. 433	HB 23
17-7-403	amended	Ch. 433	HB 23
17-7-502	amended	Ch. 46	HB 130
	amended	Ch. 69	SB 85
	amended	Ch. 107	HB 93
	amended	Ch. 108	HB 104
	amended	Ch. 127	HB 197
	amended	Ch. 195	SB 315
	amended	Ch. 234	HB 373
	amended	Ch. 265	SB 385
	amended	Ch. 330	HB 278
	amended	Ch. 389	SB 100
	amended	Ch. 395	HB 201
	amended	Ch. 415	HB 610
	amended	Ch. 450	HB 485
	amended	Ch. 452	HB 564
	amended	Ch. 492	HB 529
	amended	Ch. 526	HB 579
	amended	Ch. 534	HB 660
	amended	Ch. 555	HB 287
	amended	Ch. 578	HB 679
	amended	Ch. 581	HB 689
	amended	Ch. 605	SB 257
	amended	Ch. 613	HB 6
	amended	Ch. 625	HB 92
	amended	Ch. 630	HB 13
	amended	Ch. 635	HB 692
17-8-101	amended	Ch. 433	HB 23
18-2-102	amended	Ch. 518	HB 674
18-2-103	amended	Ch. 518	HB 674
18-2-105	amended	Ch. 518	HB 674
18-2-107	amended	Ch. 533	HB 652
18-2-111	amended	Ch. 518	HB 674
18-2-112	amended	Ch. 22	HB 85
	amended	Ch. 518	HB 674
18-2-201	amended	Ch. 236	HB 566
18-2-301	amended	Ch. 518	HB 674
18-2-401	amended	Ch. 609	SB 342

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18-2-403	amended	Ch. 464	SB 329
	amended	Ch. 609	SB 342
18-2-405	repealed	Ch. 609	SB 342
18-2-407	amended	Ch. 609	SB 342
18-2-411	amended	Ch. 609	SB 342
18-2-412	enacted	Ch. 609	SB 342
18-2-423	amended	Ch. 609	SB 342
18-2-432	amended	Ch. 609	SB 342
18-4-313	amended	Ch. 228	HB 279
18-7-303	amended	Ch. 349	SB 384
18-8-103	amended	Ch. 630	HB 13
18-8-212	amended	Ch. 22	HB 85
	amended	Ch. 518	HB 674
18-11-101(2), (3)	enacted	Ch. 625	HB 92
18-11-103	amended	Ch. 625	HB 92
18-11-104	amended	Ch. 625	HB 92
18-11-112	enacted	Ch. 625	HB 92
19-1-102	amended	Ch. 10	SB 1
19-1-304	amended	Ch. 10	SB 1
19-1-401	amended	Ch. 10	SB 1
19-1-402	amended	Ch. 10	SB 1
19-1-503	amended	Ch. 10	SB 1
19-1-823	amended	Ch. 10	SB 1
19-2-301	enacted	Ch. 265	SB 385
19-2-302	enacted	Ch. 265	SB 385
19-2-303	formerly 19-3-104	Ch. 265	SB 385
19-2-401	formerly 19-3-301	Ch. 265	SB 385
19-2-402	formerly 19-3-302	Ch. 265	SB 385
19-2-403	formerly 19-3-304	Ch. 265	SB 385
19-2-404	enacted	Ch. 265	SB 385
19-2-405	formerly 19-3-305	Ch. 265	SB 385
19-2-406	formerly 19-5-611	Ch. 265	SB 385
19-2-407	formerly 19-3-306	Ch. 265	SB 385
19-2-408	formerly 19-3-805	Ch. 265	SB 385
19-2-501	enacted	Ch. 265	SB 385
19-2-503	formerly 19-3-601	Ch. 265	SB 385
19-2-504	formerly 19-3-602	Ch. 265	SB 385
19-2-505	formerly 19-3-603	Ch. 265	SB 385
19-2-506	formerly 19-3-802	Ch. 265	SB 385
19-2-507	formerly 19-3-605	Ch. 265	SB 385
19-2-601	formerly 19-3-406	Ch. 265	SB 385
19-2-602	formerly 19-3-703	Ch. 265	SB 385
19-2-603	formerly 19-3-704	Ch. 265	SB 385
19-2-701	enacted	Ch. 265	SB 385
19-2-702	enacted	Ch. 265	SB 385
19-2-703	formerly 19-3-508	Ch. 265	SB 385
19-2-704	formerly 19-3-702	Ch. 265	SB 385
19-2-705	formerly 19-3-502	Ch. 265	SB 385
19-2-801	formerly 19-3-1301	Ch. 265	SB 385
19-2-802	formerly 19-3-1302	Ch. 265	SB 385
19-2-803	formerly 19-3-1304	Ch. 265	SB 385
19-2-804	formerly 19-3-1305	Ch. 265	SB 385
19-2-901	formerly 19-3-1401	Ch. 265	SB 385
19-2-902	formerly 19-3-1402	Ch. 265	SB 385
19-2-903	formerly 19-3-1403	Ch. 265	SB 385
19-2-904	formerly 19-3-1404	Ch. 265	SB 385
19-2-905	formerly 19-7-103	Ch. 265	SB 385

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19-2-906	formerly 19-9-1004	Ch. 265	SB 385
19-2-907	enacted	Ch. 259	SB 173
19-2-1001	formerly 19-3-107	Ch. 265	SB 385
19-2-1002	formerly 19-3-606	Ch. 265	SB 385
19-2-1003	formerly 19-3-604	Ch. 265	SB 385
19-2-1004	formerly 19-3-105	Ch. 265	SB 385
19-2-1005	enacted	Ch. 265	SB 385
19-2-1006	enacted	Ch. 265	SB 385
19-2-1007	enacted	Ch. 265	SB 385
19-2-1008	formerly 19-3-106	Ch. 265	SB 385
19-2-1009	formerly 19-5-104	Ch. 265	SB 385
19-3-102	repealed	Ch. 265	SB 385
19-3-103	amended	Ch. 265	SB 385
19-3-104	amended	Ch. 265	SB 385
	renumbered 19-2-303	Ch. 265	SB 385
19-3-105	amended	Ch. 259	SB 173
	amended	Ch. 265	SB 385
	renumbered 19-2-1004	Ch. 265	SB 385
19-3-106	renumbered 19-2-1008	Ch. 265	SB 385
19-3-107	amended	Ch. 265	SB 385
	renumbered 19-2-1001	Ch. 265	SB 385
19-3-108	enacted	Ch. 265	SB 385
	amended	Ch. 640	HB 198
19-3-201	amended	Ch. 265	SB 385
19-3-203	amended	Ch. 265	SB 385
19-3-204	amended	Ch. 265	SB 385
19-3-301	amended	Ch. 265	SB 385
	renumbered 19-2-401	Ch. 265	SB 385
19-3-302	renumbered 19-2-402	Ch. 265	SB 385
19-3-304	amended	Ch. 265	SB 385
	renumbered 19-2-403	Ch. 265	SB 385
	amended	Ch. 481	SB 192
19-3-305	amended	Ch. 265	SB 385
	renumbered 19-2-405	Ch. 265	SB 385
19-3-306	amended	Ch. 265	SB 385
	renumbered 19-2-407	Ch. 265	SB 385
19-3-307	repealed	Ch. 265	SB 385
19-3-401	amended	Ch. 265	SB 385
19-3-403	amended	Ch. 265	SB 385
19-3-404	amended	Ch. 265	SB 385
19-3-405	amended	Ch. 265	SB 385
19-3-406	amended	Ch. 265	SB 385
	renumbered 19-2-601	Ch. 265	SB 385
19-3-411	enacted	Ch. 265	SB 385
19-3-412	enacted	Ch. 265	SB 385
19-3-501	amended	Ch. 265	SB 385
19-3-502	amended	Ch. 265	SB 385
	renumbered 19-2-705	Ch. 265	SB 385
19-3-503	amended	Ch. 265	SB 385
19-3-504	amended	Ch. 265	SB 385
19-3-505	amended	Ch. 265	SB 385
19-3-506	repealed	Ch. 265	SB 385
19-3-508	amended	Ch. 265	SB 385
	renumbered 19-2-703	Ch. 265	SB 385
19-3-509	amended	Ch. 265	SB 385
19-3-510	amended	Ch. 265	SB 385
19-3-511	amended	Ch. 265	SB 385

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19-3-512	amended	Ch. 265	SB 385
19-3-513	amended	Ch. 265	SB 385
19-3-521	enacted	Ch. 265	SB 385
19-3-601	amended	Ch. 265	SB 385
	renumbered 19-2-503	Ch. 265	SB 385
19-3-602	amended	Ch. 265	SB 385
	renumbered 19-2-504	Ch. 265	SB 385
19-3-603	amended	Ch. 265	SB 385
	renumbered 19-2-505	Ch. 265	SB 385
19-3-604	amended	Ch. 265	SB 385
	renumbered 19-2-1003	Ch. 265	SB 385
19-3-605	amended	Ch. 265	SB 385
	renumbered 19-2-507	Ch. 265	SB 385
19-3-606	amended	Ch. 265	SB 385
	renumbered 19-2-1002	Ch. 265	SB 385
19-3-701	amended	Ch. 265	SB 385
19-3-702	amended	Ch. 265	SB 385
	renumbered 19-2-704	Ch. 265	SB 385
19-3-703	amended	Ch. 265	SB 385
	renumbered 19-2-602	Ch. 265	SB 385
19-3-704	amended	Ch. 265	SB 385
	renumbered 19-2-603	Ch. 265	SB 385
19-3-801	amended	Ch. 265	SB 385
19-3-802	amended	Ch. 265	SB 385
	renumbered 19-2-506	Ch. 265	SB 385
19-3-804	repealed	Ch. 265	SB 385
19-3-805	amended	Ch. 265	SB 385
	renumbered 19-2-408	Ch. 265	SB 385
19-3-901	amended	Ch. 265	SB 385
19-3-902	amended	Ch. 265	SB 385
19-3-903	amended	Ch. 265	SB 385
19-3-904	amended	Ch. 265	SB 385
19-3-905	amended	Ch. 265	SB 385
19-3-906	amended	Ch. 265	SB 385
19-3-907	amended	Ch. 265	SB 385
19-3-908	enacted	Ch. 567	HB 517
19-3-1001	repealed	Ch. 265	SB 385
19-3-1002	amended	Ch. 265	SB 385
	amended	Ch. 630	HB 13
19-3-1003	repealed	Ch. 265	SB 385
19-3-1004	repealed	Ch. 265	SB 385
19-3-1005	amended	Ch. 265	SB 385
19-3-1006	amended	Ch. 265	SB 385
19-3-1007	amended	Ch. 265	SB 385
19-3-1008	amended	Ch. 265	SB 385
19-3-1101	amended	Ch. 265	SB 385
19-3-1102	amended	Ch. 265	SB 385
19-3-1103	amended	Ch. 265	SB 385
19-3-1104	amended	Ch. 265	SB 385
19-3-1105	amended	Ch. 265	SB 385
19-3-1106	amended	Ch. 265	SB 385
19-3-1107	repealed	Ch. 265	SB 385
19-3-1108	repealed	Ch. 265	SB 385
19-3-1109	amended	Ch. 265	SB 385
19-3-1110	amended	Ch. 265	SB 385
19-3-1111	amended	Ch. 265	SB 385
19-3-1201	amended	Ch. 265	SB 385

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19-3-1202	amended	Ch. 265	SB 385
	amended	Ch. 630	HB 13
19-3-1203	amended	Ch. 265	SB 385
19-3-1204	amended	Ch. 265	SB 385
19-3-1205	amended	Ch. 265	SB 385
19-3-1210	enacted	Ch. 265	SB 385
19-3-1301	amended	Ch. 265	SB 385
	renumbered 19-2-801	Ch. 265	SB 385
19-3-1302	amended	Ch. 265	SB 385
	renumbered 19-2-802	Ch. 265	SB 385
19-3-1304	amended	Ch. 265	SB 385
	renumbered 19-2-803	Ch. 265	SB 385
19-3-1305	amended	Ch. 265	SB 385
	renumbered 19-2-804	Ch. 265	SB 385
19-3-1401	amended	Ch. 265	SB 385
	renumbered 19-2-901	Ch. 265	SB 385
19-3-1402	amended	Ch. 265	SB 385
	renumbered 19-2-902	Ch. 265	SB 385
19-3-1403	amended	Ch. 265	SB 385
	renumbered 19-2-903	Ch. 265	SB 385
19-3-1404	renumbered 19-2-904	Ch. 265	SB 385
19-3-1604	enacted	Ch. 367	SB 203
19-4-201	amended	Ch. 349	SB 384
19-4-302	amended	Ch. 178	SB 407
19-4-404	amended	Ch. 185	HB 112
19-4-603	amended	Ch. 226	HB 244
19-4-605	amended	Ch. 530	HB 601
19-4-702	amended	Ch. 9	HB 55
19-4-706	amended	Ch. 259	SB 173
19-4-901	amended	Ch. 226	HB 244
19-4-902	amended	Ch. 226	HB 244
19-5-101	amended	Ch. 265	SB 385
19-5-102	amended	Ch. 265	SB 385
19-5-103	amended	Ch. 265	SB 385
19-5-104	amended	Ch. 265	SB 385
	renumbered 19-2-1009	Ch. 265	SB 385
19-5-105	enacted	Ch. 265	SB 385
19-5-201	repealed	Ch. 265	SB 385
19-5-202	repealed	Ch. 265	SB 385
19-5-301	amended	Ch. 265	SB 385
19-5-302	repealed	Ch. 265	SB 385
19-5-303	repealed	Ch. 265	SB 385
19-5-304	repealed	Ch. 265	SB 385
19-5-401	amended	Ch. 265	SB 385
19-5-402	amended	Ch. 265	SB 385
19-5-403	amended	Ch. 265	SB 385
19-5-404	amended	Ch. 265	SB 385
19-5-405	repealed	Ch. 265	SB 385
19-5-406	repealed	Ch. 265	SB 385
19-5-407	repealed	Ch. 265	SB 385
19-5-408	repealed	Ch. 265	SB 385
19-5-501	amended	Ch. 265	SB 385
19-5-502	amended	Ch. 265	SB 385
19-5-503	amended	Ch. 265	SB 385
19-5-601	amended	Ch. 265	SB 385
19-5-602	repealed	Ch. 265	SB 385
19-5-603	amended	Ch. 265	SB 385

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19-5-604	amended	Ch. 265	SB 385
19-5-611	amended	Ch. 265	SB 385
	renumbered 19-2-406	Ch. 265	SB 385
19-5-612	amended	Ch. 265	SB 385
19-5-701	amended	Ch. 265	SB 385
19-5-702	repealed	Ch. 265	SB 385
19-5-703	repealed	Ch. 265	SB 385
19-5-704	amended	Ch. 259	SB 173
	repealed	Ch. 265	SB 385
19-5-705	repealed	Ch. 265	SB 385
19-5-706	repealed	Ch. 265	SB 385
19-6-101	amended	Ch. 265	SB 385
	amended	Ch. 640	HB 198
19-6-102	amended	Ch. 265	SB 385
19-6-103	repealed	Ch. 265	SB 385
19-6-104	repealed	Ch. 265	SB 385
19-6-106	enacted	Ch. 265	SB 385
19-6-201	repealed	Ch. 265	SB 385
19-6-202	repealed	Ch. 265	SB 385
19-6-203	repealed	Ch. 265	SB 385
19-6-301	amended	Ch. 265	SB 385
19-6-302	repealed	Ch. 265	SB 385
19-6-303	repealed	Ch. 265	SB 385
19-6-304	amended	Ch. 265	SB 385
19-6-305	amended	Ch. 265	SB 385
19-6-306	amended	Ch. 265	SB 385
19-6-401	amended	Ch. 265	SB 385
19-6-402	amended	Ch. 265	SB 385
19-6-403	amended	Ch. 265	SB 385
19-6-404	amended	Ch. 265	SB 385
19-6-405	repealed	Ch. 265	SB 385
19-6-406	repealed	Ch. 265	SB 385
19-6-407	repealed	Ch. 265	SB 385
19-6-408	repealed	Ch. 265	SB 385
19-6-409	repealed	Ch. 265	SB 385
19-6-501	amended	Ch. 265	SB 385
19-6-502	amended	Ch. 265	SB 385
19-6-503	amended	Ch. 265	SB 385
19-6-505	amended	Ch. 265	SB 385
19-6-506	repealed	Ch. 265	SB 385
19-6-601	amended	Ch. 265	SB 385
19-6-602	repealed	Ch. 265	SB 385
19-6-603	amended	Ch. 265	SB 385
19-6-604	amended	Ch. 265	SB 385
19-6-611	repealed	Ch. 265	SB 385
19-6-612	amended	Ch. 265	SB 385
19-6-702	repealed	Ch. 265	SB 385
19-6-703	repealed	Ch. 265	SB 385
19-6-704	repealed	Ch. 265	SB 385
19-6-705	amended	Ch. 259	SB 173
	repealed	Ch. 265	SB 385
19-6-706	repealed	Ch. 265	SB 385
19-6-707	amended	Ch. 265	SB 385
19-6-708	repealed	Ch. 265	SB 385
19-6-709	amended	Ch. 265	SB 385
19-6-903	enacted	Ch. 265	SB 385

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19-7-101	amended	Ch. 261	HB 650
	amended	Ch. 265	SB 385
19-7-102	amended	Ch. 261	HB 650
	amended	Ch. 265	SB 385
19-7-103	amended	Ch. 265	SB 385
	renumbered 19-2-905	Ch. 265	SB 385
19-7-104	repealed	Ch. 265	SB 385
19-7-105	enacted	Ch. 265	SB 385
19-7-201	repealed	Ch. 265	SB 385
19-7-202	repealed	Ch. 265	SB 385
19-7-301	amended	Ch. 261	HB 650
	amended	Ch. 265	SB 385
19-7-302	amended	Ch. 261	HB 650
	amended	Ch. 265	SB 385
19-7-303	repealed	Ch. 265	SB 385
19-7-304	repealed	Ch. 265	SB 385
19-7-306	repealed	Ch. 265	SB 385
19-7-307	repealed	Ch. 265	SB 385
19-7-308	amended	Ch. 265	SB 385
19-7-309	amended	Ch. 265	SB 385
19-7-310	amended	Ch. 265	SB 385
19-7-311	amended	Ch. 265	SB 385
19-7-312	enacted	Ch. 261	HB 650
19-7-401	repealed	Ch. 265	SB 385
19-7-402	amended	Ch. 261	HB 650
	amended	Ch. 265	SB 385
19-7-403	amended	Ch. 265	SB 385
19-7-404	amended	Ch. 261	HB 650
	amended	Ch. 265	SB 385
19-7-405	repealed	Ch. 265	SB 385
19-7-406	repealed	Ch. 265	SB 385
19-7-407	repealed	Ch. 265	SB 385
19-7-408	repealed	Ch. 265	SB 385
19-7-409	repealed	Ch. 265	SB 385
19-7-501	amended	Ch. 265	SB 385
19-7-502	amended	Ch. 265	SB 385
19-7-503	amended	Ch. 265	SB 385
19-7-504	amended	Ch. 265	SB 385
19-7-601	amended	Ch. 265	SB 385
19-7-602	repealed	Ch. 265	SB 385
19-7-604	amended	Ch. 265	SB 385
19-7-611	repealed	Ch. 265	SB 385
19-7-612	amended	Ch. 265	SB 385
19-7-701	amended	Ch. 265	SB 385
19-7-702	repealed	Ch. 265	SB 385
19-7-703	repealed	Ch. 265	SB 385
19-7-704	repealed	Ch. 265	SB 385
19-7-705	amended	Ch. 259	SB 173
	repealed	Ch. 265	SB 385
19-7-706	repealed	Ch. 265	SB 385
19-7-707	repealed	Ch. 265	SB 385
19-7-708	amended	Ch. 265	SB 385
19-7-709	amended	Ch. 265	SB 385
19-7-710	amended	Ch. 265	SB 385
19-7-1101	enacted	Ch. 265	SB 385
19-8-101	amended	Ch. 265	SB 385
	amended	Ch. 640	HB 198

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19-8-102	amended	Ch. 265	SB 385
19-8-103	repealed	Ch. 265	SB 385
19-8-104	repealed	Ch. 265	SB 385
19-8-105	enacted	Ch. 265	SB 385
19-8-201	repealed	Ch. 265	SB 385
19-8-202	repealed	Ch. 265	SB 385
19-8-203	repealed	Ch. 265	SB 385
19-8-301	amended	Ch. 265	SB 385
19-8-302	amended	Ch. 265	SB 385
19-8-303	repealed	Ch. 265	SB 385
19-8-304	amended	Ch. 265	SB 385
19-8-305	repealed	Ch. 265	SB 385
19-8-306	amended	Ch. 265	SB 385
19-8-307	amended	Ch. 265	SB 385
19-8-401	repealed	Ch. 265	SB 385
19-8-402	repealed	Ch. 265	SB 385
19-8-403	repealed	Ch. 265	SB 385
19-8-404	repealed	Ch. 265	SB 385
19-8-405	repealed	Ch. 265	SB 385
19-8-406	repealed	Ch. 265	SB 385
19-8-501	amended	Ch. 265	SB 385
19-8-502	amended	Ch. 265	SB 385
19-8-503	repealed	Ch. 265	SB 385
19-8-504	amended	Ch. 265	SB 385
	amended	Ch. 450	HB 485
19-8-505	repealed	Ch. 265	SB 385
19-8-601	amended	Ch. 265	SB 385
19-8-603	amended	Ch. 265	SB 385
19-8-604	amended	Ch. 265	SB 385
19-8-701	amended	Ch. 265	SB 385
19-8-702	repealed	Ch. 265	SB 385
19-8-703	amended	Ch. 265	SB 385
19-8-704	amended	Ch. 265	SB 385
19-8-711	repealed	Ch. 265	SB 385
19-8-712	amended	Ch. 265	SB 385
19-8-801	amended	Ch. 265	SB 385
19-8-802	repealed	Ch. 265	SB 385
19-8-803	repealed	Ch. 265	SB 385
19-8-804	repealed	Ch. 265	SB 385
19-8-805	amended	Ch. 259	SB 173
	repealed	Ch. 265	SB 385
19-8-806	repealed	Ch. 265	SB 385
19-8-807	repealed	Ch. 265	SB 385
19-8-808	amended	Ch. 265	SB 385
19-8-809	amended	Ch. 265	SB 385
19-8-810	amended	Ch. 265	SB 385
19-8-816	amended	Ch. 265	SB 385
19-8-1003	enacted	Ch. 265	SB 385
19-8-1110	enacted	Ch. 450	HB 485
19-9-103	amended	Ch. 265	SB 385
19-9-104	amended	Ch. 265	SB 385
19-9-105	amended	Ch. 265	SB 385
19-9-106	amended	Ch. 265	SB 385
19-9-107	amended	Ch. 265	SB 385
19-9-108	repealed	Ch. 265	SB 385
19-9-201	repealed	Ch. 265	SB 385
19-9-202	repealed	Ch. 265	SB 385

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19-9-203	repealed	Ch. 265	SB 385
19-9-301	amended	Ch. 265	SB 385
19-9-303	repealed	Ch. 265	SB 385
19-9-304	repealed	Ch. 265	SB 385
19-9-305	repealed	Ch. 265	SB 385
19-9-401	amended	Ch. 265	SB 385
19-9-402	repealed	Ch. 265	SB 385
19-9-403	amended	Ch. 265	SB 385
19-9-405	amended	Ch. 265	SB 385
19-9-410	enacted	Ch. 265	SB 385
19-9-501	repealed	Ch. 265	SB 385
19-9-502	repealed	Ch. 265	SB 385
19-9-503	amended	Ch. 265	SB 385
19-9-504	repealed	Ch. 265	SB 385
19-9-505	repealed	Ch. 265	SB 385
19-9-601	amended	Ch. 265	SB 385
	amended	Ch. 522	HB 430
	amended	Ch. 620	HB 431
19-9-602	repealed	Ch. 265	SB 385
19-9-603	repealed	Ch. 265	SB 385
19-9-604	repealed	Ch. 265	SB 385
19-9-701	repealed	Ch. 265	SB 385
19-9-702	amended	Ch. 265	SB 385
19-9-703	amended	Ch. 265	SB 385
	amended	Ch. 620	HB 431
19-9-705	amended	Ch. 265	SB 385
19-9-706	amended	Ch. 265	SB 385
19-9-707	repealed	Ch. 265	SB 385
19-9-801	amended	Ch. 265	SB 385
19-9-802	repealed	Ch. 265	SB 385
19-9-804	amended	Ch. 265	SB 385
	amended	Ch. 522	HB 430
	amended	Ch. 620	HB 431
19-9-901	repealed	Ch. 265	SB 385
19-9-902	amended	Ch. 265	SB 385
19-9-903	amended	Ch. 265	SB 385
19-9-904	amended	Ch. 265	SB 385
19-9-905	amended	Ch. 265	SB 385
19-9-911	amended	Ch. 265	SB 385
	amended	Ch. 620	HB 431
19-9-912	amended	Ch. 265	SB 385
19-9-1001	repealed	Ch. 265	SB 385
19-9-1002	repealed	Ch. 265	SB 385
19-9-1003	repealed	Ch. 265	SB 385
19-9-1004	amended	Ch. 265	SB 385
	renumbered 19-2-906	Ch. 265	SB 385
19-9-1005	repealed	Ch. 265	SB 385
19-9-1006	amended	Ch. 259	SB 173
	repealed	Ch. 265	SB 385
19-9-1007	amended	Ch. 265	SB 385
19-9-1008	repealed	Ch. 265	SB 385
19-9-1011	repealed	Ch. 265	SB 385
19-9-1012	repealed	Ch. 265	SB 385
19-12-201	amended	Ch. 481	SB 192
19-12-202	amended	Ch. 10	SB 1
	amended	Ch. 283	HB 435
19-12-401	amended	Ch. 283	HB 435

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19-12-404	amended	Ch. 283	HB 435
19-13-103	amended	Ch. 265	SB 385
19-13-104	amended	Ch. 265	SB 385
19-13-105	amended	Ch. 265	SB 385
19-13-106	repealed	Ch. 265	SB 385
19-13-107	amended	Ch. 265	SB 385
19-13-108	amended	Ch. 265	SB 385
19-13-109	repealed	Ch. 265	SB 385
19-13-110	amended	Ch. 265	SB 385
19-13-201	amended	Ch. 265	SB 385
19-13-202	repealed	Ch. 265	SB 385
19-13-203	repealed	Ch. 265	SB 385
19-13-204	repealed	Ch. 265	SB 385
19-13-301	amended	Ch. 265	SB 385
19-13-302	amended	Ch. 265	SB 385
19-13-303	repealed	Ch. 265	SB 385
19-13-304	repealed	Ch. 265	SB 385
19-13-305	repealed	Ch. 265	SB 385
19-13-401	repealed	Ch. 265	SB 385
19-13-402	repealed	Ch. 265	SB 385
19-13-403	amended	Ch. 265	SB 385
19-13-404	amended	Ch. 265	SB 385
19-13-501	repealed	Ch. 265	SB 385
19-13-502	repealed	Ch. 265	SB 385
19-13-503	amended	Ch. 265	SB 385
19-13-504	repealed	Ch. 265	SB 385
19-13-505	repealed	Ch. 265	SB 385
19-13-506	amended	Ch. 265	SB 385
19-13-601	amended	Ch. 265	SB 385
19-13-602	repealed	Ch. 265	SB 385
19-13-603	repealed	Ch. 265	SB 385
19-13-604	amended	Ch. 265	SB 385
19-13-605	amended	Ch. 265	SB 385
19-13-607	amended	Ch. 265	SB 385
19-13-608	repealed	Ch. 265	SB 385
19-13-609	repealed	Ch. 265	SB 385
19-13-701	amended	Ch. 265	SB 385
19-13-704	amended	Ch. 265	SB 385
19-13-801	repealed	Ch. 265	SB 385
19-13-802	amended	Ch. 265	SB 385
19-13-803	amended	Ch. 265	SB 385
19-13-804	amended	Ch. 265	SB 385
19-13-805	amended	Ch. 265	SB 385
19-13-901	repealed	Ch. 265	SB 385
19-13-902	amended	Ch. 265	SB 385
19-13-903	amended	Ch. 265	SB 385
19-13-1001	repealed	Ch. 265	SB 385
19-13-1002	repealed	Ch. 265	SB 385
19-13-1003	repealed	Ch. 265	SB 385
19-13-1004	amended	Ch. 259	SB 173
	repealed	Ch. 265	SB 385
19-13-1005	repealed	Ch. 265	SB 385
19-13-1006	amended	Ch. 265	SB 385
19-13-1007	amended	Ch. 265	SB 385
19-13-1008	repealed	Ch. 265	SB 385
19-13-1009	amended	Ch. 265	SB 385
19-20-714	enacted	Ch. 530	HB 601

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19-21-111	amended	Ch. 178	SB 407
19-21-201	amended	Ch. 178	SB 407
19-21-203	amended	Ch. 178	SB 407
20-1-212	amended	Ch. 420	SB 288
20-2-115	amended	Ch. 633	HB 667
20-2-121	amended	Ch. 633	HB 667
20-3-106	amended	Ch. 325	HB 656
	amended	Ch. 633	HB 667
20-3-201	amended	Ch. 146	HB 53
20-3-204	amended	Ch. 146	HB 53
20-3-205	amended	Ch. 563	HB 469
	amended	Ch. 633	HB 667
20-3-210	amended	Ch. 563	HB 469
20-3-213	enacted	Ch. 146	HB 53
20-3-302	amended	Ch. 137	SB 306
20-3-322	amended	Ch. 50	SB 28
20-3-324	amended	Ch. 402	HB 410
	amended	Ch. 633	HB 667
20-3-341	amended	Ch. 45	HB 116
20-4-110	amended	Ch. 382	SB 330
20-4-112	enacted	Ch. 382	SB 330
20-4-113	enacted	Ch. 382	SB 330
20-4-114	enacted	Ch. 382	SB 330
20-4-208	amended	Ch. 114	HB 43
20-5-201	amended	Ch. 403	HB 443
20-5-301	repealed	Ch. 563	HB 469
20-5-302	repealed	Ch. 563	HB 469
20-5-303	repealed	Ch. 563	HB 469
20-5-304	repealed	Ch. 563	HB 469
20-5-305	repealed	Ch. 563	HB 469
20-5-306	repealed	Ch. 563	HB 469
20-5-307	amended	Ch. 133	SB 178
	repealed	Ch. 563	HB 469
20-5-311	repealed	Ch. 563	HB 469
20-5-312	amended	Ch. 133	SB 178
	repealed	Ch. 563	HB 469
20-5-313	repealed	Ch. 563	HB 469
20-5-314	amended	Ch. 563	HB 469
20-5-316	formerly 20-7-437	Ch. 563	HB 469
20-5-320	enacted	Ch. 563	HB 469
20-5-321	enacted	Ch. 563	HB 469
20-5-322	enacted	Ch. 563	HB 469
20-5-323	enacted	Ch. 563	HB 469
20-5-324	enacted	Ch. 563	HB 469
20-5-411	enacted	Ch. 569	HB 548
20-6-104	enacted	Ch. 633	HB 667
20-6-201	amended	Ch. 137	SB 306
20-6-412	amended	Ch. 133	SB 178
20-6-506	amended	Ch. 633	HB 667
20-6-603	amended	Ch. 633	HB 667
20-6-701	amended	Ch. 194	SB 307
20-6-702	amended	Ch. 563	HB 469
	amended	Ch. 633	HB 667
20-6-703	amended	Ch. 633	HB 667
20-6-712	repealed	Ch. 194	SB 307
20-7-306	amended	Ch. 633	HB 667
20-7-401	amended	Ch. 356	HB 494

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20-7-403	amended	Ch. 356	HB 494
20-7-411	amended	Ch. 356	HB 494
20-7-413	repealed	Ch. 356	HB 494
20-7-414	amended	Ch. 356	HB 494
	amended	Ch. 633	HB 667
20-7-415	repealed	Ch. 356	HB 494
20-7-419	enacted	Ch. 375	SB 278
20-7-420	amended	Ch. 375	SB 278
	amended	Ch. 563	HB 469
20-7-421	amended	Ch. 375	SB 278
	amended	Ch. 563	HB 469
20-7-422	amended	Ch. 375	SB 278
	amended	Ch. 563	HB 469
20-7-424	amended	Ch. 563	HB 469
20-7-431	amended	Ch. 466	SB 348
	amended	Ch. 633	HB 667
20-7-435	amended	Ch. 375	SB 278
	amended	Ch. 633	HB 667
20-7-436	amended	Ch. 375	SB 278
20-7-437	renumbered 20-5-316	Ch. 563	HB 469
20-7-457	amended	Ch. 466	SB 348
20-7-458	repealed effective 01/01/94	Ch. 466	SB 348
20-7-461	amended	Ch. 356	HB 494
20-7-705	amended	Ch. 133	SB 178
20-8-102	amended	Ch. 537	HB 690
20-9-104	amended	Ch. 633	HB 667
20-9-113	amended	Ch. 633	HB 667
20-9-131	amended	Ch. 133	SB 178
20-9-141	amended	Ch. 133	SB 178
	amended	Ch. 325	HB 656
	amended	Ch. 563	HB 469
	amended	Ch. 633	HB 667
20-9-142	amended	Ch. 133	SB 178
20-9-143	amended	Ch. 633	HB 667
20-9-145	repealed	Ch. 633	HB 667
20-9-147	amended	Ch. 466	SB 348
	repealed	Ch. 633	HB 667
20-9-162	amended	Ch. 633	HB 667
20-9-163	amended	Ch. 633	HB 667
20-9-165	amended	Ch. 633	HB 667
20-9-166	amended	Ch. 633	HB 667
20-9-168	amended	Ch. 633	HB 667
20-9-201	amended	Ch. 633	HB 667
20-9-208	amended	Ch. 633	HB 667
20-9-211	amended	Ch. 133	SB 178
20-9-212	amended	Ch. 133	SB 178
	amended	Ch. 633	HB 667
20-9-213	amended	Ch. 10	SB 1
	amended	Ch. 133	SB 178
20-9-301	repealed	Ch. 633	HB 667
20-9-303	amended	Ch. 633	HB 667
20-9-304	repealed	Ch. 325	HB 656
20-9-305	amended	Ch. 633	HB 667
20-9-306	enacted	Ch. 633	HB 667
20-9-307	enacted	Ch. 633	HB 667
20-9-308	enacted	Ch. 633	HB 667
20-9-311	amended	Ch. 633	HB 667

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20-9-312	repealed	Ch. 633	HB 667
20-9-313	amended	Ch. 466	SB 348
20-9-314	amended	Ch. 633	HB 667
20-9-315	repealed	Ch. 633	HB 667
20-9-316	repealed	Ch. 633	HB 667
20-9-317	repealed	Ch. 633	HB 667
20-9-318	repealed	Ch. 633	HB 667
20-9-319	repealed	Ch. 633	HB 667
20-9-320	repealed	Ch. 633	HB 667
20-9-321	amended	Ch. 633	HB 667
20-9-322	repealed	Ch. 633	HB 667
20-9-331	amended	Ch. 633	HB 667
20-9-333	amended	Ch. 633	HB 667
20-9-335	amended	Ch. 633	HB 667
20-9-343	amended	Ch. 375	SB 278
	amended	Ch. 593	SB 378
	amended	Ch. 633	HB 667
20-9-344	amended	Ch. 633	HB 667
20-9-346	amended	Ch. 349	SB 384
	amended	Ch. 633	HB 667
20-9-347	amended	Ch. 633	HB 667
20-9-351	amended	Ch. 633	HB 667
20-9-353	amended	Ch. 633	HB 667
20-9-366	amended	Ch. 633	HB 667
20-9-367	amended	Ch. 633	HB 667
20-9-368	amended	Ch. 633	HB 667
20-9-369	amended	Ch. 633	HB 667
20-9-370	enacted	Ch. 633	HB 667
20-9-371	enacted	Ch. 633	HB 667
20-9-406	amended	Ch. 633	HB 667
20-9-412	amended	Ch. 158	HB 403
20-9-439	amended	Ch. 133	SB 178
	amended	Ch. 633	HB 667
20-9-501	amended	Ch. 133	SB 178
20-9-503	amended	Ch. 133	SB 178
20-9-506	amended	Ch. 133	SB 178
20-9-507	amended	Ch. 466	SB 348
	amended	Ch. 563	HB 469
	amended	Ch. 633	HB 667
20-9-514	enacted	Ch. 633	HB 667
20-10-101	amended	Ch. 359	SB 31
20-10-103	amended	Ch. 195	SB 315
20-10-105	amended	Ch. 563	HB 469
20-10-142	amended	Ch. 359	SB 31
20-10-144	amended	Ch. 133	SB 178
	amended	Ch. 563	HB 469
20-10-146	amended	Ch. 10	SB 1
	amended	Ch. 133	SB 178
	amended	Ch. 359	SB 31
	amended	Ch. 563	HB 469
20-10-147	amended	Ch. 133	SB 178
20-15-403	amended	Ch. 525	HB 539
	amended	Ch. 539	SB 106
20-25-207	enacted	Ch. 443	HB 299
20-25-236	amended	Ch. 349	SB 384
20-25-237	enacted	Ch. 443	HB 299
20-25-301	amended	Ch. 349	SB 384

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20-25-422	amended	Ch. 533	HB 652
20-25-440	enacted	Ch. 22	HB 85
20-26-1101	amended	Ch. 205	HB 293
20-26-1103	amended	Ch. 205	HB 293
20-26-1104	amended	Ch. 205	HB 293
20-26-1401	enacted	Ch. 526	HB 579
20-26-1402	enacted	Ch. 526	HB 579
20-26-1403	enacted	Ch. 526	HB 579
20-26-1404	enacted	Ch. 526	HB 579
20-26-1407	enacted and amended	Ch. 526	HB 579
20-26-1408	enacted	Ch. 526	HB 579
20-26-1409	enacted	Ch. 526	HB 579
20-26-1410	enacted	Ch. 526	HB 579
20-26-1411	enacted and amended	Ch. 526	HB 579
20-32-103	amended	Ch. 547	HB 11
22-2-308	amended	Ch. 479	HB 668
22-3-107	amended	Ch. 4	SB 2
22-3-113	enacted	Ch. 4	SB 2
22-3-114	enacted	Ch. 4	SB 2
22-3-201	amended	Ch. 420	SB 288
22-3-202	amended	Ch. 420	SB 288
22-3-203	amended	Ch. 420	SB 288
23-1-115	enacted	Ch. 501	HB 314
23-1-116	enacted	Ch. 501	HB 314
23-1-117	enacted	Ch. 501	HB 314
23-1-118	enacted	Ch. 501	HB 314
23-1-131	enacted	Ch. 574	HB 642
23-1-301	amended	Ch. 534	HB 660
23-2-508	amended	Ch. 482	SB 373
23-2-512	amended	Ch. 126	SB 355
23-2-518	amended	Ch. 511	HB 463
23-2-533	enacted	Ch. 511	HB 463
23-2-536	enacted	Ch. 511	HB 463
23-2-602	amended	Ch. 351	HB 281
23-2-611	amended	Ch. 351	HB 281
	amended	Ch. 482	SB 373
23-2-615	amended	Ch. 351	HB 281
23-2-616	amended	Ch. 351	HB 281
23-2-619	amended	Ch. 351	HB 281
23-2-621	enacted	Ch. 351	HB 281
23-2-622	enacted	Ch. 351	HB 281
23-2-632	amended	Ch. 351	HB 281
23-2-634	amended	Ch. 351	HB 281
23-2-635	amended	Ch. 351	HB 281
23-2-641	amended	Ch. 351	HB 281
23-2-642	amended	Ch. 351	HB 281
23-2-654	amended	Ch. 351	HB 281
23-2-716	amended	Ch. 10	SB 1
23-2-717	amended	Ch. 10	SB 1
23-2-718	amended	Ch. 10	SB 1
23-2-811	amended	Ch. 482	SB 373
23-2-812	amended	Ch. 482	SB 373
23-2-814	enacted	Ch. 247	HB 337
23-2-821	enacted	Ch. 578	HB 679
23-2-822	enacted	Ch. 578	HB 679
23-2-823	enacted	Ch. 578	HB 679
23-2-901	enacted	Ch. 264	SB 214

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23-2-902	enacted	Ch. 264	SB 214
23-2-903	enacted	Ch. 264	SB 214
23-2-904	enacted	Ch. 264	SB 214
23-2-905	enacted	Ch. 264	SB 214
23-2-906	enacted	Ch. 264	SB 214
23-2-907	enacted	Ch. 264	SB 214
23-2-908	enacted	Ch. 264	SB 214
23-3-401	amended	Ch. 11	HB 45
23-4-301	amended	Ch. 449	HB 433
23-5-110	amended	Ch. 398	HB 272
23-5-111	amended	Ch. 398	HB 272
23-5-112	amended	Ch. 398	HB 272
	amended	Ch. 626	HB 411
23-5-113	amended	Ch. 398	HB 272
23-5-115	amended	Ch. 398	HB 272
23-5-117	amended	Ch. 398	HB 272
23-5-118	amended	Ch. 398	HB 272
23-5-123	amended	Ch. 398	HB 272
23-5-128	enacted	Ch. 626	HB 411
23-5-129	enacted	Ch. 626	HB 411
23-5-130	enacted	Ch. 626	HB 411
23-5-136	amended	Ch. 398	HB 272
	amended	Ch. 626	HB 411
23-5-138	enacted	Ch. 626	HB 411
23-5-152	amended	Ch. 626	HB 411
23-5-157	amended	Ch. 398	HB 272
	amended	Ch. 626	HB 411
23-5-158	amended	Ch. 626	HB 411
23-5-160	amended	Ch. 626	HB 411
23-5-161	amended	Ch. 398	HB 272
23-5-162	amended	Ch. 398	HB 272
23-5-164	enacted	Ch. 626	HB 411
23-5-171	amended	Ch. 398	HB 272
23-5-172	amended	Ch. 398	HB 272
23-5-306	amended	Ch. 626	HB 411
23-5-308	amended	Ch. 317	SB 229
23-5-309	amended	Ch. 317	SB 229
	amended	Ch. 398	HB 272
23-5-312	amended	Ch. 626	HB 411
23-5-317	amended	Ch. 626	HB 411
23-5-318	enacted	Ch. 317	SB 229
23-5-412	amended	Ch. 626	HB 411
23-5-413	amended	Ch. 26	HB 63
	amended	Ch. 288	HB 506
23-5-502	amended	Ch. 449	HB 433
23-5-602	amended	Ch. 626	HB 411
23-5-610	amended	Ch. 398	HB 272
	amended	Ch. 455	HB 641
23-5-612	amended	Ch. 210	HB 269
23-5-614	enacted	Ch. 626	HB 411
23-5-625	amended	Ch. 626	HB 411
23-5-631	amended	Ch. 398	HB 272
	amended	Ch. 626	HB 411
23-5-646	amended	Ch. 455	HB 641
23-6-101	amended	Ch. 327	HB 191
23-6-102	amended	Ch. 327	HB 191

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23-6-104	amended	Ch. 327	HB 191
	amended	Ch. 353	HB 307
	amended	Ch. 626	HB 411
23-7-211	amended	Ch. 24	HB 56
23-7-302	amended	Ch. 398	HB 272
23-7-311	amended	Ch. 25	HB 59
23-7-312	enacted	Ch. 429	SB 392
23-7-402	amended	Ch. 461	SB 292
25-1-201	amended	Ch. 570	HB 555
25-9-301	amended	Ch. 631	HB 335
25-9-302	amended	Ch. 631	HB 335
25-9-303	amended	Ch. 631	HB 335
25-9-601	enacted	Ch. 441	HB 235
25-9-602	enacted	Ch. 441	HB 235
25-9-603	enacted	Ch. 441	HB 235
25-9-604	enacted	Ch. 441	HB 235
25-9-605	enacted	Ch. 441	HB 235
25-9-606	enacted	Ch. 441	HB 235
25-9-607	enacted	Ch. 441	HB 235
25-9-608	enacted	Ch. 441	HB 235
25-9-609	enacted	Ch. 441	HB 235
25-9-701	enacted	Ch. 152	HB 234
25-9-702	enacted	Ch. 152	HB 234
25-9-703	enacted	Ch. 152	HB 234
25-9-704	enacted	Ch. 152	HB 234
25-9-705	enacted	Ch. 152	HB 234
25-9-706	enacted	Ch. 152	HB 234
25-9-707	enacted	Ch. 152	HB 234
25-9-708	enacted	Ch. 152	HB 234
25-9-709	enacted	Ch. 152	HB 234
25-9-710	enacted	Ch. 152	HB 234
25-9-711	enacted	Ch. 152	HB 234
25-9-712	enacted	Ch. 152	HB 234
25-9-713	enacted	Ch. 152	HB 234
25-9-714	enacted	Ch. 152	HB 234
25-9-715	enacted	Ch. 152	HB 234
25-10-404	amended	Ch. 447	HB 409
25-10-405	amended	Ch. 570	HB 555
25-13-101	amended	Ch. 631	HB 335
25-31-407	amended	Ch. 343	SB 251
25-34-102	amended	Ch. 10	SB 1
25-35-502	amended	Ch. 10	SB 1
25-35-503	amended	Ch. 10	SB 1
27-1-717	amended	Ch. 10	SB 1
27-1-725	enacted	Ch. 119	SB 140
27-1-726	enacted	Ch. 119	SB 140
27-1-727	enacted	Ch. 119	SB 140
27-1-728	enacted	Ch. 119	SB 140
27-2-201	amended	Ch. 631	HB 335
27-2-204	amended	Ch. 560	HB 405
27-2-211	amended	Ch. 631	HB 335
27-2-217	enacted	Ch. 560	HB 405
27-12-206	amended	Ch. 47	HB 147
27-25-102	amended	Ch. 10	SB 1
27-25-203	amended	Ch. 10	SB 1
27-26-102	amended	Ch. 10	SB 1
27-26-206	amended	Ch. 10	SB 1

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27-27-102	amended	Ch. 10	SB 1
27-32-104	amended	Ch. 570	HB 555
30-3-415	amended	Ch. 10	SB 1
30-6-112	repealed	Ch. 10	SB 1
30-9-402	amended	Ch. 335	HB 635
30-9-403	amended	Ch. 411	HB 549
	amended	Ch. 420	SB 288
30-9-407	amended	Ch. 335	HB 635
	amended	Ch. 420	SB 288
30-9-432	enacted	Ch. 335	HB 635
30-10-103	amended	Ch. 162	HB 464
30-10-115	amended	Ch. 462	SB 314
30-10-201	amended	Ch. 162	HB 464
30-10-206	amended	Ch. 162	HB 464
30-10-208	amended	Ch. 162	HB 464
30-10-209	amended	Ch. 162	HB 464
	amended	Ch. 462	SB 314
30-10-304	amended	Ch. 540	SB 357
30-10-305	amended	Ch. 540	SB 357
30-10-307	amended	Ch. 162	HB 464
30-12-203	amended	Ch. 615	HB 70
30-13-141	amended	Ch. 120	SB 146
30-13-202	amended	Ch. 120	SB 146
30-13-301	amended	Ch. 120	SB 146
30-13-311	amended	Ch. 120	SB 146
30-14-225	enacted	Ch. 554	HB 273
30-14-804	amended	Ch. 519	HB 216
31-1-107	amended	Ch. 588	SB 11
31-1-202	amended	Ch. 198	SB 419
31-1-235	amended	Ch. 198	SB 419
31-1-401	amended	Ch. 258	SB 361
31-1-403	repealed	Ch. 344	SB 238
31-1-404	repealed	Ch. 344	SB 238
31-1-405	repealed	Ch. 344	SB 238
31-1-406	repealed	Ch. 344	SB 238
31-1-602	amended	Ch. 593	SB 378
31-2-106	amended	Ch. 238	SB 46
	amended	Ch. 265	SB 385
32-1-101	amended	Ch. 395	HB 201
32-1-109	amended	Ch. 395	HB 201
32-1-112	enacted	Ch. 395	HB 201
32-1-201	amended	Ch. 395	HB 201
32-1-202	amended	Ch. 395	HB 201
32-1-211	amended	Ch. 395	HB 201
32-1-217	repealed	Ch. 395	HB 201
32-1-218	amended	Ch. 395	HB 201
32-1-219	enacted	Ch. 395	HB 201
32-1-220	enacted	Ch. 395	HB 201
32-1-234	amended	Ch. 395	HB 201
32-1-301	amended	Ch. 395	HB 201
32-1-302	amended	Ch. 395	HB 201
32-1-305	repealed	Ch. 395	HB 201
32-1-306	repealed	Ch. 395	HB 201
32-1-307	amended	Ch. 395	HB 201
32-1-308	amended	Ch. 395	HB 201
32-1-322	amended	Ch. 395	HB 201
32-1-323	repealed	Ch. 395	HB 201

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32-1-325	amended	Ch. 395	HB 201
32-1-331	repealed	Ch. 395	HB 201
32-1-332	repealed	Ch. 395	HB 201
32-1-333	repealed	Ch. 395	HB 201
32-1-334	repealed	Ch. 395	HB 201
32-1-336	repealed	Ch. 395	HB 201
32-1-337	repealed	Ch. 395	HB 201
32-1-338	repealed	Ch. 395	HB 201
32-1-339	amended	Ch. 395	HB 201
32-1-340	amended	Ch. 395	HB 201
32-1-351	repealed	Ch. 395	HB 201
32-1-352	repealed	Ch. 395	HB 201
32-1-353	repealed	Ch. 395	HB 201
32-1-354	repealed	Ch. 395	HB 201
32-1-355	repealed	Ch. 395	HB 201
32-1-356	repealed	Ch. 395	HB 201
32-1-361	amended	Ch. 395	HB 201
32-1-372	amended	Ch. 401	HB 358
32-1-374	amended	Ch. 395	HB 201
32-1-381	enacted	Ch. 401	HB 358
32-1-382	enacted	Ch. 401	HB 358
32-1-383	enacted	Ch. 401	HB 358
32-1-384	enacted	Ch. 401	HB 358
32-1-402	amended	Ch. 395	HB 201
32-1-412	amended	Ch. 395	HB 201
32-1-420	enacted	Ch. 289	HB 543
32-1-422	amended	Ch. 395	HB 201
32-1-423	amended	Ch. 395	HB 201
32-1-424	amended	Ch. 395	HB 201
32-1-431	repealed	Ch. 395	HB 201
32-1-432	amended	Ch. 395	HB 201
32-1-442	repealed	Ch. 494	SB 119
32-1-443	repealed	Ch. 494	SB 119
32-1-446	amended	Ch. 395	HB 201
32-1-452	amended	Ch. 395	HB 201
32-1-455	amended	Ch. 395	HB 201
32-1-465	amended	Ch. 395	HB 201
32-1-467	amended	Ch. 395	HB 201
32-1-484	amended	Ch. 395	HB 201
32-1-507	amended	Ch. 395	HB 201
32-1-513	amended	Ch. 395	HB 201
32-1-515	amended	Ch. 395	HB 201
32-1-518	amended	Ch. 395	HB 201
32-1-531	amended	Ch. 395	HB 201
32-1-532	amended	Ch. 395	HB 201
32-1-534	amended	Ch. 395	HB 201
32-1-537	amended	Ch. 395	HB 201
32-1-538	amended	Ch. 395	HB 201
32-1-551	amended	Ch. 395	HB 201
32-1-552	amended	Ch. 395	HB 201
32-1-553	amended	Ch. 395	HB 201
32-1-606	amended	Ch. 395	HB 201
32-1-803	amended	Ch. 395	HB 201
32-1-1001	enacted	Ch. 290	HB 596
32-1-1002	enacted	Ch. 290	HB 596
32-1-1003	enacted	Ch. 290	HB 596
32-1-1004	enacted	Ch. 290	HB 596

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32-1-1005	enacted	Ch. 290	HB 596
32-1-1006	enacted	Ch. 290	HB 596
32-1-1007	enacted	Ch. 290	HB 596
32-2-406	amended	Ch. 10	SB 1
32-3-501	amended	Ch. 494	SB 119
32-3-801	amended	Ch. 66	HB 182
32-3-802	amended	Ch. 66	HB 182
32-3-803	amended	Ch. 66	HB 182
32-3-804	amended	Ch. 66	HB 182
32-3-805	enacted	Ch. 66	HB 182
32-3-806	enacted	Ch. 66	HB 182
32-3-807	enacted	Ch. 66	HB 182
32-3-808	enacted	Ch. 66	HB 182
32-3-809	enacted	Ch. 66	HB 182
32-5-103	amended	Ch. 18	SB 21
32-5-301	amended	Ch. 198	SB 419
32-5-302	amended	Ch. 198	SB 419
33-1-303	amended	Ch. 165	HB 513
33-1-311	amended	Ch. 165	HB 513
33-1-316	amended	Ch. 451	HB 545
33-1-317	amended	Ch. 164	HB 493
33-1-401	amended	Ch. 596	SB 430
33-1-403	repealed	Ch. 596	SB 430
33-1-408	enacted	Ch. 596	SB 430
33-1-409	enacted	Ch. 596	SB 430
33-1-410	enacted	Ch. 596	SB 430
33-1-412	repealed	Ch. 596	SB 430
33-1-501	amended	Ch. 451	HB 545
33-2-302	amended	Ch. 451	HB 545
33-2-305	amended	Ch. 451	HB 545
33-2-307	amended	Ch. 451	HB 545
33-2-312	amended	Ch. 451	HB 545
33-2-313	amended	Ch. 451	HB 545
33-2-501	amended	Ch. 596	SB 430
33-2-532	amended	Ch. 596	SB 430
33-2-533	amended	Ch. 596	SB 430
33-2-701	amended	Ch. 596	SB 430
33-2-705	amended	Ch. 451	HB 545
33-2-708	amended	Ch. 451	HB 545
	amended	Ch. 596	SB 430
	amended	Ch. 622	SB 354
33-2-827	amended	Ch. 10	SB 1
33-2-1111	amended	Ch. 596	SB 430
33-2-1113	amended	Ch. 451	HB 545
33-2-1114	amended	Ch. 596	SB 430
33-2-1115	amended	Ch. 596	SB 430
33-2-1125	enacted	Ch. 596	SB 430
33-2-1201	amended	Ch. 596	SB 430
33-2-1205	repealed	Ch. 596	SB 430
33-2-1216	enacted	Ch. 596	SB 430
33-2-1217	enacted	Ch. 596	SB 430
33-2-1218	enacted	Ch. 596	SB 430
33-2-1331	amended	Ch. 596	SB 430
33-2-1342	amended	Ch. 596	SB 430
33-2-1346	amended	Ch. 596	SB 430
33-2-1391	enacted	Ch. 596	SB 430
33-2-1392	enacted	Ch. 596	SB 430

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33-2-1393	enacted	Ch. 596	SB 430
33-2-1394	enacted	Ch. 596	SB 430
33-2-1501	enacted	Ch. 596	SB 430
33-2-1502	enacted	Ch. 596	SB 430
33-2-1503	enacted	Ch. 596	SB 430
33-2-1504	enacted	Ch. 596	SB 430
33-2-1509	enacted	Ch. 596	SB 430
33-2-1510	enacted	Ch. 596	SB 430
33-2-1511	enacted	Ch. 596	SB 430
33-2-1512	enacted	Ch. 596	SB 430
33-2-1513	enacted	Ch. 596	SB 430
33-2-1514	enacted	Ch. 596	SB 430
33-2-1515	enacted	Ch. 596	SB 430
33-2-1516	enacted	Ch. 596	SB 430
33-2-1517	enacted	Ch. 596	SB 430
33-2-1601	enacted	Ch. 596	SB 430
33-2-1602	enacted	Ch. 596	SB 430
33-2-1603	enacted	Ch. 596	SB 430
33-2-1604	enacted	Ch. 596	SB 430
33-2-1605	enacted	Ch. 596	SB 430
33-2-1701	enacted	Ch. 596	SB 430
33-2-1702	enacted	Ch. 596	SB 430
33-2-1703	enacted	Ch. 596	SB 430
33-2-1704	enacted	Ch. 596	SB 430
33-2-1705	enacted	Ch. 596	SB 430
33-2-1706	enacted	Ch. 596	SB 430
33-2-1707	enacted	Ch. 596	SB 430
33-2-1708	enacted	Ch. 596	SB 430
33-2-1709	enacted	Ch. 596	SB 430
33-3-305	amended	Ch. 451	HB 545
33-4-101	amended	Ch. 451	HB 545
33-4-203	amended	Ch. 451	HB 545
33-4-403	amended	Ch. 334	HB 575
33-4-501	amended	Ch. 334	HB 575
33-10-105	amended	Ch. 596	SB 430
33-10-111	amended	Ch. 596	SB 430
33-10-114	amended	Ch. 596	SB 430
33-10-201	amended	Ch. 596	SB 430
33-10-202	amended	Ch. 596	SB 430
33-10-203	amended	Ch. 596	SB 430
33-10-210	amended	Ch. 596	SB 430
33-10-217	amended	Ch. 596	SB 430
33-10-218	amended	Ch. 596	SB 430
33-10-224	amended	Ch. 596	SB 430
33-10-227	amended	Ch. 596	SB 430
33-10-229	repealed	Ch. 596	SB 430
33-10-230	amended	Ch. 596	SB 430
33-11-103	amended	Ch. 596	SB 430
33-11-104	amended	Ch. 451	HB 545
	amended	Ch. 596	SB 430
33-11-105	amended	Ch. 10	SB 1
	amended	Ch. 596	SB 430
33-11-108	amended	Ch. 451	HB 545
	amended	Ch. 596	SB 430
33-11-109	amended	Ch. 596	SB 430
33-11-110	enacted	Ch. 596	SB 430
33-14-201	amended	Ch. 451	HB 545

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33-14-305	amended	Ch. 451	HB 545
33-14-338	enacted	Ch. 416	HB 637
33-14-339	enacted	Ch. 416	HB 637
33-14-340	enacted	Ch. 416	HB 637
33-15-303	amended	Ch. 451	HB 545
33-15-318	enacted	Ch. 295	SB 163
33-15-333	enacted	Ch. 416	HB 637
33-15-334	enacted	Ch. 416	HB 637
33-15-335	enacted	Ch. 416	HB 637
33-15-336	enacted	Ch. 416	HB 637
33-15-337	enacted	Ch. 416	HB 637
33-16-106	amended	Ch. 451	HB 545
33-16-1005	amended	Ch. 630	HB 13
33-16-1011	amended	Ch. 528	HB 587
	amended	Ch. 630	HB 13
33-16-1012	amended	Ch. 528	HB 587
33-17-206	repealed	Ch. 451	HB 545
33-17-231	amended	Ch. 451	HB 545
33-17-237	amended	Ch. 451	HB 545
33-17-512	amended	Ch. 215	HB 304
33-17-1001	amended	Ch. 164	HB 493
	amended	Ch. 622	SB 354
33-17-1201	enacted	Ch. 622	SB 354
33-17-1202	enacted	Ch. 622	SB 354
33-17-1203	enacted	Ch. 622	SB 354
33-17-1204	enacted	Ch. 622	SB 354
33-17-1205	enacted	Ch. 622	SB 354
33-17-1206	enacted	Ch. 622	SB 354
33-17-1207	enacted	Ch. 622	SB 354
33-18-221	enacted	Ch. 554	HB 273
33-18-222	enacted	Ch. 554	HB 273
33-18-223	enacted	Ch. 554	HB 273
33-18-1006	enacted	Ch. 554	HB 273
33-20-101	amended	Ch. 451	HB 545
33-20-121	amended	Ch. 451	HB 545
33-20-127	amended	Ch. 451	HB 545
33-20-151	repealed	Ch. 494	SB 119
33-20-603	amended	Ch. 451	HB 545
33-21-103	amended	Ch. 179	SB 420
33-21-201	amended	Ch. 179	SB 420
33-22-101	amended	Ch. 451	HB 545
33-22-110	enacted	Ch. 451	HB 545
33-22-111	amended	Ch. 628	SB 347
33-22-130	amended	Ch. 451	HB 545
33-22-131	amended	Ch. 451	HB 545
33-22-132	amended	Ch. 451	HB 545
33-22-201	amended	Ch. 451	HB 545
33-22-202	amended	Ch. 451	HB 545
33-22-216	repealed	Ch. 451	HB 545
33-22-804	amended	Ch. 596	SB 430
33-22-902	amended	Ch. 163	HB 465
33-22-903	amended	Ch. 163	HB 465
33-22-904	amended	Ch. 163	HB 465
33-22-905	amended	Ch. 163	HB 465
33-22-906	amended	Ch. 163	HB 465
33-22-907	amended	Ch. 163	HB 465
33-22-908	amended	Ch. 163	HB 465

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33-22-910	amended	Ch. 163	HB 465
33-22-911	amended	Ch. 163	HB 465
33-22-1513	amended	Ch. 349	SB 384
33-22-1703	amended	Ch. 451	HB 545
33-22-1704	amended	Ch. 202	SB 331
33-22-1801	enacted	Ch. 606	SB 285
33-22-1802	enacted	Ch. 606	SB 285
33-22-1803	enacted	Ch. 606	SB 285
33-22-1804	enacted	Ch. 606	SB 285
33-22-1808	enacted	Ch. 606	SB 285
33-22-1809	enacted	Ch. 606	SB 285
33-22-1810	enacted	Ch. 606	SB 285
33-22-1811	enacted	Ch. 606	SB 285
33-22-1812	enacted	Ch. 606	SB 285
33-22-1813	enacted	Ch. 606	SB 285
33-22-1814	enacted	Ch. 606	SB 285
33-22-1818	enacted	Ch. 606	SB 285
33-22-1819	enacted	Ch. 606	SB 285
33-22-1820	enacted	Ch. 606	SB 285
33-22-1821	enacted	Ch. 606	SB 285
33-22-1822	enacted	Ch. 606	SB 285
33-32-103	amended	Ch. 561	HB 427
33-32-201	amended	Ch. 378	SB 291
35-1-115	amended	Ch. 249	HB 577
35-1-235	enacted	Ch. 249	HB 577
35-1-308	amended	Ch. 120	SB 146
35-1-827	amended	Ch. 249	HB 577
35-1-937	amended	Ch. 249	HB 577
35-1-1031	amended	Ch. 120	SB 146
35-1-1039	amended	Ch. 249	HB 577
35-2-305	amended	Ch. 120	SB 146
35-2-608	amended	Ch. 249	HB 577
35-2-826	amended	Ch. 120	SB 146
35-2-833	amended	Ch. 249	HB 577
35-2-906	amended	Ch. 10	SB 1
35-4-206	amended	Ch. 120	SB 146
	amended	Ch. 249	HB 577
35-8-101	enacted	Ch. 120	SB 146
35-8-102	enacted	Ch. 120	SB 146
35-8-103	enacted	Ch. 120	SB 146
35-8-104	enacted	Ch. 120	SB 146
35-8-105	enacted	Ch. 120	SB 146
35-8-106	enacted	Ch. 120	SB 146
35-8-107	enacted	Ch. 120	SB 146
35-8-201	enacted	Ch. 120	SB 146
35-8-202	enacted	Ch. 120	SB 146
35-8-203	enacted	Ch. 120	SB 146
35-8-204	enacted	Ch. 120	SB 146
35-8-205	enacted	Ch. 120	SB 146
35-8-206	enacted	Ch. 120	SB 146
35-8-207	enacted	Ch. 120	SB 146
35-8-208	enacted	Ch. 120	SB 146
35-8-209	enacted	Ch. 120	SB 146
35-8-210	enacted	Ch. 120	SB 146
35-8-211	enacted	Ch. 120	SB 146
35-8-212	enacted	Ch. 120	SB 146
35-8-301	enacted	Ch. 120	SB 146

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35-8-302	enacted	Ch. 120	SB 146
35-8-303	enacted	Ch. 120	SB 146
35-8-304	enacted	Ch. 120	SB 146
35-8-401	enacted	Ch. 120	SB 146
35-8-402	enacted	Ch. 120	SB 146
35-8-403	enacted	Ch. 120	SB 146
35-8-404	enacted	Ch. 120	SB 146
35-8-405	enacted	Ch. 120	SB 146
35-8-501	enacted	Ch. 120	SB 146
35-8-502	enacted	Ch. 120	SB 146
35-8-503	enacted	Ch. 120	SB 146
35-8-601	enacted	Ch. 120	SB 146
35-8-602	enacted	Ch. 120	SB 146
35-8-603	enacted	Ch. 120	SB 146
35-8-604	enacted	Ch. 120	SB 146
35-8-605	enacted	Ch. 120	SB 146
35-8-606	enacted	Ch. 120	SB 146
35-8-701	enacted	Ch. 120	SB 146
35-8-702	enacted	Ch. 120	SB 146
35-8-703	enacted	Ch. 120	SB 146
35-8-704	enacted	Ch. 120	SB 146
35-8-705	enacted	Ch. 120	SB 146
35-8-706	enacted	Ch. 120	SB 146
35-8-801	enacted	Ch. 120	SB 146
35-8-802	enacted	Ch. 120	SB 146
35-8-901	enacted	Ch. 120	SB 146
35-8-902	enacted	Ch. 120	SB 146
35-8-903	enacted	Ch. 120	SB 146
35-8-904	enacted	Ch. 120	SB 146
35-8-905	enacted	Ch. 120	SB 146
35-8-906	enacted	Ch. 120	SB 146
35-8-907	enacted	Ch. 120	SB 146
35-8-908	enacted	Ch. 120	SB 146
35-8-909	enacted	Ch. 120	SB 146
35-8-1001	enacted	Ch. 120	SB 146
35-8-1002	enacted	Ch. 120	SB 146
35-8-1003	enacted	Ch. 120	SB 146
35-8-1004	enacted	Ch. 120	SB 146
35-8-1005	enacted	Ch. 120	SB 146
35-8-1006	enacted	Ch. 120	SB 146
35-8-1007	enacted	Ch. 120	SB 146
35-8-1008	enacted	Ch. 120	SB 146
35-8-1009	enacted	Ch. 120	SB 146
35-8-1010	enacted	Ch. 120	SB 146
35-8-1011	enacted	Ch. 120	SB 146
35-8-1012	enacted	Ch. 120	SB 146
35-8-1013	enacted	Ch. 120	SB 146
35-8-1014	enacted	Ch. 120	SB 146
35-8-1101	enacted	Ch. 120	SB 146
35-8-1102	enacted	Ch. 120	SB 146
35-8-1201	enacted	Ch. 120	SB 146
35-8-1301	enacted	Ch. 120	SB 146
35-8-1302	enacted	Ch. 120	SB 146
35-8-1303	enacted	Ch. 120	SB 146
35-8-1304	enacted	Ch. 120	SB 146
35-8-1305	enacted	Ch. 120	SB 146
35-8-1306	enacted	Ch. 120	SB 146

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35-8-1307	enacted	Ch. 120	SB 146
35-10-102	amended	Ch. 238	SB 46
35-10-103	amended	Ch. 238	SB 46
35-10-104	amended	Ch. 238	SB 46
35-10-105	amended	Ch. 238	SB 46
35-10-106	enacted	Ch. 238	SB 46
35-10-111	enacted	Ch. 238	SB 46
35-10-112	enacted	Ch. 238	SB 46
35-10-113	enacted	Ch. 238	SB 46
35-10-116	enacted	Ch. 238	SB 46
35-10-117	enacted	Ch. 238	SB 46
35-10-201	amended	Ch. 238	SB 46
35-10-202	amended	Ch. 238	SB 46
35-10-203	amended	Ch. 238	SB 46
35-10-203(2)-(5)	enacted	Ch. 238	SB 46
35-10-301	amended	Ch. 238	SB 46
35-10-302	amended	Ch. 238	SB 46
35-10-303	repealed	Ch. 238	SB 46
35-10-304	repealed	Ch. 238	SB 46
35-10-305	amended	Ch. 238	SB 46
35-10-306	repealed	Ch. 238	SB 46
35-10-307	amended	Ch. 238	SB 46
35-10-308	amended	Ch. 238	SB 46
35-10-309	amended	Ch. 238	SB 46
35-10-310	enacted	Ch. 238	SB 46
35-10-311	enacted	Ch. 238	SB 46
35-10-312	enacted	Ch. 238	SB 46
35-10-401	amended	Ch. 238	SB 46
35-10-402	amended	Ch. 238	SB 46
35-10-403	amended	Ch. 238	SB 46
35-10-404	repealed	Ch. 238	SB 46
35-10-405	amended	Ch. 238	SB 46
35-10-406	amended	Ch. 238	SB 46
35-10-407	enacted	Ch. 238	SB 46
35-10-408	enacted	Ch. 238	SB 46
35-10-409	enacted	Ch. 238	SB 46
35-10-501	repealed	Ch. 238	SB 46
35-10-502	repealed	Ch. 238	SB 46
35-10-503	repealed	Ch. 238	SB 46
35-10-504	repealed	Ch. 238	SB 46
35-10-505	amended	Ch. 238	SB 46
35-10-507	repealed	Ch. 238	SB 46
35-10-508	enacted	Ch. 238	SB 46
35-10-509	enacted	Ch. 238	SB 46
35-10-510	enacted	Ch. 238	SB 46
35-10-601	repealed	Ch. 238	SB 46
35-10-602	amended	Ch. 238	SB 46
35-10-603	repealed	Ch. 238	SB 46
35-10-604	repealed	Ch. 238	SB 46
35-10-605	repealed	Ch. 238	SB 46
35-10-606	repealed	Ch. 238	SB 46
35-10-607	repealed	Ch. 238	SB 46
35-10-608	repealed	Ch. 238	SB 46
35-10-609	amended	Ch. 238	SB 46
35-10-610	repealed	Ch. 238	SB 46
35-10-611	repealed	Ch. 238	SB 46
35-10-612	repealed	Ch. 238	SB 46

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35-10-613	repealed	Ch. 238	SB 46
35-10-614	repealed	Ch. 238	SB 46
35-10-615	repealed	Ch. 238	SB 46
35-10-616	enacted	Ch. 238	SB 46
35-10-617	enacted	Ch. 238	SB 46
35-10-618	enacted	Ch. 238	SB 46
35-10-619	enacted	Ch. 238	SB 46
35-10-620	enacted	Ch. 238	SB 46
35-10-621	enacted	Ch. 238	SB 46
35-10-622	enacted	Ch. 238	SB 46
35-10-623	enacted	Ch. 238	SB 46
35-10-624	enacted	Ch. 238	SB 46
35-10-625	enacted	Ch. 238	SB 46
35-10-626	enacted	Ch. 238	SB 46
35-10-627	enacted	Ch. 238	SB 46
35-10-628	enacted	Ch. 238	SB 46
35-10-629	enacted	Ch. 238	SB 46
35-10-635	enacted	Ch. 238	SB 46
35-10-636	enacted	Ch. 238	SB 46
35-10-637	enacted	Ch. 238	SB 46
35-10-641	enacted	Ch. 238	SB 46
35-10-642	enacted	Ch. 238	SB 46
35-10-643	enacted	Ch. 238	SB 46
35-10-644	enacted	Ch. 238	SB 46
35-12-505	amended	Ch. 120	SB 146
35-18-105	amended	Ch. 61	HB 120
35-18-106	amended	Ch. 61	HB 120
35-18-311	amended	Ch. 41	HB 108
35-18-316	amended	Ch. 263	SB 190
35-21-102	amended	Ch. 38	SB 45
35-21-103	amended	Ch. 38	SB 45
35-21-204	amended	Ch. 38	SB 45
35-21-207	amended	Ch. 38	SB 45
35-21-208	amended	Ch. 38	SB 45
35-21-214	amended	Ch. 38	SB 45
35-21-216	amended	Ch. 38	SB 45
35-21-217	amended	Ch. 38	SB 45
35-21-302	amended	Ch. 38	SB 45
35-21-303	amended	Ch. 38	SB 45
35-21-304	amended	Ch. 38	SB 45
35-21-417	amended	Ch. 38	SB 45
35-21-504	repealed	Ch. 38	SB 45
35-21-505	repealed	Ch. 38	SB 45
35-21-709	repealed	Ch. 38	SB 45
37-1-106	amended	Ch. 349	SB 384
37-1-131	amended	Ch. 619	HB 622
37-3-203	amended	Ch. 419	SB 89
37-3-305	amended	Ch. 419	SB 89
37-3-322	amended	Ch. 419	SB 89
	amended	Ch. 619	HB 622
37-3-323	amended	Ch. 419	SB 89
37-3-401	amended	Ch. 419	SB 89
37-6-310	amended	Ch. 619	HB 622
37-7-204	enacted	Ch. 307	HB 355
37-7-701	amended	Ch. 300	SB 218
37-7-703	amended	Ch. 300	SB 218
37-7-710	enacted	Ch. 300	SB 218

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37-8-102	amended	Ch. 584	SB 121
37-8-103	amended	Ch. 584	SB 121
37-8-202	amended	Ch. 584	SB 121
37-8-204	amended	Ch. 584	SB 121
37-8-433	enacted	Ch. 584	SB 121
37-10-101	amended	Ch. 121	SB 209
	amended	Ch. 306	HB 315
37-10-105	enacted	Ch. 121	SB 209
37-10-201	amended	Ch. 121	SB 209
37-10-301	amended	Ch. 121	SB 209
37-10-302	amended	Ch. 121	SB 209
37-10-303	amended	Ch. 121	SB 209
37-10-308	amended	Ch. 121	SB 209
37-10-311	amended	Ch. 121	SB 209
	amended	Ch. 619	HB 622
37-12-201	amended	Ch. 275	HB 148
37-12-304	amended	Ch. 275	HB 148
37-12-321	amended	Ch. 619	HB 622
37-14-321	amended	Ch. 619	HB 622
37-15-102	amended	Ch. 93	SB 152
37-17-304	amended	Ch. 10	SB 1
37-19-101	amended	Ch. 38	SB 45
37-19-701	enacted	Ch. 38	SB 45
37-19-702	enacted	Ch. 38	SB 45
37-19-703	enacted	Ch. 38	SB 45
37-19-704	enacted	Ch. 38	SB 45
37-19-705	enacted	Ch. 38	SB 45
37-19-706	enacted	Ch. 38	SB 45
37-19-707	enacted	Ch. 38	SB 45
37-19-708	enacted	Ch. 38	SB 45
37-20-102	repealed	Ch. 419	SB 89
37-20-104	amended	Ch. 419	SB 89
37-20-202	amended	Ch. 419	SB 89
37-20-203	enacted	Ch. 419	SB 89
37-20-301	amended	Ch. 419	SB 89
37-20-302	amended	Ch. 419	SB 89
37-20-402	amended	Ch. 419	SB 89
37-20-404	amended	Ch. 419	SB 89
37-20-405	amended	Ch. 419	SB 89
37-20-409	enacted	Ch. 419	SB 89
37-22-301	amended	Ch. 552	HB 190
37-22-304	amended	Ch. 552	HB 190
37-22-305	amended	Ch. 552	HB 190
37-22-306	enacted	Ch. 552	HB 190
37-22-312	amended	Ch. 552	HB 190
37-23-201	amended	Ch. 552	HB 190
37-23-202	amended	Ch. 197	SB 372
	amended	Ch. 552	HB 190
37-23-205	amended	Ch. 552	HB 190
37-23-207	enacted	Ch. 552	HB 190
37-23-212	amended	Ch. 552	HB 190
37-24-103	amended	Ch. 297	SB 166
37-24-105	enacted	Ch. 297	SB 166
37-24-106	enacted	Ch. 297	SB 166
37-26-201	amended	Ch. 314	HB 158
37-26-202	amended	Ch. 314	HB 158
37-26-301	amended	Ch. 314	HB 158

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37-26-404	amended	Ch. 314	HB 158
37-27-103	amended	Ch. 10	SB 1
37-27-201	amended	Ch. 314	HB 158
37-27-202	amended	Ch. 314	HB 158
37-27-203	amended	Ch. 314	HB 158
37-27-205	amended	Ch. 314	HB 158
37-27-210	amended	Ch. 314	HB 158
37-27-212	enacted	Ch. 314	HB 158
37-28-203	amended	Ch. 392	HB 27
37-28-206	amended	Ch. 392	HB 27
37-31-101	amended	Ch. 473	HB 49
37-31-301	amended	Ch. 23	HB 34
	amended	Ch. 473	HB 49
37-31-302	amended	Ch. 473	HB 49
37-31-304	amended	Ch. 473	HB 49
37-31-305	amended	Ch. 473	HB 49
37-31-308	amended	Ch. 473	HB 49
37-31-311	amended	Ch. 473	HB 49
37-31-312	amended	Ch. 473	HB 49
37-31-322	amended	Ch. 473	HB 49
37-31-331	amended	Ch. 473	HB 49
37-34-101	enacted	Ch. 345	HB 241
37-34-102	enacted	Ch. 345	HB 241
37-34-103	enacted	Ch. 345	HB 241
37-34-201	enacted	Ch. 345	HB 241
37-34-301	enacted	Ch. 345	HB 241
37-34-302	enacted	Ch. 345	HB 241
37-34-303	enacted	Ch. 345	HB 241
37-34-304	enacted	Ch. 345	HB 241
37-34-305	enacted	Ch. 345	HB 241
37-34-306	enacted	Ch. 345	HB 241
37-34-307	enacted	Ch. 345	HB 241
37-34-308	enacted	Ch. 345	HB 241
37-40-302	amended	Ch. 16	HB 28
37-43-202	amended	Ch. 284	HB 441
37-43-203	amended	Ch. 284	HB 441
37-43-204	amended	Ch. 284	HB 441
37-43-309	enacted	Ch. 284	HB 441
37-43-310	enacted	Ch. 284	HB 441
37-43-311	repealed	Ch. 284	HB 441
37-43-313	enacted	Ch. 284	HB 441
37-47-201	amended	Ch. 220	HB 432
37-47-202	enacted	Ch. 183	HB 82
37-47-301	amended	Ch. 220	HB 432
37-47-302	amended	Ch. 220	HB 432
37-47-303	amended	Ch. 220	HB 432
37-47-304	amended	Ch. 220	HB 432
37-47-305	amended	Ch. 220	HB 432
37-47-307	amended	Ch. 220	HB 432
37-47-308	amended	Ch. 220	HB 432
37-47-309	amended	Ch. 220	HB 432
37-47-310	amended	Ch. 220	HB 432
37-47-341	amended	Ch. 220	HB 432
37-47-343	amended	Ch. 220	HB 432
37-47-344	amended	Ch. 220	HB 432
37-47-346	enacted	Ch. 220	HB 432
37-47-402	amended	Ch. 220	HB 432

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37-47-404	amended	Ch. 220	HB 432
37-50-304	amended	Ch. 218	HB 371
37-50-402	amended	Ch. 82	HB 178
37-51-102	amended	Ch. 142	SB 111
37-51-321	amended	Ch. 246	SB 411
37-51-601	enacted	Ch. 142	SB 111
37-51-602	enacted	Ch. 142	SB 111
37-51-603	enacted	Ch. 142	SB 111
37-51-604	enacted	Ch. 142	SB 111
37-51-605	enacted	Ch. 142	SB 111
37-51-606	enacted	Ch. 142	SB 111
37-51-607	enacted	Ch. 142	SB 111
37-51-608	enacted	Ch. 142	SB 111
37-53-202	amended	Ch. 12	HB 74
37-54-210	amended	Ch. 81	HB 161
37-54-211	amended	Ch. 81	HB 161
37-54-303	amended	Ch. 81	HB 161
37-54-304	amended	Ch. 81	HB 161
37-54-310	amended	Ch. 81	HB 161
37-54-311	amended	Ch. 81	HB 161
37-54-403	amended	Ch. 81	HB 161
37-61-102	amended	Ch. 221	HB 499
37-61-202	amended	Ch. 10	SB 1
37-61-205	amended	Ch. 493	HB 559
37-68-301	amended	Ch. 31	SB 83
37-68-307	amended	Ch. 31	SB 83
37-68-310	amended	Ch. 31	SB 83
37-68-311	amended	Ch. 31	SB 83
37-68-312	amended	Ch. 31	SB 83
37-68-322	amended	Ch. 31	SB 83
39-2-313	enacted	Ch. 193	SB 160
39-2-314	enacted	Ch. 193	SB 160
39-2-903	amended	Ch. 193	SB 160
39-2-905	amended	Ch. 442	HB 258
39-2-914	amended	Ch. 442	HB 258
39-2-915	enacted	Ch. 442	HB 258
39-3-204	amended	Ch. 134	SB 207
39-3-206	amended	Ch. 134	SB 207
39-3-208	amended	Ch. 134	SB 207
39-3-216	amended	Ch. 134	SB 207
39-3-406	amended	Ch. 95	SB 116
	amended	Ch. 405	HB 472
39-3-604	amended	Ch. 630	HB 13
39-29-101	amended	Ch. 78	HB 159
39-31-306	amended	Ch. 582	SB 15
39-51-204	amended	Ch. 171	SB 184
	amended	Ch. 473	HB 49
39-51-404	amended	Ch. 173	SB 270
39-51-406	amended	Ch. 10	SB 1
39-51-409	enacted	Ch. 173	SB 270
39-51-604	amended	Ch. 630	HB 13
39-51-1214	amended	Ch. 86	SB 33
39-51-1219	amended	Ch. 171	SB 184
39-51-2104	amended	Ch. 404	HB 445
39-51-2110	amended	Ch. 171	SB 184
39-51-2203	amended	Ch. 171	SB 184
39-51-2307	amended	Ch. 404	HB 445

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39-51-2508	amended	Ch. 171	SB 184
39-51-3105	amended	Ch. 171	SB 184
39-51-3206	amended	Ch. 171	SB 184
39-71-105	amended	Ch. 630	HB 13
39-71-106	enacted	Ch. 619	HB 622
39-71-116	amended	Ch. 555	HB 287
	amended	Ch. 619	HB 622
	amended	Ch. 628	SB 347
39-71-117	amended	Ch. 458	SB 256
39-71-118	amended	Ch. 154	HB 259
	amended	Ch. 279	HB 344
	amended	Ch. 458	SB 256
	amended	Ch. 471	HB 617
	amended	Ch. 561	HB 427
39-71-123	amended	Ch. 154	HB 259
	amended	Ch. 619	HB 622
39-71-201	amended	Ch. 555	HB 287
39-71-206	amended	Ch. 296	SB 164
39-71-211	enacted	Ch. 296	SB 164
39-71-225	enacted	Ch. 512	HB 511
39-71-226	enacted	Ch. 555	HB 287
39-71-304	amended	Ch. 555	HB 287
39-71-307	amended	Ch. 619	HB 622
39-71-315	enacted	Ch. 619	HB 622
39-71-316	amended	Ch. 296	SB 164
	amended	Ch. 618	HB 453
	amended	Ch. 619	HB 622
39-71-401	amended	Ch. 555	HB 287
39-71-402	amended	Ch. 458	SB 256
39-71-406	amended	Ch. 637	HB 504
39-71-407	amended	Ch. 619	HB 622
39-71-414	amended	Ch. 459	SB 258
39-71-432	enacted	Ch. 619	HB 622
39-71-433	enacted	Ch. 619	HB 622
39-71-434	amended	Ch. 248	HB 534
39-71-435	enacted	Ch. 619	HB 622
39-71-503	amended	Ch. 555	HB 287
39-71-506	amended	Ch. 555	HB 287
39-71-520	enacted	Ch. 555	HB 287
39-71-531	enacted	Ch. 467	SB 381
39-71-532	enacted	Ch. 467	SB 381
39-71-533	enacted	Ch. 467	SB 381
39-71-534	enacted	Ch. 467	SB 381
39-71-601	amended	Ch. 619	HB 622
39-71-605	amended	Ch. 619	HB 622
39-71-606	amended	Ch. 619	HB 622
	amended	Ch. 630	HB 13
39-71-607	amended	Ch. 619	HB 622
39-71-701	amended	Ch. 296	SB 164
	amended	Ch. 619	HB 622
39-71-702	amended	Ch. 296	SB 164
	amended	Ch. 619	HB 622
39-71-704	amended	Ch. 628	SB 347
39-71-708	amended	Ch. 555	HB 287
39-71-712	enacted	Ch. 619	HB 622
39-71-727	amended	Ch. 628	SB 347
39-71-736	amended	Ch. 619	HB 622

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39-71-743	amended	Ch. 628	SB 347
39-71-744	amended	Ch. 457	SB 91
39-71-902	amended	Ch. 555	HB 287
39-71-907	amended	Ch. 555	HB 287
39-71-1101	enacted	Ch. 628	SB 347
39-71-1102	enacted	Ch. 628	SB 347
39-71-1103	enacted	Ch. 628	SB 347
39-71-1104	enacted	Ch. 628	SB 347
39-71-1105	enacted	Ch. 628	SB 347
39-71-1106	enacted	Ch. 628	SB 347
39-71-1107	enacted	Ch. 628	SB 347
39-71-1108	enacted	Ch. 628	SB 347
39-71-1109	enacted	Ch. 628	SB 347
39-71-1501	enacted	Ch. 295	SB 163
39-71-1502	enacted	Ch. 295	SB 163
39-71-1503	enacted	Ch. 295	SB 163
39-71-1504	enacted	Ch. 295	SB 163
39-71-1505	enacted	Ch. 295	SB 163
39-71-1506	enacted	Ch. 295	SB 163
39-71-1507	enacted	Ch. 295	SB 163
39-71-1508	enacted	Ch. 295	SB 163
39-71-2001	amended	Ch. 296	SB 164
39-71-2101	amended	Ch. 619	HB 622
39-71-2104	amended	Ch. 555	HB 287
39-71-2105	amended	Ch. 150	HB 208
39-71-2106	amended	Ch. 150	HB 208
	amended	Ch. 555	HB 287
39-71-2109	repealed	Ch. 555	HB 287
39-71-2204	amended	Ch. 555	HB 287
39-71-2205	amended	Ch. 555	HB 287
39-71-2206	amended	Ch. 555	HB 287
39-71-2207	repealed	Ch. 555	HB 287
39-71-2211	amended	Ch. 224	HB 621
	amended	Ch. 630	HB 13
39-71-2311	amended	Ch. 295	SB 163
39-71-2312	amended	Ch. 630	HB 13
39-71-2313	amended	Ch. 630	HB 13
39-71-2314	amended	Ch. 630	HB 13
39-71-2315	amended	Ch. 619	HB 622
39-71-2316	amended	Ch. 630	HB 13
39-71-2321	amended	Ch. 630	HB 13
39-71-2323	amended	Ch. 630	HB 13
39-71-2330	enacted	Ch. 630	HB 13
39-71-2341	enacted	Ch. 295	SB 163
39-71-2351	amended	Ch. 637	HB 504
39-71-2352	amended	Ch. 630	HB 13
39-71-2354	amended	Ch. 637	HB 504
39-71-2362	enacted	Ch. 630	HB 13
39-71-2363	enacted	Ch. 630	HB 13
39-71-2501	amended	Ch. 630	HB 13
	amended	Ch. 637	HB 504
39-71-2502	amended	Ch. 637	HB 504
39-71-2503	amended	Ch. 637	HB 504
39-71-2504	amended	Ch. 455	HB 641
	amended	Ch. 637	HB 504
39-71-2505	enacted	Ch. 637	HB 504
39-71-2615	amended	Ch. 555	HB 287

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39-72-303	amended	Ch. 619	HB 622
39-72-405	amended	Ch. 555	HB 287
39-72-608	amended	Ch. 555	HB 287
40-4-121	amended	Ch. 292	SB 37
	amended	Ch. 425	SB 406
40-4-204	amended	Ch. 294	SB 150
	amended	Ch. 631	HB 335
40-4-205	amended	Ch. 434	HB 67
40-4-210	amended	Ch. 328	HB 228
40-4-215	amended	Ch. 434	HB 67
	amended	Ch. 561	HB 427
40-4-301	enacted	Ch. 199	SB 117
40-4-302	enacted	Ch. 199	SB 117
40-4-303	enacted	Ch. 199	SB 117
40-4-304	enacted	Ch. 199	SB 117
40-4-305	enacted	Ch. 199	SB 117
40-4-306	enacted	Ch. 199	SB 117
40-4-307	enacted	Ch. 199	SB 117
40-4-308	enacted	Ch. 199	SB 117
40-5-101	amended	Ch. 328	HB 228
40-5-102	repealed	Ch. 328	HB 228
40-5-103	amended	Ch. 328	HB 228
40-5-104	amended	Ch. 328	HB 228
40-5-105	repealed	Ch. 328	HB 228
40-5-106	amended	Ch. 328	HB 228
40-5-107	amended	Ch. 328	HB 228
40-5-108	repealed	Ch. 328	HB 228
40-5-109	repealed	Ch. 328	HB 228
40-5-110	repealed	Ch. 328	HB 228
40-5-111	repealed	Ch. 328	HB 228
40-5-112	repealed	Ch. 328	HB 228
40-5-113	repealed	Ch. 328	HB 228
40-5-114	repealed	Ch. 328	HB 228
40-5-115	amended	Ch. 328	HB 228
40-5-116	repealed	Ch. 328	HB 228
40-5-117	repealed	Ch. 328	HB 228
40-5-118	amended	Ch. 328	HB 228
40-5-119	amended	Ch. 328	HB 228
40-5-120	repealed	Ch. 328	HB 228
40-5-121	repealed	Ch. 328	HB 228
40-5-122	repealed	Ch. 328	HB 228
40-5-123	repealed	Ch. 328	HB 228
40-5-124	repealed	Ch. 328	HB 228
40-5-125	repealed	Ch. 328	HB 228
40-5-126	repealed	Ch. 328	HB 228
40-5-127	repealed	Ch. 328	HB 228
40-5-128	repealed	Ch. 328	HB 228
40-5-129	repealed	Ch. 328	HB 228
40-5-130	repealed	Ch. 328	HB 228
40-5-131	repealed	Ch. 328	HB 228
40-5-132	repealed	Ch. 328	HB 228
40-5-133	amended	Ch. 328	HB 228
40-5-134	repealed	Ch. 328	HB 228
40-5-135	repealed	Ch. 328	HB 228
40-5-136	repealed	Ch. 328	HB 228
40-5-137	amended	Ch. 328	HB 228
40-5-138	repealed	Ch. 328	HB 228

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40-5-139	repealed	Ch. 328	HB 228
40-5-140	amended	Ch. 328	HB 228
40-5-141	amended	Ch. 328	HB 228
40-5-142	amended	Ch. 328	HB 228
40-5-143	enacted	Ch. 328	HB 228
40-5-145	enacted	Ch. 328	HB 228
40-5-146	enacted	Ch. 328	HB 228
40-5-147	enacted	Ch. 328	HB 228
40-5-148	enacted	Ch. 328	HB 228
40-5-149	enacted	Ch. 328	HB 228
40-5-150	enacted	Ch. 328	HB 228
40-5-151	enacted	Ch. 328	HB 228
40-5-152	enacted	Ch. 328	HB 228
40-5-158	enacted	Ch. 328	HB 228
40-5-159	enacted	Ch. 328	HB 228
40-5-160	enacted	Ch. 328	HB 228
40-5-162	enacted	Ch. 328	HB 228
40-5-163	enacted	Ch. 328	HB 228
40-5-164	enacted	Ch. 328	HB 228
40-5-170	enacted	Ch. 328	HB 228
40-5-171	enacted	Ch. 328	HB 228
40-5-172	enacted	Ch. 328	HB 228
40-5-173	enacted	Ch. 328	HB 228
40-5-174	enacted	Ch. 328	HB 228
40-5-175	enacted	Ch. 328	HB 228
40-5-176	enacted	Ch. 328	HB 228
40-5-177	enacted	Ch. 328	HB 228
40-5-178	enacted	Ch. 328	HB 228
40-5-179	enacted	Ch. 328	HB 228
40-5-180	enacted	Ch. 328	HB 228
40-5-187	enacted	Ch. 328	HB 228
40-5-188	enacted	Ch. 328	HB 228
40-5-189	enacted	Ch. 328	HB 228
40-5-190	enacted	Ch. 328	HB 228
40-5-191	enacted	Ch. 328	HB 228
40-5-192	enacted	Ch. 328	HB 228
40-5-193	enacted	Ch. 328	HB 228
40-5-194	enacted	Ch. 328	HB 228
40-5-195	enacted	Ch. 328	HB 228
40-5-196	enacted	Ch. 328	HB 228
40-5-201	amended	Ch. 631	HB 335
40-5-202	amended	Ch. 328	HB 228
	amended	Ch. 631	HB 335
40-5-206	amended	Ch. 631	HB 335
40-5-208	amended	Ch. 631	HB 335
40-5-210	amended	Ch. 294	SB 150
	amended	Ch. 631	HB 335
40-5-224	amended	Ch. 631	HB 335
40-5-226	amended	Ch. 294	SB 150
	amended	Ch. 328	HB 228
	amended	Ch. 631	HB 335
40-5-227	amended	Ch. 631	HB 335
40-5-231	amended	Ch. 328	HB 228
40-5-232	amended	Ch. 631	HB 335
40-5-241	repealed	Ch. 631	HB 335
40-5-242	amended	Ch. 631	HB 335
40-5-245	repealed	Ch. 631	HB 335

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40-5-246	repealed	Ch. 631	HB 335
40-5-247	amended	Ch. 631	HB 335
40-5-248	enacted	Ch. 631	HB 335
40-5-255	amended	Ch. 631	HB 335
40-5-263	amended	Ch. 328	HB 228
40-5-272	amended	Ch. 328	HB 228
40-5-274	enacted	Ch. 631	HB 335
40-5-415	amended	Ch. 631	HB 335
40-5-431	amended	Ch. 328	HB 228
40-5-601	enacted	Ch. 523	HB 482
40-5-701	enacted	Ch. 523	HB 482
40-5-702	enacted	Ch. 523	HB 482
40-5-703	enacted	Ch. 523	HB 482
40-5-704	enacted	Ch. 523	HB 482
40-5-709	enacted	Ch. 523	HB 482
40-5-710	enacted	Ch. 523	HB 482
40-5-711	enacted	Ch. 523	HB 482
40-5-712	enacted	Ch. 523	HB 482
40-5-713	enacted	Ch. 523	HB 482
40-6-108	amended	Ch. 373	SB 260
40-6-109	amended	Ch. 328	HB 228
40-6-110	amended	Ch. 434	HB 67
40-6-116	amended	Ch. 294	SB 150
	amended	Ch. 631	HB 335
40-6-117	amended	Ch. 631	HB 335
40-6-301	amended	Ch. 435	HB 124
40-8-111	amended	Ch. 439	HB 168
41-2-101	repealed	Ch. 391	SB 223
41-2-102	enacted	Ch. 391	SB 223
41-2-103	enacted	Ch. 391	SB 223
41-2-104	enacted	Ch. 391	SB 223
41-2-105	enacted	Ch. 391	SB 223
41-2-106	enacted	Ch. 391	SB 223
41-2-107	enacted	Ch. 391	SB 223
41-2-108	enacted	Ch. 391	SB 223
41-2-109	enacted	Ch. 391	SB 223
41-2-110	enacted	Ch. 391	SB 223
41-2-111	repealed	Ch. 391	SB 223
41-2-113	repealed	Ch. 391	SB 223
41-2-114	repealed	Ch. 391	SB 223
41-2-115	enacted	Ch. 391	SB 223
41-2-116	enacted	Ch. 391	SB 223
41-2-117	enacted	Ch. 391	SB 223
41-2-118	enacted	Ch. 391	SB 223
41-2-121	repealed	Ch. 391	SB 223
41-3-102	amended	Ch. 439	HB 168
41-3-202	amended	Ch. 329	HB 238
41-3-203	amended	Ch. 181	HB 66
41-3-205	amended	Ch. 610	SB 271
41-3-303	amended	Ch. 434	HB 67
41-3-401	amended	Ch. 329	HB 238
41-3-403	amended	Ch. 112	HB 127
	amended	Ch. 362	SB 70
41-3-406	amended	Ch. 362	SB 70
41-3-609	amended	Ch. 439	HB 168
41-3-1001	enacted	Ch. 610	SB 271
41-3-1002	enacted	Ch. 610	SB 271

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41-3-1003	enacted	Ch. 610	SB 271
41-3-1004	enacted	Ch. 610	SB 271
41-3-1005	enacted	Ch. 610	SB 271
41-3-1006	enacted	Ch. 610	SB 271
41-3-1007	enacted	Ch. 610	SB 271
41-3-1008	enacted	Ch. 610	SB 271
41-3-1009	enacted	Ch. 610	SB 271
41-3-1010	enacted	Ch. 610	SB 271
41-3-1011	enacted	Ch. 610	SB 271
41-3-1012	enacted	Ch. 610	SB 271
41-3-1013	enacted	Ch. 610	SB 271
41-3-1014	enacted	Ch. 610	SB 271
41-3-1115	amended	Ch. 610	SB 271
41-3-1122	amended	Ch. 561	HB 427
	amended	Ch. 610	SB 271
41-5-203	amended	Ch. 626	HB 411
41-5-206	amended	Ch. 448	HB 429
41-5-304	amended	Ch. 603	SB 108
41-5-306	amended	Ch. 10	SB 1
41-5-523	amended	Ch. 358	HB 638
41-7-101	enacted	Ch. 98	HB 18
41-7-102	enacted	Ch. 98	HB 18
44-1-518	amended	Ch. 265	SB 385
44-2-115	amended	Ch. 630	HB 13
44-2-304	amended	Ch. 349	SB 384
44-2-601	amended	Ch. 374	SB 264
44-4-301	amended	Ch. 161	HB 446
	amended	Ch. 437	HB 134
44-5-103	amended	Ch. 431	HB 151
44-5-105	amended	Ch. 603	SB 108
44-5-214	amended	Ch. 603	SB 108
44-12-206	amended	Ch. 349	SB 384
44-13-103	amended	Ch. 349	SB 384
45-1-205	amended	Ch. 220	HB 432
	amended	Ch. 560	HB 405
45-2-101	amended	Ch. 143	SB 109
	amended	Ch. 616	HB 142
45-5-206	amended	Ch. 425	SB 406
45-5-211	enacted	Ch. 408	HB 507
45-5-220	enacted	Ch. 292	SB 37
45-5-503	amended	Ch. 85	SB 29
45-5-620	enacted	Ch. 638	HB 562
45-5-621	amended	Ch. 429	SB 392
45-5-624	amended	Ch. 233	HB 340
45-5-625	amended	Ch. 638	HB 562
45-5-627	enacted	Ch. 560	HB 405
45-6-101	amended	Ch. 616	HB 142
45-6-203	amended	Ch. 604	SB 252
45-6-301	amended	Ch. 190	HB 187
	amended	Ch. 616	HB 142
	amended	Ch. 618	HB 453
45-6-309	amended	Ch. 616	HB 142
45-6-311	amended	Ch. 616	HB 142
45-6-312	amended	Ch. 616	HB 142
45-6-316	amended	Ch. 616	HB 142
45-6-317	amended	Ch. 616	HB 142
45-6-325	amended	Ch. 616	HB 142

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45-7-210	amended	Ch. 616	HB 142
45-8-211	amended	Ch. 556	HB 323
45-8-344	amended	Ch. 600	SB 14
45-9-101	amended	Ch. 448	HB 429
45-9-110	enacted	Ch. 448	HB 429
46-1-202	amended	Ch. 262	SB 125
46-4-120	enacted	Ch. 287	HB 491
46-4-122	amended	Ch. 287	HB 491
46-4-306	amended	Ch. 262	SB 125
46-5-101	amended	Ch. 262	SB 125
46-5-212	amended	Ch. 344	SB 238
46-6-201	amended	Ch. 262	SB 125
46-6-210	amended	Ch. 262	SB 125
46-6-311	amended	Ch. 425	SB 406
46-6-312	amended	Ch. 262	SB 125
46-6-506	enacted	Ch. 180	HB 50
46-6-602	amended	Ch. 425	SB 406
46-8-113	amended	Ch. 262	SB 125
46-8-115	amended	Ch. 262	SB 125
46-8-201	amended	Ch. 262	SB 125
46-9-108	amended	Ch. 292	SB 37
46-9-121	enacted	Ch. 270	HB 502
46-9-201	amended	Ch. 262	SB 125
46-9-302	amended	Ch. 292	SB 37
	amended	Ch. 425	SB 406
46-9-412	amended	Ch. 262	SB 125
46-9-503	amended	Ch. 270	HB 502
46-9-505	amended	Ch. 262	SB 125
46-10-201	repealed	Ch. 262	SB 125
46-10-202	amended	Ch. 262	SB 125
46-11-110	amended	Ch. 262	SB 125
46-11-302	amended	Ch. 262	SB 125
46-11-332	amended	Ch. 262	SB 125
46-11-401	amended	Ch. 262	SB 125
46-11-405	amended	Ch. 262	SB 125
46-11-601	amended	Ch. 262	SB 125
46-11-701	amended	Ch. 10	SB 1
	amended	Ch. 262	SB 125
46-12-210	amended	Ch. 262	SB 125
46-12-211	amended	Ch. 262	SB 125
46-13-108	amended	Ch. 262	SB 125
46-13-109	enacted	Ch. 262	SB 125
46-13-110	amended	Ch. 262	SB 125
46-13-202	amended	Ch. 262	SB 125
46-13-203	amended	Ch. 262	SB 125
46-13-210	amended	Ch. 262	SB 125
46-14-206	amended	Ch. 397	HB 255
46-14-301	amended	Ch. 397	HB 255
46-14-302	amended	Ch. 397	HB 255
46-14-303	amended	Ch. 397	HB 255
46-14-304	amended	Ch. 397	HB 255
46-14-312	amended	Ch. 262	SB 125
	amended	Ch. 397	HB 255
46-15-101	amended	Ch. 262	SB 125
46-15-116	amended	Ch. 262	SB 125
	amended	Ch. 330	HB 278
46-15-201	amended	Ch. 262	SB 125

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46-15-202	amended	Ch. 262	SB 125
46-15-322	amended	Ch. 262	SB 125
46-15-323	amended	Ch. 182	HB 68
	amended	Ch. 262	SB 125
46-15-324	amended	Ch. 262	SB 125
46-16-107	repealed	Ch. 262	SB 125
46-16-116	amended	Ch. 262	SB 125
46-16-122	amended	Ch. 262	SB 125
46-16-130	amended	Ch. 262	SB 125
46-17-101	repealed	Ch. 262	SB 125
46-17-103	repealed	Ch. 262	SB 125
46-17-204	repealed	Ch. 262	SB 125
46-17-205	repealed	Ch. 262	SB 125
46-17-211	repealed	Ch. 262	SB 125
46-17-301	repealed	Ch. 262	SB 125
46-17-311	amended	Ch. 262	SB 125
46-18-101	amended	Ch. 10	SB 1
46-18-111	amended	Ch. 262	SB 125
	amended	Ch. 347	SB 344
46-18-112	amended	Ch. 262	SB 125
46-18-117	amended	Ch. 262	SB 125
46-18-201	amended	Ch. 10	SB 1
	amended	Ch. 262	SB 125
	amended	Ch. 365	SB 153
	amended	Ch. 579	HB 685
46-18-202	amended	Ch. 262	SB 125
46-18-203	amended	Ch. 262	SB 125
46-18-222	amended	Ch. 262	SB 125
46-18-225	amended	Ch. 10	SB 1
46-18-254	amended	Ch. 10	SB 1
46-18-256	amended	Ch. 71	SB 12
46-23-201	amended	Ch. 10	SB 1
46-23-202	amended	Ch. 579	HB 685
46-23-210	amended	Ch. 381	SB 321
46-23-1011	amended	Ch. 579	HB 685
46-23-1021	amended	Ch. 579	HB 685
46-23-1031	enacted	Ch. 577	HB 673
49-1-102	amended	Ch. 407	HB 496
49-2-101	amended	Ch. 235	HB 561
	amended	Ch. 407	HB 496
49-2-303	amended	Ch. 13	SB 24
	amended	Ch. 407	HB 496
49-2-304	amended	Ch. 407	HB 496
49-2-305	amended	Ch. 407	HB 496
49-2-306	amended	Ch. 407	HB 496
49-2-307	amended	Ch. 407	HB 496
49-2-308	amended	Ch. 407	HB 496
49-2-309	amended	Ch. 13	SB 24
49-2-403	amended	Ch. 13	SB 24
	amended	Ch. 407	HB 496
49-2-602	amended	Ch. 407	HB 496
49-3-101	amended	Ch. 407	HB 496
49-3-103	amended	Ch. 13	SB 24
	amended	Ch. 407	HB 496
49-3-201	amended	Ch. 407	HB 496
49-3-202	amended	Ch. 407	HB 496
49-3-203	amended	Ch. 407	HB 496

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49-3-204	amended	Ch. 407	HB 496
49-3-205	amended	Ch. 407	HB 496
49-3-206	amended	Ch. 407	HB 496
49-3-207	amended	Ch. 407	HB 496
49-4-101	amended	Ch. 407	HB 496
49-4-202	amended	Ch. 407	HB 496
49-4-211	amended	Ch. 407	HB 496
49-4-212	amended	Ch. 407	HB 496
49-4-301	amended	Ch. 407	HB 496
49-4-302	amended	Ch. 209	HB 256
	amended	Ch. 406	HB 478
	amended	Ch. 407	HB 496
49-4-304	amended	Ch. 407	HB 496
49-4-305	amended	Ch. 406	HB 478
	amended	Ch. 407	HB 496
49-4-307	amended	Ch. 406	HB 478
50-1-201	amended	Ch. 606	SB 285
50-4-101	enacted	Ch. 606	SB 285
50-4-102	enacted	Ch. 606	SB 285
50-4-201	enacted	Ch. 606	SB 285
50-4-202	enacted	Ch. 606	SB 285
50-4-301	enacted	Ch. 606	SB 285
50-4-302	enacted	Ch. 606	SB 285
50-4-303	enacted	Ch. 606	SB 285
50-4-304	enacted	Ch. 606	SB 285
50-4-305	enacted	Ch. 606	SB 285
50-4-306	enacted	Ch. 606	SB 285
50-4-307	enacted	Ch. 606	SB 285
50-4-308	enacted	Ch. 606	SB 285
50-4-309	enacted	Ch. 606	SB 285
50-4-310	enacted	Ch. 606	SB 285
50-4-311	enacted	Ch. 606	SB 285
50-4-401	enacted	Ch. 606	SB 285
50-4-402	enacted	Ch. 606	SB 285
50-4-501	enacted	Ch. 606	SB 285
50-4-502	enacted	Ch. 606	SB 285
50-4-503	enacted	Ch. 606	SB 285
50-4-601	enacted	Ch. 606	SB 285
50-4-602	enacted	Ch. 606	SB 285
50-4-603	enacted	Ch. 606	SB 285
50-4-604	enacted	Ch. 606	SB 285
50-4-609	enacted	Ch. 606	SB 285
50-4-610	enacted	Ch. 606	SB 285
50-4-611	enacted	Ch. 606	SB 285
50-4-612	enacted	Ch. 606	SB 285
50-5-101	amended	Ch. 151	HB 211
	amended	Ch. 590	SB 118
50-5-103	amended	Ch. 415	HB 610
50-5-108	amended	Ch. 415	HB 610
50-5-109	repealed	Ch. 415	HB 610
50-5-111	enacted	Ch. 415	HB 610
50-5-112	enacted	Ch. 415	HB 610
50-5-113	enacted	Ch. 415	HB 610
50-5-114	enacted	Ch. 415	HB 610
50-5-115	enacted	Ch. 415	HB 610
50-5-116	enacted	Ch. 415	HB 610
50-5-201	amended	Ch. 415	HB 610

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50-5-207	amended	Ch. 415	HB 610
50-5-210	amended	Ch. 151	HB 211
50-5-221	repealed	Ch. 415	HB 610
50-5-226	amended	Ch. 590	SB 118
50-5-227	amended	Ch. 590	SB 118
50-5-229	repealed	Ch. 415	HB 610
50-5-230	repealed	Ch. 415	HB 610
50-5-231	repealed	Ch. 415	HB 610
50-5-232	enacted	Ch. 415	HB 610
50-5-301	amended	Ch. 590	SB 118
50-5-310	amended	Ch. 538	HB 691
50-5-603	amended	Ch. 140	SB 312
50-10-101	amended	Ch. 286	HB 489
50-10-107	enacted	Ch. 286	HB 489
50-15-210	enacted	Ch. 523	HB 482
50-15-403	amended	Ch. 287	HB 491
50-15-405	amended	Ch. 287	HB 491
50-16-531	enacted	Ch. 469	HB 236
50-16-701	amended	Ch. 476	HB 220
50-16-702	amended	Ch. 476	HB 220
50-16-703	amended	Ch. 476	HB 220
50-16-704	amended	Ch. 476	HB 220
50-16-705	amended	Ch. 476	HB 220
50-16-711	enacted	Ch. 476	HB 220
50-16-1007	amended	Ch. 476	HB 220
50-17-104	repealed	Ch. 579	HB 685
50-18-101	amended	Ch. 71	SB 12
50-39-101	amended	Ch. 396	HB 222
50-39-102	amended	Ch. 396	HB 222
50-39-103	amended	Ch. 396	HB 222
50-39-104	amended	Ch. 396	HB 222
50-39-105	amended	Ch. 396	HB 222
50-39-106	enacted	Ch. 396	HB 222
50-39-107	enacted	Ch. 396	HB 222
50-40-202	amended	Ch. 389	SB 100
50-40-203	amended	Ch. 389	SB 100
50-40-204	amended	Ch. 389	SB 100
50-40-205	amended	Ch. 389	SB 100
50-40-206	enacted	Ch. 389	SB 100
50-53-203	amended	Ch. 277	HB 237
50-60-102	amended	Ch. 383	SB 340
	amended	Ch. 444	HB 339
50-60-203	amended	Ch. 383	SB 340
50-60-602	amended	Ch. 444	HB 339
50-60-801	enacted	Ch. 383	SB 340
50-60-802	enacted	Ch. 383	SB 340
50-60-803	enacted	Ch. 383	SB 340
52-1-103	amended	Ch. 91	SB 187
52-1-104	amended	Ch. 590	SB 118
52-1-110	amended	Ch. 561	HB 427
52-1-202	amended	Ch. 91	SB 187
52-1-203	amended	Ch. 91	SB 187
52-2-101	amended	Ch. 356	HB 494
52-2-118	repealed	Ch. 579	HB 685
52-2-301	enacted	Ch. 324	HB 632
52-2-302	enacted	Ch. 324	HB 632
52-2-303	enacted	Ch. 324	HB 632

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52-2-304	enacted	Ch. 324	HB 632
52-2-305	enacted	Ch. 324	HB 632
52-2-306	enacted	Ch. 324	HB 632
52-2-307	enacted	Ch. 324	HB 632
52-2-308	enacted	Ch. 324	HB 632
52-2-703	amended	Ch. 304	HB 118
52-2-704	amended	Ch. 91	SB 187
52-3-305	amended	Ch. 421	SB 313
52-3-802	amended	Ch. 167	HB 521
52-3-803	amended	Ch. 167	HB 521
	amended	Ch. 426	SB 408
52-3-804	amended	Ch. 167	HB 521
52-3-805	amended	Ch. 167	HB 521
	amended	Ch. 421	SB 313
	amended	Ch. 426	SB 408
52-3-811	amended	Ch. 167	HB 521
	amended	Ch. 421	SB 313
52-3-812	amended	Ch. 167	HB 521
52-3-813	amended	Ch. 167	HB 521
	amended	Ch. 421	SB 313
52-3-815	amended	Ch. 167	HB 521
52-3-825	amended	Ch. 167	HB 521
52-5-104	repealed	Ch. 516	HB 654
	repealed	Ch. 579	HB 685
52-5-106	amended	Ch. 68	SB 61
52-5-111	amended	Ch. 579	HB 685
52-5-126	amended	Ch. 358	HB 638
52-5-127	amended	Ch. 358	HB 638
53-1-104	amended	Ch. 579	HB 685
53-1-202	amended	Ch. 579	HB 685
53-1-301	amended	Ch. 471	HB 617
53-1-402	amended	Ch. 579	HB 685
53-1-501	amended	Ch. 240	SB 194
53-1-502	enacted	Ch. 579	HB 685
53-2-105	amended	Ch. 410	HB 526
53-2-110	enacted	Ch. 631	HB 335
53-2-201	amended	Ch. 561	HB 427
53-2-203	amended	Ch. 561	HB 427
53-2-207	amended	Ch. 561	HB 427
53-2-211	enacted	Ch. 410	HB 526
53-2-321	repealed	Ch. 561	HB 427
53-2-322	amended	Ch. 561	HB 427
53-2-323	repealed	Ch. 561	HB 427
53-2-501	amended	Ch. 414	HB 609
53-2-502	amended	Ch. 414	HB 609
53-2-503	amended	Ch. 414	HB 609
53-2-504	amended	Ch. 414	HB 609
53-2-505	enacted	Ch. 414	HB 609
53-2-601	amended	Ch. 561	HB 427
53-2-606	amended	Ch. 561	HB 427
53-2-608	amended	Ch. 561	HB 427
53-2-610	amended	Ch. 561	HB 427
53-2-613	amended	Ch. 631	HB 335
53-2-801	amended	Ch. 561	HB 427
53-2-802	amended	Ch. 561	HB 427
53-2-803	amended	Ch. 561	HB 427
53-2-804	enacted	Ch. 561	HB 427

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53-2-811	amended	Ch. 561	HB 427
53-2-812	amended	Ch. 561	HB 427
53-2-813	amended	Ch. 561	HB 427
53-2-821	repealed	Ch. 561	HB 427
53-2-822	repealed	Ch. 561	HB 427
53-2-1101	amended	Ch. 561	HB 427
53-2-1103	amended	Ch. 561	HB 427
53-2-1107	amended	Ch. 349	SB 384
53-2-1109	amended	Ch. 561	HB 427
53-3-109	repealed	Ch. 561	HB 427
53-3-110	amended	Ch. 435	HB 124
	repealed	Ch. 561	HB 427
53-3-111	amended	Ch. 410	HB 526
53-3-112	repealed	Ch. 561	HB 427
53-3-113	repealed	Ch. 561	HB 427
53-3-114	amended	Ch. 435	HB 124
	repealed	Ch. 561	HB 427
53-3-115	enacted	Ch. 561	HB 427
53-3-121	repealed	Ch. 561	HB 427
53-3-122	repealed	Ch. 561	HB 427
53-3-201	repealed	Ch. 561	HB 427
53-3-205	amended	Ch. 561	HB 427
	repealed	Ch. 561	HB 427
53-3-207	repealed	Ch. 561	HB 427
53-3-208	repealed	Ch. 561	HB 427
53-3-209	repealed	Ch. 561	HB 427
53-3-210	repealed	Ch. 561	HB 427
53-3-211	repealed	Ch. 561	HB 427
53-3-212	repealed	Ch. 561	HB 427
53-3-215	repealed	Ch. 561	HB 427
53-3-303	repealed	Ch. 561	HB 427
53-3-304	repealed	Ch. 561	HB 427
53-3-305	repealed	Ch. 561	HB 427
53-3-307	repealed	Ch. 561	HB 427
53-3-308	amended	Ch. 10	SB 1
	repealed	Ch. 561	HB 427
53-3-309	repealed	Ch. 561	HB 427
53-3-310	amended	Ch. 561	HB 427
	repealed	Ch. 561	HB 427
53-3-311	repealed	Ch. 561	HB 427
53-3-313	repealed	Ch. 561	HB 427
53-3-314	repealed	Ch. 561	HB 427
53-3-318	repealed	Ch. 561	HB 427
53-3-321	repealed	Ch. 561	HB 427
53-3-322	repealed	Ch. 561	HB 427
53-3-323	repealed	Ch. 561	HB 427
53-3-324	repealed	Ch. 561	HB 427
53-3-325	repealed	Ch. 561	HB 427
53-3-326	repealed	Ch. 561	HB 427
53-3-327	repealed	Ch. 561	HB 427
53-3-328	repealed	Ch. 561	HB 427
53-6-101	amended	Ch. 590	SB 118
53-6-110	amended	Ch. 349	SB 384
53-6-131	amended	Ch. 230	HB 309
53-6-501	enacted	Ch. 591	SB 145
53-6-502	enacted	Ch. 591	SB 145
53-7-101	amended	Ch. 326	HB 144

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53-7-301	amended	Ch. 326	HB 144
53-19-101	amended	Ch. 326	HB 144
53-19-102	amended	Ch. 326	HB 144
53-19-305	amended	Ch. 10	SB 1
53-20-104	amended	Ch. 349	SB 384
53-20-147	amended	Ch. 10	SB 1
53-20-163	amended	Ch. 27	HB 117
53-21-102	amended	Ch. 312	HB 633
53-21-104	amended	Ch. 349	SB 384
53-21-138	amended	Ch. 312	HB 633
53-21-147	amended	Ch. 10	SB 1
53-21-162	amended	Ch. 293	SB 120
53-21-165	amended	Ch. 293	SB 120
53-21-180	enacted	Ch. 293	SB 120
53-21-202	amended	Ch. 579	HB 685
53-21-204	amended	Ch. 37	SB 7
53-21-601	amended	Ch. 67	SB 6
	amended	Ch. 579	HB 685
53-21-602	repealed	Ch. 579	HB 685
53-21-603	amended	Ch. 579	HB 685
53-24-204	amended	Ch. 349	SB 384
53-24-210	repealed	Ch. 349	SB 384
53-30-101	amended	Ch. 579	HB 685
	amended	Ch. 624	HB 5
53-30-105	amended	Ch. 579	HB 685
53-30-131	amended	Ch. 471	HB 617
53-30-132	amended	Ch. 471	HB 617
53-30-133	amended	Ch. 349	SB 384
	amended	Ch. 471	HB 617
53-30-323	amended	Ch. 172	SB 193
53-30-401	enacted	Ch. 463	SB 323
53-30-402	enacted	Ch. 463	SB 323
53-30-403	enacted	Ch. 463	SB 323
60-1-205	enacted	Ch. 412	HB 565
60-2-103	repealed	Ch. 87	SB 198
60-2-104	repealed	Ch. 87	SB 198
60-2-105	repealed	Ch. 87	SB 198
60-2-110	amended	Ch. 87	SB 198
60-2-111	amended	Ch. 87	SB 198
60-2-125	enacted	Ch. 87	SB 198
60-2-126	enacted	Ch. 87	SB 198
60-2-127	enacted	Ch. 87	SB 198
60-2-128	enacted	Ch. 87	SB 198
60-2-129	enacted	Ch. 87	SB 198
60-2-204	amended	Ch. 87	SB 198
60-2-220	enacted	Ch. 127	HB 197
60-3-102	repealed	Ch. 87	SB 198
60-3-103	repealed	Ch. 87	SB 198
60-3-104	repealed	Ch. 87	SB 198
60-3-105	repealed	Ch. 87	SB 198
60-3-201	amended	Ch. 87	SB 198
60-3-202	amended	Ch. 87	SB 198
60-3-203	repealed	Ch. 87	SB 198
60-3-204	repealed	Ch. 87	SB 198
60-3-205	amended	Ch. 87	SB 198
60-3-206	amended	Ch. 87	SB 198
60-3-209	repealed	Ch. 87	SB 198

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60-3-210	repealed	Ch. 87	SB 198
60-3-211	amended	Ch. 87	SB 198
60-3-213	repealed	Ch. 87	SB 198
60-3-214	repealed	Ch. 87	SB 198
60-3-215	repealed	Ch. 87	SB 198
60-3-217	amended	Ch. 87	SB 198
60-3-218	amended	Ch. 87	SB 198
60-3-219	enacted	Ch. 87	SB 198
60-5-512	amended	Ch. 260	SB 272
60-5-522	amended	Ch. 260	SB 272
60-11-111	amended	Ch. 541	SB 359
60-11-120	enacted	Ch. 541	SB 359
60-11-121	amended	Ch. 541	SB 359
60-11-122	amended	Ch. 541	SB 359
60-11-123	amended	Ch. 541	SB 359
61-1-104	amended	Ch. 84	HB 180
61-1-134	amended	Ch. 195	SB 315
	amended	Ch. 575	HB 651
61-1-135	amended	Ch. 195	SB 315
61-1-136	amended	Ch. 195	SB 315
61-1-314	amended	Ch. 10	SB 1
61-1-318	amended	Ch. 482	SB 373
61-1-501	amended	Ch. 482	SB 373
61-2-106	amended	Ch. 436	HB 128
61-2-107	amended	Ch. 492	HB 529
61-3-103	amended	Ch. 482	SB 373
61-3-208	amended	Ch. 482	SB 373
61-3-313	amended	Ch. 209	HB 256
61-3-321	amended	Ch. 575	HB 651
61-3-322	amended	Ch. 365	SB 153
61-3-332	amended	Ch. 83	HB 96
	amended	Ch. 159	HB 404
	amended	Ch. 209	HB 256
61-3-448	enacted	Ch. 58	HB 101
61-3-452	amended	Ch. 209	HB 256
61-3-453	amended	Ch. 209	HB 256
61-3-454	amended	Ch. 209	HB 256
61-3-502	amended	Ch. 575	HB 651
61-3-504	amended	Ch. 209	HB 256
61-3-509	amended	Ch. 330	HB 278
61-3-521	amended	Ch. 575	HB 651
61-3-525	amended	Ch. 174	SB 353
61-3-535	amended	Ch. 365	SB 153
61-3-722	amended	Ch. 32	SB 110
61-4-101	amended	Ch. 482	SB 373
61-4-120	amended	Ch. 10	SB 1
61-4-301	amended	Ch. 575	HB 651
61-4-302	amended	Ch. 575	HB 651
61-4-310	amended	Ch. 79	HB 209
61-5-106	amended	Ch. 195	SB 315
61-5-107	amended	Ch. 195	SB 315
61-5-110	amended	Ch. 195	SB 315
61-5-111	amended	Ch. 195	SB 315
61-5-112	amended	Ch. 195	SB 315
61-5-117	amended	Ch. 10	SB 1
	amended	Ch. 195	SB 315
61-5-121	amended	Ch. 195	SB 315

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61-5-201	amended	Ch. 195	SB 315
61-5-203	amended	Ch. 195	SB 315
61-5-204	amended	Ch. 195	SB 315
61-5-205	amended	Ch. 195	SB 315
61-5-206	amended	Ch. 195	SB 315
61-5-207	amended	Ch. 195	SB 315
61-5-208	amended	Ch. 195	SB 315
61-5-209	amended	Ch. 195	SB 315
61-5-210	amended	Ch. 195	SB 315
61-5-211	amended	Ch. 195	SB 315
61-5-212	amended	Ch. 195	SB 315
61-5-302	amended	Ch. 195	SB 315
61-5-306	amended	Ch. 195	SB 315
61-6-302	amended	Ch. 278	HB 336
	amended	Ch. 365	SB 153
61-6-304	amended	Ch. 365	SB 153
61-8-207	amended	Ch. 44	SB 135
61-8-310	amended	Ch. 213	HB 295
61-8-351	amended	Ch. 132	SB 129
61-8-402	amended	Ch. 564	HB 483
61-8-403	amended	Ch. 388	SB 78
	amended	Ch. 564	HB 483
61-8-404	amended	Ch. 564	HB 483
61-8-405	amended	Ch. 564	HB 483
61-8-421	enacted	Ch. 474	HB 157
61-8-502	amended	Ch. 484	HB 233
61-8-714	amended	Ch. 474	HB 157
61-8-722	amended	Ch. 474	HB 157
61-8-802	amended	Ch. 195	SB 315
61-8-803	amended	Ch. 195	SB 315
61-8-804	amended	Ch. 195	SB 315
61-8-805	amended	Ch. 195	SB 315
61-8-806	amended	Ch. 195	SB 315
61-8-808	amended	Ch. 195	SB 315
61-8-810	amended	Ch. 195	SB 315
61-8-811	amended	Ch. 195	SB 315
61-8-812	enacted	Ch. 195	SB 315
61-9-304	amended	Ch. 276	HB 232
61-10-102	amended	Ch. 413	HB 606
61-10-104	amended	Ch. 423	SB 395
61-10-107	amended	Ch. 399	HB 294
61-10-124	amended	Ch. 575	HB 651
	amended	Ch. 621	HB 530
61-10-125	amended	Ch. 571	HB 572
61-10-128	amended	Ch. 57	HB 41
61-10-141	amended	Ch. 70	SB 185
	amended	Ch. 575	HB 651
61-10-144	amended	Ch. 70	SB 185
61-10-145	amended	Ch. 70	SB 185
61-10-148	amended	Ch. 87	SB 198
61-10-201	amended	Ch. 575	HB 651
61-10-202	repealed effective 01/01/94	Ch. 575	HB 651
61-10-203	amended	Ch. 575	HB 651
61-10-204	repealed effective 01/01/94	Ch. 575	HB 651
61-10-205	repealed effective 01/01/94	Ch. 575	HB 651
61-10-206	amended	Ch. 575	HB 651
61-10-207	repealed effective 01/01/94	Ch. 575	HB 651

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61-10-208	repealed effective 01/01/94	Ch. 575	HB 651
61-10-209	amended	Ch. 575	HB 651
61-10-210	repealed effective 01/01/94	Ch. 575	HB 651
61-11-105	amended	Ch. 346	HB 397
61-11-203	amended	Ch. 365	SB 153
61-12-201	amended	Ch. 575	HB 651
61-12-206	amended	Ch. 575	HB 651
61-12-501	amended	Ch. 346	HB 397
61-12-504	amended	Ch. 346	HB 397
61-13-104	amended	Ch. 365	SB 153
67-1-101	amended	Ch. 279	HB 344
67-1-301	amended	Ch. 642	HB 645
67-1-303	amended	Ch. 642	HB 645
67-1-305	enacted	Ch. 642	HB 645
67-1-306	enacted	Ch. 642	HB 645
67-1-307	enacted	Ch. 642	HB 645
67-2-105	amended	Ch. 279	HB 344
67-2-401	amended	Ch. 279	HB 344
67-3-101	amended	Ch. 279	HB 344
67-3-102	amended	Ch. 279	HB 344
67-3-103	amended	Ch. 279	HB 344
67-3-211	amended	Ch. 279	HB 344
67-4-201	amended	Ch. 279	HB 344
67-4-202	amended	Ch. 279	HB 344
67-4-313	amended	Ch. 279	HB 344
67-5-211	amended	Ch. 279	HB 344
67-10-302	amended	Ch. 268	HB 342
67-10-403	amended	Ch. 308	HB 357
67-11-211	amended	Ch. 268	HB 342
67-11-232	amended	Ch. 279	HB 344
67-11-304	amended	Ch. 279	HB 344
67-11-306	amended	Ch. 268	HB 342
69-1-223	amended	Ch. 508	HB 413
69-1-224	amended	Ch. 508	HB 413
69-1-402	amended	Ch. 508	HB 413
69-1-403	amended	Ch. 508	HB 413
69-1-404	repealed	Ch. 349	SB 384
69-3-108	amended	Ch. 117	SB 132
69-3-207	amended	Ch. 189	HB 164
69-3-305	amended	Ch. 207	HB 538
	amended	Ch. 535	HB 680
69-3-701	amended	Ch. 157	HB 390
69-3-702	amended	Ch. 157	HB 390
69-3-1201	enacted	Ch. 157	HB 390
69-3-1202	enacted	Ch. 157	HB 390
69-3-1203	enacted	Ch. 157	HB 390
69-3-1204	enacted	Ch. 157	HB 390
69-3-1205	enacted	Ch. 157	HB 390
69-3-1206	enacted	Ch. 157	HB 390
69-4-201	amended	Ch. 212	HB 292
69-4-311	amended	Ch. 250	SB 63
69-4-312	amended	Ch. 250	SB 63
69-4-315	repealed	Ch. 250	SB 63
69-4-316	repealed	Ch. 250	SB 63
69-4-317	repealed	Ch. 250	SB 63
69-4-318	repealed	Ch. 250	SB 63
69-4-319	repealed	Ch. 250	SB 63

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69-4-320	repealed	Ch. 250	SB 63
69-4-321	repealed	Ch. 250	SB 63
69-4-322	repealed	Ch. 250	SB 63
69-4-323	repealed	Ch. 250	SB 63
69-4-324	repealed	Ch. 250	SB 63
69-4-325	repealed	Ch. 250	SB 63
69-4-326	repealed	Ch. 250	SB 63
69-4-327	repealed	Ch. 250	SB 63
69-4-328	repealed	Ch. 250	SB 63
69-4-329	repealed	Ch. 250	SB 63
69-4-330	repealed	Ch. 250	SB 63
69-4-331	repealed	Ch. 250	SB 63
69-4-332	repealed	Ch. 250	SB 63
69-4-333	repealed	Ch. 250	SB 63
69-4-404	amended	Ch. 141	SB 259
69-4-502	amended	Ch. 393	HB 139
69-7-111	amended	Ch. 507	HB 388
69-12-101	amended	Ch. 364	SB 105
69-12-102	amended	Ch. 364	SB 105
69-12-201	amended	Ch. 364	SB 105
69-12-205	amended	Ch. 364	SB 105
69-12-210	enacted	Ch. 156	HB 356
69-12-301	amended	Ch. 364	SB 105
69-12-315	repealed	Ch. 364	SB 105
69-12-321	amended	Ch. 364	SB 105
69-12-322	amended	Ch. 364	SB 105
69-12-333	repealed	Ch. 364	SB 105
69-12-334	repealed	Ch. 364	SB 105
69-12-335	repealed	Ch. 364	SB 105
69-12-407	amended	Ch. 364	SB 105
69-12-415	enacted	Ch. 156	HB 356
69-12-611	amended	Ch. 364	SB 105
69-14-101	amended	Ch. 333	HB 541
69-14-116	amended	Ch. 372	SB 249
69-14-701	amended	Ch. 363	SB 73
69-14-714	enacted	Ch. 363	SB 73
70-1-309	repealed	Ch. 494	SB 119
70-1-703	amended	Ch. 494	SB 119
70-5-203	repealed	Ch. 252	SB 124
70-5-204	repealed	Ch. 252	SB 124
70-5-205	repealed	Ch. 252	SB 124
70-5-206	repealed	Ch. 252	SB 124
70-5-207	repealed	Ch. 252	SB 124
70-5-208	repealed	Ch. 252	SB 124
70-5-209	repealed	Ch. 252	SB 124
70-9-203	amended	Ch. 263	SB 190
70-9-301	amended	Ch. 263	SB 190
70-9-309	amended	Ch. 263	SB 190
70-16-111	enacted	Ch. 604	SB 252
70-16-301	amended	Ch. 264	SB 214
70-17-101	amended	Ch. 111	HB 125
70-20-106	repealed	Ch. 192	SB 84
70-20-107	repealed	Ch. 192	SB 84
70-21-101	amended	Ch. 192	SB 84
70-21-203	amended	Ch. 192	SB 84
70-21-213	enacted	Ch. 366	SB 189

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70-24-103	amended	Ch. 222	HB 573
	amended	Ch. 343	SB 251
	amended	Ch. 470	HB 245
	amended	Ch. 487	HB 422
70-24-108	amended	Ch. 222	HB 573
70-24-302	amended	Ch. 222	HB 573
70-24-305	enacted	Ch. 222	HB 573
70-24-311	amended	Ch. 470	HB 245
	amended	Ch. 487	HB 422
70-24-312	amended	Ch. 222	HB 573
70-24-313	enacted	Ch. 487	HB 422
70-24-314	enacted	Ch. 487	HB 422
70-24-315	enacted	Ch. 487	HB 422
70-24-321	amended	Ch. 222	HB 573
70-24-401	amended	Ch. 222	HB 573
70-24-406	amended	Ch. 222	HB 573
70-24-422	amended	Ch. 222	HB 573
70-24-424	amended	Ch. 222	HB 573
70-24-427	amended	Ch. 585	SB 362
70-24-429	amended	Ch. 176	SB 386
70-24-431	amended	Ch. 487	HB 422
70-24-436	enacted	Ch. 470	HB 245
70-25-201	amended	Ch. 342	SB 398
70-25-204	amended	Ch. 342	SB 398
70-25-205	amended	Ch. 342	SB 398
70-25-206	amended	Ch. 342	SB 398
70-27-115	amended	Ch. 138	SB 349
71-1-222	amended	Ch. 80	HB 160
71-3-125	amended	Ch. 335	HB 635
71-3-206	amended	Ch. 420	SB 288
71-3-705	amended	Ch. 420	SB 288
71-3-810	amended	Ch. 420	SB 288
71-3-901	amended	Ch. 125	SB 328
71-3-1111	amended	Ch. 384	SB 352
71-3-1112	amended	Ch. 384	SB 352
	amended	Ch. 454	HB 619
71-3-1114	amended	Ch. 384	SB 352
	amended	Ch. 454	HB 619
71-3-1115	amended	Ch. 384	SB 352
71-3-1117	amended	Ch. 384	SB 352
71-3-1118	amended	Ch. 384	SB 352
72-1-102	repealed	Ch. 494	SB 119
72-1-103	amended	Ch. 494	SB 119
72-1-108	amended	Ch. 494	SB 119
72-1-110	repealed	Ch. 494	SB 119
72-2-101	amended	Ch. 494	SB 119
72-2-102	amended	Ch. 494	SB 119
72-2-103	amended	Ch. 494	SB 119
72-2-104	amended	Ch. 494	SB 119
72-2-105	amended	Ch. 494	SB 119
72-2-120	enacted	Ch. 494	SB 119
72-2-201	amended	Ch. 494	SB 119
72-2-202	amended	Ch. 494	SB 119
72-2-203	amended	Ch. 494	SB 119
72-2-204	amended	Ch. 494	SB 119
72-2-205	amended	Ch. 494	SB 119
72-2-206	amended	Ch. 494	SB 119

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72-2-207	amended	Ch. 494	SB 119
72-2-210	amended	Ch. 494	SB 119
72-2-212	amended	Ch. 494	SB 119
72-2-213	amended	Ch. 494	SB 119
72-2-214	amended	Ch. 494	SB 119
72-2-301	amended	Ch. 494	SB 119
72-2-302	amended	Ch. 494	SB 119
72-2-303	repealed	Ch. 494	SB 119
72-2-304	amended	Ch. 494	SB 119
72-2-305	amended	Ch. 494	SB 119
72-2-306	amended	Ch. 494	SB 119
72-2-311	amended	Ch. 494	SB 119
72-2-312	amended	Ch. 494	SB 119
72-2-313	amended	Ch. 494	SB 119
72-2-314	amended	Ch. 494	SB 119
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72-2-322	amended	Ch. 494	SB 119
72-2-323	amended	Ch. 494	SB 119
72-2-401	amended	Ch. 494	SB 119
72-2-402	amended	Ch. 494	SB 119
72-2-411	enacted	Ch. 494	SB 119
72-2-501	repealed	Ch. 494	SB 119
72-2-502	amended	Ch. 494	SB 119
72-2-503	repealed	Ch. 494	SB 119
72-2-504	amended	Ch. 494	SB 119
72-2-511	repealed	Ch. 494	SB 119
72-2-512	amended	Ch. 494	SB 119
72-2-513	amended	Ch. 494	SB 119
72-2-514	amended	Ch. 494	SB 119
72-2-515	amended	Ch. 494	SB 119
72-2-516	amended	Ch. 494	SB 119
72-2-517	amended	Ch. 494	SB 119
72-2-518	amended	Ch. 494	SB 119
72-2-519	amended	Ch. 494	SB 119
72-2-523	enacted	Ch. 494	SB 119
72-2-601	amended	Ch. 494	SB 119
72-2-602	amended	Ch. 494	SB 119
72-2-611	enacted	Ch. 494	SB 119
72-2-702	amended	Ch. 494	SB 119
72-2-703	amended	Ch. 494	SB 119
72-2-704	amended	Ch. 494	SB 119
72-2-705	amended	Ch. 494	SB 119
72-2-706	amended	Ch. 494	SB 119
72-2-707	amended	Ch. 494	SB 119
72-2-711	enacted	Ch. 494	SB 119
72-2-712	enacted	Ch. 494	SB 119
72-2-714	enacted	Ch. 494	SB 119
72-2-715	enacted	Ch. 494	SB 119
72-2-716	enacted	Ch. 494	SB 119
72-2-717	enacted	Ch. 494	SB 119
72-2-718	enacted	Ch. 494	SB 119
72-2-719	enacted	Ch. 494	SB 119
72-2-720	enacted	Ch. 494	SB 119
72-2-721	enacted	Ch. 494	SB 119
72-2-801	amended	Ch. 494	SB 119
72-2-802	amended	Ch. 494	SB 119
72-2-803	amended	Ch. 494	SB 119

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72-2-804	amended	Ch. 494	SB 119
72-2-814	enacted	Ch. 494	SB 119
72-2-1017	enacted	Ch. 494	SB 119
72-3-212	amended	Ch. 494	SB 119
72-3-213	amended	Ch. 494	SB 119
72-3-222	amended	Ch. 494	SB 119
72-6-111	enacted	Ch. 494	SB 119
72-6-201	enacted	Ch. 494	SB 119
72-6-202	enacted	Ch. 494	SB 119
72-6-203	enacted	Ch. 494	SB 119
72-6-204	enacted	Ch. 494	SB 119
72-6-205	enacted	Ch. 494	SB 119
72-6-206	enacted	Ch. 494	SB 119
72-6-211	enacted	Ch. 494	SB 119
72-6-212	enacted	Ch. 494	SB 119
72-6-213	enacted	Ch. 494	SB 119
72-6-214	enacted	Ch. 494	SB 119
72-6-215	enacted	Ch. 494	SB 119
72-6-216	enacted	Ch. 494	SB 119
72-6-221	enacted	Ch. 494	SB 119
72-6-222	enacted	Ch. 494	SB 119
72-6-223	enacted	Ch. 494	SB 119
72-6-224	enacted	Ch. 494	SB 119
72-6-225	enacted	Ch. 494	SB 119
72-6-226	enacted	Ch. 494	SB 119
72-6-227	enacted	Ch. 494	SB 119
72-6-301	enacted	Ch. 494	SB 119
72-6-302	enacted	Ch. 494	SB 119
72-6-303	enacted	Ch. 494	SB 119
72-6-304	enacted	Ch. 494	SB 119
72-6-305	enacted	Ch. 494	SB 119
72-6-306	enacted	Ch. 494	SB 119
72-6-307	enacted	Ch. 494	SB 119
72-6-308	enacted	Ch. 494	SB 119
72-6-309	enacted	Ch. 494	SB 119
72-6-310	enacted	Ch. 494	SB 119
72-6-311	enacted	Ch. 494	SB 119
72-10-101	repealed	Ch. 494	SB 119
72-10-102	repealed	Ch. 494	SB 119
72-10-103	repealed	Ch. 494	SB 119
72-10-104	repealed	Ch. 494	SB 119
72-10-105	repealed	Ch. 494	SB 119
72-10-106	repealed	Ch. 494	SB 119
72-10-107	repealed	Ch. 494	SB 119
72-10-108	repealed	Ch. 494	SB 119
72-10-109	repealed	Ch. 494	SB 119
72-10-110	repealed	Ch. 494	SB 119
72-10-111	repealed	Ch. 494	SB 119
72-10-112	repealed	Ch. 494	SB 119
72-10-113	repealed	Ch. 494	SB 119
72-10-201	repealed	Ch. 494	SB 119
72-10-202	repealed	Ch. 494	SB 119
72-10-203	repealed	Ch. 494	SB 119
72-10-204	repealed	Ch. 494	SB 119
72-11-101	amended	Ch. 494	SB 119
72-11-102	amended	Ch. 494	SB 119
72-11-103	amended	Ch. 494	SB 119

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72-11-104	amended	Ch. 494	SB 119
72-11-105	repealed	Ch. 494	SB 119
72-11-201	repealed	Ch. 494	SB 119
72-11-202	repealed	Ch. 494	SB 119
72-11-203	repealed	Ch. 494	SB 119
72-11-204	repealed	Ch. 494	SB 119
72-11-205	repealed	Ch. 494	SB 119
72-11-301	repealed	Ch. 494	SB 119
72-11-302	repealed	Ch. 494	SB 119
72-11-303	repealed	Ch. 494	SB 119
72-11-304	repealed	Ch. 494	SB 119
72-11-305	repealed	Ch. 494	SB 119
72-11-306	repealed	Ch. 494	SB 119
72-11-307	repealed	Ch. 494	SB 119
72-11-308	repealed	Ch. 494	SB 119
72-11-309	repealed	Ch. 494	SB 119
72-11-310	repealed	Ch. 494	SB 119
72-11-311	repealed	Ch. 494	SB 119
72-11-312	repealed	Ch. 494	SB 119
72-11-313	repealed	Ch. 494	SB 119
72-11-314	repealed	Ch. 494	SB 119
72-11-315	repealed	Ch. 494	SB 119
72-11-316	repealed	Ch. 494	SB 119
72-11-317	repealed	Ch. 494	SB 119
72-11-318	repealed	Ch. 494	SB 119
72-11-319	repealed	Ch. 494	SB 119
72-11-320	repealed	Ch. 494	SB 119
72-11-321	repealed	Ch. 494	SB 119
72-11-322	repealed	Ch. 494	SB 119
72-11-331	repealed	Ch. 494	SB 119
72-11-332	repealed	Ch. 494	SB 119
72-11-333	repealed	Ch. 494	SB 119
72-12-104	repealed	Ch. 494	SB 119
72-12-201	repealed	Ch. 494	SB 119
72-12-202	repealed	Ch. 494	SB 119
72-12-203	repealed	Ch. 494	SB 119
72-12-204	repealed	Ch. 494	SB 119
72-12-205	repealed	Ch. 494	SB 119
72-12-206	amended	Ch. 494	SB 119
72-12-301	repealed	Ch. 494	SB 119
72-12-302	repealed	Ch. 494	SB 119
72-12-501	repealed	Ch. 494	SB 119
72-12-502	repealed	Ch. 494	SB 119
72-12-503	repealed	Ch. 494	SB 119
72-12-601	repealed	Ch. 494	SB 119
72-12-602	repealed	Ch. 494	SB 119
72-12-603	repealed	Ch. 494	SB 119
72-12-604	repealed	Ch. 494	SB 119
72-12-605	repealed	Ch. 494	SB 119
72-12-701	repealed	Ch. 494	SB 119
72-12-702	repealed	Ch. 494	SB 119
72-12-703	repealed	Ch. 494	SB 119
72-12-704	repealed	Ch. 494	SB 119
72-12-801	repealed	Ch. 494	SB 119
72-12-802	repealed	Ch. 494	SB 119
72-12-803	repealed	Ch. 494	SB 119
72-12-901	repealed	Ch. 494	SB 119

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72-12-1001	repealed	Ch. 494	SB 119
72-12-1002	repealed	Ch. 494	SB 119
72-12-1003	repealed	Ch. 494	SB 119
72-12-1004	repealed	Ch. 494	SB 119
72-13-101	repealed	Ch. 494	SB 119
72-13-102	repealed	Ch. 494	SB 119
72-13-103	repealed	Ch. 494	SB 119
72-13-201	repealed	Ch. 494	SB 119
72-13-202	repealed	Ch. 494	SB 119
72-13-203	repealed	Ch. 494	SB 119
72-13-301	repealed	Ch. 494	SB 119
72-14-102	amended	Ch. 263	SB 190
72-16-202	amended	Ch. 349	SB 384
72-16-313	amended	Ch. 494	SB 119
72-31-201	amended	Ch. 494	SB 119
72-31-202	amended	Ch. 494	SB 119
72-31-203	amended	Ch. 494	SB 119
72-31-204	amended	Ch. 494	SB 119
72-31-205	amended	Ch. 494	SB 119
72-31-206	amended	Ch. 494	SB 119
72-31-207	amended	Ch. 494	SB 119
72-31-208	amended	Ch. 494	SB 119
72-31-209	repealed	Ch. 494	SB 119
72-31-210	repealed	Ch. 494	SB 119
72-31-211	amended	Ch. 494	SB 119
72-31-212	amended	Ch. 494	SB 119
72-31-213	repealed	Ch. 494	SB 119
72-31-214	repealed	Ch. 494	SB 119
72-31-215	repealed	Ch. 494	SB 119
72-31-216	repealed	Ch. 494	SB 119
72-31-222	enacted	Ch. 494	SB 119
72-31-223	enacted	Ch. 494	SB 119
72-31-227	enacted	Ch. 494	SB 119
72-31-234	enacted	Ch. 494	SB 119
72-31-235	enacted	Ch. 494	SB 119
72-31-236	enacted	Ch. 494	SB 119
72-31-237	enacted	Ch. 494	SB 119
72-31-238	enacted	Ch. 494	SB 119
72-34-309	amended	Ch. 289	HB 543
72-36-206	amended	Ch. 494	SB 119
75-1-203	amended	Ch. 349	SB 384
75-1-324	amended	Ch. 349	SB 384
75-1-1101	amended	Ch. 349	SB 384
75-2-103	amended	Ch. 129	HB 380
	amended	Ch. 502	HB 318
	amended	Ch. 639	HB 567
75-2-105	amended	Ch. 502	HB 318
75-2-106	enacted	Ch. 502	HB 318
75-2-107	enacted	Ch. 502	HB 318
75-2-108	enacted	Ch. 502	HB 318
75-2-109	enacted	Ch. 502	HB 318
75-2-204	amended	Ch. 502	HB 318
75-2-211	amended	Ch. 502	HB 318
	amended	Ch. 639	HB 567
75-2-215	amended	Ch. 129	HB 380
	amended	Ch. 639	HB 567
75-2-217	enacted	Ch. 502	HB 318

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75-2-218	enacted	Ch. 502	HB 318
75-2-219	enacted	Ch. 502	HB 318
75-2-220	enacted	Ch. 502	HB 318
75-2-221	enacted	Ch. 502	HB 318
75-2-231	enacted	Ch. 639	HB 567
75-2-232	enacted	Ch. 639	HB 567
75-2-233	enacted	Ch. 639	HB 567
75-2-301	amended	Ch. 502	HB 318
75-2-401	amended	Ch. 502	HB 318
75-2-412	amended	Ch. 502	HB 318
75-2-413	amended	Ch. 502	HB 318
75-2-421	amended	Ch. 502	HB 318
75-3-601	enacted	Ch. 527	HB 585
75-3-602	enacted	Ch. 527	HB 585
75-3-603	enacted	Ch. 527	HB 585
75-3-604	enacted	Ch. 527	HB 585
75-3-605	enacted	Ch. 527	HB 585
75-3-606	enacted	Ch. 527	HB 585
75-3-607	enacted	Ch. 527	HB 585
75-5-103	amended	Ch. 337	HB 448
	amended	Ch. 340	HB 571
	amended	Ch. 595	SB 401
75-5-201	amended	Ch. 504	HB 374
75-5-301	amended	Ch. 595	SB 401
75-5-301(7)	enacted	Ch. 595	SB 401
75-5-303	amended	Ch. 595	SB 401
75-5-303(7)	enacted	Ch. 595	SB 401
75-5-308	enacted	Ch. 340	HB 571
75-5-516	enacted	Ch. 507	HB 388
75-5-517	enacted	Ch. 507	HB 388
75-5-605	amended	Ch. 337	HB 448
	amended	Ch. 595	SB 401
75-5-611	amended	Ch. 504	HB 374
75-7-123	amended	Ch. 255	SB 275
75-10-103	amended	Ch. 201	SB 319
75-10-104	amended	Ch. 145	SB 67
75-10-105	amended	Ch. 145	SB 67
75-10-112	amended	Ch. 145	SB 67
	amended	Ch. 201	SB 319
75-10-116	amended	Ch. 145	SB 67
75-10-117	amended	Ch. 145	SB 67
75-10-118	amended	Ch. 273	HB 64
75-10-203	amended	Ch. 201	SB 319
75-10-204	amended	Ch. 273	HB 64
75-10-206	amended	Ch. 273	HB 64
75-10-209	amended	Ch. 524	HB 532
75-10-218	repealed	Ch. 145	SB 67
75-10-405	amended	Ch. 281	HB 417
	amended	Ch. 341	HB 592
	amended	Ch. 509	HB 419
75-10-413	amended	Ch. 281	HB 417
75-10-423	enacted	Ch. 281	HB 417
75-10-424	enacted	Ch. 509	HB 419
75-10-431	enacted	Ch. 341	HB 592
75-10-432	enacted	Ch. 341	HB 592
75-10-433	enacted	Ch. 341	HB 592
75-10-434	enacted	Ch. 341	HB 592

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75-10-447	amended	Ch. 281	HB 417
75-10-512	amended	Ch. 10	SB 1
75-10-533	amended	Ch. 349	SB 384
75-10-603	amended	Ch. 10	SB 1
75-10-704	amended	Ch. 349	SB 384
75-10-903	amended	Ch. 338	HB 454
75-10-921	amended	Ch. 338	HB 454
75-10-950	amended	Ch. 338	HB 454
75-11-202	amended	Ch. 200	SB 284
75-11-203	amended	Ch. 200	SB 284
75-11-204	amended	Ch. 200	SB 284
75-11-209	amended	Ch. 200	SB 284
	amended	Ch. 641	SB 196
75-11-210	amended	Ch. 200	SB 284
75-11-211	amended	Ch. 200	SB 284
75-11-212	amended	Ch. 200	SB 284
	amended	Ch. 641	SB 196
75-11-213	amended	Ch. 200	SB 284
75-11-217	amended	Ch. 200	SB 284
75-11-218	amended	Ch. 200	SB 284
75-11-220	amended	Ch. 200	SB 284
75-11-224	amended	Ch. 200	SB 284
75-11-231	enacted	Ch. 641	SB 196
75-11-301	amended	Ch. 339	HB 512
75-11-302	amended	Ch. 298	SB 228
	amended	Ch. 339	HB 512
75-11-307	amended	Ch. 339	HB 512
75-11-308	amended	Ch. 339	HB 512
75-11-309	amended	Ch. 339	HB 512
	amended	Ch. 355	HB 423
75-11-313	amended	Ch. 543	HB 666
75-11-314	amended	Ch. 298	SB 228
75-20-304	amended	Ch. 157	HB 390
75-20-501	amended	Ch. 157	HB 390
76-2-202	amended	Ch. 505	HB 375
76-2-302	amended	Ch. 505	HB 375
76-3-102	amended	Ch. 272	HB 408
76-3-103	amended	Ch. 272	HB 408
76-3-104	amended	Ch. 272	HB 408
76-3-207	amended	Ch. 272	HB 408
	amended	Ch. 366	SB 189
76-3-401	amended	Ch. 136	SB 279
76-3-402	amended	Ch. 136	SB 279
76-3-406	enacted	Ch. 136	SB 279
76-3-608	amended	Ch. 272	HB 408
76-4-105	amended	Ch. 514	HB 563
76-4-132	enacted	Ch. 514	HB 563
76-11-203	amended	Ch. 349	SB 384
76-12-109	amended	Ch. 349	SB 384
76-13-204	amended	Ch. 147	HB 150
76-13-302	amended	Ch. 285	HB 488
76-15-515	amended	Ch. 573	HB 588
76-15-516	amended	Ch. 573	HB 588
76-15-527	amended	Ch. 573	HB 588
76-15-531	enacted	Ch. 573	HB 588
76-15-532	enacted	Ch. 573	HB 588
77-1-106	enacted	Ch. 586	SB 424

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77-1-120	enacted	Ch. 586	SB 424
77-1-208	amended	Ch. 586	SB 424
77-1-209	amended	Ch. 586	SB 424
77-1-606	amended	Ch. 533	HB 652
77-1-607	amended	Ch. 533	HB 652
77-1-608	amended	Ch. 533	HB 652
77-1-613	enacted	Ch. 533	HB 652
77-1-802	amended	Ch. 586	SB 424
77-2-312	amended	Ch. 155	HB 266
77-5-104	amended	Ch. 310	HB 536
77-5-204	amended	Ch. 446	HB 393
77-5-207	enacted	Ch. 285	HB 488
77-5-302	amended	Ch. 320	HB 503
77-5-401	enacted	Ch. 321	HB 528
77-5-402	enacted	Ch. 321	HB 528
77-5-403	enacted	Ch. 321	HB 528
77-5-404	enacted	Ch. 321	HB 528
77-6-202	amended	Ch. 586	SB 424
77-6-205	amended	Ch. 586	SB 424
77-6-208	amended	Ch. 96	SB 188
77-6-302	amended	Ch. 586	SB 424
77-6-305	amended	Ch. 586	SB 424
77-6-306	amended	Ch. 586	SB 424
77-6-501	amended	Ch. 168	HB 535
77-6-502	amended	Ch. 586	SB 424
77-6-507	amended	Ch. 586	SB 424
77-6-508	amended	Ch. 586	SB 424
80-2-203	amended	Ch. 451	HB 545
80-2-222	amended	Ch. 69	SB 85
80-2-228	amended	Ch. 69	SB 85
80-2-232	amended	Ch. 69	SB 85
80-3-101	repealed	Ch. 553	HB 193
80-3-102	repealed	Ch. 553	HB 193
80-3-103	repealed	Ch. 553	HB 193
80-3-104	repealed	Ch. 553	HB 193
80-3-105	repealed	Ch. 553	HB 193
80-3-106	repealed	Ch. 553	HB 193
80-3-107	repealed	Ch. 553	HB 193
80-3-108	repealed	Ch. 553	HB 193
80-3-109	repealed	Ch. 553	HB 193
80-3-110	repealed	Ch. 553	HB 193
80-3-111	repealed	Ch. 553	HB 193
80-3-201	repealed	Ch. 553	HB 193
80-3-202	repealed	Ch. 553	HB 193
80-3-203	repealed	Ch. 553	HB 193
80-3-204	repealed	Ch. 553	HB 193
80-3-205	repealed	Ch. 553	HB 193
80-3-206	repealed	Ch. 553	HB 193
80-3-207	repealed	Ch. 553	HB 193
80-3-211	repealed	Ch. 553	HB 193
80-3-212	repealed	Ch. 553	HB 193
80-3-301	enacted	Ch. 553	HB 193
80-3-302	enacted	Ch. 553	HB 193
80-3-303	enacted	Ch. 553	HB 193
80-3-304	enacted	Ch. 553	HB 193
80-3-305	enacted	Ch. 553	HB 193
80-3-306	enacted	Ch. 553	HB 193

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80-3-311	enacted	Ch. 553	HB 193
80-3-312	enacted	Ch. 553	HB 193
80-3-313	enacted	Ch. 553	HB 193
80-3-314	enacted	Ch. 553	HB 193
80-3-315	enacted	Ch. 553	HB 193
80-3-321	enacted	Ch. 553	HB 193
80-3-322	enacted	Ch. 553	HB 193
80-3-323	enacted	Ch. 553	HB 193
80-3-601	repealed	Ch. 553	HB 193
80-3-602	repealed	Ch. 553	HB 193
80-3-603	repealed	Ch. 553	HB 193
80-3-604	repealed	Ch. 553	HB 193
80-3-605	repealed	Ch. 553	HB 193
80-3-606	repealed	Ch. 553	HB 193
80-3-607	repealed	Ch. 553	HB 193
80-3-608	repealed	Ch. 553	HB 193
80-3-609	repealed	Ch. 553	HB 193
80-3-610	repealed	Ch. 553	HB 193
80-3-611	repealed	Ch. 553	HB 193
80-3-612	repealed	Ch. 553	HB 193
80-3-613	repealed	Ch. 553	HB 193
80-3-701	repealed	Ch. 553	HB 193
80-3-702	repealed	Ch. 553	HB 193
80-3-703	repealed	Ch. 553	HB 193
80-3-704	repealed	Ch. 553	HB 193
80-3-705	repealed	Ch. 553	HB 193
80-3-706	repealed	Ch. 553	HB 193
80-3-707	repealed	Ch. 553	HB 193
80-3-708	repealed	Ch. 553	HB 193
80-3-709	repealed	Ch. 553	HB 193
80-3-710	repealed	Ch. 553	HB 193
80-3-711	repealed	Ch. 553	HB 193
80-3-712	repealed	Ch. 553	HB 193
80-3-713	repealed	Ch. 553	HB 193
80-4-402	amended	Ch. 452	HB 564
80-4-405	amended	Ch. 452	HB 564
80-4-409	amended	Ch. 452	HB 564
80-4-415	enacted	Ch. 452	HB 564
80-4-416	enacted	Ch. 452	HB 564
80-4-420	enacted	Ch. 452	HB 564
80-4-421	amended	Ch. 452	HB 564
80-4-422	amended	Ch. 452	HB 564
80-4-425	amended	Ch. 452	HB 564
80-4-427	amended	Ch. 452	HB 564
80-4-428	amended	Ch. 452	HB 564
80-4-429	amended	Ch. 452	HB 564
80-4-501	amended	Ch. 452	HB 564
80-4-502	amended	Ch. 452	HB 564
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80-4-504	amended	Ch. 452	HB 564
80-4-505	amended	Ch. 452	HB 564
80-4-506	amended	Ch. 452	HB 564
80-4-521	amended	Ch. 452	HB 564
80-4-522	amended	Ch. 452	HB 564
80-4-523	amended	Ch. 452	HB 564
80-4-524	amended	Ch. 452	HB 564
80-4-525	amended	Ch. 452	HB 564

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80-4-526	amended	Ch. 452	HB 564
80-4-527	amended	Ch. 452	HB 564
80-4-529	amended	Ch. 452	HB 564
80-4-530	amended	Ch. 452	HB 564
80-4-531	amended	Ch. 452	HB 564
80-4-532	amended	Ch. 452	HB 564
80-4-533	amended	Ch. 452	HB 564
80-4-534	amended	Ch. 452	HB 564
80-4-536	amended	Ch. 452	HB 564
80-4-537	amended	Ch. 452	HB 564
80-4-538	amended	Ch. 452	HB 564
80-4-539	amended	Ch. 452	HB 564
80-4-602	amended	Ch. 452	HB 564
80-4-604	amended	Ch. 452	HB 564
80-4-608	amended	Ch. 452	HB 564
80-4-612	amended	Ch. 452	HB 564
80-4-710	amended	Ch. 452	HB 564
80-4-721	amended	Ch. 452	HB 564
80-4-723	amended	Ch. 452	HB 564
80-4-726	amended	Ch. 452	HB 564
80-5-207	amended	Ch. 602	SB 98
80-5-208	amended	Ch. 602	SB 98
80-6-101	amended	Ch. 491	HB 181
80-6-105	amended	Ch. 491	HB 181
80-6-303	amended	Ch. 491	HB 181
80-7-101	repealed effective 01/01/94	Ch. 551	HB 167
80-7-102	repealed effective 01/01/94	Ch. 551	HB 167
80-7-103	repealed effective 01/01/94	Ch. 551	HB 167
80-7-104	amended	Ch. 551	HB 167
80-7-105	enacted	Ch. 551	HB 167
80-7-106	enacted	Ch. 551	HB 167
80-7-108	enacted	Ch. 551	HB 167
80-7-109	enacted	Ch. 551	HB 167
80-7-111	repealed effective 01/01/94	Ch. 551	HB 167
80-7-112	repealed effective 01/01/94	Ch. 551	HB 167
80-7-113	repealed effective 01/01/94	Ch. 551	HB 167
80-7-114	amended	Ch. 551	HB 167
80-7-115	repealed effective 01/01/94	Ch. 551	HB 167
80-7-116	repealed effective 01/01/94	Ch. 551	HB 167
80-7-117	repealed effective 01/01/94	Ch. 551	HB 167
80-7-118	repealed effective 01/01/94	Ch. 551	HB 167
80-7-119	repealed effective 01/01/94	Ch. 551	HB 167
80-7-120	repealed effective 01/01/94	Ch. 551	HB 167
80-7-121	enacted	Ch. 551	HB 167
80-7-122	enacted	Ch. 551	HB 167
80-7-123	enacted	Ch. 551	HB 167
80-7-131	repealed effective 01/01/94	Ch. 551	HB 167
80-7-133	amended	Ch. 551	HB 167
80-7-134	repealed effective 01/01/94	Ch. 551	HB 167
80-7-135	enacted	Ch. 551	HB 167
80-7-201	repealed effective 01/01/94	Ch. 551	HB 167
80-7-202	repealed effective 01/01/94	Ch. 551	HB 167
80-7-203	repealed effective 01/01/94	Ch. 551	HB 167
80-7-204	repealed effective 01/01/94	Ch. 551	HB 167
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80-7-210	repealed effective 01/01/94	Ch. 551	HB 167
80-7-301	repealed effective 01/01/94	Ch. 551	HB 167
80-7-302	repealed effective 01/01/94	Ch. 551	HB 167
80-7-303	repealed effective 01/01/94	Ch. 551	HB 167
80-7-304	repealed effective 01/01/94	Ch. 551	HB 167
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80-7-1106	repealed	Ch. 280	HB 366
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80-8-105	amended	Ch. 465	SB 334
80-8-111	amended	Ch. 465	SB 334
80-8-112	enacted	Ch. 465	SB 334
80-8-120	enacted	Ch. 465	SB 334
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80-8-203	amended	Ch. 465	SB 334
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80-8-207	amended	Ch. 465	SB 334
80-8-209	amended	Ch. 465	SB 334
80-8-213	amended	Ch. 465	SB 334
80-8-401	enacted	Ch. 177	SB 393
80-8-402	enacted	Ch. 177	SB 393
80-8-403	enacted	Ch. 177	SB 393
80-8-404	enacted	Ch. 177	SB 393
80-8-405	enacted	Ch. 177	SB 393
80-11-206	amended	Ch. 51	SB 30
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80-11-207	amended	Ch. 576	HB 658
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80-11-411	repealed	Ch. 62	HB 163
80-11-412	amended	Ch. 62	HB 163
80-12-402	repealed	Ch. 349	SB 384
80-12-403	repealed	Ch. 349	SB 384
81-2-702	amended	Ch. 417	HB 648
81-3-102	amended	Ch. 30	SB 57
81-3-104	amended	Ch. 30	SB 57
81-3-201	amended	Ch. 30	SB 57
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81-4-202	amended	Ch. 8	HB 37
81-4-214	amended	Ch. 417	HB 648
81-4-215	amended	Ch. 417	HB 648
81-4-306	amended	Ch. 417	HB 648
81-4-401	amended	Ch. 417	HB 648
81-4-402	amended	Ch. 417	HB 648
81-4-601	amended	Ch. 417	HB 648
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81-5-104	amended	Ch. 108	HB 104
	amended	Ch. 417	HB 648
81-5-109	amended	Ch. 108	HB 104
81-5-110	amended	Ch. 108	HB 104
81-5-111	amended	Ch. 108	HB 104
81-7-401	amended	Ch. 106	HB 58
81-7-401(6)	enacted	Ch. 106	HB 58
81-7-403	amended	Ch. 106	HB 58
81-8-216	amended	Ch. 5	HB 36

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81-23-101	amended	Ch. 56	SB 88
81-23-202	amended	Ch. 566	HB 516
82-1-111	enacted	Ch. 379	SB 294
82-3-205	amended	Ch. 10	SB 1
82-4-203	amended	Ch. 225	HB 171
82-4-224	repealed	Ch. 371	SB 248
82-4-226	amended	Ch. 225	HB 171
82-4-227	amended	Ch. 225	HB 171
82-4-303	amended	Ch. 472	SB 320
82-4-305	amended	Ch. 598	HB 442
82-4-331	amended	Ch. 598	HB 442
82-4-335	amended	Ch. 598	HB 442
82-4-337	amended	Ch. 472	SB 320
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82-4-337(4)-(7)	enacted	Ch. 598	HB 442
82-4-338	amended	Ch. 598	HB 442
82-4-342	enacted	Ch. 472	SB 320
82-4-349	enacted	Ch. 472	SB 320
82-4-350	enacted	Ch. 472	SB 320
82-4-351	amended	Ch. 472	SB 320
82-4-362	amended	Ch. 598	HB 442
82-10-110	enacted	Ch. 607	SB 311
82-11-101	amended	Ch. 379	SB 294
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82-11-161	amended	Ch. 349	SB 384
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82-11-202	amended	Ch. 313	SB 104
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82-15-115	enacted	Ch. 65	HB 165
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85-1-211	amended	Ch. 53	SB 97
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85-1-602	amended	Ch. 478	HB 608
85-1-603	amended	Ch. 478	HB 608
85-1-604	amended	Ch. 478	HB 608
85-1-605	amended	Ch. 478	HB 608
85-1-606	amended	Ch. 478	HB 608
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85-1-614	amended	Ch. 478	HB 608
85-1-615	amended	Ch. 478	HB 608
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85-1-618	amended	Ch. 478	HB 608
85-1-619	amended	Ch. 478	HB 608
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85-1-631	amended	Ch. 478	HB 608
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	amended	Ch. 629	SB 310
85-2-105	amended	Ch. 478	HB 608
85-2-211	amended	Ch. 629	SB 310
85-2-213	amended	Ch. 629	SB 310
85-2-221	amended	Ch. 629	SB 310
85-2-225	amended	Ch. 629	SB 310
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85-2-234	amended	Ch. 629	SB 310
85-2-237	amended	Ch. 629	SB 310
85-2-302	amended	Ch. 370	SB 231
85-2-306	amended	Ch. 629	SB 310
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85-2-308	amended	Ch. 370	SB 231
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85-2-312	amended	Ch. 370	SB 231
85-2-315	amended	Ch. 370	SB 231
85-2-316	amended	Ch. 370	SB 231
85-2-319	amended	Ch. 460	SB 280
85-2-319(5)	enacted	Ch. 460	SB 280
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85-2-330	enacted	Ch. 445	HB 365
85-2-331	amended	Ch. 303	HB 102
85-2-340	enacted	Ch. 244	SB 282
85-2-341	enacted	Ch. 244	SB 282
85-2-342	enacted	Ch. 385	HB 395
85-2-343	enacted	Ch. 385	HB 395
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85-2-402(14)	enacted	Ch. 460	SB 280
85-2-436	amended	Ch. 175	SB 383
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85-2-437	amended	Ch. 175	SB 383
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85-7-2104	amended	Ch. 257	SB 350
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85-9-629	amended	Ch. 10	SB 1
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85-15-107	amended	Ch. 612	HB 121
85-15-115	enacted	Ch. 612	HB 121
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85-15-309	repealed	Ch. 418	HB 84
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85-15-311	repealed	Ch. 418	HB 84
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85-15-501	repealed	Ch. 418	HB 84
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85-15-503	enacted	Ch. 612	HB 121
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87-1-257	amended	Ch. 175	SB 383
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87-2-724	amended	Ch. 349	SB 384
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87-2-903	amended	Ch. 92	SB 227
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90-2-104	repealed	Ch. 478	HB 608
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90-2-108	repealed	Ch. 478	HB 608
90-2-109	repealed	Ch. 478	HB 608
90-2-110	repealed	Ch. 478	HB 608
90-2-111	repealed	Ch. 478	HB 608
90-2-112	repealed	Ch. 478	HB 608
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BY EFFECTIVE DATE

Section 1-2-201, MCA, as amended by Ch. 466, Laws of 1981, provides that:

"Every statute adopted after January 1, 1981, except those that provide for appropriation by the legislature of public funds for a public purpose, takes effect on the first day of October following its passage and approval unless a different time is prescribed therein. Every statute providing for appropriation as specified in this subsection takes effect on the first day of July following its passage and approval unless a different time is prescribed therein."

The following is a list of specially designated effective dates for the 52nd Legislature in regular session.

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Ch. 28	SB 8	02/10/93
Ch. 29	SB 34	07/01/93
Ch. 32	SB 110	07/01/93
Ch. 34	SB 127	02/10/93
Ch. 35	SB 43	02/11/93
Ch. 38	SB 45	02/10/93
Ch. 39	HB 8	07/01/93
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Ch. 43 (§§ 3 & 4)	SB 90	02/11/93
Ch. 43 (§§ 1 & 2 are contingent upon voter approval)	SB 90	01/01/95
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Ch. 91	SB 187	07/01/93
Ch. 94 (§ 2)	SB 142	03/15/93
Ch. 94 (§ 1 contingent upon voter approval)	SB 142	07/01/95
Ch. 95	SB 116	03/16/93

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Ch. 99		HB 22	03/17/93
Ch. 100		HB 24	03/17/93
Ch. 101		HB 44	03/17/93
Ch. 102		HB 223	03/17/93
Ch. 107		HB 93	07/01/93
Ch. 109		HB 111	03/18/93
Ch. 110		HB 122	03/18/93
Ch. 114		HB 43	03/18/93
Ch. 115		HB 289	03/18/93
Ch. 116		SB 25	03/18/93
Ch. 119		SB 140	03/18/93
Ch. 121	(§§ 4, 6 & 11)	SB 209	03/18/93
Ch. 122		SB 241	03/18/93
Ch. 124		SB 273	03/18/93
Ch. 125		SB 328	03/18/93
Ch. 126		SB 355	07/01/93
Ch. 129		HB 380	03/19/93
Ch. 130		SB 52	07/01/93
Ch. 133		SB 178	07/01/93
Ch. 136		SB 279	03/19/93
Ch. 139		SB 369	03/22/93
Ch. 142		SB 111	07/01/93
Ch. 145		SB 67	07/01/93
Ch. 146		HB 53	03/24/93
Ch. 149		HB 203	03/24/93
Ch. 155		HB 266	03/24/93
Ch. 156		HB 356	03/24/93
Ch. 157		HB 390	07/01/93
Ch. 158		HB 403	03/24/93
Ch. 159		HB 404	07/01/93
Ch. 163		HB 465	03/24/93
Ch. 167		HB 521	03/24/93
Ch. 169		HB 631	03/24/93
Ch. 170		HB 110	07/01/93
Ch. 171		SB 184	03/25/93
Ch. 173		SB 270	07/01/93
Ch. 174		SB 353	01/01/94
Ch. 175		SB 383	07/01/93
Ch. 178		SB 407	07/01/93
Ch. 181		HB 66	03/25/93
Ch. 183		HB 82	07/01/93
Ch. 184		HB 98	03/25/93
Ch. 185		HB 112	03/25/93
Ch. 188		HB 153	07/01/93
Ch. 189		HB 164	03/25/93
Ch. 194		SB 307	07/01/93
Ch. 196		HB 123	03/25/93
Ch. 197		SB 372	03/26/93
Ch. 200		SB 284	03/26/93
Ch. 201		SB 319	07/01/93
Ch. 202		SB 331	03/26/93
Ch. 206		HB 414	07/01/93
Ch. 207		HB 538	03/29/93
Ch. 209		HB 256	01/01/94
Ch. 210		HB 269	07/01/93
Ch. 211		HB 290	07/01/93
Ch. 215		HB 304	03/29/93

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Ch. 218 (§§ 2 & 3)	HB 371	03/29/93
Ch. 218 (§ 1)	HB 371	01/01/94
Ch. 219	HB 381	03/01/94
Ch. 220	HB 432	07/01/93
Ch. 224	HB 621	07/01/94
Ch. 226	HB 244	03/30/93
Ch. 227	HB 250	03/30/93
Ch. 228	HB 279	03/30/93
Ch. 230	HB 309	07/01/93
Ch. 234	HB 373	03/31/93
Ch. 236	HB 566	03/31/93
Ch. 237	HB 634	03/31/93
Ch. 239	SB 68	04/01/93
Ch. 243	SB 269	07/01/93
Ch. 244	SB 282	04/01/93
Ch. 245	SB 322	04/01/93
Ch. 248	HB 534	07/01/93
Ch. 250	SB 63	07/01/93
Ch. 257	SB 350	07/01/93
Ch. 258	SB 361	03/31/93
Ch. 260	SB 272	04/02/93
Ch. 261	HB 650	07/01/93
Ch. 265	SB 385	07/01/93
Ch. 267	SB 168	04/02/93
Ch. 272	HB 408	04/06/93
Ch. 273 (§§ 3 & 5)	HB 64	04/07/93
Ch. 275	HB 148	04/07/93
Ch. 280	HB 366	04/07/93
Ch. 281	HB 417	04/07/93
Ch. 282	HB 428	04/07/93
Ch. 283	HB 435	07/01/93
Ch. 284	HB 441	04/07/93
Ch. 286	HB 489	04/07/93
Ch. 291	HB 646	04/07/93
Ch. 292	SB 37	04/09/93
Ch. 294	SB 150	04/09/93
Ch. 295 (§§ 5, 8, & 16)	SB 163	07/01/93
Ch. 295 (§§ 1-4, 6, 7 & 9-15)	SB 163	01/01/94
Ch. 296	SB 164	07/01/93
Ch. 297	SB 166	04/09/93
Ch. 298	SB 228	07/01/93
Ch. 299	SB 138	04/09/93
Ch. 300	SB 218	07/01/93
Ch. 301	HB 19	07/01/93
Ch. 302	HB 21	04/12/93
Ch. 303	HB 102	04/12/93
Ch. 312	HB 633	07/01/93
Ch. 314	HB 158	04/12/93
Ch. 315	HB 338	04/12/93
Ch. 317	SB 229	04/12/93
Ch. 318	HB 421	07/01/93
Ch. 323	HB 574	04/12/93
Ch. 325	HB 656	07/01/93
Ch. 329	HB 238	04/13/93
Ch. 330	HB 278	04/13/93
Ch. 331	HB 394	07/01/93

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Ch. 333	HB 541	07/01/93
Ch. 336	HB 659	07/01/93
Ch. 339	HB 512	04/13/93
Ch. 341	HB 592	04/13/93
Ch. 345 (§§ 6, 7, & 14-16	HB 241	04/16/93
Ch. 346	HB 397	07/01/93
Ch. 347	SB 344	04/16/93
Ch. 350	HB 97	04/16/93
Ch. 351	HB 281	04/16/93
Ch. 352 (§§ 3-5 & 11-15)	HB 283	04/16/93
Ch. 352 (§§ 1, 2 & 6-10)	HB 283	07/01/93
Ch. 354	HB 401	07/01/93
Ch. 356	HB 494	07/01/93
Ch. 358	HB 638	04/16/93
Ch. 359	SB 31	07/01/93
Ch. 360	SB 39	07/01/93
Ch. 361	SB 40	07/01/93
Ch. 362	SB 70	04/16/93
Ch. 367	SB 203	07/01/93
Ch. 368	SB 206	04/15/93
Ch. 369	SB 215	04/16/93
Ch. 370	SB 231	04/16/93
Ch. 375	SB 278	07/01/93
Ch. 376	HB 288	04/16/93
Ch. 377	SB 425	04/15/93
Ch. 380	SB 298	04/15/93
Ch. 382	SB 330	07/01/93
Ch. 385	HB 395	04/16/93
Ch. 387	SB 77	04/19/93
Ch. 390	SB 318	07/01/93
Ch. 392	HB 27	04/19/93
Ch. 395 (§§ 1, 7, 8 & 52)	HB 201	04/19/93
Ch. 397	HB 255	04/19/93
Ch. 399	HB 294	01/01/95
Ch. 403	HB 443	04/19/93
Ch. 404	HB 445	07/01/93
Ch. 411	HB 549	07/01/93
Ch. 414 (§§ 25, 26, 28 & 29)	HB 609	04/19/93
Ch. 414 (§§ 1-24 & 27)	HB 609	07/01/93
Ch. 419	SB 89	04/20/93
Ch. 420	SB 288	04/20/93
Ch. 422	SB 370	04/20/93
Ch. 424	SB 396	04/20/93
Ch. 427	SB 412	04/20/93
Ch. 428	SB 417	07/01/93
Ch. 430	SB 429	07/01/93
Ch. 431	HB 151	04/20/93
Ch. 433	HB 23	07/01/93
Ch. 434	HB 67	04/21/93
Ch. 438	HB 149	04/21/93
Ch. 444	HB 339	04/21/93
Ch. 445	HB 365	04/21/93
Ch. 446	HB 393	07/01/93
Ch. 449	HB 433	04/21/93
Ch. 450	HB 485	07/01/93
Ch. 451 (§§ 33 & 38)	HB 545	04/21/93
Ch. 452	HB 564	07/01/93

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Ch. 455	HB 641	04/21/93
Ch. 458	SB 256	04/21/93
Ch. 460	SB 280	04/21/93
Ch. 461	SB 292	07/01/93
Ch. 463	SB 323	07/01/93
Ch. 464	SB 329	04/21/93
Ch. 465 (§§ 4(9)(b),10 & 13)	SB 334	04/21/93
Ch. 466 (§ 5)	SB 348	01/01/94
Ch. 466 (§§ 1, 3, 4, & 6-9)	SB 348	07/01/94
Ch. 470	HB 245	05/21/93
Ch. 472	SB 320	04/21/93
Ch. 477	HB 522	04/22/93
Ch. 478 (§§ 1, 3, & 5-36)	HB 608	07/01/93
Ch. 478 (§§ 2 & 4)	HB 608	07/01/95
Ch. 482 (§ 4)	SB 373	01/01/94
Ch. 483	SB 427	04/22/93
Ch. 486	HB 367	04/22/93
Ch. 488	SB 428	04/22/93
Ch. 489	HB 7	07/01/93
Ch. 490 (§§ 2 & 5)	HB 9	04/23/93
Ch. 490 (§§ 1, 3 & 4)	HB 9	07/01/93
Ch. 491	HB 181	07/01/93
Ch. 492	HB 529	07/01/93
Ch. 495	HB 655	07/01/93
Ch. 496	HB 10	07/01/93
Ch. 497	HB 12	04/24/93
Ch. 498 (§§ 2 & 3)	HB 17	04/24/93
Ch. 498 (§ 1)	HB 17	01/01/94
Ch. 502 (§§ 1, 14-18, & 20-24)	HB 318	04/24/93
Ch. 502 (§ 13(2))	HB 318	07/01/94
Ch. 503	HB 350	07/01/93
Ch. 506	HB 382	04/24/93
Ch. 508	HB 413	04/24/93
Ch. 511	HB 463	07/01/93
Ch. 512	HB 511	04/24/93
Ch. 513 (§ 4)	HB 537	07/01/93
Ch. 514	HB 563	07/01/93
Ch. 515	HB 616	04/24/93
Ch. 516	HB 654	07/01/93
Ch. 517	HB 663	04/24/93
Ch. 518	HB 674	04/24/93
Ch. 519	HB 216	04/24/93
Ch. 520	HB 330	04/24/93
Ch. 522	HB 430	07/01/93
Ch. 524	HB 532	04/24/93
Ch. 525	HB 539	01/01/94
Ch. 526	HB 579	04/24/93
Ch. 527	HB 585	07/01/93
Ch. 528	HB 587	04/24/93
Ch. 529	HB 593	05/31/93
Ch. 530	HB 601	01/01/94
Ch. 531	HB 639	04/24/93
Ch. 532	HB 640	04/24/93
Ch. 533	HB 652	06/30/93
Ch. 534	HB 660	04/24/93
Ch. 535	HB 680	07/01/95
Ch. 536	HB 687	07/01/93

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Ch. 538	HB 691	07/01/93
Ch. 540	SB 357	07/01/93
Ch. 541	SB 359	07/01/93
Ch. 542	SB 368	04/24/93
Ch. 543	HB 666	07/01/93
Ch. 544	SB 235	06/08/03 (Contingent upon voter approval)
Ch. 545 (§§ 2 & 3)	SB 289	04/24/93
Ch. 545 (§ 1)	SB 289	11/08/94 (Contingent upon voter approval)
Ch. 546	HB 3	04/28/93
Ch. 547	HB 11	04/28/93
Ch. 548	HB 46	07/01/93
Ch. 549	HB 65	04/28/93
Ch. 550	HB 145	07/01/93
Ch. 551	HB 167	01/01/94
Ch. 553	HB 193	04/28/93
Ch. 554	HB 273	04/28/93
Ch. 555	HB 287	07/01/93
Ch. 556	HB 323	04/28/93
Ch. 558 (§ 6)	HB 333	04/28/93
Ch. 558 (§§ 1-5)	HB 333	07/01/93
Ch. 559	HB 372	04/28/93
Ch. 561 (§§ 28,29,31, 33 & 34)	HB 427	04/28/93
Ch. 561 (§§ 1-27, 30 & 32)	HB 427	07/01/93
Ch. 563	HB 469	07/01/93
Ch. 565	HB 505	04/28/93
Ch. 566	HB 516	07/01/93
Ch. 567	HB 517	04/28/93
Ch. 570	HB 555	07/01/93
Ch. 571	HB 572	01/01/94
Ch. 573	HB 588	07/01/93
Ch. 574	HB 642	07/01/93
Ch. 575	HB 651	01/01/94
Ch. 576	HB 658	04/28/93
Ch. 577	HB 673	07/01/93
Ch. 579	HB 685	04/28/93
Ch. 580	HB 688	07/01/93
Ch. 581	HB 689	04/28/93
Ch. 582	SB 15	04/28/93
Ch. 583	SB 87	04/28/93
Ch. 585	SB 362	04/28/93
Ch. 586	SB 424	07/01/93
Ch. 587	SB 438	04/28/93
Ch. 588	SB 11	04/29/93
Ch. 589	SB 58	04/29/93
Ch. 590	SB 118	07/01/94
Ch. 591	SB 145	07/01/93
Ch. 593 (§§ 1-6 & 10)	SB 378	04/29/93
Ch. 593 (§§ 7-9)	SB 378	07/01/94
Ch. 595	SB 401	04/29/93
Ch. 599	HB 495	05/04/93
Ch. 601	SB 71	07/01/93
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Ch. 605	SB 257	07/01/93
Ch. 606 (§§ 1-20 & 44-47)	SB 285	05/03/93
Ch. 606 (§§ 30-34)	SB 285	07/01/93
Ch. 606 (§§ 22-28, 35 & 36)	SB 285	01/01/94
Ch. 606 (§ 21)	SB 285	07/01/96
Ch. 608	SB 332	05/03/93
Ch. 609	SB 342	05/03/93
Ch. 610	SB 271	07/01/93
Ch. 611	SB 72	05/05/93
Ch. 613 (§§ 1-11 & 14-19)	HB 6	05/05/93
Ch. 613 (§§ 12 & 13)	HB 6	07/01/93
Ch. 614	HB 4	05/05/93
Ch. 617	HB 219	05/06/93
Ch. 619	HB 622	07/01/93
Ch. 620	HB 431	05/07/93
Ch. 621	HB 530	07/01/93
Ch. 622 (§§ 1-4 & 6-11)	SB 354	07/01/93
Ch. 622 (§ 5)	SB 354	01/01/95
Ch. 623	HB 2	07/01/93
Ch. 624	HB 5	05/10/93
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Ch. 627 (§§ 4 & 5)	HB 643	07/01/93
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Ch. 628	SB 347	07/01/93
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Ch. 630 (§§ 1, 9 & 14-18)	HB 13	05/11/93
Ch. 630 (§§ 2-8 & 10-13)	HB 13	07/01/93
Ch. 632	HB 525	07/01/93
Ch. 633 (§§ 1-22, 24-32 & 34-64)	HB 667	07/01/93
Ch. 633 (§§ 23 & 33)	HB 667	07/01/94
Ch. 634	HB 671	05/11/93
Ch. 635	HB 692	07/01/93
Ch. 636	HB 693	05/11/93
Ch. 637	HB 504	05/13/93
Ch. 639	HB 567	05/13/93
Ch. 640 (§§ 8 & 12-14)	HB 198	05/17/93
Ch. 640 (§§ 1-7, 9-11 & 15)	HB 198	07/01/93
Ch. 641	SB 196	05/20/93
Ch. 642 (§§ 1, 2, 4, 6, 8-11, & 15-17)	HB 645	07/01/93
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EFFECTIVE DATES

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02/18/93	Ch. 48	SB 10
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03/17/93	Ch. 102	HB 223
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03/18/93	Ch. 114	HB 43
03/18/93	Ch. 115	HB 289
03/18/93	Ch. 116	SB 25
03/18/93	Ch. 119	SB 140
03/18/93	Ch. 121	SB 209 (§§ 4, 6 & 11)
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03/24/93	Ch. 156	HB 356
03/24/93	Ch. 158	HB 403
03/24/93	Ch. 163	HB 465
03/24/93	Ch. 167	HB 521
03/24/93	Ch. 169	HB 631
03/25/93	Ch. 171	SB 184
03/25/93	Ch. 181	HB 66
03/25/93	Ch. 184	HB 98
03/25/93	Ch. 185	HB 112
03/25/93	Ch. 189	HB 164
03/25/93	Ch. 196	HB 123
03/26/93	Ch. 197	SB 372
03/26/93	Ch. 200	SB 284
03/26/93	Ch. 202	SB 331
03/29/93	Ch. 207	HB 538
03/29/93	Ch. 215	HB 304
03/29/93	Ch. 217	HB 363
03/29/93	Ch. 218	HB 371 (§§ 2, 3)
03/30/93	Ch. 226	HB 244
03/30/93	Ch. 227	HB 250
03/30/93	Ch. 228	HB 279
03/31/93	Ch. 234	HB 373
03/31/93	Ch. 236	HB 566
03/31/93	Ch. 237	HB 634
03/31/93	Ch. 258	SB 361
04/01/93	Ch. 239	SB 68
04/01/93	Ch. 244	SB 282
04/01/93	Ch. 245	SB 322
04/02/93	Ch. 260	SB 272
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04/06/93	Ch. 272	HB 408
04/07/93	Ch. 273	HB 64 (§§ 3 & 5)
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04/07/93	Ch. 280	HB 366
04/07/93	Ch. 281	HB 417
04/07/93	Ch. 282	HB 428
04/07/93	Ch. 284	HB 441
04/07/93	Ch. 286	HB 489
04/07/93	Ch. 291	HB 646
04/09/93	Ch. 292	SB 37
04/09/93	Ch. 294	SB 150
04/09/93	Ch. 297	SB 166
04/09/93	Ch. 299	SB 138
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04/12/93	Ch. 303	HB 102
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04/13/93	Ch. 341	HB 592
04/15/93	Ch. 368	SB 206
04/15/93	Ch. 377	SB 425
04/15/93	Ch. 380	SB 298
04/16/93	Ch. 345	HB 241 (§§ 6, 7, & 14-16)
04/16/93	Ch. 347	SB 344
04/16/93	Ch. 350	HB 97
04/16/93	Ch. 351	HB 281
04/16/93	Ch. 352	HB 283 (§§ 3-5 & 11-15)
04/16/93	Ch. 358	HB 638
04/16/93	Ch. 362	SB 70
04/16/93	Ch. 369	SB 215
04/16/93	Ch. 370	SB 231
04/16/93	Ch. 376	HB 288
04/16/93	Ch. 385	HB 395
04/19/93	Ch. 387	SB 77
04/19/93	Ch. 392	HB 27
04/19/93	Ch. 395	HB 201 (§§ 1, 7, 8, & 52)
04/19/93	Ch. 397	HB 255
04/19/93	Ch. 403	HB 443
04/19/93	Ch. 414	HB 609 (§§ 25, 26, 28, & 29)
04/20/93	Ch. 419	SB 89
04/20/93	Ch. 420	SB 288
04/20/93	Ch. 422	SB 370
04/20/93	Ch. 424	SB 396
04/20/93	Ch. 427	SB 412
04/20/93	Ch. 431	HB 151
04/21/93	Ch. 434	HB 67
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04/21/93	Ch. 444	HB 339
04/21/93	Ch. 445	HB 365
04/21/93	Ch. 449	HB 433
04/21/93	Ch. 451	HB 545 (§§ 33 & 38)
04/21/93	Ch. 455	HB 641
04/21/93	Ch. 458	SB 256
04/21/93	Ch. 460	SB 280
04/21/93	Ch. 464	SB 329
04/21/93	Ch. 465	SB 334 (§§ 4(9)(b), 10 & 13)
04/21/93	Ch. 472	SB 320
04/22/93	Ch. 477	HB 522
04/22/93	Ch. 483	SB 427
04/22/93	Ch. 486	HB 367
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04/24/93	Ch. 502	HB 318 (§§ 1, 14-18, & 20-24)
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04/24/93	Ch. 508	HB 413
04/24/93	Ch. 512	HB 511
04/24/93	Ch. 515	HB 616
04/24/93	Ch. 517	HB 663
04/24/93	Ch. 518	HB 674
04/24/93	Ch. 519	HB 216
04/24/93	Ch. 520	HB 330
04/24/93	Ch. 524	HB 532
04/24/93	Ch. 526	HB 579
04/24/93	Ch. 528	HB 587
04/24/93	Ch. 531	HB 639
04/24/93	Ch. 532	HB 640
04/24/93	Ch. 534	HB 660
04/24/93	Ch. 542	SB 368
04/24/93	Ch. 545	SB 289 (§§ 2 & 3)
04/28/93	Ch. 546	HB 3
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04/28/93	Ch. 549	HB 65
04/28/93	Ch. 553	HB 193
04/28/93	Ch. 554	HB 273
04/28/93	Ch. 556	HB 323
04/28/93	Ch. 558	HB 333 (§ 6)
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04/28/93	Ch. 561	HB 427 (§§ 28, 29, 31, 33 & 34)
04/28/93	Ch. 565	HB 505
04/28/93	Ch. 567	HB 517
04/28/93	Ch. 576	HB 658
04/28/93	Ch. 579	HB 685
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04/28/93	Ch. 587	SB 438
04/29/93	Ch. 588	SB 11
04/29/93	Ch. 589	SB 58
04/29/93	Ch. 593	SB 378 (§§ 1-6 & 10)
04/29/93	Ch. 595	SB 401
05/03/93	Ch. 606	SB 285 (§§ 1-20 & 44-47)
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05/03/93	Ch. 609	SB 342
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45	1	20-3-341
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61	1	35-18-105
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70	1	61-10-141
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71	1	46-18-256
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91	1	52-1-103
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115	1	2-18-617
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116	1	7-11-1102
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	73	35-8-1302
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	79	30-13-141
	80	30-13-202
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	83	35-1-308
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	86	35-2-826
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	2	37-10-105
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	11	Effective date
122	1	16-3-214
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123	1	2-3-203
124	1	7-32-4114
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125	1	71-3-901
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126	1	23-2-512
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127	1	60-2-220(1)
	2	60-2-220(2)-(5)
	3	17-7-502
128	1	13-35-302
129	1	75-2-103
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	3	Severability
	4	Effective date
130	1	7-6-204
	2	Effective date
131	1	17-6-101
132	1	61-8-351
133	1	20-9-131
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134	1	39-3-204
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135	1	15-31-511
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136	1	76-3-406
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	5	Codification instruction
	6	Effective date
137	1	20-3-302
	2	20-6-201
138	1	70-27-115
139	1	80-8-201
	2	Effective date
140	1	50-5-603
141	1	69-4-404
142	1	37-51-102
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	3	37-51-602
	4	37-51-603
	5	37-51-604
	6	37-51-605
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	8	37-51-607
	9	37-51-608
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143	1	45-2-101
144	1	7-16-2403
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145	1	75-10-104
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	7	Effective date
146	1	20-3-201
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	3	20-3-213
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147	1	76-13-204
148	1	90-1-102
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149	1	7-33-2405
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	3	7-33-4112
	4	Codification instruction
	5	Effective date
150	1	39-71-2105
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151	1	50-5-101
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	9	25-9-709
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	11	25-9-711
	12	25-9-712
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153	1	87-3-111
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155	1	77-2-312
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156	1	69-12-415
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157	1	69-3-1201
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	12	Effective date
158	1	20-9-412
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159	1	10-2-603
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160	1	7-13-2201
161	1	44-4-301
162	1	30-10-103
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164	1	33-1-317
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165	1	33-1-303
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166	1	2-17-322
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167	1	52-3-802
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168	1	77-6-501
169	1	7-6-2348
	2	7-6-4259
	3	Effective date
170	1	87-1-513
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171	1	39-51-204
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	9	Effective date
172	1	53-30-323
173	1	39-51-404
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174	1	61-3-525
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175	1	85-2-436
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	5	Effective date
176	1	70-24-429
177	1	80-8-401
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179	1	33-21-103
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180	1	46-6-506
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181	1	41-3-203
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182	1	46-15-323
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189	1	69-3-207
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190	1	45-6-301
191	1	85-7-1710
192	1	1-5-601
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194	1	20-6-701
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195	1	61-8-812
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196	1	87-4-601
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197	1	37-23-202
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198	1	31-1-202
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199	1	40-4-301
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	14	Effective date
201	1	75-10-103
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	4	Effective date
202	1	33-22-1704
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203	1	16-3-311
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204	1	7-6-2224
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205	1	20-26-1101
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206	1	7-13-236
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207	1	69-3-305
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208	1	13-37-226
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210	1	23-5-612
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211	1	Repealer
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212	1	69-4-201
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223	1	3-10-303
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224	1	39-71-2211
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225	1	82-4-203
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226	1	19-4-603
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229	1	10-4-205
230	1	53-6-131
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231	1	15-70-201
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232	1	13-4-102
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235	1	49-2-101
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237	1	2-15-126
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238	1	35-10-102
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	62	Severability
	63	Application to existing relationships
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	2	Sec. 1, Ch. 228, L. 1987
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	4	Repealer
	5	Two-thirds vote
	6	Effective date
240	1	53-1-501
241	1	Sec. 12, Ch. 598, L. 1987
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242	1	90-4-1001
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243	1	15-30-215

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245	1	15-30-303
	2	15-70-223
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246	1	37-51-321
247	1	23-2-814
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248	1	39-71-434
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249	1	35-1-115
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250	1	7-12-2131
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251	1	7-32-4132
252	1	Repealer
253	1	7-14-2103
254	1	90-5-101
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256	1	15-24-1204
257	1	85-7-2103
	2	85-7-2104
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258	1	31-1-401
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	3	Applicability
259	1	19-2-907
	2	19-3-105
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	11	Coordination instruction
260	1	60-5-512
	2	60-5-522
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261	1	19-7-312
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262	1	46-1-202
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264	1	23-2-901
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290	1	32-1-1001
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	9	16-11-131
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	11	Rendered ineffective by sec. 12 (coordination section)
	12	Codification instruction
	13	Coordination instruction
	14	Effective dates
	15	Applicability
353	1	23-6-104
354	1	Natural resource damage program authorization and appropriation of loan proceeds
	2	Natural resource damage program reauthorization
	3	Loan authorization — appropriation of loan proceeds
	4	17-6-310
	5	Loan contract
	6	Three-fourths vote
	7	Legislative oversight
	8	Effective date
355	1	75-11-309
356	1	20-7-401
	2	20-7-403
	3	20-7-411
	4	20-7-414
	5	20-7-461
	6	52-2-101
	7	Repealer
	8	Effective date

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357	1	17-7-301
	2	17-7-311
358	1	41-5-523
	2	52-5-126
	3	52-5-127
	4	Effective date
359	1	20-10-101
	2	20-10-142
	3	20-10-146
	4	Effective date
360	1	Voided by sec. 21, Ch. 579 (coordination section)
	2	Voided by sec. 21, Ch. 579 (coordination section)
	3	Voided by sec. 21, Ch. 579 (coordination section)
361	1	Voided by sec. 21, Ch. 579 (coordination section)
	2	Voided by sec. 21, Ch. 579 (coordination section)
	3	Voided by sec. 21, Ch. 579 (coordination section)
362	1	41-3-403
	2	41-3-406
	3	Effective date
363	1	69-14-701
	2	69-14-714
	3	Codification instruction
364	1	69-12-101
	2	69-12-102
	3	69-12-201
	4	69-12-205
	5	69-12-301
	6	69-12-321
	7	69-12-322
	8	69-12-407
	9	69-12-611
	10	Repealer
365	1	46-18-201
	2	61-3-322
	3	61-3-535
	4	61-6-302
	5	61-6-304
	6	61-11-203
	7	61-13-104
366	1	7-4-2613
	2	15-8-702
	3	76-3-207
	4	70-21-213
	5	Codification instruction
367	1	19-3-1604
	2	Codification instruction
	3	Effective date
368	1	15-36-126
	2	Effective date — retroactive applicability

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369	1	7-8-2301
	2	15-17-319
	3	Effective date
370	1	85-2-102
	2	85-2-302
	3	85-2-307
	4	85-2-308
	5	85-2-311
	6	85-2-316
	7	85-2-402
	8	85-2-436
	9	85-2-312
	10	85-2-315
	11	Severability
	12	Retroactive applicability
	13	Effective date
371	1	Repealer
372	1	69-14-116
373	1	40-6-108
374	1	44-2-601
375	1	20-7-420
	2	20-7-421
	3	20-7-422
	4	20-7-435
	5	20-7-436
	6	20-9-343
	7	20-7-419
	8	Codification instruction
	9	Effective date
376	1	82-11-123
	2	Retroactive applicability
	3	Effective date
377	1	3-1-1013
	2	3-1-1014
	3	Effective date
378	1	33-32-201
379	1	82-1-111
	2	1-4-110
	3	82-11-101
	4	15-1-101
	5	Codification instruction
	6	Saving clause
380	1	17-5-1604
	2	Effective date
381	1	46-23-210
382	1	20-4-110
	2	20-4-112
	3	20-4-113
	4	20-4-114
	5	Codification instruction
	6	Effective date
383	1	50-60-801
	2	50-60-102
	3	50-60-203
	4	50-60-802
	5	50-60-803
	6	Codification instruction
	7	Coordination instruction
384	1	71-3-1111
	2	71-3-1112
	3	71-3-1114
	4	71-3-1115
	5	71-3-1117
	6	71-3-1118
385	1	85-2-342
	2	85-2-343
	3	Codification instruction
	4	Effective date
	5	Applicability
386	1	90-5-112
387	1	Definitions
	2	Joint committee on postsecondary education policy and budget — appointment and composition
	3	Term of office
	4	Vacancies
	5	Officers — quorum — meetings
	6	Compensation
	7	Staff assistance
	8	Powers and duties of committee
	9	Appropriation
	10	Effective date
	11	Termination
388	1	61-8-403
389	1	50-40-206
	2	17-7-502
	3	50-40-203
	4	50-40-202
	5	50-40-204
	6	50-40-205
	7	Codification instruction
390	1	13-1-101
	2	13-2-202
	3	13-2-203
	4	13-10-405
	5	13-10-503
	6	13-10-504
	7	13-10-601
	8	13-13-116
	9	13-25-101
	10	13-27-401
	11	13-27-410
	12	Repealer
	13	Effective date
391	1	41-2-102
	2	41-2-103
	3	41-2-104
	4	41-2-105
	5	41-2-106

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	7	41-2-108
	8	41-2-109
	9	41-2-110
	10	41-2-115
	11	41-2-116
	12	41-2-117
	13	41-2-118
	14	Repealer
	15	Codification instruction
	16	Severability
392	1	37-28-203
	2	37-28-206
	3	Saving clause
	4	Transition
	5	Effective date
393	1	69-4-502
394	1	2-15-2506
395	1	2-15-1803
	2	2-18-103
	3	17-7-502
	4	32-1-101
	5	32-1-109
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	7	32-1-201
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	11	32-1-220
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	23	32-1-374
	24	32-1-402
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	41	32-1-532
	42	32-1-534
	43	32-1-537
	44	32-1-538
	45	32-1-551
	46	32-1-552
	47	32-1-553
	48	32-1-606
	49	32-1-803
	50	Repealer
	51	Codification instruction
	52	Effective dates
396	1	50-39-101
	2	50-39-102
	3	50-39-103
	4	50-39-104
	5	50-39-105
	6	50-39-107
	7	50-39-106
	8	Coordination instruction
	9	Codification instruction
	10	Applicability
397	1	46-14-206
	2	46-14-301
	3	46-14-302
	4	46-14-303
	5	46-14-304
	6	46-14-312
	7	Effective date
398	1	23-5-110
	2	23-5-111
	3	23-5-112
	4	23-5-113
	5	23-5-115
	6	23-5-117
	7	23-5-118
	8	23-5-123
	9	23-5-136
	10	23-5-157
	11	23-5-161
	12	23-5-162
	13	23-5-171
	14	23-5-172
	15	23-5-309
	16	23-5-610
	17	23-5-631
	18	23-7-302
	19	Coordination instruction
399	1	61-10-107
	2	Date of compliance
	3	Effective date
400	1	2-5-101
	2	2-5-102
	3	2-5-103
	4	2-5-104
	5	2-5-105

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	6	2-5-106
	7	2-5-107
	8	2-5-108
	9	2-5-109
	10	2-5-110
	11	Codification instruction
401	1	32-1-381
	2	32-1-382
	3	32-1-383
	4	32-1-384
	5	32-1-372
	6	Severability
	7	Saving clause
	8	Codification instruction
402	1	20-3-324
403	1	20-5-201
	2	Effective date
404	1	39-51-2104
	2	39-51-2307
	3	Effective date
405	1	39-3-406
406	1	7-5-2109
	2	7-5-4104
	3	49-4-302
	4	49-4-305
	5	49-4-307
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407	1	49-1-102
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	22	49-4-211
	23	49-4-212
	24	49-4-301
	25	49-4-302
	26	49-4-304
	27	49-4-305
408	1	45-5-211
	2	Codification instruction
409	1	7-16-4202
	2	7-16-4224
	3	7-16-4209
	4	7-16-4227
	5	7-16-4228
410	1	53-2-211
	2	53-2-105
	3	53-3-111
	4	15-30-303
	5	Codification instruction
411	1	2-4-313
	2	2-6-103
	3	30-9-403
	4	Effective date
412	1	60-1-205
	2	Codification instruction
413	1	61-10-102
414	1	16-1-106
	2	16-1-302
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	19	16-11-124
	20	16-11-141
	21	16-11-142
	22	16-11-147
	23	16-11-149
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	25	Reorganization protections
	26	Implementation
	27	Appropriation — transfer of employee positions
	28	16-11-105 53-2-505
	29	Effective dates
415	1	50-5-111
	2	50-5-112
	3	50-5-113
	4	50-5-114
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	6	50-5-116
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	9	50-5-103
	10	50-5-108
	11	50-5-201
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	13	Repealer
	14	Codification instruction
416	1	33-15-333
	2	33-15-334
	3	33-15-335
	4	33-15-336
	5	33-15-337
	6	33-15-338
	7	33-15-339
	8	33-15-340
	9	Codification instruction
	10	Applicability
417	1	15-1-101
	2	15-24-921
	3	81-2-702
	4	81-3-201
	5	81-4-201
	6	81-4-214
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418	1	85-15-106
	2	Voided by sec. 11 (coordination section)
	3	85-15-209
	4	85-15-211
	5	85-15-212
	6	85-15-213
	7	85-15-216
	8	Voided by sec. 11 (coordination section)
	9	Repealer
	10	Codification instruction
	11	Coordination instruction
419	1	2-15-1841
	2	37-3-203
	3	37-3-305
	4	37-3-322
	5	37-3-323
	6	37-3-401
	7	37-20-104
	8	37-20-409
	9	37-20-202
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	11	37-20-301
	12	37-20-302
	13	37-20-402
	14	37-20-404
	15	37-20-405
	16	Repealer
	17	Codification instruction
	18	Effective date
420	1	2-6-401
	2	2-6-402
	3	2-6-403
	4	2-6-404
	5	2-6-201
	6	2-6-302
	7	7-4-2221
	8	7-4-2222
	9	7-4-2223
	10	7-4-2612
	11	7-4-2613
	12	7-5-2131
	13	7-5-2132
	14	7-5-4124
	15	20-1-212
	16	22-3-201
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	19	30-9-403
	20	30-9-407
	21	71-3-206
	22	71-3-705
	23	71-3-810
	24	Codification instruction
	25	Effective date
421	1	52-3-305
	2	52-3-805
	3	52-3-811
	4	52-3-813
422	1	15-24-1704
	2	15-24-1702
	3	Codification instruction
	4	Effective date — retroactive applicability
	5	Termination
423	1	61-10-104
424	1	15-10-412
	2	Effective date — retroactive applicability
425	1	40-4-121
	2	45-5-206
	3	46-6-311
	4	46-6-602
	5	46-9-302
426	1	52-3-803
	2	52-3-805
427	1	15-24-1203
	2	Coordination instruction
	3	Effective date — retroactive applicability
428	1	15-70-221

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	2	15-70-328
	3	15-70-105 15-71-110
	4	Codification instruction
	5	Applicability
	6	Effective date
429	1	23-7-312
	2	17-4-105
	3	45-5-621
	4	Codification instruction
	5	Severability
430	1	90-2-1113
	2	Effective date
431	1	44-5-103
	2	Effective date
432	1	90-6-701
	2	90-6-703
	3	90-6-710
433	1	17-7-114
	2	17-2-102
	3	17-7-402
	4	17-7-403
	5	17-8-101
	6	Codification instruction
	7	Effective date
434	1	40-4-205
	2	40-4-215
	3	40-6-110
	4	41-3-303
	5	Effective date
435	1	40-6-301
	2	53-3-110
	3	53-3-114
436	1	61-2-106
437	1	7-31-203
	2	7-32-303
	3	44-4-301
438	1	15-70-124
	2	Effective date
439	1	41-3-102
	2	40-8-111
	3	41-3-609
440	1	7-16-2202
	2	7-16-2205
441	1	25-9-601
	2	25-9-602
	3	25-9-603
	4	25-9-604
	5	25-9-605
	6	25-9-606
	7	25-9-607
	8	25-9-608
	9	25-9-609
442	1	39-2-905
	2	39-2-914
	3	39-2-915
	4	Codification instruction
443	1	20-25-237
	2	20-25-207
	3	Codification instruction
444	1	50-60-102
	2	50-60-602
	3	Effective date
445	1	85-2-329
	2	85-2-330
	3	Codification instruction
	4	Applicability
	5	Effective date
446	1	77-5-204
	2	Effective date
447	1	25-10-404
448	1	45-9-110
	2	41-5-206
	3	45-9-101
	4	Codification instruction
449	1	23-4-301
	2	23-5-502
	3	Coordination instruction
	4	Effective date
450	1	19-8-1110(1)-(3)
	2	19-8-1110(4)
	3	19-8-504
	4	17-7-502
	5	Study for equitable postretirement adjustments for all public retirement systems
	6	Codification instruction
	7	Coordination instruction
	8	Coordination instruction
	9	Effective date
451	1	33-1-316
	2	33-1-501
	3	33-2-302
	4	33-2-305
	5	33-2-307
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	7	33-2-313
	8	33-2-705
	9	33-2-708
	10	33-2-1113
	11	33-3-305
	12	33-4-101
	13	33-4-203
	14	33-11-104
	15	33-11-108
	16	33-14-201
	17	33-14-305
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	27	33-22-130
	28	33-22-131
	29	33-22-132
	30	33-22-201
	31	33-22-202
	32	33-22-1703
	33	80-2-203
	34	33-22-110
	35	15-16-601
	36	Repealer
	37	Codification instruction
	38	Effective date
452	1	80-4-402
	2	80-4-422
	3	80-4-425
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	18	80-4-420
	19	Codification instruction
	20	Code commissioner instruction
		80-4-405
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		80-4-536
		80-4-537
		80-4-539
		80-4-710
		80-4-721
		80-4-723
		80-4-726
	21	Effective date
453	1	7-7-2268
	2	7-7-2269
	3	7-7-4268
	4	7-7-4269
	5	7-13-4301
	6	7-14-4714
	7	Repealer
454	1	Voided by sec. 3 (coordination section)
	2	Voided by sec. 3 (coordination section)
	3	Coordination instruction
455	1	15-1-501
	2	15-23-716
	3	15-25-122
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	5	15-35-108
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	28	16-1-423
	29	16-11-119
	30	16-11-206
	31	23-5-610
	32	23-5-646
	33	39-71-2504
	34	Repealer
	35	Retroactive applicability
	36	Effective date
456	1	87-4-608
	2	87-4-609

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	3	Codification instruction
457	1	39-71-744
458	1	39-71-117
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	3	39-71-402
	4	Code commissioner instruction
	5	Saving clause
	6	Effective date
459	1	39-71-414
460	1	85-2-311
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	4	85-2-506
	5	85-2-311(7) 85-2-319(5) 85-2-402(14)
	6	Codification instruction
	7	Severability
	8	Retroactive applicability
	9	Effective date
461	1	23-7-402
	2	Effective date
462	1	30-10-115
	2	30-10-209
463	1	53-30-401
	2	53-30-402
	3	53-30-403
	4	Codification instruction
	5	Effective date
464	1	17-5-1526
	2	17-5-1527
	3	18-2-403
	4	90-5-114
	5	90-7-302
	6	Effective date
465	1	80-8-105
	2	80-8-111
	3	80-8-112
	4	80-8-201
	5	80-8-203
	6	80-8-205
	7	80-8-207
	8	80-8-209
	9	80-8-213
	10	80-8-120
	11	Severability
	12	Codification instruction
	13	Effective date
	14	Termination
466	1	20-7-431
	2	20-7-457
	3	20-9-147
	4	Voided by sec. 60, Ch. 633 (coordination section)
	5	Voided by sec. 60, Ch. 633 (coordination section)
	6	20-9-313
	7	Voided by sec. 60, Ch. 633 (coordination section)
	8	20-9-507
	9	Repealer
	10	Effective dates
467	1	39-71-531
	2	39-71-532
	3	39-71-533
	4	39-71-534
	5	Codification instruction
468	1	7-32-2109
	2	7-32-2110
	3	7-32-4152
	4	7-32-4153
	5	7-32-4155
	6	7-32-4156
	7	7-32-4157
	8	7-32-4158
	9	7-32-4160
	10	7-32-4161
	11	7-32-4164
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469	1	50-16-531
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470	1	70-24-103
	2	70-24-436
	3	70-24-311
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	5	Effective date
471	1	39-71-118
	2	53-1-301
	3	53-30-131
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472	1	82-4-349
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	8	Saving clause
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473	1	37-31-101
	2	37-31-301
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	4	37-31-304
	5	37-31-305
	6	37-31-308
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474	1	61-8-714

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	3	61-8-421
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475	1	7-5-4302
	2	7-5-4306
476	1	50-16-701
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477	1	2-18-1201
	2	2-18-1202
	3	2-18-1203
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478	1	15-38-106
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	17	85-1-610
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	28	85-1-621
	29	85-1-623
	30	85-1-631
	31	85-2-105
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	35	Repealer
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479	1	22-2-308
480	1	Disposition of old Montana state prison complex to Powell County museum and arts foundation
481	1	19-3-304
	2	Voided by sec. 9 (coordination section)
	3	Voided by sec. 9 (coordination section)
	4	Voided by sec. 9 (coordination section)
	5	Voided by sec. 9 (coordination section)
	6	Voided by sec. 9 (coordination section)
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483	1	15-10-412
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484	1	61-8-502
485	1	85-7-2136
486	1	7-1-4137
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487	1	70-24-103
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	4	70-24-315
	5	70-24-311
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488	1	15-30-246
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493	1	37-61-205
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	6	72-2-102 (renum. 72-2-224)
	7	72-2-103 (renum. 72-2-812)
	8	72-2-104 (renum. 72-2-813)
	9	72-2-105 (renum. 72-2-534)
	10	72-2-201 (renum. 72-2-111)
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	13	72-2-204 (renum. 72-2-116)
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	15	72-2-206 (renum. 72-2-119)
	16	72-2-207 (renum. 72-2-115)
	17	72-2-210 (renum. 72-2-123)
	18	72-2-212 (renum. 72-2-118)
	19	72-2-213 (renum. 72-2-124)
	20	72-2-214 (renum. 72-2-121)
	21	72-2-120
	22	72-2-301 (renum. 72-2-521)
	23	72-2-302 (renum. 72-2-522)
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	25	72-2-305 (renum. 72-2-525)
	26	72-2-306 (renum. 72-2-526)
	27	72-2-311 (renum. 72-2-530)
	28	72-2-312 (renum. 72-2-533)
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496	1	Policy
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504	1	75-5-201
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508	1	69-1-223
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509	1	75-10-405
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510	1	15-6-135
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511	1	23-2-518
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512	1	39-71-225
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513	1	90-7-220
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514	1	76-4-105
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515	1	Definitions
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517	1	Appropriations from treasure state endowment account
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	3	Approval of grants from bond proceeds — completion of appropriation
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518	1	18-2-102
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519	1	30-14-804
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520	1	15-30-145
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	3	15-30-149
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521	1	15-16-701
522	1	19-9-601
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523	1	40-5-601
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524	1	75-10-209
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525	1	15-70-301
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	44	Repealer
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	46	Saving clause
	47	Effective date
526	1	20-26-1401
	2	20-26-1402
	3	20-26-1403
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	13	Effective date
527	1	75-3-601
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528	1	33-16-1011
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529	1	16-4-304
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530	1	19-20-714
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531	1	90-1-116
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532	1	15-23-211
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533	1	77-1-613
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534	1	90-14-101
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535	1	15-32-107
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536	1	15-35-108
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	3	Effective date
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537	1	20-8-102
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538	1	50-5-310
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539	1	15-16-603
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	9	Repealer
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540	1	30-10-304
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541	1	60-11-111
	2	60-11-121
	3	60-11-122
	4	60-11-123
	5	60-11-120
	6	Codification instruction
	7	Effective date
542	1	2-1-306
	2	Effective date
543	1	75-11-313
	2	Effective date
544	1-192	Voided by vote of electorate 6/8/93
545	1	Art. VIII, sec. 15, Mont. Const.
	2	Effective date
	3	Submission to electorate
546	1	Time limits
	2	Totals not appropriations
	3	Appropriations
	4	Appropriation for department of family services, secretary of state's office, and department of military affairs for fiscal year 1994
	5	Agency not to record certain general fund encumbrances
	6	Effective date
547	1	20-32-103
	2	Appropriations
	3	Effective date
548	1	16-11-119
	2	10-2-417
	3	17-5-408
	4	Codification instruction
	5	Effective date
549	1	5-21-101
	2	5-21-102
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550	1	Appropriations
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551	1	80-7-105
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	5	80-7-135
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	13	Codification instruction
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552	1	37-22-301
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553	1	80-3-301
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	18	Effective date — retroactive applicability
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554	1	33-18-221
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555	1	39-71-116
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	15	39-71-2615
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556	1	45-8-211
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557	1	15-16-118
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558	1	15-60-101
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559	1	7-7-2212
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	4	7-7-2215
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	9	7-7-2261
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	11	Codification instruction
	12	Effective date
560	1	45-5-627
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561	1	53-3-115
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562	1	15-6-134
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563	1	20-5-320
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	20	Codification instruction
	21	Instruction to code commissioner
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564	1	61-8-402
	2	61-8-403
	3	61-8-404
	4	61-8-405
565	1	Voided by sec. 2 (coordination section)
	2	Coordination instruction — contingent termination
	3	Effective date — retroactive applicability date
566	1	81-23-202
	2	Effective date — applicability
567	1	19-3-908
	2	Montana university system voluntary termination for teachers' retirement system members
	3	Montana university system voluntary termination for optional teachers' retirement system participants
	4	Reports on effect of incentives
	5	Retroactive applicability
	6	Codification instruction
	7	Effective date
	8	Termination
568	1	15-32-601
	2	15-32-609
	3	15-32-603
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	5	Codification instruction
	6	Retroactive applicability
569	1	16-11-301
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570	1	25-1-201
	2	25-10-405
	3	27-32-104
	4	Effective date
571	1	61-10-125
	2	Effective date
572	1	State housing task force — creation — membership — administration
	2	State housing task force — powers and duties
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573	1	76-15-531
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574	1	15-65-121
	2	23-1-131(2)
	3	23-1-131(1)
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575	1	15-6-138
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	4	Voided by sec. 23 (coordination section)
	5	15-71-102
	6	61-1-134
	7	61-3-321
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	21	Repealer
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576	1	80-11-206
	2	80-11-207
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577	1	46-23-1031
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578	1	23-2-821
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	5	Codification instruction
	6	Contingent voidness
579	1	Voided by sec. 21 (coordination section)
	2	10-2-416
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	17	Funds transfer and expenditure
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580	1	15-35-102
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581	1	15-30-153(1), (2)
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583	1	Suspension of election laws — purpose — notice
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584	1	37-8-102
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	5	37-8-433
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585	1	70-24-427
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586	1	77-1-208
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587	1	15-16-613
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588	1	31-1-107
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589	1	87-1-304
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	5	Effective date
590	1	50-5-101
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	3	50-5-227
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	5	52-1-104
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	7	Applicability
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591	1	53-6-501
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592	1	15-70-522
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593	1	17-1-501
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	10	Effective dates
594	1	15-1-402
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595	1	75-5-103
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	6	Voided by sec. 8 (coordination section)
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596	1	33-2-1501
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	12	33-2-1516
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597	1	7-5-109
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598	1	82-4-305
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599	1	16-4-111
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600	1	45-8-344
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602	1	80-5-207
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603	1	41-5-304
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606	1	50-4-101
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607	1	82-10-110
608	1	7-14-212
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609	1	18-2-412
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610	1	41-3-1001
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611	1	85-3-202
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617	1	15-30-164
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618	1	39-71-316
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619	1	39-71-116
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620	1	19-9-601
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621	1	61-10-124
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622	1	33-17-1201
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625	1	18-11-101(2), (3)
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626	1	2-15-2021
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627	1	15-6-133
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SESSION LAWS

Enacted by the

FIFTY-SECOND LEGISLATURE IN SPECIAL SESSION

Held at Helena, the Seat of Government
January 6, 1992, through January 17, 1992

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA LEGISLATIVE COUNCIL

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CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FIRST SPECIAL SESSION OF THE 52ND LEGISLATURE, CONVENING JANUARY 6, 1992, AND FOR OTHER RELATED PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Operations appropriations.** The following amounts are appropriated from the general fund for fiscal year 1992 for the operation of the first special session of the 52nd legislature, convening January 6, 1992:

House of Representatives	$269,275
Senate	$156,635
Legislative Council	$ 88,108

Section 2. **Legislative fiscal analyst appropriation.** The following amount is appropriated from the general fund to the office of the legislative fiscal analyst for fiscal year 1992 for preparation, printing, and distribution of fiscal information relating to the first special session of the 52nd legislature:

Legislative Fiscal Analyst	$22,350

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved January 13, 1992.

CHAPTER NO. 2

[SB 2]

AN ACT TO ADDRESS THE PROBLEMS, ALTERNATIVES, AND CONTINGENCIES ARISING FROM THE STATE'S SUIT FOR RELIEF FROM A CONGRESSIONAL APPORTIONMENT THAT ALLOCATED ONLY ONE CONGRESSIONAL SEAT TO THE STATE OF MONTANA; TO DETERMINE THE ALTERNATIVE PROCEDURES FOR PRIMARY FILING AND FOR THE PRIMARY AND GENERAL ELECTIONS IF A FINAL DETERMINATION IS MADE THAT MONTANA IS ENTITLED TO ONLY ONE CONGRESSIONAL REPRESENTATIVE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, on January 16, 1991, the Clerk of the United States House of Representatives issued a certificate of entitlement to the Governor of Montana containing notice that the State of Montana is entitled to one congressional representative in the 103rd Congress; and

WHEREAS, pursuant to that certificate and in accordance with Article V, section 14, of the Montana Constitution, the Montana Districting and Apportionment Commission prepared and filed its final plan for one congressional district with the Secretary of State of Montana in April 1991 and the plan became law; and

WHEREAS, on May 22, 1991, the Attorney General of Montana filed a lawsuit in the United States District Court for the District of Montana against the United States Department of Commerce and its Secretary, the United States Bureau of the Census and its Director, and the Clerk of the United States House of Representatives, challenging the apportionment formula and the resulting loss of one of Montana's two congressional representatives; and

WHEREAS, on October 18, 1991, a three-judge United States District Court for the District of Montana found that the apportionment violates the rights of Montana voters to equal representation and declared unconstitutional and void 2 U.S.C. 2a, upon which the certificate of entitlement was predicated; and

WHEREAS, the decision of the United States District Court for the District of Montana has been appealed to the United States Supreme Court, which has noted probable jurisdiction and has scheduled oral arguments for March 4, 1992; and

WHEREAS, the Legislature of the State of Montana finds that the decision of the United States District Court for the District of Montana is law unless and until it is overturned, that the judgment has rendered invalid the Districting and Apportionment Commission's April 1991 plan for one congressional district, and that Montana is entitled to two congressional representatives unless and until a final determination is made otherwise.

THEREFORE, the Legislature of the State of Montana finds that it is appropriate to provide for the preparation and adoption of a plan for two congressional districts, to direct the Secretary of State to accept declarations of nomination and to prepare the ballot for the office of congressional representative for both a first and second district for the 1992 primary election, and to specify a contingent method for nomination of candidates in the event of a final determination that Montana is entitled to only one congressional representative.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Redistricting of congressional districts — contingent primary filing, primary election, and general election procedures.** (1) (a) Except as provided in subsection (2), for the filing period beginning January 21, 1992, and ending March 19, 1992, the secretary of state shall accept declarations of nomination for the office of congressional representative for both a first and second district for the state of Montana, as established by the two-district plan provided for in subsection (3). Both offices must be placed on the ballot for the June 2, 1992, primary election.

(b) If a final determination is made before the 1992 primary election that Montana is entitled to only one congressional representative in the 103rd United States congress, the nominations for the office of congressional representative are vacant and the vacancies must be filled as provided in 13-10-326. Votes cast at the primary for candidates for the offices of first and second district congressional representative must be counted, and the returns must be canvassed as provided in Title 13, chapter 15, but no declaration of nomination may be issued under 13-15-507.

(c) If a final determination is made after the 1992 primary election but before the November 1992 general election that Montana is entitled to only one congressional representative in the 103rd United States congress, declarations of nomination issued pursuant to 13-15-507 are invalid, the nominations for the office of congressional representative are vacant, and the vacancies must be filled as provided in 13-10-327. If the date of the final determination is less than 75 days before the 1992 general election, each political party shall appoint a candidate within 5 days after being notified of the vacancies by the secretary of state, as provided in 13-10-327(2). An independent candidate who wishes to file for the office of congressional representative shall file a petition for nomination within the time provided by this subsection for political parties to file their candidate nominations with the secretary of state.

(2) If a final determination is made on or before April 7, 1992, that Montana is entitled to only one congressional representative in the 103rd United States congress, the secretary of state shall accept declarations of nomination for the office of congressional representative for only one district until March 19, 1992, or for a period of 3 working days from the date of the final determination, whichever is later, and shall place only one congressional representative office on the ballot for the 1992 primary election. If the final determination is made after March 19, 1992, and before April 7, 1992, the filing deadline in 13-10-201(6) does not apply.

(3) (a) As soon as is practical after [the effective date of this act], the Montana districting and apportionment commission shall prepare and hold a hearing on a plan for two congressional districts based on the official 1990 census data. For purposes of subsection (1)(a), the plan must be used by the secretary of state to determine the congressional district in which an elector resides.

(b) If a final determination results in Montana being entitled to two congressional representatives, the commission shall immediately file the two-district plan with the secretary of state. Upon filing, the two-district plan becomes law and applies retroactively to the date that the one-district plan was filed. The two-district plan must state that under the authority of the commission, the two-district plan supersedes the one-district plan filed in April 1991.

Section 2. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved January 14, 1992.

CHAPTER NO. 3

[HB 19]

AN ACT CREATING A TREASURE STATE ENDOWMENT PROGRAM; CREATING THE TREASURE STATE ENDOWMENT FUND WITHIN THE COAL SEVERANCE TAX TRUST FUND; PROVIDING THAT ONE-HALF OF THE ANNUAL REVENUE THAT WOULD OTHERWISE BE DEPOSITED IN THE COAL SEVERANCE TAX PERMANENT FUND BE DEPOSITED IN

THE ENDOWMENT FUND; AUTHORIZING THE USE OF INTEREST FROM THE ENDOWMENT FUND FOR GRANTS, DEBT RETIREMENT, AND LOANS TO LOCAL GOVERNMENTS; TRANSFERRING $10 MILLION FROM THE PERMANENT FUND TO THE ENDOWMENT FUND; EXPANDING THE COAL SEVERANCE TAX BOND PROGRAM; SUBMITTING THE CREATION OF THE PROGRAM TO THE QUALIFIED ELECTORS OF MONTANA; AND AMENDING SECTIONS 17-5-701 AND 17-5-703, MCA.

STATEMENT OF INTENT

A statement of intent is necessary for [this act] because [section 6] delegates rulemaking authority to the department of natural resources and conservation and to the department of commerce. It is the intent of the legislature that in adopting rules to implement the prioritization of projects, the agencies shall use the rules established for determining priorities for water development projects as guidelines. The department of commerce should use its existing procedures for determining the local governments that are eligible for financing as a guide in adopting rules to implement the treasure state endowment program. In adopting rules to implement [this act], the departments shall take into consideration any coordination between [this act] and the coal severance tax school bond contingency loan fund.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Treasure state endowment program created — definitions.** (1) There is a treasure state endowment program that consists of:

(a) the treasure state endowment fund established in 17-5-703; and

(b) the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).

(2) Interest from the treasure state endowment fund and from proceeds of the sale of bonds under 17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under [sections 1, 2, and 5 through 8].

(3) As used in [sections 1, 2, and 5 through 8], the following definitions apply:

(a) "Infrastructure projects" means:

(i) drinking water systems;

(ii) wastewater treatment;

(iii) sanitary sewer or storm sewer systems;

(iv) solid waste disposal and separation systems, including site acquisition, preparation, or monitoring; or

(v) bridges.

(b) "Local government" means an incorporated city or town, a county, or a consolidated local government.

(c) "Treasure state endowment fund" means the coal severance tax infrastructure endowment fund established in 17-5-703(1)(b).

(d) "Treasure state endowment program" means the local government infrastructure investment program established in subsection (1).

Section 2. **Purpose.** The purpose of the treasure state endowment program is to assist local governments in funding infrastructure projects that will:

(1) create jobs for Montana residents;

(2) promote economic growth in Montana by helping to finance the necessary infrastructure;

(3) encourage local public facility improvements;

(4) create a partnership between the state and local governments to make necessary public projects affordable;

(5) support long-term, stable economic growth in Montana;

(6) protect future generations from undue fiscal burdens caused by financing necessary public works;

(7) coordinate and improve infrastructure financing by federal, state, local government, and private sources; and

(8) enhance the quality of life and protect the health, safety, and welfare of Montana citizens.

Section 3. Section 17-5-701, MCA, is amended to read:

"**17-5-701. State of Montana coal severance tax bonds.** This part provides for the issuance of state of Montana coal severance tax bonds (also referred to as coal severance tax bonds in this part) to*:*

(1) finance water resource development projects and activities in the state designed to provide, during and after extensive coal mining, a healthy economy, the alleviation of social and economic impacts created by coal development, and a clean and healthful environment for present and future generations*; and*

(2) finance loans to local governments for infrastructure projects under [sections 1, 2, and 5 through 8]."

Section 4. Section 17-5-703, MCA, is amended to read:

"**17-5-703. Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;

(b) *a treasure state endowment fund;*

(c) a clean coal technology demonstration fund;

~~(c)~~*(d)* a coal severance tax permanent fund; and

~~(d)~~*(e)* a coal severance tax income fund.

(2) The state treasurer shall determine the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next two ensuing semiannual payment dates and retain that amount in the coal severance tax bond fund.

(3) Beginning on July 1, 1991, and ending on June 30, 1997, the state treasurer shall from time to time transfer from the excess amount in the coal severance tax bond fund $5 million a year to the clean coal technology demonstration fund and, *except as provided in subsection (4), shall transfer* any remaining amount to the coal severance tax permanent fund.

(4) (a) Beginning on July 1, 1993, and ending on June 30, 2013, the state treasurer shall:

(i) from time to time transfer to the treasure state endowment fund all money in the coal severance tax bond fund except the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next two ensuing semiannual payment dates; and

(ii) from time to time transfer to the coal severance tax permanent fund 50% of the principal transferred from the coal severance tax bond fund to the treasure state endowment fund in the preceding year.

(b) The state treasurer shall annually transfer to a treasure state endowment special revenue account the amount of interest earnings required to meet the obligations of the state that are payable from the account in accordance with [section 6]. Interest earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund."

Section 5. **Types of financial assistance available.** The legislature shall provide for and make available to local governments the following types of financial assistance under [sections 1, 2, and 5 through 8]:

(1) matching grants for local infrastructure projects;

(2) annual debt service subsidies on local infrastructure projects; and

(3) loans from the proceeds of coal severance tax bonds at a subsidized interest rate.

Section 6. **Priorities for projects — procedure — rulemaking.** (1) The department of commerce must receive proposals for projects from local governments as defined in [section 1(3)(b)]. The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise pertinent to the proposal. The department shall prepare and submit a list containing the recommended projects and the recommended form of financial assistance for each project to the governor, prioritized pursuant to subsection (2). The governor shall review the projects recommended by the department of natural resources and conservation under Title 85, chapter 1, part 6, and shall submit a list of recommended projects and the recommended financial assistance to the legislature.

(2) In preparing recommendations under subsection (1), preference must be given to projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems;

(b) projects that enable local governments to meet state or federal health or safety standards;

(c) projects that enable local governments to obtain funds from sources other than the funds provided under [sections 1, 2, and 5 through 8];

(d) projects that provide long-term, full-time job opportunities for Montanans;

(e) projects that provide public facilities necessary for the expansion of a business that has a high potential for financial success;

(f) projects that result in a benefit to the public commensurate with the amount of financial assistance;

(g) projects that reflect greater need for financial assistance than other projects;

(h) projects that maintain the tax base or that do not discourage expansion of the tax base; and

(i) projects that are high local priorities and have strong community support.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department of natural resources and conservation shall adopt rules to implement the prioritization and recommendation of projects to be financed pursuant to 17-5-701.

(5) Except as provided in subsection (4), the department of commerce shall adopt rules necessary to implement the treasure state endowment program.

Section 7. **Infrastructure endowment fund to continue.** The treasure state endowment fund created in 17-5-703 must be maintained even though transfers to the fund from the coal severance tax bond fund cease on June 30 of the 20th year following the initial transfer to the fund, as provided in [section 10]. Interest earnings from the treasure state endowment fund must continue to be paid annually to the treasure state endowment special revenue account as provided in 17-5-703(4)(b).

Section 8. **Coal severance tax trust fund to remain inviolate.** [Sections 1, 2, and 5 through 10] do not authorize or permit the expenditure of any part of the coal severance tax trust fund created by Article IX, section 5, of the Montana constitution.

Section 9. **Legislative implementation required.** (1) The legislature shall implement [this act] by amending or enacting all legislation necessary to carry out the intent of [this act].

(2) If the process required under [section 6] has occurred, the 53rd legislature may approve projects.

(3) The 53rd legislature may authorize the issuance of bonds in order to provide the maximum amount of initial funding for the treasure state endowment program and shall take any action necessary to prevent a negative arbitrage consequence.

Section 10. **Transfer of coal severance tax money to treasure state endowment fund.** On July 1, 1993, $10 million is transferred from the coal severance tax permanent fund to the treasure state endowment fund and is dedicated for the purposes provided in [this act].

Section 11. **Submission to electorate.** The question of whether this act will become effective shall be submitted to the qualified electors of Montana at the primary election to be held in June 1992 by printing on the ballot the full title of this act and the following:

☐ FOR creating the treasure state endowment fund to provide local governments coal severance tax trust fund interest for water, sewer, solid waste, and bridge projects.

☐ AGAINST creating the treasure state endowment fund to provide local governments coal severance tax trust fund interest for water, sewer, solid waste, and bridge projects.

CHAPTER NO. 4

[HB 5]

AN ACT TRANSFERRING TO THE GENERAL FUND A CERTAIN AMOUNT OF MONEY DEPOSITED IN THE INTERNAL SERVICE FUND FROM RECEIPTS FROM THE SALE OF GOODS PRODUCED OR MANUFACTURED BY A STATE INSTITUTION; AMENDING SECTION 53-1-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1-302, MCA, is amended to read:

"**53-1-302. Disposition of receipts from sale of goods.** Receipts from the sale of goods produced or manufactured by an institution *in the amount of $605,212 for fiscal year 1993 shall be deposited in the general fund on or before June 30, 1993, and all other receipts* shall be deposited in the internal service fund for the use of the industries program of the institution."

Section 2. **Effective date — termination.** [This act] is effective on passage and approval and terminates July 1, 1993.

Approved January 21, 1992.

CHAPTER NO. 5

[HB 6]

AN ACT TRANSFERRING TO THE GENERAL FUND CERTAIN FEES ADMINISTERED BY THE DEPARTMENT OF JUSTICE; AMENDING SEC-

TIONS 61-2-107, 61-2-108, 61-5-121, AND 61-12-504, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-107, MCA, is amended to read:

"**61-2-107. License reinstatement fee to fund county drinking and driving prevention programs — *balance transferred.*** (1) Notwithstanding the provisions of any other law of the state, a driver's license that has been suspended or revoked under 61-5-205 or 61-8-402 must remain suspended or revoked until the driver has paid to the department a fee of $100 in addition to any other fines, forfeitures, and penalties assessed as a result of conviction for a violation of the traffic laws of the state.

(2) (a) The department shall deposit one-half of the fees collected under subsection (1) in the general fund to be used for funding county drinking and driving prevention programs as provided in 61-2-108.

(b) The remaining fees collected under subsection (1) that are not allocated under subsection (2)(a) must be deposited in ~~an account in the state special revenue fund to be distributed to county treasurers~~ *the general fund.* ~~The~~ *On or before June 30, 1993, the* department shall ~~distribute to each county treasurer~~ *transfer to the general fund the balance of* money in the *state special revenue account* collected as license reinstatement fees ~~in that county~~. ~~The county treasurer shall distribute the money to each incorporated city or town in the county in the ratio that the population of the incorporated city or town bears to the total population of incorporated cities or towns in the county, based on figures provided by the most recent official census. An incorporated city or town shall distribute the money to state and local government entities, and private entities working with state and local government entities, that operate programs within the county that address the problems and concerns of minors, including but not limited to substance abuse and delinquency and chemical-free youth facilities and programs. Up to one-half of the money distributed under this subsection (b) may be used for adult chemical dependency programs and law enforcement training programs and for equipment for local government law enforcement agencies within the respective jurisdiction.~~"

Section 2. Section 61-2-108, MCA, is amended to read:

"**61-2-108. Funding allocation for programs to prevent or reduce drinking and driving.** If the county in which the violation or violations occurred has initiated and maintained a drinking and driving prevention program as provided in 61-2-106, the department shall, *to the extent of the appropriation authorized for the purpose specified in this part,* transmit the county portion of the proceeds of the license reinstatement fees collected in that county to the county treasurer, as provided in 61-2-107(2)(a), at the end of each quarter."

Section 3. Section 61-5-121, MCA, is amended to read:

"**61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial vehicle operator's endorsements provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) ~~If~~ *Except as provided in subsection (3), if* the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) ~~If~~ *Except as provided in subsection (3), if* the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of 17.5% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) The amount of 53.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each commercial vehicle operator's endorsement fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g).

(3) On or before June 30, 1993, the balance in the driver's license collections account in the state special revenue fund collected pursuant to subsections (1)(b)(ii) and (1)(c)(ii) must be transferred to the general fund."

Section 4. Section 61-12-504, MCA, is amended to read:

"**61-12-504. Fees for identification cards — *disposition of fees.*** *(1)* Fees not in excess of $1 for ~~such~~ identification cards ~~shall~~ *issued pursuant to this part must* be collected and credited to a state special revenue fund ~~which shall~~ *to* be known as the Montana highway patrol identification card fund. ~~Such~~ *Except as provided in subsection (2), the* fund ~~shall~~ *must* be used by the department to defray the cost of issuing identification cards.

(2) On or before June 30, 1993, the balance in the Montana highway patrol identification card fund must be transferred to the general fund."

Section 5. Section 61-5-121, MCA, is amended to read:

"**61-5-121. Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial vehicle operator's endorsements provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the ~~state special revenue~~ *general* fund ~~for use by the department to defray the costs of issuing licenses or duplicate licenses~~.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the ~~state special revenue~~ *general* fund ~~for use by the department to defray the costs of issuing motorcycle endorsements~~.

(d) The amount of 17.5% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) ~~The~~ *In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the* amount of 53.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each commercial vehicle operator's endorsement fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

Section 6. Section 61-12-504, MCA, is amended to read:

"**61-12-504. Fees for identification cards.** Fees not in excess of $1 for ~~such~~ identification cards ~~shall~~ *issued pursuant to this part must* be collected and ~~credited to a state special revenue~~ *deposited in the general* fund ~~which shall be known as the Montana highway patrol identification card fund. Such fund shall be used by the department to defray the cost of issuing identification cards.~~"

Section 7. **Effective dates — termination.** (1) [Sections 1 through 4] and this section are effective on passage and approval, and [sections 1 through 4] terminate July 1, 1993.

(2) [Sections 5 and 6] are effective July 1, 1993.

Approved January 21, 1992.

CHAPTER NO. 6

[HB 9]

AN ACT TRANSFERRING TO THE GENERAL FUND A PORTION OF CERTAIN FEES COLLECTED BY THE SECRETARY OF STATE; AMENDING SECTIONS 2-4-313 AND 2-6-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-313, MCA, is amended to read:

"**2-4-313. Distribution, costs, and maintenance.** (1) The secretary of state shall distribute copies of ARM and supplements or revisions thereto to the following:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana, one copy;

(i) legislative council, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of ARM, including supplements or revisions thereto. Such persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall also maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to ARM and supplements or revisions thereto and the register available to any person at prices fixed in accordance with subsection (4).

(4) The secretary of state, in consultation with the administrative code committee, shall determine the cost of supplying copies of ARM and supplements or revisions thereto and the register to persons not listed in subsection (1). The cost shall be the approximate cost of publication of such copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register.

(5) The secretary of state shall deposit ~~all~~ fees he collects *in the amount of $20,000 for fiscal year 1993 in the general fund on or before June 30, 1993, and shall deposit all other fees* in an account within the state special revenue fund created for paying the expenses of publication of ARM and the register.

(6) The secretary of state may charge agencies a filing fee for all material to be published in ARM or the register. He shall fix, in consultation with the administrative code committee, the fee to cover the costs of supplying copies of ARM and supplements or revisions thereto and the register to the persons listed in subsection (1). The cost shall be the approximate cost of publication of such copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of ARM and supplements or revisions thereto and the register."

Section 2. Section 2-6-211, MCA, is amended to read:

"**2-6-211. Transfer of public records.** (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government which may be abolished or discontinued shall be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if such records are considered to have permanent administrative or historical value.

(2) When records are transferred to the state records center, the agency so doing loses none of its rights of control and access. The state records center is only a custodian of the agency records, and access will only be by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing. *On or before June 30, 1993, the secretary of state shall transfer $20,000 to the general fund from the proprietary account funded by this section.*

(3) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the secretary of state and request a change in the schedule."

Section 3. **Effective date — termination.** [This act] is effective on passage and approval and terminates July 1, 1993.

Approved January 21, 1992.

CHAPTER NO. 7

[HB 12]

AN ACT PROVIDING THAT CERTAIN GRANTS MADE UNDER THE WATER DEVELOPMENT PROGRAM, THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM, AND THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM ARE NOT REAUTHORIZED; AMENDING SECTION 12, CHAPTER 551, LAWS OF 1991, AND SECTION 5, CHAPTER 552, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 12, Chapter 551, Laws of 1991, is amended to read:

"Section 12. **Appropriations established.** *(1)* For any entity of state government that receives a grant or loan under [sections 1 through 12], an appropriation is established for the amount of the grant or loan upon award of the grant or loan by the department of natural resources and conservation. ~~Grants~~ *Except as provided in subsection (2), grants* to state entities from prior bienniums are reauthorized for completion of contract work.

(2) The following grants are not reauthorized:

(a) Carbon County/Roberts water system, $47,500;

(b) Cascade water system, $50,000; and

(c) Cascade landfill and park, $11,711."

Section 2. Section 5, Chapter 552, Laws of 1991, is amended to read:

"Section 5. **Appropriations established.** *(1)* For any entity of state government that receives a grant under [sections 1 through 6], an appropriation is established for the amount of the grant upon award of the grant by the department of natural resources and conservation. ~~Grants~~ *Except as provided in subsection (2), grants* to state entities from prior bienniums are reauthorized for completion of contract work.

(2) The following grants are not reauthorized:

(a) Cataract Creek reclamation, $21,565; and

(b) Grasshopper Creek restoration, $2,274."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved January 21, 1992.

CHAPTER NO. 8

[HB 13]

AN ACT DIVERTING TO THE MONTANA ARTS COUNCIL, FOR OPERATING EXPENSES, A PORTION OF THE COAL SEVERANCE TAX NOW DEDICATED TO THE NONEXPENDABLE TRUST FUND FOR THE PUR-

POSE OF PROTECTION OF WORKS OF ART IN THE STATE CAPITOL AND FOR OTHER CULTURAL AND AESTHETIC PROJECTS; AMENDING SECTIONS 15-35-108 AND 22-2-304, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"**15-35-108.** *(Temporary)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 0% to a nonexpendable trust fund for the purpose of parks management. Income from this trust fund must be appropriated for the development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 ⅔% to *the Montana arts council, to be allocated as follows:*

(i) 42 ½% for operating costs; and

(ii) 57 ½% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(k) beginning July 1, 1991, and ending June 30, 1993, 3 ⅓% to a special revenue account to be used by the department of fish, wildlife, and parks for the development, operation, and maintenance of state parks and the stabilization and preservation of historic sites within the state park system;

(l) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates June 30, 1993—sec. 3, Ch. 615, L. 1991.)* "

Section 2. Section 22-2-304, MCA, is amended to read:

"**22-2-304. Cultural and aesthetic project appropriations — administration.** (1) The legislature must appropriate funds from the income of the trust fund created in 15-35-108~~(3)(e)~~ *for cultural and aesthetic projects* before any grant for a cultural or aesthetic project is awarded.

(2) Costs incurred by the Montana arts council for accounting, correspondence, project visits, and solicitation of proposals related to cultural and aesthetic project grants and the costs of the advisory committee established in 2-15-1521 shall be paid from appropriations from the income of the trust fund.

(3) Grant proposals are heard by a legislative appropriations subcommittee.

(4) Grant proposals approved by the legislature are administered by the Montana arts council."

Section 3. **Effective date — termination.** [This act] is effective July 1, 1992, and [section 1] terminates June 30, 1993.

Approved January 21, 1992.

CHAPTER NO. 9

[HB 18]

AN ACT TRANSFERRING TO THE GENERAL FUND AMOUNTS IN EXCESS OF $50,000 IN THE SCIENCE AND TECHNOLOGY DEVELOPMENT ACCOUNT; CLARIFYING THE REVENUE TO BE DEPOSITED IN THE SCIENCE AND TECHNOLOGY DEVELOPMENT ACCOUNT; AMENDING SECTIONS 90-3-305 AND 90-3-525, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-3-305, MCA, is amended to read:

"**90-3-305. Science and technology development account.** (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the science and technology development account:

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana permanent coal tax trust fund, executed under this chapter; and

(b) all payback of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989.

(3) Any time the balance of the science and technology development account exceeds $50,000, the board shall transfer the amount of the balance in excess of $50,000 to the general fund."

Section 2. Section 90-3-525, MCA, is amended to read:

"**90-3-525. Deposit of payback ~~— seed capital and research and development project loans~~.** (1) The ~~payback of principal and earnings on a seed capital project loan executed under this chapter or on a research and development project loan from the Montana permanent coal tax trust fund or the~~ payback of principal and earnings on a research and development project loan from a source other than the Montana permanent coal tax trust fund must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

(2) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use by the board. The paybacks include all those received after January 1, 1989."

Section 3. **Effective date — termination.** [This act] is effective on passage and approval, and [section 1] terminates June 30, 1993.

Approved January 21, 1992.

CHAPTER NO. 10

[SB 1]

AN ACT CLARIFYING THE EFFECTIVE DATE AND APPLICABILITY DATE OF CHAPTER 823, LAWS OF 1991; ENSURING THAT NO UNINTENDED PENSION BENEFIT RESULTS FROM THAT ACT; REVISING CERTAIN REPORTING AND CERTIFICATION DATES; REVISING THE DATE ON WHICH THE STATE TREASURER TRANSFERS FUNDS TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD AND THE TEACHERS' RETIREMENT BOARD AND THE DATE ON WHICH ADJUSTMENT PAYMENTS ARE MADE; AMENDING SECTIONS 19-15-101 AND 19-15-102, MCA, AND SECTION 22, CHAPTER 823, LAWS OF 1991; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

WHEREAS, Chapter 823, Laws of 1991, provided, among other things, for adjustment payments to retirees of state, local, and teacher retirement systems who are also Montana residents; and

WHEREAS, the first adjustment payments were intended to be made for the 1991 tax year and to be payable to retirees by June 1, 1992; and

WHEREAS, the language of section 5, Chapter 823, Laws of 1991, which provides for the payment of the retirement adjustments by June 1 of each year, read together with the May 24, 1991, effective date of Chapter 823 created confusion and a question of whether the adjustment payments were required to be paid beginning June 1, 1991, for the 1990 tax year, which was not the intended result; and

WHEREAS, the additional, unintended payments have not been made at this time; and

WHEREAS, the impact on the general fund of beginning the adjustment payments a year earlier than intended is estimated to be approximately $2.9 million; and

WHEREAS, this act is intended as a curative amendment to Chapter 823, Laws of 1991, to clarify that the intent of the 52nd Legislature in enacting Chapter 823, Laws of 1991, was to make the first adjustment payments beginning June 1, 1992.

THEREFORE, the Legislature of the State of Montana finds it is appropriate to amend the effective date and applicability date of Chapter 823, Laws of 1991.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22, Chapter 823, Laws of 1991, is amended to read:

"Section 22. **Effective date — retroactive applicability.** ~~[This act] is~~ *(1) [Sections 1 through 3, 6 through 17, and 19 through 22] are* effective on passage and approval ~~and applies~~.

(2) [Sections 4, 5, and 18] are effective July 1, 1991.

(3) [Sections 1 through 3 and 6 through 17] apply retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990."

Section 2. Section 19-15-101, MCA, is amended to read:

"**19-15-101. Retirement adjustment — annual deposit — statutory appropriation.** (1) There are statutorily appropriated, as provided in 17-7-502, from the general fund to the public employees' retirement board and the teachers' retirement board the amounts provided in subsection (2) for distribution to members of retirement systems as provided in 19-15-102.

(2) On or before ~~May~~ *March* 1 of each year, the state treasurer shall pay to the public employees' retirement board and the teachers' retirement board an amount equal to 2 ½% of the total benefits paid by both systems during the prior calendar year. In distributing the appropriations to the boards, the treasurer shall consult with the boards to determine the amounts necessary for uniform payments to members. The amount of the benefits must be certified to the treasurer by the public employees' retirement board and the teachers' retire-

ment board no later than ~~April 1~~ *February 15* of each year. For the purpose of this section, the public employees' retirement board shall collect information and certify the amount of benefits paid pursuant to Title 19, chapters 10 and 11. ~~Not later than February 15 of each year, the~~ *The* boards of trustees of local police retirement funds, provided in 19-10-201, and boards of trustees of local fire department relief associations, provided in 19-11-104, shall submit reports on benefit payments containing information requested by the public employees' retirement board."

Section 3. Section 19-15-102, MCA, is amended to read:

"**19-15-102. Montana retirement adjustment payments — public employees' retirement board.** (1) Not later than ~~June~~ *April* 1 of each year, the public employees' retirement board and the teachers' retirement board shall fix and pay to those members entitled to it an annual adjustment payment. The adjustment payment is determined for each system based upon the benefits paid by the system in the prior calendar year and on the annual benefit to which each Montana resident member of the system is entitled.

(2) (a) The public employees' retirement board shall allocate money appropriated for retirement adjustment to the public retirement systems in Title 19, chapters 3 and 5 through 13. The allocation to each system must be made based upon the annual amount each system's benefits payments bears to the amount paid by all of the systems specified in this subsection.

(b) The teachers' retirement board shall administer the money appropriated for retirement adjustment to the teachers' retirement system in Title 19, chapter 4.

(3) (a) Each member of a system listed in subsection (2) who is a resident of the state and who is entitled to an annual benefit is entitled to a retirement adjustment payment. Each retirement system specified in subsection (2), through the public employees' retirement board, the teachers' retirement board, or a local retirement board of trustees, as appropriate, shall distribute its allocation of the money appropriated for retirement adjustment to its members entitled to adjustment payments. The governing board of each system set forth in subsection (2) shall provide an annual adjustment payment that is a percentage of annual benefits.

(b) The methodology that the public employees' retirement board and the teachers' retirement board use to calculate adjustments for systems administered by them must be adopted by rule pursuant to Title 2, chapter 4.

(c) For the purposes of this section, a "Montana resident" means a person domiciled in the state and any person who maintains a permanent place of abode within the state."

Section 4. **Effective dates — retroactive applicability.** (1) [Section 1 and this section] are effective on passage and approval. [Section 1] applies retroactively, within the meaning of 1-2-109, to May 24, 1991.

(2) [Sections 2 and 3] are effective July 1, 1992.

Approved January 21, 1992.

CHAPTER NO. 11

[SB 4]

AN ACT DEFINING A PROPOSED SUPPLEMENTAL APPROPRIATION; PROVIDING A PROCEDURE FOR THE REVIEW OF A PROPOSED SUPPLEMENTAL APPROPRIATION; AMENDING SECTION 17-7-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-301, MCA, is amended to read:

"17-7-301. Authorization to expend during first year of biennium from appropriation for second year — *proposed supplemental appropriation defined.* (1) A state department, institution, or agency of the executive branch desiring authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium shall ~~make application for such authorization~~ *submit a proposed supplemental appropriation* to the governor through the budget director. If the governor finds that, due to an unforeseen and unanticipated emergency, the amount actually appropriated for the first fiscal year of the biennium with all other income will be insufficient for the operation and maintenance of said department, institution, or agency during the year for which the appropriation was made, he ~~may~~ *shall,* after careful study and examination of the request and upon review of the recommendation of the budget director, *submit the proposed supplemental appropriation to the legislative fiscal analyst. Upon receipt of the recommendation of the legislative finance committee pursuant to [section 2], the governor may* authorize an expenditure during the first fiscal year of the biennium to be made from the appropriation for the second fiscal year of the biennium.

(2) The department, institution, or agency may expend the amount authorized by the governor only for the purposes specified in the authorization.

(3) The governor shall report to the next legislature in a special section of the budget the amounts expended as a result of all such authorizations granted by him and shall request that any necessary supplemental appropriation bills be passed.

(4) As used in this part, "proposed supplemental appropriation" means an application for authorization to make expenditures during the first fiscal year of the biennium from appropriations for the second fiscal year of the biennium."

Section 2. **Proposed supplemental appropriation — procedure.** (1) A proposed supplemental appropriation and all supporting documentation must be submitted to the legislative fiscal analyst. The governor may not approve a proposed supplemental appropriation until the governor receives the legislative finance committee's written report for that proposed supplemental appropriation unless:

(a) the report is not received within 90 calendar days from the date the proposed supplemental appropriation and supporting documentation were forwarded to the legislative finance committee, in which case the governor may approve the proposed supplemental appropriation; or

(b) there has been a waiver of the review and report requirements, as provided in subsection (4).

(2) The legislative fiscal analyst shall review each proposed supplemental appropriation submitted by the governor for compliance with statutory requirements and standards and shall present a written report of this review to the legislative finance committee. Within 10 days after the legislative finance committee's consideration of the proposed supplemental appropriation, the legislative fiscal analyst shall submit the legislative finance committee's report to the governor.

(3) Upon receipt of the legislative finance committee's written report, the governor may approve or deny the proposed supplemental appropriation or may return the proposed supplemental appropriation to the requesting agency for further information. If the governor has returned the proposed supplemental appropriation to the requesting agency and the requesting agency resubmits the proposed supplemental appropriation to the governor, all procedures provided in this section apply to the resubmitted proposed supplemental appropriation.

(4) (a) If an emergency occurs that poses a serious threat to the life, health, or safety of the public, the legislative fiscal analyst may waive the written review and the legislative finance committee's written report required by this section. After a waiver, the legislative fiscal analyst may complete the written review.

(b) Upon receipt of the waiver, the governor may approve the proposed supplemental appropriation.

(c) A waiver affects only the legislative fiscal analyst's written review and the legislative finance committee's written report on the proposed supplemental appropriation. All other proposed supplemental appropriation requirements and standards remain in effect.

(5) Nothing in this part confers on the legislative finance committee authority to approve or deny a proposed supplemental appropriation.

Section 3. **Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 17, chapter 7, part 3, and the provisions of Title 17, chapter 7, part 3, apply to [section 2].

Section 4. **Effective date.** [This act] is effective on passage and approval.

Approved January 21, 1992.

CHAPTER NO. 12

[SB 5]

AN ACT AUTHORIZING STATE LOANS TO SCHOOL DISTRICTS TO PAY HOLDERS OF SCHOOL DISTRICT BONDS DECLARED INVALID OR UNENFORCEABLE BY A FINAL COURT ORDER OR INJUNCTION; PROVIDING CRITERIA TO QUALIFY FOR THE STATE LOANS; ESTABLISHING A COAL SEVERANCE TAX SCHOOL BOND CONTINGENCY LOAN FUND;

REQUIRING A SCHOOL DISTRICT TO INCLUDE A COVENANT IN THE BOND RESOLUTION; LIMITING THE AMOUNT OF STATE-SECURED LOAN AUTHORITY ALLOCABLE TO SCHOOL DISTRICTS; AMENDING SECTIONS 17-5-703, 17-5-704, AND 17-6-310, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT EFFECTIVE DATE.

WHEREAS, the decision of the Montana Supreme Court in Helena Elementary School District No. 1 v. State of Montana, 236 M 44, 769 P2d 684 (1989) (the Helena School District case), which became effective July 1, 1991, created uncertainty as to the validity and enforceability of Montana school district bonds issued after July 1, 1991; and

WHEREAS, neither the 1989 Legislature in House Bill No. 28, which addressed the funding issue for school operation, nor the 1991 Legislature addressed equalization of capital outlay; and

WHEREAS, on October 7, 1991, the Montana Supreme Court denied a request to delay the effective date of its decision in the Helena School District case beyond July 1, 1991; and

WHEREAS, since July 1, 1991, Montana school districts have been unable to issue bonds because bond counsel is unable to give an unqualified opinion as to the validity and enforceability of the bonds; and

WHEREAS, there are certain school districts that are in need of new facilities but are currently unable to market bonds, including Plentywood and West Glacier, whose schools were destroyed by fire; Livingston, which faces closure of its 80-year-old building by the State Fire Prevention and Investigation Program; and Clancy, which, like other districts, faces the threat of accreditation loss because of the unsafe and unsanitary conditions of its building.

THEREFORE, the Legislature finds it appropriate that until the 1993 Legislature can address the issue of capital outlay equalization, the state provide school districts the authority to obtain loans secured by the state to pay holders of school district bonds issued between [the effective date of this act] and January 1, 1993, by school districts faced with severe deficiencies in their current facilities.

Be it enacted by the Legislature of the State of Montana:

Section 1. **School district bonds — state loan — qualifications for state loan.** (1) The department of administration shall make a loan from the coal severance tax school bond contingency loan fund, established in 17-5-703(1)(e), to a school district in an amount equal to the principal and interest payment on qualifying bonds when due in accordance with the provisions contained in the bonds. In order to receive a loan, the school district must:

(a) have issued bonds between [the effective date of this act] and January 1, 1993, pursuant to 20-9-421 and 20-9-464;

(b) be prevented from making principal and interest payments on the bonds because the debt service levy for the bonds:

(i) has been declared invalid or unenforceable under Article II, section 4, or Article X, section 1, of the Montana constitution by a final court order; or

(ii) is prevented by an injunction;

(c) have exhausted the debt service reserve for the bonds; and

(d) have complied with all the requirements for the bonds contained in [section 2] and this section.

(2) To qualify for the state loan described in subsection (1), a school district, before issuing its bonds, must have:

(a) received voter approval for bonds pursuant to 20-9-421;

(b) following voter approval, received a certificate of eligibility from the board of public education stating that after consultation with the superintendent of public instruction, the board has determined that a minimum of 75% of the principal amount of the proposed bonds will be used to:

(i) restore, rebuild, or replace a destroyed or severely damaged school building;

(ii) correct one or more building deficiencies that affect the health and safety of school children;

(iii) correct one or more deficiencies that prevent the school district from meeting current accreditation standards; or

(iv) address any combination of circumstances described under subsections (2)(b)(i) through (2)(b)(iii); and

(c) received a final certificate of allocation from the department of administration pursuant to subsection (5).

(3) The board of public education shall:

(a) maintain a record of the total principal amount of bonds for which certification has been issued; and

(b) immediately furnish to the department a copy of each certificate issued.

(4) Upon receipt of a copy of the certificate from the board of public education, the department shall temporarily allocate loan authority to the school district equal to the principal amount of bonds indicated in the board's certificate. The principal amount of bonds for which final certification is issued may be less than the principal amount of bonds approved by the voters pursuant to subsection (2)(a).

(5) To obtain a final certificate of allocation, a school district shall provide the department, on a form provided by the department, the following information:

(a) the tentative date of sale of the school district's bonds;

(b) the principal amount of the bonds to be issued;

(c) the name and addresses of bond counsel and the financial advisor; and

(d) other information as requested by the department.

(6) Upon issuance of the bonds, a school district shall forward to the department a copy of the district's bond resolution, the final opinion of bond counsel on the bonds, and a schedule of principal and interest payments on the bonds to maturity. The bond resolution must include a covenant agreeing to:

(a) defend any lawsuit challenging the school district's authority to sell and issue the bonds and to levy a tax for payment of the principal of and interest on the bonds;

(b) provide to the department before August 1 of each year a report of the school district's outstanding principal balance as of the preceding June 30 on the bonds secured by state loans;

(c) refund the bonds on any normal call date if, during the term of the bonds, the school district can refund its bonds without the state loan security and without increasing its total debt service costs on the bonds; and

(d) enter into a contract with the department establishing a schedule to repay the state if the state loans the school district money to make payments on district bonds. Notwithstanding other provisions of law, the loan must be repaid by the school district at a rate equivalent to the average yield of the pooled investment fund established in 17-6-203(3), commonly known as the short-term investment pool, for the period of the loan. Repayment must begin no later than January 1, 1994, and the loan must be repaid in full within 10 years from the date the first loan is issued to a school district. Repayment must be paid from the sources designated for repayment of the bonds or from any other revenue and assets of the school district, including state equalization funds currently distributed or which may be distributed to the district. Loan repayments received by the department must be deposited in the coal severance tax school bond contingency loan fund.

(7) The department shall maintain a record of the total principal amount of bonds secured by state loans.

(8) A school district issuing bonds subject to [section 2] and this section may apply to the attorney general for a determination as to whether its bonds are affected by a court order declaring that the bonds of another district are invalid or unenforceable.

(9) A school district whose authority to levy a property tax to pay principal of and interest on bonds has been challenged shall, upon notification of the challenge, immediately notify the attorney general and the department.

Section 2. **State loan — limitation on state loan authority — priority of loan allocation — application.** (1) The allocation of the state's loan authority for bonds issued pursuant to [section 1] is intended only to enable a school district to issue bonds pending resolution of the financing of capital outlay.

(2) Except as provided in subsection (5), the total principal amount of school district bonds that may be secured by loans under [section 1] may not exceed $25 million and must be allocated to qualifying school districts on a first-come, first-serve basis in order of issuance of final certificates of allocation by the department of administration.

(3) An individual school district may not issue bonds secured by a state loan with a principal amount in excess of $6 million.

(4) If more than one school district qualifies for a state loan and an insufficient amount of state loan authority remains, the board of public education shall allocate the state loan authority to the district with the earliest voter approval of its bonds.

(5) Prior to allocating the final $1.5 million of state loan authority under [section 1], the board of public education shall determine if there is a school district eligible for a state loan under [section 1(2)(b)(i)] and, if so, shall give that district first priority to the remaining loan authority.

(6) This section does not apply unless a bond resolution contains the covenant required under [section 1(6)].

Section 3. Section 17-5-703, MCA, is amended to read:

"**17-5-703. Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;

(b) a clean coal technology demonstration fund;

(c) a coal severance tax permanent fund; ~~and~~

(d) a coal severance tax income fund*; and*

(e) a coal severance tax school bond contingency loan fund.

(2) The state treasurer shall determine the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next two ensuing semiannual payment dates and retain that amount in the coal severance tax bond fund.

(3) (a) On [the effective date of this act] and continuing as long as any school district bonds secured by state loans under [section 1] are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under [section 1] during the next following 12 months.

~~(3)~~*(4)* Beginning ~~on~~ July 1, 1991, and ending ~~on~~ June 30, 1997, *from any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of any amount that is required to be transferred by subsection (3),* the state treasurer shall from time to time transfer ~~from the excess amount in the coal severance tax bond~~

~~fund~~ *an amount not exceeding* $5 million ~~a~~ *per fiscal* year to the clean coal technology demonstration fund ~~and any remaining amount to the coal severance tax permanent fund~~.

(5) Beginning July 1, 1997, the state treasurer shall transfer to the coal severance tax permanent fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsections (3) and (4)."

Section 4. Section 17-5-704, MCA, is amended to read:

"**17-5-704. Investment of funds.** Money in the coal severance tax bond fund, the coal severance tax permanent fund, ~~and~~ the coal severance tax income fund, *and the coal severance tax school bond contingency loan fund* must be invested in accordance with the investment standards for coal severance tax funds. Income and earnings from all funds are statutorily appropriated, as provided in 17-7-502, as follows:

(1) 15% to the state equalization aid account; and

(2) 85% to the state general fund."

Section 5. Section 17-6-310, MCA, is amended to read:

"**17-6-310.** ~~**No**~~ ***Limits on*** **direct loans.** (1) ~~The~~ *Except as provided in [section 1], the* state may not use ~~this revenue~~ *the portion of the permanent coal tax trust fund designated for investment in the Montana economy* to make direct loans.

(2) ~~The~~ *Except as provided in [section 1], the* permanent coal tax trust fund may not be used by the board of investments to make direct loans to individual borrowers. The purchase of debentures issued by a capital company and loans or portions of loans originated by a financial institution that are sold to the trust are not direct loans."

Section 6. **Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 9, part 4, and the provisions of Title 20, chapter 9, part 4, apply to [sections 1 and 2].

Section 7. Section 17-5-703, MCA, is amended to read:

"**17-5-703. Coal severance tax trust funds.** (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;

(b) *a treasure state endowment fund;*

(c) a clean coal technology demonstration fund;

~~(c)~~*(d)* a coal severance tax permanent fund; ~~and~~

~~(d)~~*(e)* a coal severance tax income fund*; and* *(f) a coal severance tax school bond contingency loan fund.*

(2) The state treasurer shall determine the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next two ensuing semiannual payment dates and retain that amount in the coal severance tax bond fund.

(3) (a) On [the effective date of this act] and continuing as long as any school district bonds secured by state loans under [section 1] are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under [section 1] during the next following 12 months.

~~(3)~~*(4)* Beginning ~~on~~ July 1, 1991, and ending ~~on~~ June 30, 1997, *from any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of any amount that is required to be transferred by subsection (3),* the state treasurer shall from time to time transfer ~~from the excess amount in the coal severance tax bond fund~~ *an amount not exceeding* $5 million ~~a~~ *per fiscal* year to the clean coal technology demonstration fund ~~and any remaining amount to the coal severance tax permanent fund~~.

(5) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall transfer to the treasure state endowment fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsections (3) and (4).

(6) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall from time to time transfer to the coal severance tax permanent fund 50% of the principal transferred from the coal severance tax bond fund to the treasure state endowment fund in the preceding year.

(b) The state treasurer shall annually transfer to the treasure state endowment special revenue account the amount of interest earnings required to meet the obligations of the state that are payable from the account in accordance with [section 6 of House Bill No. 19]. Interest earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund."

Section 8. **Effective dates — coordination.** (1) [Sections 1 through 6 and this section] are effective on passage and approval.

(2) If House Bill No. 19 is passed and is approved by the electorate, then [section 3 of this act] and [section 4 of House Bill No. 19] are void and [section 7 of this act] is effective on the date of approval by the electorate.

Approved January 21, 1992.

CHAPTER NO. 13

[HB 2]

AN ACT TO GENERALLY REVISE APPROPRIATIONS FOR THE 1992 BIENNIUM; AMENDING THE GENERAL APPROPRIATIONS ACT OF 1991 AND OTHER ACTS APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1993; AMENDING CHAPTER 815; SECTION 9, CHAPTER 526; SECTION 2, CHAPTER 546; SECTION 4, CHAPTER 559; SECTION 16, CHAPTER 604; SECTION 6, CHAPTER 634; SECTION 1, CHAPTER 707; SECTION 16, CHAPTER 720; SECTION 1, CHAPTER 753; SECTION 12, CHAPTER 765; SECTION 6, CHAPTER 774; SECTION 9, CHAPTER 781; SECTION 5, CHAPTER 816; AND SECTION 1, CHAPTER 820, LAWS OF 1991; REPEALING SECTION 7, CHAPTER 725, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Chapter 815, Laws of 1991, is amended to read:

"**Section 1. Short title.** [This act] may be cited as "The General Appropriations Act of 1991".

Section 2. Limit on personal services transfer — exceptions. (1) Funds appropriated for personal services or indicated in legislative intent as having been appropriated for personal services may not be expended under any other category unless the approving authority approves a specific agency request for the 1993 biennium only, which request is justified either on the basis of documented cost savings or as specified in subsection (2). The approving authority shall submit its analysis of the cost savings to the legislative auditor, with wages and fringe benefits separately documented from other cost savings. The legislative audit committee shall review the approving authority's analysis and report to the 53rd legislature on the savings realized.

(2) If an agency is unable to recruit and hire professional positions funded in the appropriation, funds appropriated for personal services may be used to fund an agreement or contract to provide services that are identical to those services performed by an authorized position. The amount used for the agreement or contract may not be more than the amount authorized for the position less any personal services reduction. The agency director shall certify to the approving authority, as defined in ~~House Bill No. 454~~ *17-7-102*, or his designated representative that the agency is unable to fill the position and that the services performed by that position are necessary.

Section 3. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 1993 biennium, are adopted as legislative intent.

Section 4. Reorganization. If any agency reorganizes during the 1993 biennium, the agency shall present for fiscal 1992 and fiscal 1993 by program:

(1) a restatement of the FTE records and financial records consistent with the reorganized structure; and

(2) a comparison of the original operating budget to the revised operating budget that reflects the reorganization. Reorganization means transfer of functions or five or more FTE from one program to another.

Section 5. Natural resources damage assessment repayment. In the natural resource damage assessment and litigation against the atlantic richfield company, the state shall seek repayment of any funds appropriated in [this act] that are expended by a state agency for the purpose of conducting the assessment and/or litigation. This repayment must include interest on the funds at a rate commensurate with rates earned in the short-term investment pool.

~~**Section 6. Personal services reduction.** The line item for "personal services reduction" reduces the agency's total personal services appropriations. Before [this act] is enrolled, the legislative fiscal analyst is directed to allocate the personal services reduction among programs within the agency. This allocation must be:~~

~~(1) made after all other amendments contained in this conference committee report have been made; and~~

~~(2) based upon the funding for all control variables within each program, excluding control variables that do not contain personal services.~~

Section ~~7~~ *6*. Budget reduction. The line item for "budget reduction" reduces the agency's total general fund appropriation. The agency, with the approval of the approving authority as defined in ~~House Bill No. 454~~ *17-7-102*, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

Section ~~8~~ *7*. Vacant positions. If a budgeted position remains unfilled for more than 6 months, the position may be filled only after approval by the approving authority. The approving authority shall document in writing the justification and approval for filling each position that was vacant for more than 6 months and shall provide the documentation to the office of budget and program planning and to the office of the legislative fiscal analyst if requested. If a budgeted position remains unfilled for more than 1 year, the approving authority may not include the position in the budget request base for the executive budget request that will be presented to the 53rd legislature. The budget request presented to the 53rd legislature must include an analysis of vacant positions subject to the approval requirement in this section and must specifically identify those positions that remained unfilled for more than 1 year and are included in the budget request as modifications.

~~**Section 9. Employee training documentation.** All agencies shall identify on the statewide budgeting and accounting system the costs of providing training to employees, including travel but not including the personal services costs for the employees being trained. In addition, agencies shall maintain statistics and information that disclose the days of training provided to employees, the number of employees who received training, and the type of training provided.~~

Section ~~10~~ *8*. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, such decision does not affect the validity of the remaining portions of [this act].

Section ~~11~~ *9.* Audit cost. Amounts appropriated for audits may be transferred between fiscal years. Agencies shall reserve enough cash in each fund to pay for audit costs and shall, to the maximum extent allowable under federal regulations, charge audit costs to federal funds. The budget director shall increase the agency line item appropriations for legislative audits by amounts that total the amount appropriated for the 1993 biennium from the legislative auditor's special revenue fund for the purpose of state pay plan funding. The budget director shall allocate the amounts on the same basis that current line items for legislative audits in agency budgets are allocated in [this act].

Section ~~12~~ *10.* Technical allocation costs. For agencies with internal cost allocation plans funded with proprietary revenues, the budget director shall adjust agency appropriations by amounts necessary to increase the budgets for indirect costs attributable to pay increases in an agency's indirect cost pool appropriated in the state pay plan bill. Funding for this appropriation consists of general fund money and other funds in an amount proportionate to the funding allocated for budgeting indirect cost assessments in [this act].

Section ~~13~~ *11.* Account analysis. All agencies shall reexamine their proprietary accounts and designated subfunds and report to the legislative auditor's office after fiscal year 1992 the specific plans for spending the accounts, the monthly or daily account balances, and whether the accounts have adequate amounts of revenue and fund balances and the plans to reduce or add monies to the accounts.

Section ~~14~~ *12.* Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 13. Fund balance transfers and revenue estimate increases. *The legislative auditor shall transfer to the general fund from state agency audit fees $22,159 in fiscal 1992. The legislative auditor shall transfer to the general fund from special audit reimbursements $10,200 in fiscal 1993. The legislative auditor shall work with agencies to ensure that $33,140 of bond assessment fees is deposited in the general fund in fiscal 1993.*

The law library program in the judiciary is directed to increase fees for automated legal data base and telefax services. The program must deposit to the general fund $11,000 in fiscal 1992 and $26,000 in fiscal 1993 from such fee revenue increases.

The governor's office shall transfer to the general fund from the ARCO Clark Fork state special revenue account $28,000 in fiscal 1992. The governor is directed to sell the governor's airplane for an amount sufficient to deposit approximately $575,000 in the general fund in fiscal 1992 after selling costs.

The secretary of state is directed to raise annual corporation report fees by an amount sufficient to deposit an additional $150,000 in the general fund beginning in fiscal 1993.

The department of justice shall transfer to the general fund from the driver improvement fees state special revenue account $2,700 in fiscal 1993. The department of justice shall transfer to the general fund from the criminal lab state special revenue account $21,700 in fiscal 1993.

The department of administration shall transfer to the general fund from photocopy pool proprietary funds $46,000 each year of the biennium. The department of administration shall transfer to the general fund from computer services and telecommunications proprietary funds $100,000 in fiscal 1992.

The public employees' retirement division shall transfer to the general fund from social security contributions and interest earnings $120,547 in fiscal 1992 and $24,000 in fiscal 1993.

The department of military affairs shall transfer to the general fund from federal national guard funds $183,431 over the biennium. The department of military affairs shall transfer to the general fund from federal contract reimbursements $40,000 over the biennium.

The department of social and rehabilitation services shall transfer to the general fund from the child support enforcement account all cash balance remaining at the end of fiscal 1992. Any cash balance in the account in excess of $500,000 at the end of fiscal 1993 must be deposited in the general fund. Upon final determination of all general fund money in the social and rehabilitation services department's unreconciled special revenue fund balance (in the approximate total amount of $2,530,153), any funds remaining in the special revenue fund to which the state is entitled must be deposited in the general fund.

There must be retained in the local impact account, established under 90-6-202, for the purpose of reverting to the state special revenue account for school equalization aid to public schools an amount not less than $500,000 in fiscal 1992 and $1,635,363 in fiscal 1993.

The department of corrections and human services shall transfer to the general fund from additional estimated insurance, medicaid, and medicare reimbursements $999,162 in fiscal 1992 and $792,870 in fiscal 1993. The department of corrections and human services shall transfer to the general fund from the additional fiscal 1990 cost settlement $1,050,012 in fiscal 1992. The department of corrections and human services shall transfer to the general fund $513,454 from estimated charges for court-ordered evaluations in fiscal 1993.

Section 14. Montana university system vacancy. *The Montana university system, with the exception of the office of the commissioner of higher education, is excluded from the vacant position provisions in [section 7].*

Section 15. Effective date. [This act] is effective ~~July 1, 1991~~ *on passage and approval.*

Section 16. Appropriations. The following money is appropriated for the respective fiscal years:

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
A. GENERAL GOVERNMENT AND HIGHWAYS												
LEGISLATIVE AUDITOR (1101)												
1. Audit and Examination Program (01)	~~1,154,114~~	1,108,855				~~2,262,969~~	~~1,149,898~~	1,104,805				~~2,254,703~~
	1,075,633					2,184,488	1,146,687					2,251,492
a. Additional Audit Staff (Line Item)		117,631				117,631		117,376				117,376
b. Legislative Automation Plan (Line Item)	6,401	6,151				12,552	12,706	12,208				24,914
c. Adjusted Cost Estimates (Line Item)	12,476	11,987				24,463	4,040	3,883				7,923
d. Sunrise Application Evaluations (Line Item)								5,000				5,000
e. SB 264 — Actuarial Evaluation (Line Item)		20,000				20,000						
f. Audits of School-Related Organizations (Line Item)		4,000				4,000						
g. Privatization Alternatives — Additional Audit Staff (Line Item)	24,837					24,837	24,778					24,778
h. New Audit Work — Additional Audit Staff (Line Item)	24,837					24,837	24,778					24,778
i. State Compensation Mutual Insurance Fund (Line Item)		24,837				24,837		24,778				24,778
2. Budget Reduction (Line Item)	5,668					5,668	5,637					5,637
Total	~~1,216,997~~	1,293,461				~~2,510,458~~	~~1,210,563~~	1,268,050				~~2,478,613~~
	1,138,516					2,431,977	1,207,352					2,475,402
LEGISLATIVE FISCAL ANALYST (1102)												
1. Analysis and Review (01)	~~828,738~~					~~828,738~~	~~877,121~~					~~877,121~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	781,974					781,974	830,965					830,965
a. Legislative Contingencies (Line Item)												
	~~20,000~~					~~20,000~~						
	18,700					18,700						
b. Legislative Requests (Line Item)												
	~~20,000~~					~~20,000~~						
	18,700					18,700						
2. Budget Reduction (Line Item)												
	4,221					4,221	4,260					4,260
Total												
	~~864,517~~					~~864,517~~	~~872,861~~					~~872,861~~
	815,153					815,153	826,705					826,705

Items 1a and 1b are biennial appropriations.

LEGISLATIVE COUNCIL (1104)

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Interim Studies and Conferences (05)												
	~~469,407~~	12,000				~~481,407~~						
	444,046					456,046						
2. Reimbursable Activities Program (07)												
		593,470				593,470		251,120				251,120
3. Legislative Council Operations (10)												
	~~1,342,917~~	458,726				~~1,801,643~~	~~1,876,200~~	254,363				~~2,130,563~~
	1,300,694					1,759,420	1,834,120					2,088,483
a. 1991 Base Pay Adjustment (Line Item)												
	34,161					34,161	~~30,349~~					~~30,349~~
							5,000					5,000
b. One Added FTE (Line Item)												
	23,865					23,865	~~27,179~~					~~27,179~~
							0					0
c. Reapportionment Technical Support (Line Item)												
	~~130,406~~					~~130,406~~	11,213					11,213

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	103,486					*103,486*						
d. Legislative Computer Network (Line Item)												
	~~94,530~~					~~94,530~~	~~84,166~~					~~84,166~~
	69,530					*69,530*	*70,166*					*70,166*
4. Budget Reduction (Line Item)												
	10,918					10,918	9,852					9,852
Total												
	~~2,092,448~~	1,064,196				~~3,156,644~~	~~2,019,255~~	505,483				~~2,524,738~~
	1,964,864					*3,029,060*	*1,910,647*					*2,416,130*

Item 1 is a biennial appropriation. Individual activities are budgeted as follows:

Joint Interim Committees	$ 82,470
Statewide Issues	25,000
Districting and Apportionment Commission	43,000
Revenue Oversight Committee	37,983
Administrative Code Committee	14,048
Select Committee on Indian Affairs	7,200
Commission on Uniform State Laws	30,000
National Conference of State Legislatures	189,706
Northwest Economic Region Conference	20,000
Regional Conferences	32,000
State Aircraft Study	*12,000*

Expenditure of funds for item 3d is contingent on approval by the joint legislative administration committee.

The legislative council may allocate money appropriated in item 1 among the individual activities listed above in order to complete work assigned by the legislature.

~~Contingent on passage and approval of House Joint Resolution No. 50, a~~ *A* biennial appropriation not to exceed $30,000 from pension trust funds is made to the legislative council for the purpose of conducting an interim study on retirement systems. Of the total appropriation, 12.5% must be made from the teachers' retirement pension fund. The remaining 87.5% must be made from the various pension trust funds administered by the public employees' retirement board in proportion to the membership of each system.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total

The revenue oversight committee may use part of the appropriation provided in item 1 for the support of the activities of the coal tax oversight subcommittee.

Item 1 includes $12,000 for an interim study of state-owned aircraft to determine the most economical method of managing the aircraft. The committee on committees of the senate and the speaker of the house of representatives shall, respectively, appoint four senators and four representatives, two from each party, to serve on the aircraft study interim committee.

The unobligated portions of the appropriations in Chapter 1, Special Laws of January 1992, are on March 1, 1992, reappropriated to the legislative council and may be spent for an interim study upon unanimous agreement of the president of the senate, senate minority leader, speaker of the house, and house minority leader. The leaders may determine the membership and scope of the interim committees.

ENVIRONMENTAL QUALITY COUNCIL (1111)

	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
1. Environmental Quality Program (01)												
	~~271,083~~					~~271,083~~	~~268,865~~					~~268,865~~
	263,125	1,058				264,183	261,465					261,465
a. Additional Staff (Line Item)												
	15,800					15,800	15,800					15,800
2. Water Policy Committee (02)												
		~~26,451~~				~~26,451~~						
		25,393				25,393						
3. Budget Reduction (Line Item)												
	1,410					1,410	1,390					1,390
Total												
	~~285,473~~	26,451				~~311,924~~	~~283,275~~					~~283,275~~
	277,515					303,966	275,875					275,875

Item 2 is a biennial appropriation.

CONSUMER COUNSEL (1112)

	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
1. Administration Program (01)												
		805,775				805,775		828,517				828,517
a. Contract Services (Line Item)												
		100,000				100,000		100,000				100,000
b. Increased Travel (Line Item)												
		6,607				6,607		6,591				6,591
Total												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		912,382				912,382		935,108				935,108
Item 1a is for expert witness fees for unanticipated cases.												
JUDICIARY (2110)												
1. Supreme Court Operations (01)												
	~~1,358,807~~					~~1,358,807~~	~~1,356,914~~					~~1,356,914~~
	1,305,273					1,305,273	1,302,950					1,302,950
a. Audit (Line Item)	15,626					15,626						
b. Court Automation (HB 320) (Line Item)	101,646					101,646	101,647					101,647
c. Law Clerk Parity (Line Item)	13,767					13,767	13,749					13,749
d. Clerk of Court Training (Line Item)	4,000					4,000	4,000					4,000
e. SB 228 — Judicial Salary Increase (Line Item)	25,105					25,105	56,203					56,203
2. Boards and Commissions (02)												
	~~243,391~~					~~243,391~~	~~243,520~~					~~243,520~~
	230,936					230,936	230,921					230,921
a. Judicial Standards (Line Item)	2,445					2,445	2,445					2,445
3. Law Library (03)												
	~~551,730~~					~~551,730~~	~~551,801~~					~~551,801~~
	524,709					524,709	538,985					538,985
a. Automated Legal Data Bases (Line Item)	192,050					192,050	202,773					202,773
b. Law Book Inflation (Line Item)	10,556					10,556	9,265					9,265
4. District Court Operations (04)	2,534,319					2,534,319	2,527,692					2,527,692
a. SB 228 — Judicial Salary Increase (Line Item)	125,348					125,348	289,212					289,212
b. 21st Judicial District Salary, Training, Travel (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
							32,770					32,770
c. SB 228 — Judicial Salary Increase (Line Item)							4,166					4,166
5. Water Courts Supervision (05)		~~469,161~~				~~469,161~~		475,084				475,084
		459,161				459,161						
a. Audit (Line Item)		1,736				1,736						
b. SB 228 — Judicial Salary Increase (Line Item)		3,440				3,440		8,004				8,004
6. Clerk of Court (06)	~~160,001~~					~~160,001~~	~~167,757~~					~~167,757~~
	161,375					161,375	160,961					160,961
a. Salary Increase — Deputy Clerk of Supreme Court (Line Item)	3,323					3,323	3,323					3,323
7. District Court Criminal Reimbursement Program (07)	2,682,579					2,682,579	~~2,806,573~~					~~2,806,573~~
							3,062,573					3,062,573
a. Audit (Line Item)	1,848					1,848						
8. Budget Reduction (Line Item)	~~25,056~~					~~25,056~~	~~25,781~~					~~25,781~~
	39,629					39,629	52,060					52,060
Total	~~8,008,765~~	~~494,337~~				~~8,503,102~~	~~8,348,037~~	483,088				~~8,831,125~~
	7,895,276	464,337				8,359,613	8,491,575					8,974,663

Except for $16,000 for law library use, expenditures in item 3a are limited to the amount of revenue collected from reimbursable automated legal data base usage by other entities.

~~Items 1e, 4a, and 5b are appropriated if Senate Bill No. 228 is passed and approved.~~

Item 4b is contingent on passage and approval of House Bill No. 934 and item 4c is contingent on passage and approval of both House Bill No. 934 and Senate Bill No. 228.

If revenue deposited to the general fund under the provisions of 61-3-509 is less than the appropriation for district court reimbursement, the supreme court administrator shall reduce the reimbursement to an amount equal to the revenue collected.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
GOVERNOR'S OFFICE (3101)												
1. Executive Office Program (01)												
	~~1,016,303~~	~~78,221~~	1			~~1,094,525~~	~~1,017,335~~	~~78,186~~				~~1,095,521~~
	982,796	*83,221*				*1,066,018*	*978,859*	*83,186*				*1,062,045*
a. Audit (Line Item)												
	18,152					18,152						
2. Mansion Maintenance Program (02)												
	~~59,098~~					~~59,098~~	~~59,051~~					~~59,051~~
	53,922					*53,922*	*54,639*					*54,639*
3. Air Transportation Program (03)												
	~~317,390~~					~~317,390~~	~~159,019~~					~~159,019~~
	463,655	*10,000*				*473,655*	*126,271*	*10,000*				*136,271*
4. Office of Budget and Program Planning (04)												
	~~790,110~~					~~790,110~~	~~829,424~~					~~829,424~~
	771,856					*771,856*	*770,706*					*770,706*
a. Audit (Line Item)												
	17,362					17,362						
~~b. NASBO 1992 National Meeting (Line Item)~~												
	~~5,000~~					~~5,000~~	~~5,000~~					~~5,000~~
	0					*0*	*0*					*0*
e *b.* Equipment Replacement (Line Item)												
	4,000					4,000						
c. Special Session (Line Item)												
	8,111					*8,111*						
5. Northwest Regional Power Act (09)												
			403,124			403,124			402,853			402,853
6. Lieutenant Governor (12)												
	~~170,790~~					~~170,790~~	~~170,604~~					~~170,604~~
	159,367	*6,000*				*165,367*	*150,186*	*15,000*				*165,186*
7. Citizens' Advocate Office (16)												
	~~68,452~~					~~68,452~~	~~69,136~~					~~69,136~~
	53,030		*15,000*			*68,030*	*53,715*		*15,000*			*68,715*

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
8. Mental Disabilities Board of Visitors (20)												
	~~134,685~~		47,037			~~181,722~~	~~134,743~~		47,037			~~181,780~~
	140,286					187,323	141,554					188,591
9. Budget Reduction (Line Item)												
	~~13,029~~					~~13,029~~	~~12,256~~					~~12,256~~
	72,321					72,321	54,007					54,007
Total												
	~~2,596,321~~	~~78,221~~	~~450,162~~			~~3,124,704~~	~~2,432,856~~	~~78,186~~	~~449,890~~			~~2,960,932~~
	2,600,216	99,221	465,162			3,164,599	2,221,923	108,186	464,890			2,794,999

Public funds may not be used to support the governor's radio newsline, a telephone service providing recorded news briefs.

The citizens' advocate office may not be eliminated.

The governor's aircraft is to be sold, with the proceeds from the sale to be deposited in the general fund. The appropriation in item 3 includes $175,000 to purchase a new aircraft.

SECRETARY OF STATE'S OFFICE (3201)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Records Management Program (01)												
	~~876,280~~					~~876,280~~	~~876,789~~					~~876,789~~
	948,712					948,712	935,751					935,751
a. Audit (Line Item)												
	13,416					13,416						
~~b. Printing Costs (Line Item)~~												
	~~19,924~~					~~19,924~~	~~50,962~~					~~50,962~~
	0					0	0					0
~~c. Microfilming Project (Line Item)~~												
	~~25,000~~					~~25,000~~	~~25,000~~					~~25,000~~
	0					0	0					0
~~d. Fireproof Document Storage (Line Item)~~												
	~~45,000~~					~~45,000~~						
	0					0						
~~e. SB 384 — Primary Election for 2 Mill Levy (Line Item)~~												
	~~52,500~~					~~52,500~~						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
2. Administrative Code Program (03)		174,064				174,064		175,298				175,298
a. Audit (Line Item)		2,368				2,368						
3. State Agency Record Management (05)				331,332		331,332				332,856		332,856
4. Budget Reduction (Line Item)	4,845					4,845	4,751					4,751
Total	~~1,027,283~~ 957,283	176,432		331,332		~~1,535,047~~ 1,465,047	~~956,000~~ 931,000	175,298		332,856		~~1,464,154~~ 1,439,154

~~If House Bill No. 897 is not enacted, the appropriation in item 3 is transferred to the department of administration.~~

COMMISSIONER OF POLITICAL PRACTICES (3202)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration (01)	111,249					111,249	113,562					113,562
a. Audit (Line Item)	2,526					2,526						
b. Part-Time Assistant (Line Item)	10,406					10,406						
c. Staff Termination Pay (Line Item)	1,150					1,150	550					550
d. Legal Fees and Court Costs (Line Item)	~~45,000~~ 27,844					~~45,000~~ 27,844						
2. Budget Reduction (Line Item)	627					627	591					591
Total	~~169,704~~ 152,548					~~169,704~~ 152,548	113,521					113,521

Items 1b and 1d are biennial appropriations.

The commissioner of political practices may use funds from the biennial appropriation identified in item 1b for a 0.5 FTE part-time assistant to meet the biennial budget reduction of $17,156.

The commissioner of political practices is to charge a fee for the Campaign Finance Report book that is sufficient to recover the costs of printing and distribution of the book. Public libraries are exempt from the charge for the book. The proceeds from the sale of the book, as well as the fees collected for reimbursement of copier charges, must be deposited in the general fund.

			Fiscal 1992						Fiscal 1993			
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
STATE AUDITOR'S OFFICE (3401)												
1. Central Management (01)												
	~~237,063~~					~~237,063~~	~~237,103~~					~~237,103~~
	236,418					236,418	226,850					226,850
a. Audit (Line Item)												
	5,048					5,048						
b. Computer System Replacement (Line Item)												
	97,930					97,930	~~52,070~~					~~52,070~~
							41,656					41,656
2. State Payroll (02)												
	~~199,363~~	194,227				~~393,590~~	~~184,690~~	209,540				~~394,230~~
	195,109					389,336	176,690					386,230
a. Audit (Line Item)												
	33,461					33,461						
b. Payroll System Data Processing — ISD (Line Item)												
		160,218				160,218		144,394				144,394
3. Insurance Program (03)												
	~~963,525~~					~~963,525~~	~~963,351~~					~~963,351~~
	917,308					917,308	868,897	41,850				910,747
a. Audit (Line Item)												
	5,050					5,050						
b. Medicare Compliance Specialist (Line Item)												
	29,354					29,354	27,304					27,304
c. Office Equipment (Line Item)												
	~~5,420~~					~~5,420~~	1,495					1,495
	998					998						
4. Securities Program (04)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	~~288,501~~					~~288,501~~	~~288,316~~					~~288,316~~
	284,001					284,001	281,587					281,587
a. Audit (Line Item)												
	5,050					5,050						
b. Office Equipment (Line Item)												
	~~4,300~~					~~4,300~~						
	140					140						
5. Fiscal Control and Management Program (10)												
	~~308,393~~	146,999		149,562		~~604,954~~	~~398,050~~	146,832		136,588		~~591,470~~
	303,591					600,152	300,050					583,470
a. Audit (Line Item)												
	33,467					33,467						
b. Warrant System Data Processing — ISD (Line Item)												
	99,268					99,268	89,464					89,464
6. Budget Reduction (Line Item)												
	~~11,779~~					~~11,779~~	~~10,759~~					~~10,759~~
	63,036					63,036	29,932					29,932
Total												
	~~2,303,414~~	501,444		149,562		~~2,954,420~~	~~2,141,084~~	~~500,766~~		136,588		~~2,778,438~~
	2,183,157					2,834,163	1,984,061	542,616				2,663,265

The appropriation in item 1b is for a computer system. The agency shall follow the system design recommendations approved by the information services division of the department of administration.

The state auditor shall implement a fee system for the purpose of recovering the operational cost of issuing warrants from all user agencies on an equitable basis. It is intended that, beginning in fiscal 1994, the general fund must be reimbursed *for services provided to user agencies that are not funded entirely by the general fund.* Revenues collected as reimbursement fees from user agencies for costs of issuing state warrants must be deposited in a state special revenue account. The state auditor shall submit the cost recovery plan and the 1995 biennium fee schedule by agency to the office of budget and program planning and to the legislative fiscal analyst by June 1, 1992.

CRIME CONTROL DIVISION (4107)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Justice System Support Service (01)												
	~~442,801~~	58,665	166,462			~~667,928~~	~~442,958~~	58,665	156,462			~~658,085~~
	402,254					627,381	429,558					644,685
a. Audit (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	5,176					5,176						
b. *Crime Victims' Compensation* Pass-Through Grants (Line Item)		379,920				379,920		379,920				379,920
c. Juvenile Justice Pass-Through Grants (Line Item)			221,500			221,500			221,500			221,500
d. Victims' Assistance Pass-Through Grants (Line Item)			224,000			224,000			224,000			224,000
e. Drug Education Pass-Through Grants (Line Item)			427,000			427,000			427,000			427,000
f. Drug Enforcement Pass-Through Grants (Line Item)			1,240,000			1,240,000			1,250,000			1,250,000
g. Narcotics Control — Grant Administration (Line Item)	27,000		18,101			45,101	~~54,000~~ 24,427		~~1,102~~ 30,675			55,102
h. Drug Enforcement Pass-Through Grants (Modified) (Line Item)			904,000			904,000			921,000			921,000
i. Juvenile Justice — Support Services (Line Item)	7,500					7,500	7,500					7,500
j. Victims' Assistance — Grant Administration (Line Item)		29,116				29,116		25,985				25,985
k. Victims' Assistance Pass-Through Grants (Modified) (Line Item)			109,000			109,000			109,000			109,000
l. Drug Education — Grant Administration (Line Item)			11,720			11,720			11,720			11,720
m. Drug Education Pass-Through Grants (Modified) (Line Item)			115,218			115,218			115,218			115,218
n. SB 321 — Victim of DUI Offenders (Line Item)		73,038				73,038		72,538				72,538
o. SB 370 — D.A.R.E. Program (Line Item)		16,200				16,200		16,200				16,200
p. SB 379 — Probation and Parole Officer Standards (Line Item)	6,579					6,579	100					100
2. *Budget Reduction* (Line Item)	2,412					2,412	2,522					2,522

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total	~~486,644~~	556,939	3,437,001			~~4,480,584~~	~~502,036~~	553,308	~~3,437,002~~			~~4,492,346~~
	446,097					*4,440,037*	*459,063*		*3,466,575*			*4,478,946*

Items 1b through 1f, 1h, 1k, and 1m are biennial appropriations.

~~Item 1o is contingent on passage and approval of Senate Bill No. 370.~~

~~Item 1p is contingent on passage and approval of Senate Bill No. 379.~~

All remaining federal pass-through grant appropriation authority for the 1991 biennium is authorized to continue into fiscal 1992 and fiscal 1993.

The board of crime control shall charge tuition and fees sufficient to reimburse the general fund for costs associated with the juvenile justice training program and for technical assistance provided to local law enforcement agencies. The tuition and fees collected must be deposited in the general fund.

HIGHWAY TRAFFIC SAFETY (4108)

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Highway Traffic Safety Division (36)	~~200,000~~	74,087	904,614			~~1,178,701~~	~~200,000~~	74,686	903,504			~~1,178,190~~
	184,080					*1,162,781*	*184,080*					*1,162,270*
a. Audit (Line Item)		1,013	1,013			2,026						
2. Budget Reduction (Line Item)	1,000					1,000	1,000					1,000
Total	~~199,000~~	75,100	905,627			~~1,179,727~~	~~199,000~~	74,686	903,504			~~1,177,190~~
	183,080					*1,163,807*	*183,080*					*1,161,270*

DEPARTMENT OF JUSTICE (4110)

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Legal Services Division (01)	845,681	311,771	1			1,157,451	938,193	212,972				1,151,165
a. Case-Related Travel (Line Item)	9,500					9,500	9,500					9,500
b. Legal Fees and Expert Witnesses (Line Item)	100,000					100,000						
c. Attorney-Indian Legal Jurisdiction (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	47,837					47,837	43,239					43,239
d. Litigation Costs (Line Item)												
	400,000					400,000						
2. Agency Legal Services (06)												
				571,894		571,894				571,855		571,855
3. Gambling Control Division (07)												
		1,387,007				1,387,007		1,386,606				1,386,606
a. Gambling Control Expansion (Line Item)												
		305,785				305,785		207,001				207,001
4. Motor Vehicle Division (12)												
	~~4,569,289~~	124,254	48,538			~~4,742,081~~	4,641,381	85,419	48,534			4,775,334
	4,331,014					*4,503,806*						
a. HB 646 — Additional Handicap Parking Display Cards (Line Item)												
	15,000					15,000	2,500					2,500
b. HB 568 — *Driver's License Express Stations* (Line Item)												
	708,000					708,000	710,000					710,000
5. Highway Patrol Division (13)												
		10,800,052	486,937			11,286,989		10,658,603	485,011			11,143,614
a. Additional Patrol Officers and Dispatchers (Line Item)												
		302,290				302,290		211,109				211,109
b. Handheld Radios (Line Item)												
		51,000				51,000						
6. Law Enforcement Services Division (18)												
	902,303	348,539	21,196			1,272,038	881,303	327,085	31,044			1,239,432
a. Special Investigation — West (Line Item)												
	~~121,327~~		336,898			~~458,225~~	~~458,199~~					458,199
	112,942					*449,840*	*114,550*		*343,649*			
b. Fire Prevention Grant (Line Item)												
			9,976			9,976						
c. Identification Bureau Federal Grant (Line Item)												
			88,636			88,636			88,643			88,643
d. HB 809 — Fire Marshal Bureau Expansion (Line Item)												
	~~159,667~~					~~159,667~~	~~163,000~~					~~163,000~~
	69,000					*69,000*	*126,624*					*126,624*

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
7. County Attorney Payroll (19)												
	1,014,148					1,014,148	1,015,435					1,015,435
a. HB 155 — County Attorney Salary Increase (Line Item)												
	136,000					136,000	333,000					333,000
8. Law Enforcement Academy Division (22)												
	607,208					607,208	606,856					606,858
9. Central Services Division (28)												
	167,823	196,198		9,334		373,355	169,654	196,952		9,401		376,007
a. Audit (Line Item)												
	16,628	19,440		925		36,993						
10. Data Processing Division (29)												
	651,393	240,969				892,362	645,373	246,847				892,220
a. Data Processing Air Conditioner (Line Item)												
	45,000					45,000	4,400					4,400
11. Extradition and Transportation of Prisoners (30)												
	~~193,648~~					~~193,648~~	~~193,640~~					~~193,640~~
	143,648					*143,648*	*143,640*					*143,640*
12. Forensic Science Division (32)												
	930,630	243,667				1,174,297	864,061	226,237				1,090,298
13. Budget Reduction (Line Item)												
	~~55,436~~					~~55,436~~	~~54,015~~					~~54,015~~
	304,762					*304,762*	*361,749*					*381,749*
Total												
	~~11,635,646~~	14,330,972	992,180	582,153		~~27,540,951~~	~~11,625,721~~	13,758,831	~~653,232~~	581,256		~~26,619,040~~
	10,948,993					*26,854,298*	*10,867,962*		*996,881*			*26,204,930*

Items 1b and 1d are biennial *appropriations.*

The legislature recognizes that costs associated with the Crow coal case, water rights, and tribal litigation may exceed the appropriation in item 1, and in that event, the department will need to request a supplemental appropriation from the 1993 legislature to adequately represent the state.

~~Item 4b is contingent on passage and approval of House Bill No. 568.~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

If federal ~~or other~~ funds ~~can be~~ *are not* obtained for item 6a in fiscal 1993, ~~the federal or other funds must replace~~ the general fund appropriation ~~in item 6a and the general fund appropriation~~, *as amended by [this act]*, must be ~~reduced by the amount of~~ *increased and the* federal ~~or other funds received. The total appropriation contained in item 6a may not be increased~~ *appropriation, as amended by [this act], must be decreased by the same amount.*

~~Item 6d is contingent on passage and approval of House Bill No. 809.~~

~~Item 7a is contingent on passage and approval of House Bill No. 155.~~ In the event that a pay plan bill is passed and approved that includes salary increases for county attorneys, item 7a must be reduced by the amount included in the pay plan bill for county attorney salaries.

DEPARTMENT OF ~~HIGHWAYS~~ *TRANSPORTATION* (5401)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. General Operations Program (01)		6,534,444	1,988,234			8,522,678		6,311,881	1,986,661			8,298,542
a. Audit (Line Item)		71,028				71,028						
b. Road Reporting System (Line Item)		12,750				12,750		13,630				13,630
c. Map Digitizing (Line Item)		120,000				120,000		120,000				120,000
d. Kalispell Bypass Study (Line Item)			150,000			150,000						
e. SB 164 — Department of Transportation Organization Costs (Line Item)		105,128				105,128		30,061				30,061
2. Construction Program (02)		63,254,325	142,709,034			205,963,359		66,640,533	144,241,767			210,882,300
a. City Park Rest Areas (Line Item)		200,000				200,000		200,000				200,000
3. Maintenance Program (03)		46,944,095				46,944,095		46,728,864				46,728,864
a. Monitoring/Upgrading Underground Fuel Tanks (Line Item)		1,109,800				1,109,800		1,109,800				1,109,800
4. State Motor Pool (07)				748,341		748,341				594,076		594,076
5. Equipment Program (08)				13,390,277		13,390,277				13,249,710		13,249,710
6. Interfund Transfers Program (11)		14,208,404				14,208,404		17,149,771				17,149,771

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
7. Stores Inventory (12)		15,460,726				15,460,726		14,901,886				14,901,886
8. Gross Vehicle Weight Division (22)		3,540,044				3,540,044		3,637,061				3,637,061
a. Automated Weigh Stations (Line Item)		243,820				243,820		68,700				68,700
b. Gross Vehicle Weight Officer Training (Line Item)		30,165				30,165		25,165				25,165
Total		151,834,729	144,847,268	14,138,618		310,820,615		156,937,352	146,228,428	13,843,786		317,009,566

The department is directed to submit to the 1993 legislature a construction work plan for the 1995 biennium that is detailed by year and project. This work plan must specify, by road system or project area, proposed projects on which $1 million or more would be spent during the 1995 biennium and an aggregate cost for projects with anticipated expenditures of less than $1 million. Costs must be detailed by year and project.

The department may adjust appropriations and FTE in the construction, interfund transfers, and maintenance programs between fiscal years to reflect actual expenditures related to the construction work plan and maintenance activities.

The department may adjust appropriations in the construction program between fund types, provided that the adjustment does not exceed 10% of the total appropriation established by the legislature for the construction program. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning, and all fund transfers of over $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

The department is directed to conduct a cost responsibility study to determine the appropriate ratio of highway user fees based on road wear caused by each type of user. The department shall provide a report of study results and a recommended fee structure to the legislative finance committee by June 1, 1992.

State highway commission commissioners cannot be flown to or from highway commission meetings in state-owned aircraft unless documented cost savings over other transportation options can be achieved.

DEPARTMENT OF REVENUE (5801)

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Director's Office (01)	~~809,347~~		168,644	428,424		~~1,406,415~~	~~815,409~~		168,425	428,716		~~1,412,550~~
	733,247					*1,330,315*	*741,509*					*1,338,650*
a. Audit (Line Item)	32,474	1,563		89,079		123,116						
2. Centralized Services Division (02)	~~778,656~~	8,607				~~787,263~~	~~775,416~~	8,589				~~784,005~~
	706,656					*715,263*	*700,416*					*709,005*

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Proprietary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Proprietary	Fiscal 1993 Other	Fiscal 1993 Total
3. Data Processing Division (03)												
	~~970,323~~	~~43,525~~		450,445		~~1,464,293~~	~~965,910~~	43,428		451,108		~~1,460,446~~
	880,323	*53,525*				*1,384,293*	*875,910*					*1,370,446*
a. Workers' Compensation Payroll Tax (Line Item)												
		39,887				39,887		34,165				34,165
4. Liquor Division (05)												
a. Liquor Licensing Bureau (Line Item)												
				249,743		249,743				249,656		249,656
5. Income Tax (06)												
	~~3,348,123~~	286,506				~~3,634,629~~	~~3,299,224~~	293,880				~~3,593,104~~
	3,315,923					*3,602,429*	*3,162,629*					*3,456,509*
a. Workers' Compensation Payroll Tax (Line Item)												
		91,992				91,992		75,074				75,074
b. Accounts Receivable (Line Item)												
	91,931					91,931	78,141					78,141
c. Equipment Replacement (Line Item)												
	66,389					66,389	27,614					27,614
d. Computer Processing Costs (Line Item)												
	98,384					98,384	72,417					72,417
e. Revenue Collection (Line Item)												
	91,713					91,713	78,723					78,723
f. Revenue Enhancement												
	39,667					*39,667*	*126,761*					*126,761*
6. Corporation Tax (07)												
	~~1,122,194~~	63,186	129,145			~~1,314,525~~	~~1,124,159~~	63,193	129,156			~~1,316,508~~
	1,224,148					*1,416,479*	*1,238,282*					*1,430,631*
7. Property Tax Division (08)												
a. Elected and Deputy Assessors												
	1,649,662					1,649,662	1,651,923					1,651,923
b. Appraisers and Other Assessors												
	6,558,578					6,558,578	6,557,512					6,557,512
c. Property Assessment Program												
	2,956,963					2,956,963	2,956,882					2,956,882

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
d. Cyclical Reappraisal Costs (Line Item)												
	22,000					22,000	245,000					249,000
e. Computer-Assisted Mass Appraisal System (CAMAS) Costs (Line Item)												
	333,281					333,281	276,281					276,281
8. Motor Fuel Tax (10)												
		620,119				620,119		617,287				617,287
9. Budget Reduction (Line Item)												
	94,138					94,138	94,195					94,195
Total												
	~~18,835,880~~	~~1,155,385~~	297,789	1,217,691		~~21,506,745~~	~~18,834,416~~	1,135,616	297,581	1,129,480		~~21,397,093~~
	18,707,201	*1,165,385*				*21,388,066*	*18,699,805*					*21,262,482*

Liquor division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated. During the 1993 biennium, the division shall attempt to return at least 10% of net sales. Net sales are gross sales less discounts and all taxes collected. The division shall limit operational expenses of the liquor merchandising system to not more than 15% of the net sales. Operational expenses may not include product costs, freight charges, expenses allocable to other divisions, or licensing bureau expenses.

An agent operating a state agency liquor store has the preference right to renew the agent's agency agreement by accepting the terms of the request for bids as those terms existed before January 1, 1991, and by meeting the highest bid made by any other applicant. Those agency agreements that contain renewal options must be honored according to the terms of the agency contract and request for bids in existence prior to January 1, 1991.

Funds appropriated in item 7e may be used only for consulting contracts to support CAMAS or to support appraisers' use of CAMAS, for debt service costs to fund equipment acquisition, and for computer maintenance contracts.

DEPARTMENT OF ADMINISTRATION (6101)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Director's Office (01)												
	~~232,354~~			61,572		~~293,926~~	229,139			60,818		289,957
	230,097					*291,669*						
2. Accounting Program (03)												
	~~1,020,986~~			29,350		~~1,050,336~~	~~1,005,187~~			29,297		~~1,034,484~~
	998,936					*1,028,186*	*989,477*					*1,018,774*
a. Audit (Line Item)												
	38,771					38,771						
3. Architecture and Engineering Program (04)												
		672,098			664,006	1,336,104		682,019			672,552	1,354,571
a. Audit (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
		1,370				1,370						
b. Capitol Restoration Commission (Line Item)		11,634				11,634		11,634				11,634
c. Expanded Long-Range Building Plan (Line Item)		51,242			51,242	102,484		53,670			53,670	107,340
4. Procurement and Printing Division (06)	~~420,824~~			6,111,843		~~6,532,667~~	~~421,166~~			6,380,662		~~6,801,828~~
	408,724					*6,520,567*	*412,625*					*6,793,287*
a. Audit (Line Item)				19,788		19,788						
b. Pass-Through Printing (Line Item)				3,412,515		3,412,515				3,543,765		3,543,765
c. Federal Surplus Property (Line Item)				87,000		87,000				87,000		87,000
5. Information Services Division (07)												
a. Audit (Line Item)				58,140		58,140						
b. Contracted Systems Development (Line Item)				200,000		200,000						
c. Computer Services				7,982,061		7,982,061				8,193,261		8,193,261
d. Telecommunications				8,385,973		8,385,973				7,924,699		7,924,699
e. Emergency 911				75,567		75,567				76,712		76,712
f. Armory Computer Upgrade (Line Item)				75,000		75,000				75,000		75,000
g. Public Safety Communication (Line Item)				82,000		82,000				57,000		57,000
h. ISD — Growth in Workload (Line Item)				500,000		500,000				500,000		500,000
i. ISD — Networks (Line Item)				796,499		796,499				796,504		796,504
j. Mainframe Disaster Backup (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
				179,000		179,000				144,000		144,000
k. Student Long Distance (Line Item)				323,768		323,768				323,771		323,771
l. Telephone System Upgrades (Line Item)				229,000		229,000				229,000		229,000
m. Family Services Computer System (Line Item)				78,200		78,200				93,200		93,200
6. General Services Program (08)	~~241,750~~			2,275,260	58,419	~~2,575,429~~	~~250,164~~			2,347,743	58,426	~~2,656,333~~
	211,750					*2,545,429*	*220,164*					*2,626,333*
a. Audit (Line Item)				7,672		7,672						
b. Utilities Cost (Line Item)	141,083			1,034,607		1,175,690	143,409			1,051,670		1,195,079
7. Mail and Distribution Bureau (13)				1,639,686		1,639,686				1,642,234		1,642,234
a. Audit (Line Item)				3,526		3,526						
b. Postage Machines (Line Item)				6,500		6,500				6,500		6,500
c. Expanded Mail Services (Line Item)				174,087		174,087				174,087		174,087
8. State Personnel Division (23)	~~922,039~~			~~500,037~~		~~1,422,076~~	~~917,491~~			~~502,944~~		~~1,420,435~~
	873,414			*543,037*		*1,416,451*	*869,093*			*548,217*		*1,417,310*
a. Audit (Line Item)				1,176		1,176						
b. Group Insurance Benefits System (Line Item)				36,500		36,500				21,500		21,500
c. State Employee Combined Campaign (Line Item)		10,000				10,000		10,000				10,000
d. Professional Development Center Growth in Workload (Line Item)				9,112		9,112				21,180		21,180
e. Communications for Group Insurance Requirements (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
				8,000		8,000				8,000		8,000
f. Genetics Program (Line Item)												
				20,252		20,252				20,252		20,252
9. Tort Claims Division (24)												
				2,101,132		2,101,132				2,153,202		2,153,202
a. Audit (Line Item)												
				7,036		7,036						
b. Tort Claims — Contracts (Line Item)												
				500,000		500,000				500,000		500,000
10. State Tax Appeal Board (37)												
	~~427,007~~					~~427,007~~	~~427,361~~					~~427,361~~
	374,783					374,783	375,073					375,073
11. Budget Reduction (Line Item)												
	~~17,277~~					~~17,277~~	~~17,043~~					~~17,043~~
	48,934					48,934	88,156					88,156
Total												
	~~3,420,337~~	746,344		~~37,011,059~~	773,667	~~41,960,207~~	~~3,376,074~~	757,323		~~36,964,001~~	784,648	~~41,882,046~~
	3,228,524			37,054,859		41,803,394	3,150,824			37,009,274		41,702,069

~~The deletion of the personal services reduction in state special revenue is contingent on passage and approval of House Bill No. 5.~~

~~Item 3b is contingent on passage and approval of House Bill No. 500.~~

~~Item 3c is contingent on passage and approval of House Bill No. 5.~~

Item 5b is a biennial appropriation.

The governor-elect program is appropriated all necessary expenses, up to $50,000 from the general fund in fiscal 1993, to implement the provisions of 2-15-221.

~~Item 5m is contingent on passage and approval of House Bill No. 569.~~

The department shall develop and submit a cost recovery plan for each of its proprietary operations to the office of budget and program planning and the legislative fiscal analyst by August 1, 1992.

Funds remaining in the capitol land grant account of the capital projects fund, after the appropriations are met for the general services division of the department of administration and any projects provided for in ~~House Bill No. 5~~ *Chapter 774, Laws of 1991*, are appropriated to the long-range building debt service fund for the payment of principal and interest on bond issues for public buildings at the capitol for executive, legislative, and judicial purposes, as outlined in section 12 of The Enabling Act. This appropriation is for the biennium ending June 30, 1993, and is not to exceed the annual debt service required on these bonds.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

The appropriation in item 6 in the other column includes $58,801 in fiscal 1992 and $58,801 in fiscal 1993 from the capital projects fund.

In item 6, the department may charge a maximum of $3.28 a square foot in fiscal 1992 and $3.34 a square foot in fiscal 1993 for office space in state-owned buildings.

Item 6b may be used only to pay utilities costs.

The department may charge a maximum overhead rate of 6% each year in item 7.

~~Item 8f is contingent on passage and approval of House Bill No. 696.~~

The department is appropriated funds to pay the deductible portion of each claim incurred and covered by a deductible insurance plan from the deductible reserve fund authorized in 2-9-202(2).

By July 15, 1992, the tort claims division shall present to the legislative finance committee proposed changes in the method or methods of determining and allocating insurance premiums to state agencies. The division shall review with the legislative finance committee the proposal and potential fiscal impacts before the rate methodology is adopted and before premiums are included in agency budget requests by the office of budget and program planning.

In item 9b, the department is authorized to hire 0.5 clerical FTE.

The public service commission is considering a proposal allowing large state natural gas customers to purchase their own supplies of gas directly from gas producers. Recognizing the likelihood of a changing natural gas procurement environment, the governor is authorized, if the proposal is approved by the commission, to designate a lead agency to implement a coordinated natural gas procurement program for affected state agencies and the university system.

STATE COMPENSATION MUTUAL INSURANCE FUND (6103)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. State Compensation Mutual Insurance Fund (01)		25,082		121,856,189		121,881,271				128,877,379		128,877,379
a. Audit (Line Item)				83,655		83,655						
b. Claims Management Program (Line Item)				912,563		912,563				910,494		910,494
c. Audit Bureau (Line Item)				304,304		304,304				303,699		303,699
d. HB 187 — Construction Premiums (Line Item)				228,629		228,629				194,830		194,830
Total		25,082		123,385,340		123,410,422				130,286,402		130,286,402

~~Item 1d is contingent on passage and approval of House Bill No. 187.~~

PUBLIC EMPLOYEES' RETIREMENT BOARD (6104)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Public Employees' Retirement Program (35)					837,589	837,589					816,990	816,990
a. Audit (Line Item)					36,303	36,303						
b. Public Employees' Retirement Division — Rewrite Data Processing System (Line Item)					301,289	301,289					79,224	79,224
c. Program Improvements (Line Item)					50,387	50,387					56,952	56,952
Total					1,225,568	1,225,568					953,166	953,166

The amounts listed in items 1, 1a, 1b, and 1c are appropriated from the pension trust fund.

~~Contingent on passage and approval of House Bill No. 595, the~~ *The* board is appropriated $3,860 from pension trust funds in fiscal 1992 and $2,360 from pension trust funds in fiscal 1993.

~~Contingent on passage and approval of House Bill No. 711, the~~ *The* board is appropriated $5,000 from pension trust funds in fiscal 1992 and $5,000 from pension trust funds in fiscal 1993.

~~Contingent on passage and approval of Senate Bill No. 226, the~~ *The* board is appropriated $25,000 from pension trust funds in fiscal 1992 and $5,000 from pension trust funds in fiscal 1993.

TEACHERS' RETIREMENT BOARD (6105)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Teachers' Retirement Program (01)					469,647	469,647					461,222	461,222
a. Audit (Line Item)					23,676	23,676						
b. Data Processing and Service Upgrades (Line Item)					147,380	147,380					108,380	108,380
c. System Enhancements for Legislated Changes (Line Item)					25,000	25,000						
Total					665,703	665,703					569,602	569,602

The amounts listed in items 1, 1a, 1b, and 1c are appropriated from the pension trust fund.

~~Item 1c is contingent on passage and approval of Senate Bill No. 226.~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
DEPARTMENT OF MILITARY AFFAIRS (6701)												
1. Administration Program (01)												
	217,838					217,838	~~217,991~~					~~217,991~~
							212,991					*212,991*
a. Audit (Line Item)												
	5,920					5,920						
2. Army National Guard Program (12)												
	~~900,880~~		1,108,021			~~2,008,901~~	~~908,451~~		~~1,116,411~~			~~2,024,862~~
	895,780					*2,003,801*	*855,851*		*1,156,411*			*2,012,262*
a. Repair and Maintenance (Line Item)												
	~~186,000~~					~~186,000~~						
	118,375					*118,375*						
b. Environmental Program (Line Item)												
	9,275		41,099			50,374	9,228		40,833			50,061
3. Air National Guard Program (13)												
	180,429		1,402,315			1,582,744	182,313		1,411,460			1,593,773
a. Repair and Maintenance (Line Item)												
	14,000		42,000			56,000						
4. Disaster Coordination Response (21)												
	218,140		235,009			453,149	217,697		234,558			452,255
a. Audit (Line Item)												
	4,262		4,262			8,524						
5. Emergency Management Development (24)												
			263,904			263,904			263,572			263,572
a. Audit (Line Item)												
			3,314			3,314						
b. Earthquake Program (Line Item)												
			46,187			46,187			46,190			46,190
6. Local Reimbursement — DES (29)												
			564,000			564,000			540,000			540,000
7. Veterans' Affairs Program (31)												
	468,438	9,672	35,557			513,667	468,162	9,669	35,456			513,287
a. Audit (Line Item)												

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
	5,918					5,918						
b. Veterans' Cemetery Construction (Line Item)												
		22,500				22,500		31,500	45,000			76,500
8. Budget Reduction (Line Item)												
	~~11,055~~					~~11,055~~	~~10,019~~					~~10,019~~
	31,834					31,834	67,732					67,732
Total												
	~~2,200,045~~	32,172	3,745,668			~~5,977,885~~	~~1,993,823~~	41,169	~~3,733,480~~			~~5,760,472~~
	2,106,541					5,884,381	1,878,510		3,773,480			5,693,159

Items 2a and 3a are biennial appropriations.

In item 3, up to two firefighter FTE may be added if the current contract is modified or becomes unnecessary.

In item 5b, the department shall direct the earthquake program to local schools to the maximum extent possible.

~~Item 7b is contingent on passage and approval of House Bill No. 723.~~

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
TOTAL SECTION A												
	~~55,350,474~~	~~173,303,647~~	~~154,675,695~~	~~176,816,555~~	2,664,938	~~562,811,309~~	~~54,909,322~~	~~177,204,264~~	~~155,703,117~~	~~183,274,369~~	2,307,416	~~573,398,488~~
	53,604,964	173,304,647	154,690,695	176,859,555		561,124,799	53,201,903	177,276,114	156,131,339	183,319,642		572,236,414

B. HUMAN SERVICES

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Proprietary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Proprietary	Fiscal 1993 Other	Fiscal 1993 Total
DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES (5301)												
1. Director's Office (01)												
	~~136,421~~		43,874	386,783		~~567,078~~	~~133,586~~		43,844	384,008		~~561,438~~
	127,926					558,583	*125,091*					552,943
a. Personnel Specialist (Line Item)												
				25,529		25,529				25,472		25,472
b. Legal Services Charge System (Line Item)												
	~~82,897~~					~~82,897~~	~~82,897~~					~~82,897~~
	76,265					76,265	*76,265*					76,265
2. Central Services (02)												
	~~575,412~~	~~825,063~~	213,254	785,266		2,398,995	~~562,668~~	~~779,045~~	211,795	786,845		2,340,353
	516,150	*884,325*					*476,950*	*864,763*				
a. Audit (Line Item)												
				53,666		53,666						
b. Laboratory Contingency (Line Item)												
		100,000				100,000						
c. Support Staff (Line Item)												
				46,922		46,922				46,818		46,818
d. Newborn Pku Screening (Line Item)												
		76,552				76,552		28,772				28,772
e. Safe Drinking Water — Laboratory Certification (Line Item)												
		40,479				40,479		39,853				39,853
f. Safe Drinking Water — Public Health Laboratory (Line Item)												
		39,847				39,847		39,306				39,306
3. Environmental Sciences (03)												
	~~899,129~~	~~1,341,069~~	728,237	145,559		~~3,113,994~~	~~891,306~~	~~1,340,240~~	715,549	142,903		~~3,089,998~~
	822,917	*1,402,369*				*3,099,082*	*814,875*	*1,401,616*				*3,074,943*
a. Air Quality (Line Item)												
		84,972	248,386			333,358		80,771	247,976			328,747
b. Asbestos Control (Line Item)												
		92,919				92,919		92,239				92,239

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Natural Resources Lawsuit (Line Item)												
		4,908,049				4,908,049						
d. Air Quality — Permits (Line Item)												
		301,338				301,338		297,979				297,979
e. Pay Exceptions — Environmental Specialist (Line Item)												
		24,128	58,799			82,927		23,715	57,825			81,540
f. HB 987 — Regulation of Public Accommodations (Line Item)												
		10,125				10,125		10,125				10,125
g. HB 988 — Regulation of Campgrounds, Trailer Courts, Etc. (Line Item)												
		15,750				15,750		15,750				15,750
h. HB 989 — Regulation of Food Establishments (Line Item)												
		165,000				165,000		165,000				165,000
i. HB 994 — Regulation of Swimming Pools (Line Item)												
		76,500				76,500		76,500				76,500
4. Solid and Hazardous Waste (04)												
	~~105,149~~	~~2,253,395~~	7,504,734			9,943,278	~~103,227~~	~~2,264,333~~	7,483,177			9,930,737
	168,716	*2,269,828*					*166,794*	*2,280,766*				
a. Hazardous Waste (Line Item)												
		48,628	147,306			195,934		47,823	144,889			192,712
b. Landfill Management (Line Item)												
		138,367				138,367		136,501				136,501
c. Landfill Management — EQC (Line Item)												
		297,066				297,066		298,376				298,376
d. BN/ARCO Special Projects (Line Item)												
		312,348				312,348		308,898				308,898
e. Pay Exceptions — Environmental Specialist (Line Item)												
	13,725	125,490	99,973			239,188	13,491	124,583	98,317			236,391
f. Exemption for Noncommercial Waste — HB 660 (Line Item)												
		95,008				95,008		95,008				95,008
5. Water Quality (05)												
	~~169,562~~	521,550	2,079,210			~~2,770,322~~	~~167,493~~	516,550	2,057,121			~~2,741,164~~
	160,280					*2,761,040*	*158,211*					*2,731,882*
a. Agriculture Monitoring (Line Item)												
		15,000				15,000		15,000				15,000

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
b. Ground Water Pollution (Line Item)												
			112,373			112,373			111,203			111,203
c. Wastewater Operators (Line Item)												
		10,787				10,787		8,901				8,901
d. Subdivisions (Line Item)												
	44,386					44,386	40,213					40,213
e. Safe Drinking Water (Line Item)												
		625,017	303,823			928,840		622,756	302,363			925,119
f. Nonpoint Source Pollution (Line Item)												
			1,423,271			1,423,271			1,422,188			1,422,188
g. Ground Water — EQC (Line Item)												
		101,494				101,494		99,903				99,903
h. Ground Water — EQC Lawyer (Line Item)												
			46,378			46,378			45,590			45,590
i. Pay Exceptions — Environmental Specialist (Line Item)												
	~~7,647~~	42,983	75,215			~~125,845~~	~~7,516~~	45,023	73,969			~~126,508~~
	7,036					*125,234*	*6,436*					*125,428*
j. SB 136 — Water Quality Districts (Line Item)												
		18,539				18,539		18,504				18,504
6. Health Services and Medical Facilities (06)												
	~~476,282~~	45,753	230,678			~~752,713~~	469,155	45,455	231,110			745,720
	474,831					*751,262*						
a. HB 445 — Health Planning Specialist (Line Item)												
	16,289					16,289	16,251					16,251
7. Family/Maternal and Child Health Bureau (07)												
	~~101,985~~		15,082,316			~~15,184,301~~	~~101,272~~		14,859,001			~~14,960,273~~
	97,985					*15,180,301*	*97,272*					*14,956,273*
a. Child Nutrition (Line Item)												
			1,634,000			1,634,000			2,642,000			2,642,000
b. WIC (Line Item)												
			1,122,486			1,122,486			1,122,486			1,122,486
c. MIAMI Program (Line Item)												
	171,468					171,468	169,608					169,608
8. Preventive Health Bureau (08)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	~~217,576~~	60,020	1,120,301			~~1,397,897~~	~~216,795~~	65,874	1,111,683			~~1,394,352~~
	199,076					1,379,397	91,795					1,269,352
a. Chronic Disease Prevention (Line Item)			40,054			40,054			39,850			39,850
b. AIDS Education (Line Item)			20,000			20,000			20,000			20,000
c. Sexually Transmitted Diseases (Line Item)			79,556			79,556			78,656			78,656
d. AIDS (Line Item)			33,583			33,583			32,751			32,751
e. Vaccine (Line Item)			103,540			103,540			101,774			101,774
9. Licensing and Certification (09)	~~450,760~~		912,381			~~1,363,141~~	~~466,089~~		876,281			~~1,342,370~~
	371,607					1,283,988	407,528					1,283,809
a. OBRA (Line Item)	47,681		802,065			849,746	64,101		724,616			788,717
b. Hearings — OBRA (Line Item)	10,275		126,727			137,002	13,700		123,302			137,002
Total	~~3,696,644~~	~~12,813,246~~	34,392,520	1,443,725		~~52,254,125~~	~~3,559,566~~	~~7,742,583~~	34,979,316	1,386,046		~~47,667,511~~
	3,326,613	12,950,231				52,113,089	3,207,736	7,866,310				47,439,408

Item 3c is a biennial appropriation.

The total appropriation for the department includes $2,204,426 in fiscal 1992 and $2,204,426 in fiscal 1993 from the maternal and child health block grant. To the extent revenue from the grant exceeds these amounts, it must be distributed to the counties, based upon identifiable needs. To the extent revenue from the grant is less than these amounts, allocations must be reduced proportionately among state programs and grants to counties.

The total appropriation for the department includes $644,771 in fiscal 1992 and $644,771 in fiscal 1993 from the preventive health block grant. To the extent revenue from the grant exceeds these amounts, it must be distributed at the discretion of the director of the department, based upon identifiable health care needs. To the extent revenue from the grant is less than these amounts, the director of the department shall make program reductions.

Funds appropriated to the department for indirect cost recovery may be expended only for that purpose.

Fiscal 1992						Fiscal 1993					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The director's office includes $82,897 of general fund money each year within the legal unit that may be used only to pay legal services billed to programs funded by the general fund within the department. None of this appropriation may be transferred to other programs.

Item 2 includes a total of $25,000 of general fund each year that must be used to perform tests as needed on behalf of the food and consumer safety and occupational health bureaus within the department. If these funds are not needed for testing in the food and consumer safety and occupational health bureaus, they may be expended for other services within the laboratories.

It is the intent of the legislature that the department determine the feasibility of funding the public health and chemistry laboratories through proprietary and special revenue accounts with little or no use of general fund money, except as specified to support testing for the food and consumer safety and occupational health bureaus. If the department determines that such accounting is feasible and saves general fund money, then on or after July 1, 1991, the department may request that the approving authority authorize a proprietary account and reduce the general fund appropriation by a like amount. If this occurs, the general fund appropriation must remain at $25,000 to provide necessary testing for the food and consumer safety and occupational health bureaus.

Item 2b is a biennial appropriation that may be used only if the demand for reimbursable services requires expenditures for supplies, materials, and communications in excess of the appropriated levels of $184,820 in fiscal 1992 and $184,597 in fiscal 1993.

The department is authorized to receive an interentity loan from the general fund for no more than $4,928,894 for the purpose of conducting the Clark Fork natural resources damage assessment and litigation against the atlantic richfield company (ARCO). Repayment of this loan is extended through the end of the 1993 biennium in accordance with 17-2-107. The repayment must include interest on the amount loaned at a rate commensurate with rates earned in the short-term investment pool.

The natural resource damage litigation program policy committee is formed to ensure cooperation and unity among the state's natural resource agencies in carrying out their responsibilities as representatives of the governor, who is the trustee of the state's natural resources. The policy committee shall guide and make natural resource damage litigation program policy recommendations. The appropriation of $4,928,894 to continue the natural resources lawsuit against ARCO must be overseen by the policy committee, which consists of the following individuals or their designated representatives: the governor's energy and environmental policy advisor; the directors of the departments of health and environmental sciences and fish, wildlife, and parks; and the commissioner of the department of state lands. The attorney general or his designated representative may act in an advisory capacity to the natural resource damage litigation program policy committee.

None of the appropriation for the licensing, certification, and construction bureau may be transferred to any other program in the department.

The legislative fiscal analyst is directed to recalculate the indirect cost assessments to department programs, using the following rates applied to 100% of personal services:

FY 92FY 93

General Rate14.00%12.00%

Environmental Sciences Division 3.00% 3.00%

Statewide Cost Allocation 3.75% 3.75%

Items 3e, 4e, and 5i may be used only to pay for the blanket "pay exception — environmental specialist" class series and associated indirect costs, authorized by the department of administration on April 11, 1991.

~~Items 3f, 3g, 3h, and 3i are contingent on passage and approval of House Bill Nos. 987, 988, 989, and 994 respectively.~~

~~Item 4f is contingent on passage and approval of House Bill No. 660.~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
DEPARTMENT OF LABOR AND INDUSTRY (6602)												
1. Job Service Division (01)		88,244	11,386,520			11,474,764		88,236	11,336,977			11,425,213
a. Federal Economic Dislocated Worker Adjustment and Assistance/Trade Adjustment Assistance Program (Line Item)			247,869			247,869			247,534			247,534
b. Jobs for Montana Graduates (Line Item)			126,517			126,517			124,485			124,485
2. Unemployment Insurance (02)			3,741,488			3,741,488			3,701,445			3,701,445
a. Unemployment Insurance Accounts Receivable (Line Item)			126,312			126,312			102,208			102,208
3. Commissioner/Centralized Services (03)				2,711,023		2,711,023				2,664,153		2,664,153
a. Audit (Line Item)				66,293		66,293						
4. Employment Relations (04)	~~434,423~~	1,359,095	680,030	389,277		~~2,662,825~~	~~405,167~~	1,317,950	684,365	389,094		~~2,796,576~~
	423,224					*2,851,626*	*394,028*					*2,785,437*
a. Consideration of Investment Income — HB 187 (Line Item)		44,438				44,438		38,485				38,485
~~b. HB 342 — Implementation (Line Item)~~		~~45,400~~				~~45,400~~		~~39,445~~				~~39,445~~
5. Legal Services Division (06)		243,463	458,877	133,095		835,435		244,610	461,562	132,946		839,118
6. Research, Safety, and Training (07)		727,437	2,027,353			2,754,790		728,061	1,995,263			2,723,324
7. Human Rights Commission (08)	283,438		101,470			384,908	288,063		101,463			389,526
a. Human Rights Backlog (Line Item)	~~44,267~~					~~44,267~~	~~37,322~~					~~37,322~~
	16,461					*16,461*	*8,690*					*8,690*
8. Workers' Compensation Judge (09)		356,165				356,165		355,643				355,643

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
9. Job Training Grants (50)												
			13,940,510			13,940,510			14,158,765			14,158,765
a. Project Work Program Contracts (Line Item)												
			286,145			286,145			286,145			286,145
b. Federal Economic Dislocated Worker Adjustment and Assistance/Trade Adjustment Assistance Grants (Line Item)												
			596,435			596,435			664,793			664,793
c. Job Training Partnership Act Funding (Line Item)												
			1,267,759			1,267,759			1,732,241			1,732,241
Total												
	~~762,128~~	2,818,842	34,987,285	3,299,688		~~41,867,943~~	~~730,552~~	2,772,985	35,597,246	3,186,193		~~42,286,976~~
	723,123					41,828,938	690,781					42,247,205

All unappropriated revenue to and fund balance in the unemployment insurance administrative tax account is appropriated to a reserve fund for job service administrative costs, except amounts, up to $100,000 per fiscal year, necessary to comply with federal requirements that a cost allocation plan for nonunemployment insurance tax collections be established. The amount of unappropriated funds for deposit into the reserve must be determined after all other unemployment insurance administrative tax appropriations are funded. The job service reserve fund must be maintained within the unemployment insurance administrative tax account. Interest earned on the job service reserve must be deposited into the job service reserve fund. Sufficient funds from the job service reserve are appropriated to the department to fund the job service federal fund appropriation in fiscal 1992 and fiscal 1993, contingent upon receipt of federal funds for the support of job service functions that are less than the level received in fiscal 1991. Funds in the job service reserve may not be transferred to the unemployment insurance trust fund until January 30, 1993, except in the case that an amount is necessary to reduce the employer contribution schedule for the coming year. Any transfer prior to January 30, 1993, must be reviewed by the legislative finance committee.

The department, in concert with other interested parties, shall prepare formal guidelines for use of the unemployment insurance administrative tax funds and present these guidelines to the 53rd legislature. At a minimum, the guidelines must include a prioritization of programs and activities to be funded. The criteria for prioritization must include the following considerations:

(1) loss of federal funding, impact on rural communities, and employer/employee-related functions; and

(2) the establishment and maintenance of a reserve fund to ensure that employment security services continue in the event of federal fund reductions.

The department shall provide information to the 53rd legislature regarding the actual amount collected by the 3 FTE added to collect unemployment insurance accounts receivable.

The department is appropriated up to $1 million each year from funds referred to in 39-71-502 and 39-71-901 to pay uninsured employer and subsequent injury benefits as required by 39-71-503 and 39-71-907.

Funds appropriated in item 1b must be distributed to the office of public instruction for administration of the jobs for Montana's graduates program.

~~Item 4 is increased by $68,916 in fiscal 1992 and by $70,143 in fiscal 1993 (state special revenue) if House Bill No. 837 is not passed into law.~~

~~Item 4a is contingent on passage and approval of House Bill No. 187.~~

~~Item 4b is contingent on passage and approval of House Bill No. 342.~~

~~Contingent on passage and approval of Senate Bill No. 228, the~~ *The* budget director shall increase item 8 by the amount necessary to bring the salary and benefits of the workers' compensation judge to the levels authorized by ~~Senate Bill No. 228~~ *Chapter 656, Laws of 1991,* less any increase provided for in the pay plan bill.

Funds appropriated in item 9c to replace federal fund reductions in Job Training Partnership Act (JTPA) programs statewide are one-time only funds and may be used only if and to the extent federal JTPA funds allocated to the state are less than the amount allocated in state fiscal year 1991. Unspent funds revert to the job service reserve fund in the unemployment insurance administrative tax account.

During fiscal 1993, the department is authorized to use unemployment insurance administrative tax funds appropriated for funding the JTPA as state matching funds for federal funds appropriated to the department of social and rehabilitation services for the job opportunities and basic skills (JOBS) program.

The amount of unemployment insurance administrative tax funding for the jobs for Montana's graduates program may not be increased.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (6901)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Family Assistance (01)												
	~~14,664,197~~	~~724,364~~	~~44,743,522~~			~~60,132,083~~	~~14,542,550~~	~~721,346~~	~~44,703,905~~			~~59,967,801~~
	16,328,532	*806,543*	*48,365,516*			*65,500,591*	*16,066,913*	*801,988*	*48,101,330*			*64,970,231*
a. Food Stamp Employment and Training (Line Item)												
			96,000			96,000			96,000			96,000
b. Day-Care Rate Increase (Line Item)												
	~~33,404~~		~~84,673~~			118,077	~~57,550~~		~~147,256~~			204,806
	0		*118,077*				*0*		*204,806*			
c. Food Stamp Job Search Support (Line Item)												
	43,750					43,750	43,750					43,750
d. Statewide Jobs Program (Line Item)												
	709,367		1,931,001			2,640,368	709,367		1,931,001			2,640,368
e. AFDC/General Assistance at 42% of Federal Poverty Index (Line Item)												
	537,529	29,142	1,135,730			1,702,401	1,199,824	67,125	2,622,980			3,889,929
2. Eligibility Determination Program (03)												
	2,463,835	2,436,980	4,523,828			9,424,643	2,461,200	2,434,448	4,519,060			9,414,708
3. Administrative and Support Services (04)												
	~~616,796~~	307,237	1,517,425	1		~~2,441,459~~	~~616,875~~	308,621	1,522,310	1		~~2,447,807~~
	615,002					*2,439,665*	*616,482*					*2,447,414*
a. Audit (Line Item)												
	68,690	6,284	74,974			149,948						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
b. Grant Writing (Line Item)												
	~~11,250~~	11,250	22,500			~~45,000~~	~~11,250~~	11,250	22,500			~~45,000~~
	0					*33,750*	*0*					*33,750*
4. Child Support Enforcement (05)												
		1,225,772	2,443,455			3,669,227		1,215,076	2,441,553			3,656,629
a. Contracted Employees (Line Item)												
		~~126,991~~	246,512			~~373,503~~		~~129,124~~	250,652			~~379,776~~
		109,756				*356,268*		*101,511*				*352,163*
b. Collection of Parental Contribution to Out-of-Home Care — HB 993 (Line Item)												
		10,145	19,692			29,837		10,294	19,981			30,275
5. State-Assumed County Administration (06)												
	606,151		500,578			1,106,729	~~606,639~~		500,752			~~1,107,391~~
							596,195					*1,096,947*
6. Medical Assistance (07)												
	~~53,699,220~~	7,590,929	~~169,946,054~~			~~231,236,203~~	~~54,611,324~~	7,975,494	~~174,077,061~~			~~236,663,879~~
	57,081,847		*170,346,054*			*235,018,830*	*53,861,591*		*169,647,004*			*231,484,089*
a. OBRA-90 (Line Item)												
	~~438,298~~		~~1,025,486~~			~~1,463,784~~	~~1,477,222~~		~~3,257,934~~			~~4,735,156~~
	282,998		*631,829*			*914,827*	*1,169,322*		*2,470,104*			*3,639,426*
b. Hospital Rate Study/Cost Containment (Line Item)												
	292,080		142,080			434,160	191,300		41,300			232,600
c. Baby Your Baby (Line Item)												
		134,000	134,000			268,000						
d. Nurses' Aide Testing (Line Item)												
	86,400		86,400			172,800	86,400		86,400			172,800
e. Nursing Home Rate Rebase (Line Item)												
	1,110,746		2,815,539			3,926,285	2,644,514		6,766,569			9,411,083
f. Elderly Waiver Expansion (Line Item)												
	74,888		189,827			264,715	100,134		256,216			356,350
g. Residential Psychiatric (Line Item)												
			4,490,088			4,490,088			4,516,295			4,516,295
h. Increase Ob/Gyn/Ped Physicians' Rates (Line Item)												
	~~1,027,510~~		~~2,604,553~~			~~3,632,063~~	~~1,360,813~~		~~3,481,937~~			~~4,842,750~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	817,510		*2,072,241*			*2,889,751*	*1,078,433*		*2,759,406*			*3,837,839*
i. Health Clinics Expansion (Line Item)												
	18,388		46,612			65,000	18,265		46,735			65,000
~~j. Hospital Rate Rebase (Line Item)~~												
							~~920,613~~		~~2,355,590~~			~~3,276,203~~
							0		*0*			*0*
~~k~~ *j.* Ambulance Provider Increase (Line Item)												
	139,729		354,189			493,918	138,791		355,127			493,918
~~l~~ *k.* Pregnant Women Targeted Case Management (Line Item)												
	139,484		353,566			493,050	138,574		354,572			493,146
~~m~~ *l.* Provider Rate Increase (Line Item)												
	3,181		8,068			11,249	6,354		16,258			22,612
~~n~~ *m.* Operating Cost Implementation of SB 391 (Line Item)												
	62,298		119,299			181,597	86,551		90,752			177,303
~~o~~ *n.* Managed Care Benefit Costs of SB 391 (Line Item)												
							143,566		367,346			510,912
~~p~~ *o.* Targeted Case Management Benefits Costs for the Mentally Ill — SB 391 (Line Item)												
			1,510,752			1,510,752			1,524,996			1,524,996
~~q~~ *p.* Federal Medicaid Reimbursement for State Institutions — HB 93 (Line Item)												
			104,334			104,334			109,288			109,288
7. Audit and Program Compliance Division (08)												
	~~578,770~~	7,445	809,479			~~1,395,694~~	~~578,628~~	7,430	809,185			~~1,395,243~~
	575,770					*1,392,694*	*567,733*					*1,384,348*
8. Office of Management, Analysis, and Systems (09)												
	~~1,860,054~~	534,238	~~3,083,450~~	1		~~5,477,743~~	~~2,074,546~~	578,011	3,474,121			~~6,126,678~~
	1,697,497		*2,933,450*			*5,165,186*	*2,055,708*					*6,107,840*
a. TDD Project Implementation (Line Item)												
		67,072				67,072		70,890				70,890
b. TEAMS Operations (Line Item)												
	436,795					438,795	485,182					485,182
c. SEARCHS Operations (Line Item)												
		~~396,337~~	~~3,567,031~~			~~3,963,368~~		226,975	1,322,777			1,549,752
		196,337	*2,433,698*			*2,630,035*						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
9. Vocational Rehabilitation Program (10)												
	~~970,616~~	688,058	6,416,932			~~8,075,606~~	~~969,506~~	687,966	6,278,353			~~7,935,905~~
	965,693					*8,070,683*	*966,386*					*7,932,705*
a. JTPA Administration (Line Item)												
			15,000			15,000			15,000			15,000
b. Provider Rate Increase (Line Item)												
	51,952		199,957			251,909	104,422		401,908			506,330
c. JTPA Additional Training (Line Item)												
			25,000			25,000			25,000			25,000
d. Program Expansion (Line Item)												
	155,455					155,455	155,455					155,455
10. Disability Determination Program (11)												
			2,655,318			2,655,318			2,654,349			2,654,349
11. Visual Services Program (13)												
	~~281,858~~		968,316			~~1,250,174~~	~~281,653~~		967,493			~~1,249,146~~
	280,319					*1,248,635*	*279,374*					*1,246,867*
a. Provider Rate Increase (Line Item)												
	7,204		21,654			28,858	14,476		43,520			57,996
12. Developmental Disabilities Program (14)												
	~~9,213,088~~		16,042,689			~~25,255,777~~	~~9,277,332~~		15,975,818			~~25,253,150~~
	9,206,205					*25,248,894*	*9,265,498*					*25,241,316*
a. Provider Rate Increase (Line Item)												
	931,226		328,892			1,260,118	1,916,428		676,848			2,593,276
b. Program Expansion (Line Item)												
	~~181,779~~		~~467,431~~			~~649,210~~	181,779		467,431			649,210
	95,483		*245,527*			*341,010*						
c. DD System Phase IV Implementation (Line Item)												
	725,745		568,430			1,294,175	~~1,213,331~~		1,517,728			~~2,731,059~~
							813,331					*2,331,059*
d. DD System Phase I and II Implementation (Line Item)												
	391,794		762,564			1,154,358	389,156		761,753			1,150,909
e. DD Part H Expansion (Line Item)												
	~~597,059~~		~~244,627~~			841,686	897,059		244,627			1,141,686

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	477,059		364,627									
f. Increased Title XIX Funding (Line Item)			500,000			500,000			500,000			500,000
g. Montana Youth Initiative (Line Item)			86,000			86,000			86,000			86,000
h. Chapter I OPI DD Treatment (Line Item)			90,000			90,000			90,000			90,000
i. OBRA-87 (Line Item)							296,516		762,470			1,058,986
13. Developmental Disabilities Advisory Council (15)			304,696			304,696			304,672			304,672
a. DDPAC Grant Increased Administration (Line Item)			9,977			9,977			10,004			10,004
b. DDPAC Grant Increased Benefits (Line Item)			32,500			32,500			32,500			32,500
14. Budget Reduction (Line Item)	*50,000*					*50,000*	*100,000*					*100,000*
Total	~~93,232,586~~	~~14,296,244~~	~~278,470,680~~	2		~~385,999,512~~	~~101,008,975~~	~~14,444,850~~	~~293,903,883~~	1		~~409,356,909~~
	97,432,602	14,161,188	280,214,872			391,808,664	99,646,029	14,497,079	289,062,850			403,205,959

The department is authorized to retain 7.5% of the federal community services block grant and pass through the remaining 92.5% to the human resource development councils (HRDC). If, during fiscal 1992 or fiscal 1993, the block grant falls below the federal fiscal year 1990 grant level, the department shall retain only 5% and pass through the remaining 95% to the HRDCs.

Item 1b is funding for rate increases to day-care providers. Beginning October 1, 1991, the department shall increase day-care provider rates up to 75% of the "local market rate" (the maximum allowed under federal regulations). If federal regulations permit the use of funds from the new "child care and development block grant" for these increases, the department shall decrease the general fund appropriations by the amount of block grant funds available.

Item 1e is additional funding to set AFDC and general assistance payment levels at 42% of the federal poverty index.

The department may, beginning October 1, 1991, pay AFDC recipients a transition-to-work allowance. The allowance may be used for travel and relocation expenses of the recipient and family to another county or state. AFDC recipients are eligible to receive this allowance under rules adopted by the department. The rules may establish limitations on the amount to be paid and require that the recipient have verification of employment, an employment interview, or acceptance into an approved educational or training program. Expenses for a transition-to-work allowance may be paid from the appropriation for AFDC benefits.

The department is authorized to use federal funds appropriated for the job opportunities and basic skills (JOBS) program to match general fund money available within the department and unemployment insurance administrative tax funds appropriated to the department of labor and industry for funding the Job Training Partnership Act (JTPA).

Fiscal 1992						Fiscal 1993					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The state share of the AFDC-related support collections and all AFDC and non-AFDC federal incentive payments must be deposited in a state special revenue account from which the state's share of the administrative and operational costs of the child support enforcement program must be paid. The legislature intends that, during the 1993 biennium, the department collect $1.25 for each $1 expended for administrative and operational costs from the account. Expenditures made from the account for state medicaid match or development of the SEARCHS computer project are not considered administrative or operational expenditures for purposes of this requirement. ~~Any cash fund balance in excess of $500,000 in the state special revenue account at the end of each fiscal year must be deposited in the state general fund.~~ *The department shall transfer to the general fund from the child support enforcement account all cash balance remaining at the end of fiscal 1992. Any cash balance in the account in excess of $500,000 at the end of fiscal 1993 must be deposited in the general fund.*

The department is authorized to transfer funds among appropriations for medicaid primary care, medicaid nursing care, medicare buy-in, state medical, and the home and community-based waiver program. Except as provided below, funds transferred to the medicaid waiver program may not be used to increase the number of recipients receiving waiver services but must be used solely for covering cost increases above the appropriated level.

The department may utilize funds appropriated for medicaid nursing care to increase the number of recipients in the home and community-based waiver program during the 1993 biennium under the following conditions:

(1) During the 1993 biennium, no more than 25 nursing residents who are appropriate for waiver services may be transferred from nursing facilities to the waiver program.

(2) Per diem waiver costs for residents moved from nursing facilities may not exceed the statewide average medicaid per diem cost of intermediate nursing care.

(3) The department shall keep records of each resident transferred under this provision and submit to the 53rd legislature a report on the number of residents transferred and any cost savings achieved as a result of the transfers.

The legislature intends that expenditures for all executive budget modifications for provider rate increases approved by the legislature be limited to dollar amounts appropriated rather than percentage increases on which the original estimates may have been based. The department will be in compliance with this provision if:

(1) it estimates total costs for each medicaid service category in June, prior to the beginning of each fiscal year of the 1993 biennium; and

(2) the percentage increases or base adjustments approved by the department are limited to the dollar amount appropriated for each budget modification.

The department may not expand or reduce the amount, scope, or duration of benefits provided to recipients under the medicaid primary care or nursing care programs during the 1993 biennium unless Title XIX of the federal Social Security Act is amended to require expansion or reduction of benefits as a condition of the state receiving federal financial participation. This provision may not be construed to prohibit the department from implementing coverage provided in 53-6-101(3)(l).

~~The appropriation in item 6q is contingent on passage and approval of House Bill No. 93.~~

The rate increases in items 6e and 6h are funded beginning October 1, 1991. ~~The rate increase in item 6j is funded beginning October 1, 1992.~~

Upon final determination of all general fund money in the department's unreconciled special revenue fund balance (in the approximate total amount of $2,530,153) and the deposit of these funds in the general fund, $438,795 in fiscal 1992 and $485,182 in fiscal 1993 are appropriated to fund the additional general fund costs of the TEAMS project in item 8b. Any funds remaining in the special revenue fund to which the state is entitled must be deposited in the general fund.

However, if a subsequent reconciliation concludes that funds transferred from the unreconciled account to the general fund belong to the federal government, the department may request a general fund supplemental appropriation to repay the federal funds.

~~House Bill No. 903 requires~~ *Chapter 707, Laws of 1991, required* the department to transfer all money in the federal special revenue account (number 03143) associated with the former department of community affairs grant closeouts reported in the April 1990 legislative audit report. If ~~House Bill No. 903 is passed and approved and~~ a subsequent reconciliation of this

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

account concludes that any of the funds transferred from the account to the general fund belong to the federal government, the department may request a general fund supplemental appropriation to repay the federal funds.

It is the intent of the legislature that annualized expenses for operation of SEARCHS not exceed $1,500,000. This amount includes expenses for any facilities management contracting that may be utilized for system operations, computer processing costs directly associated with operation of the system, and other personal services and nonpersonal services costs directly charged to the management and operation of the system. The department may not proceed with development of SEARCHS until it has demonstrated to the satisfaction of the governor's office of budget and program planning and to the legislative finance committee that the projected annualized operational costs of the system will not exceed the limit imposed in this statement of intent.

Item 9b is funding for a 4.5% rate increase each year of the 1993 biennium to providers of vocational rehabilitation services.

Item 11a is funding for a 4.5% rate increase each year of the 1993 biennium to providers of visual services.

The department is authorized to transfer funds between appropriations for the vocational rehabilitation and visual services programs.

Item 12a is funding for a 4.5% rate increase each year of the 1993 biennium to providers of developmental disabilities services.

The department may pursue funding under the federal ICF/MR program for additional intensive service slots funded by the 1991 legislature if the federal government fails to approve adequate medicaid waiver funding under the home and community-based waiver program.

DEPARTMENT OF FAMILY SERVICES (6911)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Management Support (01)												
	~~1,671,245~~	14,806	535,741			~~2,221,792~~	~~1,670,776~~	14,784	527,236			~~2,212,796~~
	1,616,806					2,167,353	1,591,661					2,133,681
a. Audit (Line Item)												
	62,036		38,982			101,018						
b. Management Information System (Line Item)												
	80,037		8,893			88,930						
c. Management Increases (Line Item)												
	109,849		81,583			191,432	102,829		75,227			178,056
d. Division Directors (Line Item)												
	40,082		7,073			47,155	37,789		6,669			44,458
2. Community Services (02)												
	~~19,705,863~~	2,607,131	~~12,097,033~~			~~34,410,027~~	~~20,227,881~~	2,614,818	~~12,170,127~~			~~35,020,026~~
	21,330,914		12,468,661			36,406,706	19,594,866		12,578,786			34,788,470
a. Child Care and Development Block Grant (Line Item)												
			2,373,287			2,373,287			2,641,716			2,641,716
b. Staff Increases (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	233,293		41,169			274,462	224,699		39,653			264,352
c. Montana Developmental Center Phases I and II SSI (Line Item)												
	27,072					27,072	27,072					27,072
d. Montana Developmental Center Phase IV Child Placement (Line Item)												
	42,435		107,565			150,000	84,300		215,700			300,000
e. Montana Developmental Center Phase IV Case Management (Line Item)												
	29,664		51,546			81,210	29,665		51,535			81,200
f. Montana Developmental Center Phase IV SSI (Line Item)												
	19,740					19,740	53,580					53,580
g. Youth Treatment Services (Line Item)												
	~~1,770,656~~					~~1,770,656~~	~~1,764,354~~					~~1,764,354~~
	1,170,737					1,170,737	1,599,095					1,599,095
h. Field Equipment (Line Item)												
	20,000					20,000	20,000					20,000
i. Native American Services (Line Item)												
	280,863		711,937			992,800	278,977		713,823			992,800
j. SB 37 — Aftercare Services (Line Item)												
	5,105					5,105	33,613					33,613
3. Mountain View (03)												
	1,964,695	3,134	103,807			2,071,636	1,981,694	3,135	103,877			2,088,706
a. Staff Increases (Line Item)												
	34,902					34,902	33,675					33,675
4. Pine Hills School (04)												
	3,205,244	314,045	303,489			3,822,778	3,220,172	320,180	303,344			3,843,696
a. Industries Program (Line Item)												
		6,000				6,000		6,000				6,000
b. Staff Increases (Line Item)												
	61,757					61,757	61,707					61,707
Total												
	~~29,364,530~~	2,945,116	~~16,462,105~~			~~48,771,759~~	~~29,852,703~~	2,958,917	~~16,856,907~~			~~49,668,607~~
	30,335,231		16,833,733			50,114,080	28,975,394		17,257,566			49,191,877

Item 1b is a biennial appropriation.

Fiscal 1992						Fiscal 1993					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

The department shall submit to the 53rd legislature a report detailing the numbers of developmentally disabled (DD) clients served by the department in fiscal 1992 and the actual fiscal 1992 general fund and federal fund expenditures for that service.

The department may provide DD targeted case management through increases in staff, or it may contract for the targeted case management services. The department may transfer the targeted case management program for the developmentally disabled to the department of social and rehabilitation services during the 1993 biennium.

Included in item 2 is a general fund appropriation of $38,708 in fiscal 1992 and $58,083 in fiscal 1993 for increases to day-care providers. Beginning October 1, 1991, the department shall increase day-care provider rates up to 75% of the "local market rate" (the maximum allowed under federal regulations). If federal regulations permit the use of funds from the new "child care and development block grant" for these increases, the department shall decrease the general fund appropriations by the amount of block grant funds available.

In item 2a, the department is appropriated federal funds of $2,373,287 in fiscal 1992 and $2,641,716 in fiscal 1993 for improving the availability and quality of day care. The department shall issue a report to the 53rd legislature detailing the numbers and types of services provided and the actual fiscal 1992 expenditures for those services.

In item 2g, at least $1.3 million for the biennium must be reserved for residential treatment services.

In item 2i, the department may use the funds to contract for direct services on reservations or pay for placement services.

The continuum of service plan is to be presented to the legislative finance committee during calendar 1991 for its review and comment. After review by the committee and consideration of recommendations and upon implementation of the plan, all funds are to be spent in accordance with the plan. The goal of the plan is to develop a comprehensive child welfare service system by July 1, 1993. The system must include but not be limited to family-based services, foster care, therapeutic foster care, group care, residential treatment, and psychiatric hospitalization for youth. Funds appropriated for the youth foster care program may not be transferred to the medicaid program administered by the department.

~~The personal services reduction may not be applied to social workers in the community services program of the department.~~

TOTAL SECTION B

~~126,965,896~~	~~32,873,438~~	~~364,312,590~~	4,743,415		~~528,895,339~~	~~135,191,678~~	~~27,878,735~~	~~381,337,352~~	4,572,240		~~548,980,005~~
131,817,569	32,875,377	366,428,410			535,864,771	132,519,940	28,095,291	376,896,978			542,084,449

C. NATURAL RESOURCES

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
PUBLIC SERVICE REGULATION (4201)												
1. Public Service Regulation Program (01)	1,791,853		25,137	19,397		1,836,387	1,806,581		25,113	19,380		1,851,074
a. Audit (Line Item)	15,784					15,784						
b. Consultants (Line Item)	50,000					50,000						
c. Travel and Registration (Line Item)	25,000					25,000						
d. Exempt Positions Salaries (Line Item)	14,400					14,400	14,400					14,400
e. Public Service Commission Relocation — SB 164 (Line Item)	176,310					176,310	108,120					108,120
f. Regulation of Log Hauling — HB 192 (Line Item)	23,639					23,639	20,027					20,027
Total	2,096,986		25,137	19,397		2,141,520	1,949,128		25,113	19,380		1,993,621

Items 1b and 1c are biennial appropriations.

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)												
1. Management Services Division (01)		1,184,123	471,048	1,845,483		3,500,654		1,231,525	469,542	1,839,404		3,540,471
a. Audit (Line Item)		53,666				53,666						
b. Legislative Contract Authority (Line Item)			65,000			65,000			65,000			65,000
c. Fiscal Management Position (Line Item)		33,801				33,801		32,425				32,425
d. Vehicle Account (Line Item)				163,000		163,000				169,000		169,000
2. Field Services Division (02)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		2,139,230	451,282	106,137		2,696,649		2,158,078	457,296	101,115		2,716,489
a. Block Management (Line Item)		170,581				170,581		170,469				170,469
b. Fishing and Motorboat Access (Line Item)		9,880	29,642			39,522		9,863	29,591			39,454
c. Microcomputer Support (Line Item)		30,731				30,731		30,665				30,665
d. Block Management — Executive Planning Process (Line Item)		234,494				234,494		234,496				234,496
e. Game Damage (Line Item)		50,000				50,000		75,000				75,000
f. Sporting Information (Line Item)		17,000				17,000		17,000				17,000
g. License Agent Commissions (Line Item)		10,300				10,300		97,300				97,300
h. Development and Maintenance of Department Property (Line Item)		60,000				60,000		60,000				60,000
i. Computerize Land Records (Line Item)		35,000				35,000		35,000				35,000
j. Cherry Creek Reservoir (Line Item)		100,000	50,000			150,000						
k. License Drawings — HB 91 (Line Item)		9,864				9,864		7,297				7,297
3. Fisheries Division (03)		2,507,264	2,162,190		18,600	4,688,054		2,367,417	2,130,525			4,497,942
a. Water Leasing Study (Line Item)			60,000			60,000						
b. Legislative Contract Authority (Line Item)			1,245,000			1,245,000			1,505,000			1,505,000
c. Missouri Basin Reservations (Line Item)		41,706	125,120			166,826						
d. Streambank Projects (Line Item)		10,000	31,000			41,000		10,000	31,000			41,000
e. USFS Fisheries Data Project (Line Item)												

		Fiscal 1992						Fiscal 1993				
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		13,958	41,873			55,831		14,233	42,700			56,933
f. Evaluate Fish Population (Line Item)		27,060	81,180			108,240		27,051	81,152			108,203
g. Fishing and Motorboat Access (Line Item)		8,006	24,017			32,023		8,089	24,264			32,353
h. Flathead Lake Fishery (Line Item)		5,785	17,354			23,139		5,971	17,911			23,882
i. Clark Fork River Investigation (Line Item)		12,318	36,953			49,271		12,317	36,952			49,269
j. Fish Hatchery Operations (Line Item)		13,750	41,250			55,000		13,750	41,250			55,000
k. Evaluation of Fish Introductions — HB 576 (Line Item)		18,750	56,250			75,000						
l. Paddlefish Roe — HB 115 (Line Item)		26,000				26,000		26,000				26,000
m. Water Measuring Devices — HB 908 (Line Item)		7,250				7,250		21,750				21,750
4. Law Enforcement Division (04)		3,958,760	190,882			4,149,642		3,991,839	190,713			4,182,552
a. Legislative Contract Authority (Line Item)			40,000			40,000			40,000			40,000
b. Special Investigations (Line Item)		110,580				110,580		110,547				110,547
c. Enforcement Relocation (Line Item)		27,000				27,000		27,000				27,000
5. Wildlife Division (05)		2,500,661	2,288,629			4,789,290		2,519,720	2,306,357			4,826,077
a. Upland Game Birds (Line Item)		1,853,386				1,853,386						
b. Legislative Contract Authority (Line Item)			1,404,500			1,404,500			1,331,500			1,331,500
c. Sun River Game Management Area (Line Item)		35,000				35,000						
d. Habitat/Timber Sales Plans (Line Item)												

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Proprietary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Proprietary	Fiscal 1993 Other	Fiscal 1993 Total
		16,250				16,250		16,250				16,250
e. Canyon Ferry Wildlife Management Area (Line Item)												
		7,404				7,404		7,398				7,396
f. Helicopter Rental (Line Item)												
		45,300	45,300			90,600		45,300	45,300			90,600
g. Upland Game Bird Increase (Line Item)												
		125,000				125,000						
h. Development and Maintenance of Real Property — SB 252 (Line Item)												
		532,026				532,026						
6. Parks Division (06)												
	~~54,695~~	3,378,402	289,215	256,913		~~3,979,229~~	~~54,700~~	3,405,876	289,122	271,732		~~4,021,430~~
	50,323					3,974,853	50,324					4,017,054
a. Land and Water Conservation Fund (Line Item)												
			700,000			700,000						
b. Legislative Contract Authority (Line Item)												
			25,000			25,000			25,000			25,000
c. Park Futures Committee (Line Item)												
	~~360,356~~					~~360,356~~	~~360,364~~					~~360,364~~
	338,273					338,273	337,903					337,903
d. Fishing Access Maintenance (Line Item)												
		49,549				49,549		49,550				49,550
e. Capitol Grounds Maintenance (Line Item)												
				27,265		27,265				27,258		27,258
f. Off-Highway Vehicles — HB 909 (Line Item)												
		98,580				98,580		98,580				98,580
7. Conservation Education Division (08)												
		1,237,193	149,842			1,387,035		1,241,942	156,244			1,398,186
a. Shooting Ranges (Line Item)												
		150,049				150,049						
b. Legislative Contract Authority (Line Item)												
			30,000			30,000			30,000			30,000
c. Watchable Wildlife (Line Item)												
		29,333				29,333		29,334				29,334
d. Aquatic Education (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		2,748	8,244			10,992		2,748	8,244			10,992
e. Update Hunter Education (Line Item)		6,250	18,750			25,000		6,250	18,750			25,000
f. Off-Highway Vehicles — HB 309 (Line Item)		10,900				10,900		10,900				10,900
8. Administration (09)		1,608,450	552,491			2,160,941		1,597,938	550,990			2,148,928
a. Legislative Contract Authority (Line Item)			100,000			100,000			100,000			100,000
b. Legal Services — Executive Planning Process (Line Item)		33,798				33,798		33,801				33,801
c. Tribal Relations (Line Item)		40,000				40,000		40,000				40,000
d. Interagency Support (Line Item)		25,000				25,000		25,000				25,000
e. Geographic Information System (Line Item)		50,000				50,000		40,000				40,000
f. Regional Offices Support (Line Item)		75,000				75,000		75,000				75,000
g. Sikes Act (Line Item)		150,000	20,000			170,000						
h. Predator Control (Line Item)		20,000				20,000		20,000				20,000
i. Legal Services (Line Item)		12,300				12,300		12,300				12,300
Total	~~423,055~~	23,019,436	10,852,012	2,398,798	18,600	~~36,711,901~~	~~423,064~~	20,072,969	10,024,403	2,408,509		~~32,928,945~~
	388,596					36,677,442	388,227					32,894,108

Items 2j, 3a, 3c, 3k, 5a, 5c, 5g, 5h, 6a, 7a, and 8g are biennial appropriations.

If the department receives private funds, it may increase its state special revenue appropriation and decrease its federal revenue appropriation by like amounts.

The appropriation for the legislative contract authority in items 1b, 3b, 4a, 5b, 6b, 7b, and 8a is subject to the following provisions:

		Fiscal 1992						Fiscal 1993			
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(3) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects, with the related amount of expenditures for each project.

The department shall conduct a study of the options and methods available for allocating administrative costs to the various state special revenue funds managed by the agency. The department shall present the findings of its study to the legislative finance committee by July 1, 1992, along with its recommendation, affected accounts, and any required statute changes.

Item 2f contains $17,000 a year to develop informational displays for use by license agents, and item 2g contains $10,300 in fiscal 1992 and $97,300 in fiscal 1993 for increases in license agents' commissions. ~~The expenditures of these appropriations are contingent on the enactment of Senate Bill No. 171. Senate Bill No. 171 increases~~ *Chapter 592, Laws of 1991, increased* certain fishing and hunting license fees.

Item 2h contains $60,000 a year from the general license account for development and maintenance of wildlife management areas, waterfowl projects, parks, and fishing access sites. This appropriation is reduced by the amount of funds ~~Senate Bill No. 252, if enacted, provides~~ *Chapter 319, Laws of 1991, provided* the general license account for the management of wildlife management areas. ~~Senate Bill No. 252 revises~~ *Chapter 319, Laws of 1991, revised* allocation of funds for development and maintenance of wildlife habitat.

Item 3 contains $18,600 in fiscal 1992 to contract with the U.S. fish and wildlife service to raise Kokanee salmon fingerlings at the Creston national fish hatchery. If a second raceway shelter at the Creston national fish hatchery is not purchased, this appropriation is reduced by $8,220.

Item 3i contains $50,042 in fiscal 1992 and $50,040 in fiscal 1993, appropriated for aquatic resource data collection on the Upper Clark Fork River in connection with the state's resource damage assessment suit against ARCO. The department shall present to the 53rd legislature the results of this project. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base. In the litigation, the state shall seek reimbursement for all expenses incurred by the department associated with the assessment and litigation. Reimbursement must include interest on the amount commensurate with rates earned in the short-term investment pool.

Item 4c contains $27,000 a year for employee relocation expenses. The department shall present the 53rd legislature with a report on historical expenditures for employee relocation. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 6 contains $246,266 from federal funds and $55,000 from the general fund in fiscal 1992 and $246,173 from federal funds and $55,000 from the general fund in fiscal 1993 for the Montana conservation corps. It is the intent of the legislature that the department provide a liaison position to coordinate this program with the human resource development council.

Item 8 contains $5,500 in fiscal 1992 to print the department's 5-year strategic plan. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 8e contains $50,000 in fiscal 1992 and $40,000 in fiscal 1993 for a pilot project to evaluate potential uses of a geographic information system within the department. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Fish, wildlife, and parks commission commissioners cannot be flown to or from fish, wildlife, and parks commission meetings in state-owned aircraft unless documented cost savings over other transportation options can be achieved.

DEPARTMENT OF STATE LANDS (5501)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Central Management Program (01)	~~1,435,054~~ 1,374,154	97,627	112,654	188,024		~~1,834,159~~ 1,772,459	~~1,436,785~~ 1,379,585	95,037	112,596	185,611		~~1,830,029~~ 1,772,829
a. Audit (Line Item)	41,038					41,038						
b. Trust Land Access (Line Item)	~~300,000~~ 250,000					~~300,000~~ 250,000						
c. Helena Office Support Staff (Line Item)	16,451	31,796				48,247	16,350	31,796				48,146
d. Royalty Auditor Travel Expense (Line Item)		10,469				10,469		10,469				10,469
e. Revised Lease for Office Space (Line Item)	82,992					82,992	82,992					82,992
2. Reclamation Program (03)	~~299,465~~ 274,691	626,141	8,589,719			~~9,515,325~~ 9,490,551	~~296,430~~ 270,767	630,754	8,589,223			~~9,516,407~~ 9,490,744
a. Opencut Bond Forfeiture (Line Item)		100,000				100,000						
b. Hard-Rock Reclamation (Line Item)		100,000				100,000						
c. Hard-Rock Bond Forfeiture (Line Item)		100,000				100,000						
d. Environmental Analysis (Line Item)		3,000,000				3,000,000						
e. Coal Bureau Workload (Line Item)		47,176	97,199			144,375		51,039	104,628			155,667
f. Abandoned Mine Rent (Line Item)			17,784			17,784			17,784			17,784
g. Hard-Rock Workload (Line Item)		123,609				123,609		116,747				116,747
h. Coal and Uranium Rent (Line Item)		5,335	12,449			17,784		5,335	12,449			17,784
i. Hard-Rock Increase (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		100,000				100,000		100,000				100,000
j. Environmental Compliance (Line Item)												
		129,289				129,289		106,190				106,190
k. SB 253 — Opencut Reclamation (Line Item)												
		15,500				15,500		15,500				15,500
3. Land Administration Program (04)												
	~~703,122~~	255,640				~~950,762~~	~~702,276~~	255,819				~~950,095~~
	661,122					916,762	687,276					943,095
a. Trust Land Management (Line Item)												
	90,629					90,629	115,923					115,923
b. Cabinsite Sales (Line Item)												
		70,000				70,000						
4. Forestry (25)												
	~~5,712,977~~	2,963,314	385,005			~~9,061,296~~	~~5,708,002~~	2,962,595	385,266			~~9,056,743~~
	5,396,740					8,745,059	5,406,382					8,754,243
a. Federal Fire Reimbursement (Line Item)												
			~~100,000~~			~~100,000~~			~~100,000~~			~~100,000~~
			44,000			44,000			44,000			44,000
b. State/County Cooperative Fire (Line Item)												
	43,040	21,517				64,557	42,670	21,333				64,003
c. Slash Increase (Line Item)												
		31,384				31,384		31,385				31,385
d. Urban Forestry Assistance (Line Item)												
			156,759			156,759			156,764			156,764
e. Forest Resource Management Program (Line Item)												
			336,974			336,974			259,465			259,465
f. Best Management Practices Audit (Line Item)												
	10,000					10,000						
g. Block 5 and Philipsburg Fire (Line Item)												
	67,425	33,712				101,137	68,458	34,228				102,686
h. Best Management Practices Work (Line Item)												
	23,435					23,435	23,437					23,437
i. Forestry Capital Equipment (Line Item)												
	100,383	42,117				142,500	100,383	42,117				142,500

	Fiscal 1992					Fiscal 1993					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
j. HB 731 — Streamside Management Zones (Line Item)											
52,463					52,463	37,018					37,018
k. Fire Supplemental (Line Item)											
5,573,650					5,573,650						
Total											
~~8,979,274~~	7,904,626	~~9,808,543~~	188,024		~~26,880,467~~	~~8,631,604~~	4,510,344	~~9,738,175~~	185,611		~~23,065,734~~
14,058,213		*9,752,543*			*31,903,406*	*8,231,241*		*9,682,175*			*22,609,371*

The ~~$300,000~~ *$250,000* general fund appropriation in item 1b is to be used for an economic study (~~$250,000~~) *($200,000)* of the surface uses of state lands, with emphasis on recreation uses, and for startup costs ($50,000) of the recreational access program mandated in ~~House Bill No. 778~~ *Chapter 609, Laws of 1991.* The study of recreational uses must be performed by an economist with experience in analysis of the economic value of recreation.

Items 2a through 2d, 3b, and 4f are biennial appropriations.

The department shall conduct a study of the options and methods available for allocating administrative costs to the various state special revenue funds managed by the agency. The department shall present the findings of its study to the legislative finance committee by July 1, 1992, along with its recommendation, affected accounts, and any required statute changes.

Item 2i contains $100,000 a year for the hard-rock increase modification. ~~This appropriation is contingent on enactment of House Bill No. 448.~~

The legislature recommends that the board of land commissioners amend its cabinsite rules to require lessees who apply for sale of their cabinsites to reimburse the department for all expenses it incurs in processing the sale applications.

Item 2k grants spending authority to implement ~~Senate Bill No. 253 and is contingent on passage and approval of Senate Bill No. 253~~ *Chapter 431, Laws of 1991.*

Item 4 contains $24,400 a year from the general fund to provide training and materials on best management practices to loggers and forest landowners. If federal funds are received for this purpose, the general fund appropriation must be reduced by a like amount.

Item 4d contains $173,100 a year of federal funds for the urban forestry assistance program. The department shall emphasize replacing dead, diseased, and infected trees in Montana communities. Replacement trees that are adapted to and will survive in Montana must be used.

Item 4f contains $10,000 in fiscal 1992 as a biennial appropriation to coordinate and conduct, in consultation with the environmental quality council, audits of the application and effectiveness of voluntary best management practices for timber sales.

~~Item 4j is contingent on passage and approval of House Bill No. 731.~~

Federal fire reimbursement funds are those funds received for expenses incurred from loaning department personnel to federal agencies to assist in fire suppression activities. Only those federal funds received as reimbursement of expenses credited against the department's state forestry operational budget are considered federal fire reimbursement funds. All other federal funds received must be deposited into the general fund. The department shall report federal fire reimbursement expenditures on state accounting records, and the records must be separate from current level operations.

DEPARTMENT OF LIVESTOCK (5603)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Centralized Services Program (01)												
	~~82,794~~	352,967	~~18,170~~			453,931	~~82,714~~	352,623	~~18,135~~			453,472
	62,794		*38,170*				*62,714*		*38,135*			
a. Audit (Line Item)												
	3,899	16,620				20,519						
2. Diagnostic Laboratory Program (03)												
	~~314,947~~	~~453,215~~				768,162	314,978	453,263				768,241
	269,947	*498,215*										
3. Disease Control Program (04)												
		482,783				482,783		483,794				483,794
4. Milk and Egg Program (05)												
	150,313		30,707			181,020	149,680		31,268			180,948
5. Inspection and Control Program (06)												
		2,095,424				2,095,424		1,981,982				1,981,982
a. Livestock Workload Increase (Line Item)												
		53,861				53,861		53,794				53,794
6. Predator Control Program (08)												
		374,162				374,162		272,266				272,266
a. Section 8 (Line Item)												
		20,000				20,000		20,000				20,000
7. Rabies Control (09)												
		15,000				15,000		15,000				15,000
8. Meat and Poultry Inspection Program (10)												
	225,720		225,721			451,441	225,510		225,510			451,020
Total												
	~~777,673~~	~~3,864,032~~	~~274,598~~			4,916,303	~~772,882~~	3,632,722	~~274,913~~			4,680,517
	712,673	*3,909,032*	*294,598*				*752,882*		*294,913*			
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)												
1. Centralized Services (21)												
	~~1,236,640~~	390,391	4,391			~~1,631,422~~	~~1,240,145~~	390,121	4,364			~~1,634,630~~
	1,192,924					*1,587,706*	*1,218,000*					*1,612,485*

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
a. Audit (Line Item)												
	42,617					42,617						
b. State of Montana, et al. v. United States Army Corps of Engineers, et al. (Line Item)												
	25,000					25,000						
2. Oil and Gas Regulation (22)												
		1,151,230				1,151,230		1,136,578				1,136,578
a. Oil and Gas Environmental Impact Statement — Montana Environmental Policy Act Compliance (Line Item)												
		50,000				50,000		50,000				50,000
3. Conservation and Resource Development Division (23)												
	~~75,935~~	~~985,671~~	54,765			~~1,116,371~~	~~76,343~~	~~987,190~~	54,782			~~1,118,315~~
	299	*1,052,194*				*1,107,258*	*2,079*	*1,053,717*				*1,110,578*
a. Statewide Resource Conservation and Development Coordinator (Line Item)												
	14,470		14,471			28,941	14,438		14,438			28,876
b. Statewide Resource Conservation and Development Operating Expenses (Line Item)												
	19,887		19,887			39,774						
~~c. HB 795 — Montana Community Infrastructure Program (Line Item)~~												
	~~20,000~~					~~20,000~~	~~20,000~~					~~20,000~~
~~d~~ c. HB 701 — Implementation of Clean Coal Technology Project (Line Item)												
		20,000				20,000						
~~e~~ *d.* Pay Exceptions (Line Item)												
		8,361				8,361		8,106				8,106
4. Water Resources and Planning (24)												
	~~2,555,644~~	~~2,011,436~~	~~51,316~~			~~4,618,396~~	~~2,548,521~~	~~2,011,112~~	51,022			~~4,610,655~~
	2,214,949	*2,228,436*	*81,316*			*4,524,701*	*2,339,042*	*2,091,112*				*4,481,176*
a. Broadwater Equipment (Line Item)												
		336,000				336,000						
b. Rehabilitation of State-Owned Water Projects (Line Item)												
		~~991,000~~				~~991,000~~						
		891,000				*891,000*						
c. Poplar River Monitoring (Line Item)												
		33,050				33,050		33,750				33,750
d. Middle Creek Dam (Line Item)												
			3,896,925			3,896,925						
e. Smith River (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
			1,600,000			1,600,000						
f. Tongue River (Line Item)		400,000	1,600,000			2,000,000						
g. Missouri Basin Reservation (Line Item)		82,505				[illegible],505		82,317				82,317
h. Missouri River Operating Expenses (Line Item)		~~375,743~~				~~375,743~~						
		288,743				*288,743*						
i. Hydrologist Pay Exceptions (Line Item)		71,113				71,113		71,113				71,113
j. Pay Exceptions (Line Item)	27,374	90,736				118,110	27,374	90,736				118,110
k. *Treasure State Endowment — HB 19*							*20,000*					*20,000*
5. Reserved Water Rights Compact Commission (25)	~~150,717~~	283,447				~~434,164~~	150,119	282,652				432,771
	123,948					*407,395*						
a. Pay Exceptions (Line Item)	3,948	7,331				11,279	3,936	7,311				11,247
b. Hydrologist Pay Exceptions (Line Item)		11,440				11,440		11,410				11,410
6. Energy Planning (26)	~~406,387~~	~~1,240,725~~	1,093,701			~~2,820,813~~	~~400,280~~	~~1,240,920~~	1,095,275			~~2,832,475~~
	444,452	*1,268,725*				*2,806,878*	*444,825*	*1,288,920*				*2,829,020*
a. Rock Creek Mitigation (Line Item)		400,000				400,000						
b. Lake Broadview (Line Item)		30,000				30,000						
c. Energy Conservation (Line Item)			107,000			107,000			334,500			334,500
d. Pay Exceptions (Line Item)	10,349	1,150				11,499	10,042	1,117				11,159

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total												
	~~4,648,968~~	~~8,979,329~~	~~8,442,456~~			~~22,070,753~~	~~4,559,198~~	~~6,412,433~~	1,554,381			~~12,526,012~~
	4,120,217	9,095,852	8,472,456			21,688,525	4,229,855	6,598,960				12,383,196

Items 1b, 3b, ~~3d~~ *3c*, 4a, 4b, 4d through 4f, 4h, 6a, and 6b are biennial appropriations.

All indirect charges collected on oil overcharge funds are appropriated for transfer to the general fund.

Included in centralized services funding is $10,000 a year of indirect funds from major facility siting fees. If major facility siting activities generate more than $20,000 of indirect funds over the biennium, the additional major facility siting fee indirect funds must be used to fund centralized service operations and an equal amount of centralized service division general fund money must be reverted.

The board of oil and gas conservation is appropriated $110,000 a year from federal special revenue, contingent upon receiving federal funds from the environmental protection agency for the underground injection control program.

The department is authorized up to $700,000 from the account established in 76-14-112 for rangeland loans during the 1993 biennium.

The department is appropriated up to $1 million over the biennium from the account established in 85-1-604 for purchase of prior liens on property held as loan security as required by 85-1-618.

All funds deposited into the state special revenue account established in 76-15-530 are appropriated to the department for distribution as grants to conservation districts.

The general fund appropriation in items 3a and 3b may be expended only as a match for an equal amount of federal funds.

~~Item 3c is contingent on passage and approval of House Bill No. 795.~~

~~Item 3d is contingent on passage and approval of House Bill No. 701.~~

Funds appropriated in item 4a must be used to repair and replace equipment at the Broadwater hydropower project and to service the Broadwater hydropower project bond debt if revenue deposited in the debt service account is insufficient for this purpose.

Item 4k is to implement House Bill No. 19 and is contingent on passage of House Bill No. 19 and on electoral approval.

Funds received under the provisions of 85-1-514(4) are appropriated to the department for the purpose of performing duties required under 85-1-514.

Any revenue collected in the state water project hydroelectric power generation special revenue account established in ~~House Bill No. 588~~ *Chapter 370, Laws of 1991*, is appropriated to the department for the rehabilitation of the Tongue River dam. The revenue will be used only if federal authorization for the project rehabilitation is secured.

Any fines collected under the provisions of Title 85, chapter 2, and deposited in the water right appropriation account in accordance with 85-2-318 are appropriated to the department to carry out the enforcement functions required under 85-2-114.

Funds received from bonds required by 37-43-306 are appropriated to the department for the purpose of performing remedial action on water wells, providing compensation for damages caused by water well violations, or paying administrative costs incurred by the board of water well contractors.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

In spending eligible federal energy funds appropriated in item 6, the department shall give priority to developing a self-sustaining program for retrofitting school buildings with energy conservation measures that is similar to the state building energy conservation program established by Title 90, chapter 4, part 6, for state buildings. The department shall submit to the 53rd legislature proposed legislation necessary to implement the school building energy conservation program.

The department is appropriated up to $700,000 from the Rock Creek mitigation special account in addition to the $400,000 appropriated in item 6a. The total appropriation for item 6a may not exceed $1,100,000 over the biennium.

The department may not reduce general fund appropriations for the statewide resource conservation and development coordinator or the statewide resource conservation and development operating expenses as shown in items 3a and 3b.

DEPARTMENT OF AGRICULTURE (6201)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Centralized Services Division (15)												
	175,911	188,091	24,504		33,509	422,015	177,241	188,060	24,448		33,443	423,192
a. Audit (Line Item)												
	26,733					26,733						
2. State Grain Laboratory (25)												
		458,676				458,676		460,209				460,209
a. Grain Laboratory Increase (Line Item)												
		61,804				61,804		41,772				41,772
3. Environmental Management Division (30)												
	~~304,796~~	1,863,365	257,774			~~2,425,935~~	~~181,644~~	1,986,743	257,776			~~2,426,163~~
	224,622					*2,345,761*	*111,959*					*2,356,478*
a. Pesticide Program Workload (Line Item)												
		57,086				57,086		58,962				58,962
b. Ground Water Program Workload (Line Item)												
		224,295	68,515			292,810		220,278	68,437			288,715
4. Plant Industry Division (40)												
	448,926	143,851	9,144	11,198		613,119	443,564	146,063	9,189	11,251		610,067
5. Agricultural Development (50)												
	~~235,430~~	1,751,048	82,696		251,536	~~2,320,710~~	~~230,803~~	1,755,791	83,491		252,580	~~2,322,665~~
	215,674					*2,300,954*	*210,854*					*2,302,716*
Total												
	~~1,191,796~~	4,748,216	442,633	11,198	285,045	~~6,678,888~~	~~1,033,252~~	4,857,878	443,341	11,251	286,023	~~6,631,745~~
	1,091,866					*6,578,958*	*943,618*					*6,542,111*

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

~~If House Bill No. 964 is not passed and approved, the general fund appropriation in item 3 is increased by $388,254 in fiscal 1992 and state special revenue is decreased by $388,254 in fiscal 1992, and general fund is increased by $515,919 in fiscal 1993 and state special revenue is decreased by $515,919 in fiscal 1993.~~

Item 3a contains $58,361 in fiscal 1992 and $60,281 in fiscal 1993 for an increase in the pesticide program. Item 3b contains $294,883 in fiscal 1992 and $291,090 in fiscal 1993 for an increase in the ground water program. ~~These appropriations are contingent on enactment of House Bill No. 964.~~

The department is authorized to make grants to state agencies from the growth through agriculture account, as approved by the Montana agriculture development council in accordance with Title 90, chapter 9. The state agency that receives a grant from the Montana agriculture development council is authorized additional appropriation authority equal to the grant amount.

The department shall report to the legislative finance committee during fiscal 1992 on the feasibility of the department selling its portfolio of rural assistance program loans to the board of investments, thus enabling it to increase its loan capability.

DEPARTMENT OF COMMERCE (6501)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Public Safety Division (01)		70,842		65,338		136,180		70,841		65,250		136,091
a. Audit (Line Item)				464		464						
2. Weights and Measures Bureau (02)	~~431,469~~					~~431,469~~	~~408,977~~					~~408,977~~
	427,469					427,469	406,477					406,477
a. Audit (Line Item)	1,394					1,394						
b. Equipment Replacement (Line Item)	59,386					59,386	~~24,353~~					~~24,353~~
							15,000					15,000
3. Financial Division (36)		821,173				821,173		821,241				821,241
a. Audit (Line Item)		2,434				2,434						
b. Bank Analysis Computers (Line Item)		27,773				27,773		4,450				4,450
4. Milk Control Bureau (37)		283,503				283,503		284,272				284,272
a. Audit (Line Item)		835				835						
5. Professional and Occupational Licensing Bureau (39)												

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
		2,047,292		859,146		2,905,438		2,028,181		858,739		2,886,920
a. Audit (Line Item)				7,703		7,703						
b. Impairment Program — Dentists (Line Item)		25,000				25,000		25,000				25,000
c. Miscellaneous Legislation (Line Item)		191,641		73,818		265,459		160,482		62,845		223,327
6. Aeronautics Division (40)		599,341	73,599	63,713		736,653		600,391	73,592	63,653		737,636
a. Audit (Line Item)		1,912		144		2,056						
b. West Yellowstone Airport (Line Item)				17,000		17,000						
7. Transportation Division (50)	~~404,058~~ 370,761	62,102	879,734			~~1,345,894~~ 1,312,597	~~372,427~~ 341,074	71,250	850,835			~~1,294,512~~ 1,263,159
a. Audit (Line Item)	1,466		978			2,444						
b. McCarty Farms (Line Item)	~~100,000~~ 165,483					~~100,000~~ 165,483						
c. Local Rail Assistance Grant (Line Item)			500,000			500,000						
d. Construction Loan Fund (Line Item)		1,800,000				1,800,000						
8. Business Development Division (51)	~~761,908~~ 727,808	347,062	2,192,329			~~3,301,299~~ 3,267,199	~~763,281~~ 708,868	347,065	2,192,326			~~3,302,672~~ 3,248,259
a. Audit (Line Item)	2,633		1,316			3,949						
b. Business Development Division (Line Item)		35,000				35,000		35,000				35,000
c. Defense Logistics Agency Contract (Line Item)		48,839	110,760			159,599		48,841	110,768			159,609

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
d. EDA/CDBG Revolving Fund (Line Item)			168,922			168,922			169,926			169,926
e. Canadian Trade Office (Line Item)	14,816	55,000				69,816	14,741	55,000				69,741
f. International Affairs Coordinator (Line Item)	~~30,959~~	~~14,581~~				53,540	~~30,962~~	~~14,582~~				53,544
	0	*53,540*					*0*	*53,544*				
g. Small Business Development Centers Expansion (Line Item)			75,000			75,000			100,000			100,000
h. General Revision of Montana Capital Company Act — HB 901 (Line Item)		42,385				42,385		39,385				39,385
9. Montana Promotion Division (52)		4,752,177				4,752,177		4,757,953				4,757,953
a. Audit (Line Item)		11,283				11,283						
b. Montana Promotional Division (Line Item)		1,034,028				1,034,028		1,352,234				1,352,234
10. Community Development Bureau (60)	220,058	~~2,795,493~~	20,099,524			~~23,115,075~~	219,837	~~2,796,279~~	20,110,416			~~23,126,532~~
		2,295,493				*22,615,075*		*1,160,916*				*21,491,169*
a. Audit (Line Item)	1,881	2,794	12,748			17,423						
b. Section 8 Grant Increase (Line Item)			1,000,390			1,000,390			1,000,390			1,000,390
c. *Treasure State Endowment — HB 19*							*35,000*					*35,000*
11. Office of Research and Information Services (61)	296,192					296,192	~~294,276~~					~~294,276~~
							282,276					*282,276*
a. Audit (Line Item)	874					874						
b. Automation of Census (Line Item)	~~63,061~~					~~63,061~~	~~52,266~~					~~52,266~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	58,061					58,061	37,266					37,266
12. Local Government Services — Audit (62)	~~89,770~~			1,101,410		~~1,191,180~~	~~89,737~~			1,101,007		~~1,190,744~~
	86,770					1,188,180	86,737					1,187,744
a. Audit (Line Item)				3,244		3,244						
b. Local Government Services Peer Review (Line Item)				10,000		10,000						
c. Single Audit Act — HB 328 (Line Item)				143,137		143,137				144,859		144,859
13. Local Government Services — Systems (63)	~~52,741~~			186,588		~~239,329~~	~~52,605~~			186,329		~~238,934~~
	49,741					236,329	49,605					235,934
a. Audit (Line Item)				818		818						
14. Local Government Assistance — Administration (64)				115,466		115,466				115,810		115,810
a. Audit (Line Item)				302		302						
15. Building Codes Bureau (65)	30,058	1,220,487				1,250,545	30,016	1,220,959				1,250,975
a. Audit (Line Item)	125	3,625				3,750						
b. Vehicle Replacement (Line Item)		191,424				191,424						
16. Indian Affairs Coordinator (70)	~~100,398~~					~~100,398~~	~~100,457~~					~~100,457~~
	96,398					98,398	98,457					98,457
a. Audit (Line Item)	278					278						
b. EEO Grant — Indian Affairs (Line Item)			97,536			97,536			96,992			96,992
17. Health Facilities Authority (71)				116,141		116,141				116,093		116,093

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
a. Audit (Line Item)				6,100		6,100						
18. Montana Science and Technology Alliance (73)	~~476,350~~					~~476,350~~	~~484,420~~					~~484,420~~
	398,556					398,556	409,420					409,420
a. Audit (Line Item)	10,658					10,658						
b. R & D Loans — SB 242 (Line Item)	50,000					50,000	50,000					50,000
19. Board of Housing (74)				1,972,226		1,972,226				1,965,745		1,965,745
a. Audit (Line Item)				57,095		57,095						
20. Investments Division (75)				1,544,640		1,544,640				1,544,164		1,544,164
a. Audit (Line Item)				104,059		104,059						
b. Additional FTE BOI/HFA Bond (Line Item)				21,658		21,658				21,609		21,609
c. Investment Portfolio Managers (Line Item)				46,179		46,179				92,367		92,367
21. Montana State Lottery (77)				3,004,658		3,004,658				3,007,793		3,007,793
a. Audit (Line Item)				132,861		132,861						
b. Montana Lottery (Line Item)				3,466,783		3,466,783				3,275,782		3,275,782
c. Lottery Vehicles (Line Item)										55,500		55,500
22. Board of Horseracing (78)		302,171				302,171		302,820				302,820
a. Audit (Line Item)		944				944						
23. Director/Management Services (81)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	103,705			749,470		853,175	103,820			748,881		852,701
a. Audit (Line Item)												
	299			78,920		79,219						
24. Budget Reduction												
	16,333					*16,333*	*54,667*					*54,667*
Total												
	~~3,392,537~~	~~16,791,141~~	25,212,836	13,949,081		~~59,345,595~~	~~3,100,175~~	~~15,036,226~~	24,705,245	13,426,426		~~56,260,072~~
	3,160,537	*16,330,100*				*58,652,554*	*2,833,927*	*13,439,825*				*54,405,423*

Item 5 contains $3,000 in fiscal 1992 and $2,000 in fiscal 1993 for the board of dentistry to implement mandatory continuing professional education requirements for dentists and dental hygienists.

Item 6 contains $33,176 in fiscal 1992 and $33,226 in fiscal 1993. These amounts are not to be used for moving costs associated with the department of transportation ~~if Senate Bill No. 164 is enacted~~.

~~If Senate Bill No. 164 is enacted, item~~ *Item* 7 contains $31,081 from the general fund and $20,721 from federal funds in fiscal 1992 for moving costs associated with the department of transportation.

Item 7b is for litigation costs associated with the McCarty Farms case. The department shall seek to recover all general fund expenditures plus interest at a rate of 10% from any settlement in this case.

Items 7b through 7d are biennial appropriations.

Item 8c contains ~~$114,000~~ *$110,760* a year of federal funds to provide assistance for small businesses in contracting with the federal government. General fund money may not be used in place of these federal funds.

The department is authorized to seek and expend private or other funds to replace $77,921 of state special revenue included in item 8f. If the department is successful in securing private or other funds, the accommodations tax state special revenue account appropriation is reduced by $38,959 in fiscal 1992 and $38,962 in fiscal 1993.

~~Item 8h is contingent on passage and approval of House Bill No. 901.~~

Item 10c is to implement House Bill No. 19 and is contingent on passage of House Bill No. 19 and on electoral approval.

Item 11b contains ~~$64,264~~ *$58,061* in fiscal 1992 and ~~$53,466~~ *$37,266* in fiscal 1993 for automation of census data. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

~~Item 18b is contingent on passage and approval of Senate Bill No. 242.~~

All revenue deposited in the science and technology development special revenue account, as established in 90-3-305, is appropriated to the Montana board of science and technology development.

In eliminating the certified communities program, the business development division may retain the 1.0 FTE associated with that program.

	Fiscal 1992						Fiscal 1993				
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
TOTAL SECTION C											
~~21,510,289~~	~~65,306,780~~	~~55,058,215~~	16,566,498	303,645	~~158,745,427~~	~~20,469,303~~	~~54,522,572~~	~~46,765,571~~	16,051,177	286,023	~~138,094,646~~
25,629,088	65,007,262	55,052,215			162,558,708	19,328,878	53,112,698	46,729,571			135,508,347

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
D. INSTITUTIONS AND CULTURAL EDUCATION												
MONTANA ARTS COUNCIL (5114)												
1. Promotion of the Arts (01)	~~123,729~~	116,778	198,277			~~438,784~~	~~121,921~~	~~116,771~~	198,253			~~436,945~~
	115,869					*430,924*	*11,558*	*220,636*				*430,447*
a. Audit (Line Item)	15,784					15,784						
b. Federal Grants — Biennial (Line Item)			307,470			307,470						
c. Federal Grants — Biennial (Line Item)			35,000			35,000						
d. Federal Grants (Line Item)			11,535			11,535			11,535			11,535
e. Federal Grants — Biennial (Line Item)			231,130			231,130						
Total	~~139,513~~	116,778	783,412			~~1,039,703~~	~~121,921~~	~~116,771~~	209,788			~~448,480~~
	131,653					*1,031,843*	*11,558*	*220,636*				*441,982*

Items 1b, 1c, and 1e (federal grants awarded to local communities and schools) are biennial appropriations.

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
LIBRARY COMMISSION (5115)												
1. State Library Operations (01)	~~956,620~~	157,431	363,927			~~1,477,978~~	~~970,939~~	153,905	368,406			~~1,493,250~~
	895,977					*1,417,335*	*939,658*					*1,461,969*
a. Audit (Line Item)	15,784					15,784						
b. Federal Grants — Biennial (Line Item)			1,286,476			1,286,476						
c. Blind and Physically Handicapped — FTE and Associated Equipment (Line Item)	22,319					22,319	19,097					19,097
d. Library of Congress Dues (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	1,500					1,500	3,000					3,000
e. Local Library Assistance — Biennial (Line Item)	~~250,621~~ 194,664					~~250,621~~ 194,664						
f. Western Library Network Equipment (Line Item)		10,000				10,000						
2. Natural Resource Information Services (07)		236,442	14,871			251,313		236,440	14,871			251,311
a. Contract Authority — Biennial (Line Item)			650,000			650,000						
Total	~~1,254,844~~ 1,130,244	403,873	2,315,274			~~3,973,991~~ 3,849,391	~~993,036~~ 961,755	390,345	383,277			~~1,766,650~~ 1,735,377

Item 1b (federal grants for local libraries) is a biennial appropriation.

Item 1d (appropriation for library of congress dues) may not be included in the current level base in the agency budget request for the 1995 biennium.

Item 1e (general fund state aid to local libraries) is a biennial appropriation.

In the event coal severance tax allocated to the state library under 15-35-108(3)(f) exceeds the amounts appropriated to the state library for fiscal 1992 and fiscal 1993, the additional funds are appropriated to the state library commission for pass-through to the library federations.

The biennial appropriation for the legislative contract authority in item 2a is subject to the following provisions:

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(3) A report must be submitted by the library commission to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

HISTORICAL SOCIETY (5117)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration Program (01)	~~462,516~~ 478,737	82,762	33,392			~~578,670~~ 594,891	~~465,061~~ 481,242	82,233	33,383			~~580,677~~ 596,858
a. Audit (Line Item)	16,707					16,707						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Trustees' Reimbursement (Line Item)												
	7,654					7,654	7,654					7,654
c. Capitol Tour Guides (Line Item)												
	~~25,029~~					~~25,029~~	~~25,030~~					~~25,030~~
	22,105					22,105	22,816					22,816
2. Library Program (02)												
	~~398,270~~	~~29,736~~				~~428,006~~	~~398,625~~	~~29,875~~				~~428,500~~
	396,256	2,148		27,588		425,992	396,300	1,559		28,316		426,175
3. Museum Program (03)												
	~~210,130~~	~~23,600~~				~~233,730~~	~~210,124~~	~~23,600~~				~~233,732~~
	193,340	19,487		4,121		216,948	187,385	19,487		4,121		210,993
a. Electronic Security (Line Item)												
	~~30,000~~					~~30,000~~						
	5,000					5,000						
4. Publication Program (04)												
	48,135			472,778		520,913	48,134			475,867		524,001
a. Audit (Line Item)												
				1,374		1,374						
b. Merchandise Authority (Line Item)												
				30,000		30,000				30,000		30,000
c. Milwaukee Mitigation (Line Item)												
			13,500			13,500						
5. Historical Sites Preservation (06)												
	~~72,069~~		~~565,233~~			637,302	~~72,211~~		~~565,717~~			637,928
	65,551		571,751				63,717		574,211			
a. Audit (Line Item)												
	768		4,038			4,806						
b. Computers — Federal (Line Item)												
			11,400			11,400						
Total	~~1,272,078~~	~~136,106~~	~~627,563~~	~~504,152~~		~~2,539,899~~	~~1,227,647~~	~~135,716~~	~~599,100~~	~~505,067~~		~~2,468,330~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	1,234,253	104,397	634,081	535,861		2,508,592	1,207,248	103,279	607,594	538,304		2,456,425

~~The Montana historical society has submitted for review plans for up to $95,000 in private funds for the 1993 biennium. The Montana historical society is to present a summary report to its appropriations subcommittee during the 1993 legislature that lists the projects funded with these private funds and the expenditures for each project. These funds are not subject to appropriation and are not included in the above totals. This language is contingent upon passage of House Bill No. 45.~~

In item 1, $16,221 in fiscal 1992 and $16,181 in fiscal 1993 are to offset vacancy savings that will revert to the general fund if not needed to pay personnel costs during the biennium. The agency has the authority to move these funds between programs by transfer to meet the expenses experienced.

The proprietary authority for a statutorily required transfer of general fund money in the magazine program must be increased by the same amount as the pay plan increase for FTEs supported by the general fund.

~~Item 1c is contingent on the failure of Senate Bill No. 411.~~

~~The amendment made to item 2 that struck $219,191 and $219,078 is contingent on the failure of Senate Bill No. 411.~~

DEPARTMENT OF ~~INSTITUTIONS~~ *CORRECTIONS AND HUMAN SERVICES* (6401)

1. Central Operations Division (10)												
	~~1,563,204~~					~~1,563,204~~	~~1,562,953~~					~~1,562,953~~
	1,520,604					1,520,604	1,546,713					1,546,713
a. Audit (Line Item)												
	123,438	41,150	8,512	6,838		179,938						
~~b. Special Services (Line Item)~~												
	~~32,500~~					~~32,500~~	~~32,500~~					~~32,500~~
	0					0	0					0
~~c~~ *b.* Board of Pardons Staff (Line Item)												
	30,995					30,995	26,910					26,910
~~d~~ *c.* Information System Enhancement (Line Item)												
	130,665					130,665	128,024					128,024
2. Corrections Division (20)												
	~~21,046,761~~	1,302,651	155,023	3,077,232		~~25,581,667~~	~~21,180,633~~	1,303,227	155,056	3,080,854		~~25,719,770~~
	21,234,267					25,769,173	20,927,059					25,466,196
a. Corrections Medical (Line Item)												
	1,869,975					1,869,975						
b. Staffing for Additional Capacity (Line Item)												
	560,823					560,823	759,892					759,892
~~a. Jail Payments — Parole Violators (Line Item)~~												
	~~66,120~~					~~66,120~~	~~66,120~~					~~66,120~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	0					*0*	*0*					*0*
d *c.* Operating Cost Increases (Line Item)												
	80,663					80,663	80,663					80,663
e *d.* SRFC Chemical Dependency (Line Item)												
		38,350				38,350		38,282				38,282
f *e.* Female Population Increase (Line Item)												
	77,058					77,058	99,214					99,214
g *f.* WCC Additional Staff (Line Item)												
	43,306					43,306	43,034					43,034
h *g.* Local Jurisdiction Sentencing (Line Item)												
	~~17,312~~	17,264				~~34,576~~	17,301	17,265				34,566
	0					*17,264*						
i *h.* Prerelease Expansion (Line Item)												
	~~336,395~~					~~336,395~~	358,145					358,145
	72,240					*72,240*						
j *i.* House Arrest (Line Item)												
	~~45,000~~					~~45,000~~	45,000					45,000
	0					*0*						
k *j.* Great Falls ISP (Line Item)												
	~~127,739~~					~~127,739~~	70,600					70,600
	105,597					*105,597*						
l *k.* Probation and Parole Officer Increase (Line Item)												
	~~131,201~~					~~131,201~~	134,526					134,526
	95,930					*95,930*						
m *l.* Jail — Graduated Sanctions (Line Item)												
	~~66,120~~					~~66,120~~	66,120					66,120
	0					*0*						
n *m.* Targeted Case Managers (Line Item)												
	54,244					54,244	54,128					54,128
o *n.* BLSC Operating Increases (Line Item)												
	3,110					3,110	3,110					3,110
p *o.* New Women's Prerelease Center (Line Item)												
	~~278,119~~					~~278,119~~	237,043					237,043

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	40,740					40,740						
q p. Community Prerelease Provider Increases (Line Item)												
	27,132					27,132	54,807					54,807
~~r. Peace Officer Training (Line Item)~~												
	~~12,200~~					~~12,200~~	~~5,200~~					~~5,200~~
	0					0	0					0
q. Gallehon Turner Trial (Line Item)												
	75,000					75,000						
r. Maximum Disturbance Legal Costs (Line Item)												
	25,000					25,000						
s. Reception Overflow (Line Item)												
	41,000					41,000						
t. Food Costs (Line Item)												
	78,782					78,782						
u. Jail Payments — Parole Violators (Line Item)												
	66,120					66,120	66,120					66,120
3. Mental Health Division (30)												
	~~29,395,013~~	~~725,403~~	1,021,946			~~31,142,362~~	~~29,632,062~~	~~736,589~~	1,021,947			~~31,396,598~~
	29,460,517	742,323				31,224,786	29,919,438	753,509				31,694,894
a. Child and Adolescent Service System Program (Line Item)												
			13,405			13,405						
b. Federal Data Grant (Line Item)												
			107,100			107,100			26,775			26,775
c. Service Provider Increases (Line Item)												
	106,381					106,381	214,889					214,889
d. CFA Additional Staff (Line Item)												
	36,100					36,100	36,100					36,100
e. Homeless Block Grants (Line Item)												
			275,000			275,000			275,000			275,000
f. HB 93 — Utilization Fee on Nursing Facilities (Line Item)												
	32,370					32,370	64,740					64,740
4. Chemical Dependency Division (40)												
	~~230,329~~	1,556,082	2,032,317			~~3,818,728~~	~~230,329~~	1,544,395	2,032,298			~~3,807,022~~
	226,877					3,815,276	226,877					3,803,570

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
a. Alternative Chemical Dependency Services (Line Item)												
			20,817			20,817			41,666			41,666
b. Community Youth Activity-2 (Line Item)												
			507,276			507,276			15,610			15,610
c. Chemical Dependency Data Grant (Line Item)												
			65,788			65,788			16,447			16,447
d. HB 93 — Utilization Fee on Nursing Facilities (Line Item)												
	16,612					16,612	33,224					33,224
5. Developmental Disability Division (50)												
	~~13,460,966~~	30,227	13,356			~~13,504,549~~	~~12,487,800~~	30,251	2,440			~~12,520,491~~
	13,724,386					13,767,969	12,753,705					12,786,396
a. MDC ICF/MR Certification (Line Item)												
	89,278					89,278	45,633					45,633
b. Eastmont ICF/MR Certification (Line Item)												
	136,720					136,720	137,102					137,102
6. Veterans' Nursing Home Division (60)												
	~~781,882~~	~~1,106,550~~	~~761,043~~			~~2,649,475~~	~~794,537~~	~~1,144,715~~	~~761,129~~			~~2,700,381~~
	587,137	1,223,606	851,408			2,662,151	578,781	1,259,167	855,109			2,693,057
a. HB 93 — Utilization Fee on Nursing Facilities (Line Item)												
	30,200					30,200	60,400					60,400
Total												
	~~71,060,011~~	~~4,817,677~~	~~4,981,583~~	3,084,070		~~83,943,341~~	~~68,760,739~~	~~4,814,724~~	~~4,340,368~~	3,080,854		~~81,012,605~~
	70,803,267	4,951,653	5,071,948			83,910,938	68,789,298	4,946,096	4,442,348			81,258,596

Contracts negotiated or renegotiated by the department may not extend beyond the end of the 1993 biennium unless they contain the clause "subject to legislative appropriation of funds for this contract".

If the department is unable to recruit and hire professional positions funded in the appropriation and required for patient treatment and/or certification, it may transfer up to 100% of the aggregate personal services cost of each class of vacant position or the cost of the required contract, whichever is less, to operating expenses for the purpose of contracting for services that would have been provided if *that* position were filled. The department shall certify to the governor or his designated representative that:

(1) the department is unable to fill the position or positions; and

(2) the services that would be provided by that position if filled and by the proposed contract are necessary for either federal medicaid certification or the treatment requirements of its correctional institutions.

Fiscal 1992						Fiscal 1993					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Within the industries operations in item 2, the department may submit budget amendments to hire 1 FTE marketing representative, 2 FTE shop supervisors, and 1 FTE prison industries procurement coordinator if funding is available.

Within the industries training program in item 2, the department may submit budget amendments to hire 1 FTE vehicle maintenance shop supervisor if funding is available.

The department is authorized to maintain a cash balance of not more than $16,000 at the end of each fiscal year in the prison industries training proprietary account. Any funds in excess of $16,000 in the proprietary account are to offset the general fund appropriation.

Item 2a, the corrections medical budget, is a biennial appropriation.

The department shall submit budget amendments for the local jurisdiction sentencing option program in item ~~2h~~ *2g* if federal funding becomes available. The total general fund and state special fund share of the program may not exceed 50% and must revert to the respective funds to the extent that federal funding is less than $35,000.

Item ~~2n~~ *2m* contains $55,276 in fiscal 1992 and $55,158 in fiscal 1993 for two targeted case managers at the prison. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from the above items in the current level base.

~~Item 2r contains $12,200 in fiscal 1992 and $5,200 in fiscal 1993 from the general fund for peace officer training for probation and parole officers. This appropriation is contingent on passage and approval of Senate Bill No. 379.~~

Transfers may be made between line items within the mental health division and the alcohol and drug abuse division (chemical dependency) for the purpose of accurately allocating operating expenses associated with the alcohol and drug programs on the Galen campus upon approval of the governor or his designated representative.

Included in item 3 are $22,492,426 in fiscal 1992 and $22,717,860 in fiscal 1993 for the operation of Montana state hospital. Except for approved transfers to the chemical dependency division for the purpose of accurately allocating operating expenses associated with the alcohol and drug programs on the Galen campus, no more than 5% of these funds may be transferred.

In item 3, the department may transfer appropriation authority from the personal services category to the operating expense category of the mental health division budget upon approval by the governor or his designated representative for costs associated with the Ihler lawsuit and the pilot projects in Kalispell, Missoula, and Butte.

In item 3, the department may transfer appropriation authority from the personal services category to the operating expense category of the mental health division budget upon approval by the governor or his designated representative for costs, up to $1,000,000 for the 1993 biennium, associated with responding to the district court ruling on the Ihler lawsuit.

~~Items 3f, 4d, and 6a are contingent on passage and approval of House Bill No. 93.~~

Included in the appropriation for the Montana state hospital chemical dependency program within item 4 are $1,408,733 in fiscal 1992 and $1,413,201 in fiscal 1993 for the operation of the Galen chemical dependency program. No more than 5% of these funds may be transferred.

The department shall continue to provide acute hospital care, intermediate nursing care, and chemical dependency services at the Montana state hospital at Warm Springs and Galen without significant changes in the program at either campus, *except for approved changes on the Warm Springs campus to implement the district court ruling on the Ihler lawsuit.*

In item 5, the department may transfer appropriation authority from the personal services category to the operating expense category of the Montana developmental center budget upon approval of the governor or his designated representative if the downsizing does not take place on schedule.

TOTAL SECTION D										
~~73,726,446~~	~~5,474,434~~	~~8,707,832~~	~~3,588,222~~		~~91,496,934~~	~~71,111,343~~	~~5,457,556~~	~~5,540,533~~	~~3,586,721~~		~~85,696,153~~

		Fiscal 1992						Fiscal 1993			
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
73,299,417	5,576,701	8,804,715	3,619,931		91,300,764	70,969,859	5,660,356	5,643,007	3,619,158		85,892,380

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

E. EDUCATION

University units are defined in ~~[section 5 of House Bill No. 454]~~ *17-7-102(16)*. For all university units, except the office of the commissioner of higher education, all funds, other than plant funds appropriated in ~~House Bill No. 5~~ *Chapter 774, Laws of 1991*, relating to long-range building, and current unrestricted operating funds, are appropriated contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. All movement of funds between the current unrestricted subfund and the designated subfund account entities must be clearly identified in the state budgeting and accounting system.

Programs for the university units' budgets, except the office of the commissioner of higher education, include instruction, organized research, public service, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowships.

All university units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the national center for higher education management systems program classification structure, along with the college and university business administration (CUBA) system, as a minimum standard for achieving consistency.

Any tuition added through budget amendment in fiscal 1992 and fiscal 1993 may, in the discretion of the board of regents, be distributed among agencies of the Montana university system with the following restriction: tuitions may not be budget amended either directly or indirectly to increase the budget of the office of the commissioner of higher education.

The general fund reduction to the Montana university system is not contingent on or tied to any action concerning the operation of state liquor stores.

OFFICE OF PUBLIC INSTRUCTION (3501)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. Administration (06)	~~3,169,983~~	~~367,521~~	~~2,719,420~~	~~832,959~~		~~7,089,891~~	~~3,149,504~~	~~367,773~~	~~2,717,600~~	~~827,733~~		~~7,062,690~~
	3,540,725	*470,021*	*4,248,382*	*904,728*		*9,163,856*	*3,338,426*	*381,305*	*4,089,022*	*887,460*		*8,696,213*
a. Audit (Line Item)				52,087		52,087						
~~b. GAAP Accounting Standards (Line Item)~~	~~177,024~~					~~177,024~~	~~170,558~~					~~170,558~~
~~c. Financial Management (Line Item)~~	~~214,355~~			~~71,769~~		~~286,124~~	~~172,357~~			~~59,727~~		~~232,084~~
~~d. Resource Center Funds (Line Item)~~		~~8,000~~				~~8,000~~						
~~e. Distribution of Migrant Grants (Line Item)~~			~~320,000~~			~~320,000~~			~~320,000~~			~~320,000~~
~~f. Indian Education (Line Item)~~	~~24,071~~					~~24,071~~	~~23,997~~					~~23,997~~
~~g. Audiology — Biennial (Line Item)~~	~~136,000~~	~~82,000~~				~~218,000~~						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
~~h. Other Federal Funds (Line Item)~~			~~291,302~~			~~291,302~~			~~93,709~~			~~93,709~~
~~i. Education of the Handicapped — Part B Administration Set-Aside (Line Item)~~			~~300,000~~			~~300,000~~			~~342,000~~			~~342,000~~
~~j. Race Equity (Line Item)~~			~~25,000~~			~~25,000~~			~~25,000~~			~~25,000~~
~~k. Nutrition Education and Training Grant (Line Item)~~			~~12,500~~			~~12,500~~			~~12,500~~			~~12,500~~
~~l. AIDS Education (Line Item)~~			~~98,107~~			~~98,107~~			~~98,109~~			~~98,109~~
~~m. Drug Free Schools and Communities (Line Item)~~			~~131,512~~			~~131,512~~			~~131,514~~			~~131,514~~
~~n. Chapter 1 Program Improvements (Line Item)~~			~~50,000~~			~~50,000~~			~~50,000~~			~~50,000~~
~~o. ESEA Chapter 2 Program (Line Item)~~			~~141,043~~			~~141,043~~			~~141,043~~			~~141,043~~
~~p. Expanded Co-op Food Purchase (Line Item)~~		~~12,500~~				~~12,500~~		~~13,532~~				~~13,532~~
~~q. Bilingual Grant (Line Item)~~			~~24,673~~			~~24,673~~			~~24,674~~			~~24,674~~
~~r. National Bicentennial Compact (Line Item)~~			~~7,500~~			~~7,500~~			~~7,500~~			~~7,500~~
~~s. Court-Ordered Attorney Fees — Ridgeway (Line Item)~~	~~11,000~~					~~11,000~~						
~~t. Jobs for Montana Graduates (Line Item)~~			~~126,517~~			~~126,517~~			~~124,405~~			~~124,405~~
2. Distribution to Schools (09)												
a. Special Education (Line Item)	32,845,797					32,845,797	32,845,797					32,845,797
b. Special Education Contingency — Biennial (Line Item)	~~2,031,699~~ 2,031,163					~~2,031,699~~ 2,031,163						
c. Transportation (Line Item)	6,483,120	3,908,166				10,391,286	6,493,558	3,914,457				10,408,015

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
d. School Lunch (Line Item)												
	599,397					599,397	599,397					599,397
e. Gifted and Talented (Line Item)												
	~~300,000~~					~~300,000~~	~~300,000~~					~~300,000~~
	276,000					*276,000*	*276,000*					*276,000*
f. Secondary Vocational Education — Biennial (Line Item)												
	~~1,000,000~~					~~1,000,000~~						
	1,656,000					*1,656,000*						
g. Adult Education (Line Item)												
	250,000					250,000	250,000					250,000
h. Impact Aid (Line Item)												
	~~5,000~~					~~5,000~~	~~5,000~~					~~5,000~~
	4,600					*4,600*	*4,600*					*4,600*
i. Education of the Handicapped — Part B Biennial *(Line Item)*												
			1,356,000			1,356,000						
j. Job Training Partnership Act — Biennial (Line Item)												
			1,017,200			1,017,200						
k. Adult Basic Education — Biennial (Line Item)												
			1,198,000			1,198,000						
l. McKinney Homeless Act — Biennial (Line Item)												
			140,400			140,400						
m. Preschool Incentive — Biennial (Line Item)												
			230,000			230,000						
n. Vocational Education — Biennial (Line Item)												
			5,000,000			5,000,000						
o. English Literacy — Biennial (Line Item)												
			25,000			25,000						
p. Education of the Handicapped — Part D Biennial (Line Item)												
			45,000			45,000						
q. Chapter 1 — Biennial (Line Item)												
			180,000			180,000						
r. Section 20-9-351 Supplemental Funding — Biennial (Line Item)												
	24,130,000					*24,130,000*						

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Proprietary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Proprietary	Fiscal 1993 Other	Fiscal 1993 Total
Total	~~40,040,246~~ *71,816,802*	4,378,187	13,439,982	956,815		~~66,023,230~~ *90,591,786*	~~44,010,160~~ *43,807,778*	4,295,762	4,089,022	887,460		~~53,290,412~~ *53,080,022*

Item 1 includes $81,564 in fiscal 1992 and $81,810 in fiscal 1993 in the state special revenue fund from the traffic safety account for motorcycle safety. ~~This appropriation is contingent upon the passage and approval of House Bill No. 763.~~

The legislature approved the addition of 0.5 FTE from the federal national origins grant and 0.5 FTE from the federal school foods grant. These funds are in item 1.

~~Item 1g is a biennial appropriation.~~ *Included in item 1 is a biennial appropriation of $136,000 from the general fund and $82,000 from the state special revenue fund for audiology services.*

The superintendent of public instruction may use any unexpended general fund appropriation, excluding item 2r, school equalization supplemental funding, in distributions to schools, program 09, to restore the appropriations for special education contingency, gifted and talented, secondary vocational education, and out-of-district placements up to but not exceeding the amount authorized by Chapter 815 and Chapter 765, Laws of 1991. Any unexpended appropriation balances in fiscal 1992 in items 2a through 2h may be carried in and expended in fiscal 1993.

Item 2b is a biennial appropriation. This appropriation is for unforeseen expenses that may arise in special education programs in local districts. A district board of trustees may apply for an allocation from these funds by presenting to the superintendent of public instruction, for each child, a child-study (CST) report and an individual education plan (IEP) relating to this unforeseen expense or, if the need for additional personnel is due to caseload excess, a board of trustees' verification of completed IEPs and CSTs. In addition, a current listing of programs, caseloads, and related costs must be submitted. Contingency funds may be awarded for positions that have gone unfilled for an entire school year and for which regular state special education funds were not awarded. The agency may transfer any unused balance in this appropriation into the special education appropriation in item 2a.

Item 2f is a biennial appropriation.

Items 2i through ~~2q~~ *2r* are biennial appropriations.

All revenue received in the state traffic education account under the provisions of 20-7-504, is appropriated as provided in Title 20, chapter 7, part 5.

BILLINGS VOCATIONAL-TECHNICAL CENTER (3511)

1. General Operations (01,07,44)	1,213,990				682,386	1,896,376	1,198,920				688,861	1,887,781
a. Audit (Line Item)	25,570					25,570						
2. *Budget Reduction*	*9,773*					*9,773*	*81,545*					*81,545*
Total	~~1,239,560~~ *1,229,787*				682,386	~~1,921,946~~ *1,912,173*	~~1,198,920~~ *1,117,375*				688,861	~~1,887,781~~ *1,806,236*

Fiscal 1992						Fiscal 1993					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Total audit costs are estimated to be $28,412 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

Item 2 reduces the Billings vocational-technical center's total general fund appropriation. The Billings vocational-technical center, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

BUTTE VOCATIONAL-TECHNICAL CENTER (3512)

	FY92 General Fund	FY92 State Special Revenue	FY92 Federal Special Revenue	FY92 Proprietary	FY92 Other	FY92 Total	FY93 General Fund	FY93 State Special Revenue	FY93 Federal Special Revenue	FY93 Proprietary	FY93 Other	FY93 Total
1. General Operations (01,07,44)	1,432,620				351,978	1,784,598	1,463,460				353,473	1,816,933
a. Audit (Line Item)	26,992					26,992						
2. *Budget Reduction*	*11,343*					*11,343*	*87,478*					*87,478*
Total	~~1,459,612~~				351,978	~~1,811,590~~	~~1,463,460~~				353,473	~~1,816,933~~
	1,448,269					*1,800,247*	*1,375,982*					*1,729,455*

Total audit costs are estimated to be $29,990 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

Item 2 reduces the Butte vocational-technical center's total general fund appropriation. The Butte vocational-technical center, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

GREAT FALLS VOCATIONAL-TECHNICAL CENTER (3513)

	FY92 General Fund	FY92 State Special Revenue	FY92 Federal Special Revenue	FY92 Proprietary	FY92 Other	FY92 Total	FY93 General Fund	FY93 State Special Revenue	FY93 Federal Special Revenue	FY93 Proprietary	FY93 Other	FY93 Total
1. General Operations (01,07,44)	1,552,944				631,385	2,184,329	1,586,011				634,024	2,220,035
a. Audit (Line Item)	25,570					25,570						
2. *Budget Reduction*	*12,520*					*12,520*	*110,576*					*110,576*
Total	~~1,578,514~~				631,385	~~2,209,899~~	~~1,586,011~~				634,024	~~2,220,035~~
	1,565,994					*2,197,379*	*1,475,435*					*2,109,459*

Total audit costs are estimated to be $28,412 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

Item 2 reduces the Great Falls vocational-technical center's total general fund appropriation. The Great Falls vocational-technical center, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
HELENA VOCATIONAL-TECHNICAL CENTER (3514)												
1. General Operations (01,07,44)	1,998,352				549,089	2,547,441	1,948,771				551,207	2,499,978
a. Audit (Line Item)	26,992					26,992						
2. *Budget Reduction*	*15,788*					*15,788*	*115,834*					*115,834*
Total	~~2,025,344~~ *2,009,556*				549,089	~~2,574,433~~ *2,558,645*	~~1,948,771~~ *1,832,937*				551,207	~~2,499,978~~ *2,384,144*

Total audit costs are estimated to be $29,990 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

Item 2 reduces the Helena vocational-technical center's total general fund appropriation. The Helena vocational-technical center, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
MISSOULA VOCATIONAL-TECHNICAL CENTER (3515)												
1. General Operations (01,07,44)	2,031,178				666,617	2,697,795	1,952,924				670,365	2,623,289
a. Audit (Line Item)	22,728					22,728						
2. *Budget Reduction*	*16,101*					*16,101*	*114,410*					*114,410*
Total	~~2,053,906~~ *2,037,805*				666,617	~~2,720,523~~ *2,704,422*	~~1,952,924~~ *1,838,514*				670,365	~~2,623,289~~ *2,508,879*

Total audit costs are estimated to be $25,254 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

Item 2 reduces the Missoula vocational-technical center's total general fund appropriation. The Missoula vocational-technical center, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

The commissioner of higher education may transfer county millage collections among the centers. Total revenue received from the 1.5-mill levy that exceeds $965,005 in fiscal 1992 and $981,480 in fiscal 1993 is appropriated to the office of the commissioner of higher education for distribution to the vocational-technical centers and ~~must result in a general fund reversion of~~

~~a like amount~~ *must be added by budget amendment by the board of regents in a manner so as to offset reductions in vocational-technical center appropriations in [this act] from the levels contained in The General Appropriations Act of 1991 and acts supplementary thereto.*

It is the intent of the legislature that the board of regents have additional appropriation flexibility to operate the vocational-technical centers during the 1993 biennium. Therefore, the legislature has approved for each vocational-technical center a single appropriation for its general operations. The appropriation for each postsecondary vocational-technical center listed above is for the following programs: instruction, academic support, student services, institutional support, and operation and maintenance of plant. The vocational-technical centers are exempt from [section 2], which requires personal services line items.

It is further the intent of the legislature that all fiscal matters pertaining to the postsecondary vocational-technical centers during the 1993 biennium and the 1995 biennium budget request be recorded, maintained, and submitted, using the college and university business administration (CUBA) fund structure and functional expenditure classifications.

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Proprietary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Proprietary	Fiscal 1993 Other	Fiscal 1993 Total
BOARD OF PUBLIC EDUCATION (5101)												
1. Administration (01)	~~114,186~~ *107,677*	*6,509*				114,186	~~114,001~~ *104,458*	*6,509*				~~114,001~~ *110,967*
a. Audit (Line Item)	1,264					1,264						
~~b. Board Hearing — HB 28 — Biennial (Line Item)~~	~~3,252~~ *0*					~~3,252~~ *0*						
2. Advisory Council (03)		71,665				71,665		71,527				71,527
a. Audit (Line Item)		1,262				1,262						
Total	~~118,702~~ *108,941*	~~72,927~~ *79,436*				~~191,629~~ *188,377*	~~114,001~~ *104,458*	~~71,527~~ *78,036*				~~185,528~~ *182,494*

~~Item 1b is a biennial appropriation.~~

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Proprietary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Proprietary	Fiscal 1993 Other	Fiscal 1993 Total
COMMISSIONER OF HIGHER EDUCATION (5102)												
1. Administration Program (01)	864,771					864,771	853,079					853,079
a. Audit (Line Item)	20,519					20,519						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
b. Regents Employee Reporting System (Line Item)	121,053					121,053	107,424					107,424
2. Student Assistance Program (02)	4,788,611		280,000			5,068,611	4,854,262		280,000			5,134,262
a. Increased Supplemental Educational Opportunity Grant Match (Line Item)	63,590					63,590	63,590					63,590
b. Increased Perkins Loan Match (Line Item)	36,270					36,270	36,270					36,270
c. State Work Study — Minimum Wage Increase (Line Item)	105,203					105,203	105,203					105,203
3. Dwight D. Eisenhower Mathematics and Science Education Act (03)			249,842			249,842			249,842			249,842
4. Community College Assistance (04)	3,785,966					3,785,966	4,215,246					4,215,246
a. Audit (Line Item)	29,890					29,890						
5. Montana University System Group Insurance Program (05)				13,760,131		13,760,131				16,044,208		16,044,208
a. Group Insurance Additional Costs (Line Item)				139,801		139,801				140,249		140,249
6. Talent Search (06)			188,829			188,829			188,315			188,315
a. Talent Search Additional Federal Funds (Line Item)			48,793			48,793			48,792			48,792
7. Carl D. Perkins Administration (08)	92,966		5,115,331			5,208,297	76,970		5,098,843			5,175,813
8. Guaranteed Student Loan Program (12)			1,409,410			1,409,410			1,408,634			1,408,634
a. Audit (Line Item)			6,630			6,630						
b. Guaranteed Student Loan Additional Workload (Line Item)			232,694			232,694			232,691			232,691
c. Supplemental Preclaims Unit (Line Item)			43,446			43,446			43,348			43,348

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
9. Board of Regents — Administration (13)	32,854					32,854	32,863					32,863
10. Board of Regents Bond Payments (14)	706,255					706,255	698,153					698,153
11. Vocational-Technical Center Administration (15)	96,575					96,575	96,338					96,338
a. Vocational-Technical Center Contingency (Line Item)	150,000					150,000						
12. Budget Reduction — Commissioner of Higher Education	*362,913*					*362,913*	*153,920*					*153,920*
13. Budget Reduction — Community Colleges	*152,634*					*152,634*	*152,634*					*152,634*
14. Tuition Increase											*5,178,760*	*5,178,760*
Total	~~10,894,523~~		7,574,975	13,899,932		~~32,369,430~~	~~11,139,398~~		7,550,465	16,184,457		~~34,874,320~~
	10,378,976					*31,853,883*	*10,832,844*				*5,178,760*	*39,746,526*

Item 2 includes $68,400 general fund in fiscal 1992 and $114,000 general fund in fiscal 1993 for three new medical student WICHE slots in fiscal 1992 and three continuing medical student WICHE slots and 2 new medical student WICHE slots in fiscal 1993. ~~If House Bill No. 1007 is enacted, the general fund appropriation in item 2 must be reduced by $68,400 in fiscal 1992 and $114,000 in fiscal 1993.~~

The appropriation in item 4 provides 51% and 55% of the total unrestricted budgets for the community colleges in fiscal 1992 and fiscal 1993, respectively. The total unrestricted budgets for the community colleges must be approved by the board of regents.

The general fund appropriation for each community college includes 49% of the total audit cost. The remaining 51% of these costs are to be paid from funds other than those appropriated in items 4 and 4a. Audit costs may not exceed $18,000 each for Dawson and Miles community colleges and $25,000 for Flathead Valley community college for the biennium.

Item 11a is a biennial appropriation.

Items 12 and 13 reduce the commissioner of higher education's total general fund appropriation. The commissioner of higher education, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

Item 14 is additional spending authority for tuition revenue. This tuition may, in the discretion of the board of regents, be distributed among agencies of the Montana university system with the following restriction: all tuition revenue must be distributed to agencies other than the office of the commissioner of higher education. It is the intent of the 52nd legislature that the board of regents increase total tuition and fee charges at the six university units by no more than $7 per credit hour for resident students and $47 per credit hour for nonresident students, which is the equivalent of the difference between charges at Montana state university and the university of Montana and the average of their peer institutions.

UNIVERSITY OF MONTANA (5103)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Instruction (01)	15,528,473				9,107,802	24,636,275	15,504,308				9,148,531	24,652,839
2. Organized Research (02)	631,517					631,517	632,053					632,053
a. Bureau of Business and Economic Research (Line Item)	30,000					30,000						
3. Public Service (03)	306,560					306,560	426,596					426,596
4. Operation and Maintenance of Plant (07)	5,476,334					5,476,334	5,524,124					5,524,124
5. Scholarships and Fellowships (08)					1,228,074	1,228,074					1,228,074	1,228,074
6. Support (44)	6,762,601				5,342,998	12,105,599	6,777,328				5,384,625	12,161,953
a. Audit (Line Item)	55,244					55,244						
b. Minimum Wage (Line Item)	73,740					73,740	73,740					73,740
c. Library Books (Line Item)	281,715					281,715						
d. Regents' Employee Reporting System (Line Item)	25,766					25,766	25,766					25,766
7. *Budget Reduction*	*451,183*					*451,183*	*2,672,011*					*2,672,011*
Total	~~29,171,950~~ *28,720,767*				15,678,874	~~44,850,824~~ *44,399,641*	~~28,963,915~~ *26,291,904*				15,761,230	~~44,725,145~~ *42,053,134*

Total audit costs are estimated to be $110,488 for the biennium. Fifty percent of these costs must be paid from funds other than those appropriated in items 1 through 6.

Item 1 contains $130,000 from the general fund in *fiscal 1992 and $130,000 from the general fund in fiscal 1993 for* the university of Montana pharmacy school over and above the amount generated by the funding formula for the school of pharmacy. Any grant and donation made to the university of Montana for the express purpose of maintaining accreditation at the school of pharmacy may not reduce funds otherwise allocated from the current unrestricted fund. It is the intent of the legislature that the current unrestricted budget allocation by the university of Montana to the school of pharmacy not be reduced. It is the further intent of the legislature that these additional funds become part of the current level base budget for the university of Montana and be included in the 1995 biennium current level budget analysis prepared by the office of the legislative fiscal analyst and presented to the 53rd legislature.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Items 2a and 6c are biennial appropriations.

Item 7 reduces the university of Montana's total general fund appropriation. The university of Montana, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

MONTANA STATE UNIVERSITY (5104)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Instruction (01)	20,084,648				9,687,288	29,771,936	20,608,791				9,731,683	30,340,474
a. Nursing	313,388					313,388	584,443					584,443
b. NSF Mathematics Grant Match — Biennial (Line Item)	1,000,000					1,000,000						
2. Organized Research (02)	594,926					594,926	594,947					594,947
3. Public Service (03)	260,362					260,362	360,362					360,362
4. Operation and Maintenance of Plant (07)	5,978,306					5,978,306	6,042,058					6,042,058
5. Scholarships and Fellowships (08)					1,327,730	1,327,730					1,327,730	1,327,730
6. Support (44)	8,034,029				5,668,827	13,702,856	8,047,841				5,715,957	13,763,798
a. Audit (Line Item)	55,244					55,244						
b. Minimum Wage (Line Item)	75,232					75,232	75,232					75,232
c. Library Books (Line Item)	321,683					321,683						
d. Regents' Employee Reporting System (Line Item)	28,580					28,580	28,580					28,530
7. *Budget Reduction*	*553,260*					*553,260*	*2,870,909*					*2,870,909*
Total	~~36,746,398~~				16,683,845	~~53,430,243~~	~~36,342,254~~				16,775,370	~~53,117,624~~

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
	36,193,138					*52,876,983*	*33,471,345*					*50,246,715*

Total audit costs are estimated to be $110,488 for the biennium. Fifty percent of these costs must be paid from funds other than those appropriated in items 1 through 6.

Item 1b is a biennial appropriation and is contingent on the receipt of the national science foundation mathematics grant being awarded to Montana.

Item 6c is a biennial appropriation.

Item 7 reduces Montana state university's total general fund appropriation. Montana state university, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY (5105)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. Instruction (01)	3,417,769				2,035,482	5,453,251	3,411,274				2,043,500	5,454,774
2. Organized Research (02)	41,300					41,300	41,415					41,415
3. Operation and Maintenance of Plant (07)	1,545,483					1,545,483	1,557,023					1,557,023
4. Scholarships and Fellowships (08)					201,561	201,561					201,561	201,561
5. Support (44)	2,279,062				468,393	2,747,455	2,282,457				474,752	2,757,209
a. Audit (Line Item)	49,721					49,721						
b. Minimum Wage (Line Item)	35,041					35,041	35,041					35,041
c. Library Books (Line Item)	51,805					51,805						
d. Regents' Employee Reporting System (Line Item)	8,993					8,993	8,993					8,993
6. *Budget Reduction*	*116,122*					*116,122*	*510,299*					*510,299*
Total	~~7,429,174~~				2,705,436	~~10,134,610~~	~~7,336,203~~				2,719,813	~~10,056,016~~
	7,313,052					*10,018,488*	*6,825,904*					*9,545,717*

Total audit costs are estimated to be $66,294 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 5.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Item 5c is a biennial appropriation.

Item 6 reduces the Montana college of mineral science and technology's total general fund appropriation. The Montana college of mineral science and technology, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

EASTERN MONTANA COLLEGE (5106)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Instruction (01)	3,232,818				4,979,980	8,212,798	3,095,181				5,004,703	8,099,884
2. Public Service (03)	253,236					253,236	254,033					254,033
3. Operation and Maintenance of Plant (07)	2,184,624					2,184,624	2,204,427					2,204,427
a. Apsaruke Hall Utilities (Line Item)	10,000					10,000	10,000					10,000
b. Billings SID (Line Item)	10,503					10,503	6,024					6,024
4. Scholarships and Fellowships (08)					382,715	382,715					382,715	382,715
5. Support (44)	5,027,976				117,382	5,145,358	5,025,779				124,827	5,150,606
a. Audit (Line Item)	52,088					52,088						
b. Minimum Wage (Line Item)	35,563					35,563	35,563					35,563
c. Library Books (Line Item)	112,965					112,965						
d. Regents' Employee Reporting System (Line Item)	14,608					14,608	14,608					14,608
6. *Budget Reduction*	*170,082*					*170,082*	*855,491*					*855,491*
Total	~~10,934,381~~ *10,764,299*				5,480,077	~~16,414,458~~ *16,244,376*	~~10,645,615~~ *9,790,124*				5,512,245	~~16,157,860~~ *15,302,369*

Total audit costs are estimated to be $69,450 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 5.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Item 3a is for utilities expense at Apsaruke hall only. Any unused funds revert to the general fund at the end of each fiscal year.

Item 5c is a biennial appropriation.

Item 6 reduces eastern Montana college's total general fund appropriation. Eastern Montana college, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

NORTHERN MONTANA COLLEGE (5107)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Instruction (01)	2,505,437				2,011,170	4,516,607	2,764,317				1,752,290	4,516,607
2. Public Service (03)					8,891	8,891					8,891	8,891
3. Operation and Maintenance of Plant (07)	1,166,288					1,166,288	1,177,153					1,177,153
4. Scholarships and Fellowships (08)					278,375	278,375					278,375	278,375
5. Support (44)	2,312,971				193,409	2,506,380	2,046,279				467,452	2,513,731
a. Audit (Line Item)	42,617					42,617						
b. Minimum Wage (Line Item)	39,730					39,730	39,730					39,730
c. Library Books (Line Item)	53,234					53,234						
d. Regents' Employee Reporting System (Line Item)	9,050					9,050	9,050					9,050
6. *Budget Reduction*	*96,194*					*96,194*	*387,812*					*387,812*
Total	~~6,129,327~~ *6,033,133*				2,491,845	~~8,621,172~~ *8,524,978*	~~6,036,529~~ *5,648,717*				2,507,008	~~8,543,537~~ *8,155,725*

Total audit costs are estimated to be $56,823 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 5.

Item 5c is a biennial appropriation.

Item 6 reduces northern Montana college's total general fund appropriation. Northern Montana college, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA (5108)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Instruction (01)	1,531,128				1,027,650	2,558,778	1,526,351				1,033,343	2,559,694
2. Operation and Maintenance of Plant (07)	738,270					738,270	743,101					743,101
3. Scholarships and Fellowships (08)					89,683	89,683					89,683	89,683
4. Support (44)	1,119,120				353,405	1,472,525	1,119,456				356,123	1,475,579
a. Audit (Line Item)	43,802					43,802						
b. Minimum Wage (Line Item)	38,507					38,507	38,507					38,507
c. Library Books (Line Item)	31,158					31,158						
d. Regents' Employee Reporting System (Line Item)	8,865					8,865	8,865					8,865
5. *Budget Reduction*	*55,504*					*55,504*	*250,655*					*250,655*
Total	~~3,510,850~~				1,470,738	~~4,981,588~~	~~3,436,280~~				1,479,149	~~4,915,429~~
	3,455,346					*4,926,084*	*3,185,625*					*4,664,774*

Total audit costs are estimated to be $58,402 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 4.

Item 4c is a biennial appropriation.

Item 5 reduces western Montana college's total general fund appropriation. Western Montana college, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

Included within current unrestricted funds (contained in the "other" fund column) to the six university units is the sum of $11,887,000 in fiscal 1992 and $12,131,000 in fiscal 1993 from revenue generated under the provisions of 20-25-423. The department of revenue shall levy the full 6 mills as authorized in 20-25-423. Revenue received by the university system under the provisions of 20-25-423 that exceeds $11,887,000 in fiscal 1992 and $12,131,000 in fiscal 1993 is appropriated to the office of the commissioner of higher education for distribution to the university system and ~~must cause a general fund reversion of a like amount~~ *must be added by budget amendment by the board of regents in a manner so as to offset reductions in the university system appropriations in [this act] from the levels contained in The General Appropriations Act of 1991 and acts supplementary thereto.*

It is understood by the 52nd legislature that the appropriations contained in [this act] for the six university units may result in the board of regents electing to limit or reduce enrollment during fiscal 1992 and fiscal 1993. It is the intent of the 52nd legislature that if actual enrollments during the 1993 biennium are fewer than the budgeted number of student full-time equivalents for the 1993 biennium, systemwide or by unit, the legislative fiscal analyst shall present to the 53rd legislature a current level budget for the six units, systemwide and by unit, no lower than the budgeted amount for the 1993 biennium.

It is ~~further~~ understood by the 52nd legislature that shortfalls in student tuition due to enrollment declines may be presented to the 53rd legislature for a supplemental appropriation. These tuition shortfalls are not expected to be made up by per-student full-time equivalent tuition increases.

The 52nd legislature intends for the Montana university system to be subject to the personal services line item requirements contained in [section 2, *Chapter 815, Laws of 1991, as amended by [this act]*]. The dollar amount of the personal services line item is equal to the following:

(1) For the research, public service, and plant programs, the line item amount is equal to the personal services amount contained in table 3 of the Montana university system budget narrative accompanying [this act].

(2) For the instruction program, the line item amount is equal to the personal services amount identified on the original regents'-approved operating budget each fiscal year~~,~~ but may be no less than the faculty compensation amount contained in table 3 of the Montana university system budget narrative accompanying [this act].

(3) For the support program, the line item amount is equal to the personal services amount identified on the original regents'-approved operating budget each fiscal year.

It is further the intent of the 52nd legislature that the original budgeted personal services by program on the regents' employee reporting system each fiscal year equal the original regents'-approved operating budget by program.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
AGRICULTURAL EXPERIMENT STATION (5109)												
1. Organized Research (02)	7,278,082				2,127,376	9,405,458	7,278,043				2,127,056	9,405,099
a. Biological Weed Control (Line Item)	60,000					60,000	80,572					80,572
2. Livestock and Range Research Station (15)					389,344	389,344					374,295	374,295
3. *Budget Reduction*	*117,419*					*117,419*	*214,819*					*214,819*
Total	~~7,338,082~~ *7,220,663*				2,516,720	~~9,854,802~~ *9,737,383*	~~7,358,615~~ *7,143,796*				2,501,351	~~9,859,966~~ *9,645,147*

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total

Item 3 reduces the agricultural experiment station's total general fund appropriation. The agricultural experiment station, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

COOPERATIVE EXTENSION SERVICE (5110)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. Public Service (03)	2,778,004				1,987,347	4,765,351	2,769,940				1,987,404	4,757,344
2. *Budget Reduction*	*44,746*					*44,746*	*82,408*					*82,408*
Total	~~2,778,004~~ *2,733,258*				1,987,347	~~4,765,351~~ *4,720,605*	~~2,769,940~~ *2,687,532*				1,987,404	~~4,757,344~~ *4,674,936*

Item 2 reduces the cooperative extension service's total general fund appropriation. The cooperative extension service, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

FORESTRY AND CONSERVATION EXPERIMENT STATION (5111)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. Research (02)	711,138					711,138	711,940					711,940
2. *Budget Reduction*	*11,068*					*11,068*	*36,536*					*36,536*
Total	~~711,138~~ *700,070*					~~711,138~~ *700,070*	~~711,940~~ *675,404*					~~711,940~~ *675,404*

Item 2 reduces the forestry and conservation experiment station's total general fund appropriation. The forestry and conservation experiment station, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

BUREAU OF MINES (5112)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. Bureau of Mines (11)	1,288,493				46,410	1,334,903	1,289,384				46,411	1,335,795
2. *Budget Reduction*	*20,054*					*20,054*	*20,172*					*20,172*
Total												

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
	~~1,288,493~~				46,410	~~1,334,903~~	~~1,289,384~~				46,411	~~1,335,795~~
	1,268,439					1,314,849	1,269,212					1,315,623

Item 2 reduces the bureau of mines' total general fund appropriation. The bureau of mines, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
SCHOOL FOR THE DEAF AND BLIND (5113)												
1. Administration Program (01)	197,895					197,895	198,322					198,322
a. Audit (Line Item)	20,519					20,519						
2. General Services Program (02)	251,213					251,213	~~253,044~~					~~253,044~~
							243,044					243,044
3. Student Services (03)	~~799,974~~		34,282			~~834,256~~	~~781,842~~		34,247			~~816,089~~
	763,095					797,377	745,289					779,536
4. Education (04)	~~1,317,179~~	~~170,000~~	131,200			1,618,379	~~1,315,205~~	~~170,000~~	131,200			1,616,405
	1,297,179	190,000					1,295,205	190,000				
a. Supervising Teacher (Line Item)	33,249					33,249	33,256					33,256
Total	~~2,620,029~~	~~170,000~~	165,482			~~2,955,511~~	~~2,581,669~~	~~170,000~~	165,447			~~2,917,116~~
	2,563,150	190,000				2,918,632	2,515,116	190,000				2,870,563
MONTANA COUNCIL ON VOCATIONAL EDUCATION (5116)												
1. Administration Program (01)			135,578			135,578			135,650			135,650
a. Audit (Line Item)			4,104			4,104						
b. Increased Federal Funding (Line Item)			30,000			30,000			30,000			30,000

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total			169,682			169,682			165,650			165,650
FIRE SERVICES TRAINING SCHOOL (5119)												
1. Fire Services Training School (01)	236,279					236,279	219,064					219,064
a. Audit (Line Item)	2,525					2,525						
2. *Budget Reduction*	*3,818*					*3,818*	*6,442*					*6,442*
Total	~~238,804~~					~~238,804~~	~~219,064~~					~~219,064~~
	234,986					*234,986*	*212,622*					*212,622*

The fire services training school must be provided office, classroom, and storage space in the Great Falls vocational-technical center at no charge.

Item 2 reduces the fire services training school's total general fund appropriation. The fire services training school, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
TOTAL SECTION E	~~176,315,037~~	~~4,621,114~~	21,350,121	14,856,747	51,942,747	~~269,085,766~~	~~171,113,061~~	~~4,537,289~~	11,970,584	17,071,917	~~52,187,911~~	~~256,880,762~~
	197,796,431	*4,647,623*				*290,593,669*	*162,102,624*	*4,563,798*			*57,366,671*	*253,075,594*
TOTAL STATE FUNDING	~~453,868,142~~	~~281,573,413~~	~~604,104,453~~	~~216,571,437~~	54,911,330	~~1,611,034,775~~	~~452,794,707~~	~~269,600,416~~	~~601,317,157~~	~~224,556,424~~	~~54,781,350~~	~~1,603,050,054~~
	482,147,469	*281,411,610*	*606,326,156*	*216,646,146*		*1,641,442,711*	*438,123,204*	*268,706,257*	*597,371,479*	*224,634,134*	*59,960,110*	*1,588,797,184"*

Section 2. Section 9, Chapter 526, Laws of 1991, is amended to read:

"Section 9. **Appropriation.** There is appropriated for the biennium ending June 30, 1993, ~~$26,000~~ *$21,710* for travel costs and per diem and administrative support costs and $40,000 for consultant costs from the general fund to the office of the legislative fiscal analyst for use by the joint committee on postsecondary education policy and budget."

Section 3. Section 2, Chapter 546, Laws of 1991, is amended to read:

"Section 2. **Appropriation.** There is appropriated from the general fund to the legislative council for the biennium ending June 30, 1993, ~~$37,000~~ *$34,040* for the purposes of conducting the study required in [section 1]."

Section 4. Section 4, Chapter 559, Laws of 1991, is amended to read:

"Section 4. **Appropriation.** There is appropriated from the general fund to the department of family services for the biennium ending June 30, 1993, the sum of ~~$100,000~~ *$50,000* to be used to provide respite care for foster children."

Section 5. Section 16, Chapter 604, Laws of 1991, is amended to read:

"Section 16. **Appropriation.** There is appropriated from the general fund to the department of justice ~~$639,300~~ *$588,156* in fiscal year 1992 and ~~$837,900~~ *$770,868* in fiscal year 1993 to fund the continued development and operation of the statewide motor vehicle computer system."

Section 6. Section 6, Chapter 634, Laws of 1991, is amended to read:

"Section 6. **Appropriation.** There is appropriated to the department of health and environmental sciences ~~$14,000~~ *$12,880* from the general fund for the biennium ending June 30, 1993, for the purpose of implementing [this act]."

Section 7. Section 1, Chapter 707, Laws of 1991, is amended to read:

"Section 1. **Appropriation — purpose — department of social and rehabilitation services to deposit certain funds to general fund — court automation report.** (1) There is appropriated from the state general fund to the supreme court ~~$420,000~~ *$386,400* for the 1993 biennium for court automation projects.

(2) There is appropriated from the federal special revenue account to the supreme court $200,000 for the 1993 biennium for court automation projects.

(3) The funds appropriated by this section to the supreme court must be used to pay necessary costs for court automation projects to improve information systems, case management systems, and the administration of justice.

(4) Prior to July 1, 1991, the department of social and rehabilitation services shall deposit to the credit of the state general fund all money in the federal special revenue account (number 03143) associated with the former department of community affairs grant closeouts reported in the April 1990 legislative audit by the office of the legislative auditor.

(5) The supreme court shall report to the 1993 legislature the status of judicial automation."

Section 8. Section 16, Chapter 720, Laws of 1991, is amended to read:

"Section 16. **Appropriation.** (1) The following money for the indicated fiscal years is appropriated to the listed agencies to implement [this act]:

	Fiscal 1992		Fiscal 1993	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Auditor	$ 55,321	$ 59,836	$ 90,697	$ 98,098
Legislative Fiscal Analyst	29,486		49,742	
Legislative Council	76,834		152,898	
Environmental Quality Council	11,763		18,618	
Consumer Counsel		7,167		11,734
Judiciary	72,569	16,802	122,084	28,266
University System	4,113,000	1,160,000	6,752,000	1,904,000
Office of Budget and Program Planning for Distribution to All Other Agencies	8,603,027	11,843,195	13,727,961	18,844,902

(2) There is appropriated to the state personnel division ~~$73,200~~ *$64,200* from the general fund for the fiscal year ending June 30, ~~1993~~ *1991*, for changes in the payroll/personnel/position control system. Any unexpended portion of the appropriation is reappropriated for the biennium ending June 30, 1993."

Section 9. Section 1, Chapter 753, Laws of 1991, is amended to read:

"Section 1. **Appropriation.** Upon final determination of all general fund money in the department of social and rehabilitation services' unreconciled special revenue fund balance and the deposit of these funds in the general fund, the lesser of ~~$547,339~~ *$286,589* or the amount available from the balance after funding $438,795 in fiscal 1992 and $485,182 in fiscal 1993 appropriated to the department of social and rehabilitation services from the TEAMS project is appropriated from the general fund to the department of family services for the purchase and development of a management information system and may not be used for other purposes. In addition, there is appropriated the following for this purpose:

Fiscal year 1992 . . . . $138,312 from federal special funds
Fiscal year 1993 . . . . 138,312 from federal special funds"

Section 10. Section 12, Chapter 765, Laws of 1991, is amended to read:

"Section 12. **Appropriation.** There is appropriated from the general fund to the superintendent of public instruction ~~$2,471,000~~ *$2,273,320* for the biennium ending June 30, 1993, to fund educational programs for children with disabilities who are placed in an in-state children's psychiatric hospital or residential treatment facility."

Section 11. Section 6, Chapter 774, Laws of 1991, is amended to read:

"Section 6. **Capital projects appropriations.** (1) The following money is appropriated for the indicated capital projects from the indicated sources to the

department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBPF	Other Funding Sources	
DEPARTMENT OF ADMINISTRATION			
Hazardous Material Abatement, Statewide	~~$ 617,500~~ *$ 594,625*	$ 150,000	Auxiliary
State Building Energy Retrofit, Statewide		500,000	Nonstate State Special Revenue
		1,000,000	Federal Special Revenue
		500,000	Auxiliary or Other
Construction, Litigation, Architecture and Engineering Division	345,000		
Develop Alternate Water Supply, Capitol Complex		50,000	Proprietary Funds
Property Acquisition and Development, Capitol Complex		~~123,014~~ *20,000*	Capitol Land Grant
DEPARTMENT OF COMMERCE			
Improve Pavement and Lighting, Yellowstone Airport		51,773	Proprietary Funds
		465,957	Federal Special Revenue
DEPARTMENT OF EDUCATION			
Replace Academic Building Roof and Miscellaneous Repairs, Montana School for the Deaf and Blind	339,000		
DEPARTMENT OF FAMILY SERVICES			
Expand Security Fence, Pine Hills School	27,000		
Replace and Repair Roofs, Family Services	127,600		
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Remove Underground Storage Tanks, Statewide		150,000	State Special Revenue
Headquarters Maintenance and Improvements, Statewide		85,000	State Special Revenue
Department Property Development, Statewide		360,000	State Special Revenue
State Park Maintenance and Development, Statewide		3,798,500	State Special Revenue
		1,124,500	Federal Special Revenue
Fish Hatchery Maintenance, Statewide		37,500	State Special Revenue
		112,500	Federal Special Revenue
Fishing Access Site Improvements, Statewide		286,000	State Special Revenue
		858,000	Federal Special Revenue
Motorboat Access Facilities, Statewide		67,000	State Special Revenue
		201,000	Federal Special Revenue
Wildlife Habitat Maintenance, Statewide		304,000	State Special Revenue
Waterfowl Habitat Enhancement, Statewide		349,500	State Special Revenue
DEPARTMENT OF HIGHWAYS			
Maintenance Projects, Statewide		450,000	Highways State Special Revenue
Construct and Expand Maintenance and Storage Buildings, Statewide		1,167,600	Highways State Special Revenue
		115,925	Federal Special Revenue
DEPARTMENT OF ~~INSTITUTIONS~~ *CORRECTIONS AND HUMAN SERVICES*			
Replace Water and Steam Lines, Montana Developmental Center	116,708		
Replace Roofs, Institutions	30,000		
Moisture Protection, Eastmont Human Services Center	98,450		
~~Maintain Roads and Parking Lots, Institutions~~	~~37,625~~		
Montana State Hospital Infrastructure Study	112,375		
Seal Buildings, Montana State Prison	25,000		
Building Improvements, Center for the Aged	105,015		
Replace Multipurpose Building Flooring, Montana State Hospital, Warm Springs	26,800		
Galen Repair Projects	181,000		

DEPARTMENT OF LABOR AND INDUSTRY			
Renovate and Expand Job Service, Great Falls		310,000	Federal Special Revenue
Various Major Maintenance Projects		209,450	Federal Special Revenue
DEPARTMENT OF STATE LANDS			
~~Construct Unit Office, Plains~~	~~235,000~~		
Construct Two Greenhouses, Missoula		191,900	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Kitchen Upgrade, Statewide	~~45,000~~ *5,000*		
Rifle Range Rehabilitation, Statewide	10,000	555,000	Federal Special Revenue
Armory Additions and Alterations, Statewide	~~150,000~~ *1,000*	16,155,000	Federal Special Revenue
Acquire Land and Preplan Armory, Billings	150,000	200,000	Federal Special Revenue
Expand Military Vehicle Compounds, Statewide	5,000	275,000	Federal Special Revenue
Federal Spending Authority		300,000	Federal Special Revenue
Libby Armory		827,000	Federal Special Revenue
MONTANA UNIVERSITY SYSTEM			
Primary Electrical Vault Disconnect, Eastern Montana College	31,000	14,000	Auxiliary
Install Fire Alarm System, University of Montana	70,000		
Replace and Improve Roofs, University System	1,154,550	350,000	Plant
Improve Underground Utilities, Phase I, University System	296,000	200,000	Auxiliary
Repair and Improve Heating System, Western Montana College	57,900		
Improve Handicapped Access, University System	335,000		
Replace Carpet, Great Falls Vo-Tech	60,000		
Improve Sidewalks and Fire Access, University System	86,000		
~~Plan Chemistry/Pharmacy Renovations, University of Montana~~	~~50,000~~		
~~Plan Metallurgy Remodel, Montana Tech~~	~~50,000~~		
Window Retrofit Museum Building, Montana Tech	142,000		
Various Improvements, University of Montana		2,584,600	Federal, Higher Education Funds, and/or Donations
Centennial Mall, Montana State University		1,600,000	Plant
Remodel Student Union Building, Western Montana College		600,000	Auxiliary
Construct Engineering/Physical Sciences Complex, Montana State University		~~2,168,200~~ *2,301,200*	Higher Education Funds and/or Donations
Life Science Building, University of Montana		12,000,000	Federal Special Revenue
Construct Business Administration Building, University of Montana		1,858,320	Higher Education Funds and/or Donations
Multipurpose Building, Northern Agricultural Research Center	150,000	*150,000*	*Higher Education Funds and/or Donations*
Repair Northern Montana College Gymnasium	*934,500*	1,700,000	Higher Education Funds and/or Donations

~~(2) If House Bill No. 959 is not passed and approved, the appropriation in this section to construct the engineering/physical sciences complex at MSU is $2,668,200 from higher education funds and/or donations.~~

~~(3)~~*(2)* For purposes of obtaining cash for the construction litigation appropriation authority in [section 6(1)], the architecture and engineering division of the department of administration is authorized to request a budget amendment for transfer of any excess long-range building project funds from any agency so long as the amendment does not move funds required to complete any authorized agency project.

~~(4)~~*(3)* The following money is appropriated to the department of administration in the indicated amounts for the purpose of planning projects described in [section 12] and authorized in [section 13]:

Agency/Project	LRBPF	Other Funding Sources
Preliminary Design for Prison Expansion	$ 877,500	
Preliminary Design, University System:		
Engineering/Physical Sciences, MSU	1,165,290	
Business Administration, UM	604,705	

~~(5)~~*(4)* ~~(a) If House Bill No. 959 is passed and approved, the~~ *The* following money is appropriated to the department of administration for the university system:

Agency/Project	LRBPF	Other Funding Sources	
University System			
Deferred Maintenance Projects and Equipment Approved by the Board of Regents		~~$ 600,000~~ *$ 517,500*	General Fund
Repair Northern Montana College Gymnasium		~~1,300,000~~ *283,000*	General Fund
Equipment for Eastern Montana College		600,000	General Fund
Construct Engineering/Physical Sciences Complex, Montana State University		~~500,000~~ *367,000*	General Fund

~~(b) If the bonding program in [section 13] fails to receive the necessary two-thirds vote of both houses of the legislature and if House Bill No. 959 is passed and approved, there is appropriated $1,800,000 from the general fund to the university system for deferred maintenance projects and/or equipment as approved by the board of regents. The $1,165,290 appropriation for the engineering/physical sciences complex at MSU and the $604,705 appropriation for the business administration building at UM in [section 6(4)] are void, and LRBPF funds in the amount of $1,769,995 are appropriated to replace the $1,300,000 general fund appropriation for the repairs of the northern Montana college gymnasium in subsection (5), funds in the amount of $400,000 are appropriated to replace the bonding money for the Libby armory in [section 12], and funds in the amount of $69,995 are appropriated to design the remodeling of the Great Falls vocational-technical center.~~

~~(6)~~*(5)* Amounts not to exceed $490,000 of federal special revenue money and $163,333 of state special revenue money appropriated in the state parks maintenance and development statewide line item under subsection (1) may be added to the line item appropriations for motorboat access facilities statewide under subsection (1) or fishing access site acquisition statewide under [section 8(1)]. ~~This subsection is void if House Bill No. 386 and Senate Bill No. 415 are passed and approved and provide sufficient additional state special revenue money required as state matching funds to fully utilize all of the federal special revenue money provided in subsection (1) in the line item appropriation for state parks.~~"

Section 12. Section 9, Chapter 781, Laws of 1991, is amended to read:

"Section 9. **Appellate defender — appropriation.** The following money is appropriated from funds available as provided in 3-5-901(2) to the appellate defender commission for the operation of the commission and the office of appellate defender:

Fiscal year 1992	~~$100,000~~ *$ 50,000*
Fiscal year 1993	100,000"

Section 13. Section 5, Chapter 816, Laws of 1991, is amended to read:

"Section 5. **General fund appropriation.** The department of ~~highways~~ *justice* is appropriated ~~$345,000~~ *$317,400* from the general fund in fiscal 1992 and ~~$233,000~~ *$214,360* from the general fund in fiscal 1993 to pay a portion of the state retirement contribution for the Montana highway patrol."

Section 14. Section 1, Chapter 820, Laws of 1991, is amended to read:

"Section 1. **Appropriation.** There is appropriated from the general fund ~~$700,000~~ *$644,000* to the department of commerce for the Lewis and Clark national historic trail interpretive center for the biennium ending June 30, 1993. The money, along with the $300,000 of other funds specified in [section 2], is to be used to match federally appropriated funds on an 8-to-1 basis. The department of commerce shall administer the appropriation to add another tourism destination attraction in Montana. The department of commerce shall distribute the money for planning, design, and all phases of construction for a Lewis and Clark national historic trail interpretive center, as authorized in Public Law 100-552."

Section 15. **Repealer.** Section 7, Chapter 725, Laws of 1991, is repealed.

Section 16. **Effective date.** [This act] is effective on passage and approval.

Approved February 4, 1992

CHAPTER NO. 14

[HB 3]

AN ACT ACCEPTING AN AMENDMENT TO THE ENABLING ACT IN ORDER TO ALLOW CERTAIN TIMBER TO BE TREATED AS A CROP; TREATING TIMBER HARVESTED FROM SCHOOL TRUST LANDS AS A CROP; RETAINING TIMBER SALE REVENUE FROM TIMBER HARVESTED FROM OTHER TRUST LANDS IN THE TRUST FUND SUPPORTING THE INSTITUTION TO WHICH THE LAND IS GRANTED; EXCLUDING TIMBER SALE REVENUE FROM THE DEFINITION OF INCOME TO BE DEPOSITED IN THE RESOURCE DEVELOPMENT ACCOUNT; AMENDING SECTIONS 17-3-1003, 20-9-341, 20-9-601, AND 77-1-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Legislature recognizes that timber on school trust lands is a finite renewable resource to be managed on a sustainable yield basis by the Department of State Lands.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Acceptance of amendment.** The State of Montana hereby accepts the amendment to section 11 of the Act approved February 22, 1889 (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved by the President of the United States, June 30, 1967, (Public Law 90-41), which amendment reads as follows:

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the second sentence of the fourth paragraph of section 11 of the Act entitled "An Act to provide for the division of Dakota into two States and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States", approved February 22, 1889 (25 Stat. 676), as amended, is amended to read as follows: "Rentals on leased land, proceeds from the sale of timber and other crops, interest on deferred payments on land sold, interest on funds arising from these lands, and all other actual income, shall be available for the acquisition and construction of facilities, including the retirement of bonds authorized by law for such purposes, and for the maintenance and support of such schools and institutions." Approved June 30, 1967.

Section 2. Section 17-3-1003, MCA, is amended to read:

"**17-3-1003. Support of state institutions.** (1) For the support and endowment of each state institution, there is annually and perpetually appropriated the income from all permanent endowments therefor and from all land grants as provided by law. All moneys received or collected in connection with such endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except revenues pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of such obligations or moneys which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the proper fund.

(2) ~~All moneys~~ *Except as provided in subsection (3), all money* received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution shall be deposited with the state treasurer of Montana for each of such institutions, to the credit of the state special revenue fund.

(3) All money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution."

Section 3. Section 20-9-341, MCA, is amended to read:

"**20-9-341. Definition of interest and income moneys.** (1) As used in this title, the term "interest and income moneys" means the total of the following revenues, as provided for by Article X, section 5, of the 1972 Montana constitution:

(a) 95% of the interest received from the investment of the public school fund;

(b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of *or sale of timber from* state school lands after any deductions that may be made under the provisions of Title 77, chapter 1, part 6; and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of such revenues shall be annually credited to the public school fund."

Section 4. Section 20-9-601, MCA, is amended to read:

"**20-9-601. Public school fund.** The public school fund shall be maintained by the state treasurer as a fund in the nonexpendable trust fund type, and the principal amount of such fund shall be irreducible and permanent. The following moneys shall be credited to such fund as an addition to the irreducible and permanent principal amount:

(1) appropriations and donations by the state;

(2) donations and bequests by individuals to the state or schools;

(3) the proceeds of land and other property which revert to the state by escheat and forfeiture;

(4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;

(5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;

(6) the proceeds of the sale of ~~timber,~~ stone, materials, or other property from school lands other than those granted for specific purposes and all moneys other than rental recovered from persons trespassing on such lands;

(7) the principal of all moneys arising from the sale of lands and other property which have been and may be hereafter granted to the state for the support of common schools;

(8) the amount earmarked for deposit in this fund under the provisions of 20-9-341; and

(9) such other moneys as may be provided by the legislature."

Section 5. Section 77-1-602, MCA, is amended to read:

"**77-1-602. Definition of terms.** Unless the context requires otherwise, in this part the following definitions apply:

(1) "Account" means the resource development account in the state special revenue fund.

(2) "Income" means all proceeds received for the use of state land except ~~revenues~~ *revenue* required by law to be placed in the Montana nonexpendable trust fund type *and revenue from the sale of timber.*"

Section 6. **Effective date — termination.** [This act] is effective on passage and approval, and [sections 3 through 5] terminate June 30, 1993.

Approved February 4, 1992.

CHAPTER NO. 15

[HB 4]

AN ACT TRANSFERRING TO THE GENERAL FUND $1.5 MILLION FROM UNEMPLOYMENT INSURANCE ADMINISTRATIVE FUNDS COLLECTED THROUGH STATE ASSESSMENTS; AMENDING SECTIONS 39-51-404 AND 39-51-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-404, MCA, is amended to read:

"**39-51-404. Administrative expenses.** (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount which may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such 35 12-month periods.

(2) For the purposes of this section, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the 34th preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the unemployment insurance administration account but, until expended, shall remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited

is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) Beginning with the third quarter of 1983, an assessment equal to .1% of all taxable wages provided for in 39-51-1108 and .05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers ~~and may be used by the department for administrative purposes~~. All such assessments must be deposited in the unemployment insurance administration account provided for in 39-51-406 and used as appropriated by the legislature. Any assessments deposited to the unemployment insurance administration account, including investment income, that are not appropriated by the legislature must be transferred to the unemployment trust fund account provided for in 39-51-402."

Section 2. Section 39-51-406, MCA, is amended to read:

"**39-51-406. Unemployment insurance administration account.** (1) There is hereby created an account in the federal special revenue fund to be known as the unemployment insurance administration account. ~~All~~ *Except as provided in subsection (8),* moneys which are deposited, appropriated, or paid into this account are hereby appropriated and made available to the department. ~~All~~ *Except as provided in subsection (8),* moneys in the account shall be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of such other legislation as shall be specifically delegated to the department for administration by the legislature.

(2) All moneys received and deposited in said account for administration expense from the United States or any agency thereof pursuant to section 302, Title III, of the Social Security Act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account shall consist of:

(a) all moneys received from the United States or any agency thereof pursuant to section 302, Title III, of the Social Security Act, as amended;

(b) all moneys appropriated by the state from the general fund for the purpose of administering this chapter; and

(c) all moneys, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency thereof;

(ii) this state or any agency thereof;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

(v) any other source for administrative expense and purpose.

(4) ~~Notwithstanding any provisions of this section~~ *Except as provided in subsection (8),* all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 shall remain part of the unemployment insurance fund and shall be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. Any balance in this account shall not lapse at any time but shall be continuously available to the department for the expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment insurance fund under 39-51-402 shall be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code shall be taken to mean the unemployment insurance administration account in the federal special revenue fund.

(8) On or before June 30, 1992, the department shall transfer an amount not to exceed $1.5 million from the unemployment insurance administration account to the general fund."

Section 3. **Effective date — termination.** [This act] is effective on passage and approval and terminates July 1, 1992.

Approved February 4, 1992.

CHAPTER NO. 16

[HB 10]

AN ACT DIVERTING TO THE GENERAL FUND COAL SEVERANCE TAX FUNDS THAT WOULD OTHERWISE BE DEPOSITED IN THE HIGHWAY RECONSTRUCTION TRUST FUND ACCOUNT; AMENDING SECTION 15-35-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-35-108, MCA, is amended to read:

"**15-35-108.** *(Temporary)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money

must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, ~~1987~~ *1992*, and ending June 30, ~~2003~~ *1993*, 12% of coal severance tax collections are allocated to the ~~highway reconstruction trust fund account in the state special revenue~~ *general* fund.

(3) Coal severance tax collections remaining after the allocations provided by subsections (1) and (2) are allocated in the following percentages of the remaining balance:

(a) 17 ½% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 ¼% to the credit of the renewable resource development bond fund;

(e) 0% to a nonexpendable trust fund for the purpose of parks management. Income from this trust fund must be appropriated for the development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 ¼% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 ⅔% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(k) beginning July 1, 1991, and ending June 30, 1993, 3 ⅓% to a special revenue account to be used by the department of fish, wildlife, and parks for the development, operation, and maintenance of state parks and the stabilization and preservation of historic sites within the state park system;

(l) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates June 30, 1993—sec. 3, Ch. 615, L. 1991.)*

15-35-108. *(Effective July 1, 1993)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Starting July 1, 1987, and ending June 30, 2003, 12% of coal severance tax collections are allocated to the highway reconstruction trust fund account in the state special revenue fund.

(3) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state. *(Terminates July 1, 2003—sec. 4, Ch. 191, L. 1991.)*

15-35-108. *(Effective July 1, 2003)* **Disposal of severance taxes.** Severance taxes collected under this chapter must be allocated according to the provisions in effect on the date the tax is due under 15-35-104. Severance taxes collected under the provisions of this chapter are allocated as follows:

(1) To the trust fund created by Article IX, section 5, of the Montana constitution, 50% of total coal severance tax collections. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) 17 1/2% to the credit of the local impact account. Unencumbered funds remaining in the local impact account at the end of each biennium are allocated to the state special revenue fund for state equalization aid to public schools of the state.

(b) 30% to the state special revenue fund for state equalization aid to public schools of the state;

(c) 1% to the state special revenue fund to the credit of the county land planning account;

(d) 1 1/4% to the credit of the renewable resource development bond fund;

(e) 3 1/3% to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(f) 1% to the state special revenue fund to the credit of the state library commission for the purposes of providing basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking;

(g) 1/2 of 1% to the state special revenue fund for conservation districts;

(h) 1 1/4% to the debt service fund type to the credit of the water development debt service fund;

(i) 2% to the state special revenue fund for the Montana Growth Through Agriculture Act;

(j) 1 2/3% to a nonexpendable trust fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Income from this trust fund shall be appropriated for protection of works of art in the state capitol and other cultural and aesthetic projects.

(k) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 2. **Effective date — termination.** [This act] is effective on passage and approval and terminates July 1, 1993.

Approved February 4, 1992.

CHAPTER NO. 17

[HB 14]

AN ACT TO PROVIDE FOR PAYMENT OF ESTIMATED INDIVIDUAL INCOME TAXES IN FOUR INSTALLMENTS; TO ESTABLISH THAT AN AMOUNT EQUAL TO AT LEAST 90 PERCENT OF THE TAX DUE IN THE CURRENT TAX YEAR OR EQUAL TO 100 PERCENT OF THE TAX LIABILITY IN THE PRECEDING TAX YEAR MUST BE PAID THROUGH PAYMENT OF ESTIMATED TAXES, THROUGH EMPLOYER WITHHOLDING, OR THROUGH A COMBINATION OF BOTH; TO PROVIDE CERTAIN EXCEPTIONS FROM THE PAYMENT OF ESTIMATED TAXES; TO ALLOW PAYMENT OF ESTIMATED TAXES ON THE BASIS OF ANNUALIZED INSTALLMENTS; TO REQUIRE PAYMENT OF A PENALTY FOR FAILURE TO PAY THE REQUIRED INSTALLMENT OF ESTIMATED TAXES; TO PROVIDE AN APPROPRIATION; AMENDING SECTION 15-30-241, MCA; REPEALING SECTION 15-30-242, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-241, MCA, is amended to read:

"**15-30-241.** ~~**Declaration of estimated**~~ ***Estimated*** **tax — *payment — exceptions — penalty.*** (1) *(a)* ~~Every~~ *Each* individual *subject to tax under this chapter,* except farmers~~,~~ *or* ranchers~~, or stockmen~~ *as defined in subsection (6),* shall~~, at the time prescribed in subsection (3) of this section, make a declaration of his estimated tax~~ *pay* for the ~~taxable~~ *tax* year, *through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:*

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year. ~~if his net income from sources other than wages, salaries, bonuses, or other emoluments can reasonably be expected to equal or exceed his net income from wages, salaries, bonuses or other emoluments, which are subject to withholding.~~

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than $500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) ~~In the declaration required under subsection (1) of this section, the individual shall state:~~

~~(a) the amount which he estimates as the amount of tax under 15-30-103 for the taxable year;~~

~~(b) the amount which he estimates will be withheld from wages paid by his employer if said individual is an employee;~~

~~(c) the excess of the amount estimated under subsection (2)(a) over the amount estimated under subsection (2)(b), which excess for purposes of this section shall be considered the estimated tax for the taxable year;~~

~~(d) such other information as may be prescribed in rules promulgated by the department.~~

~~(3) The declaration required under subsection (1) of this section shall be filed with the department on or before April 15 of the taxable year, except that if the requirements of subsection (1) of this section are first met:~~

~~(a) after April 1 and before October 1 of the taxable year, the declaration shall be filed on or before October 15 of the taxable year;~~

~~(b) after October 1 of the taxable year, the declaration shall be filed on or before February 15 of the succeeding taxable year.~~

~~(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules prescribed by the department.~~

~~(5) If, on or before February 15 of the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on his return as payable, then under rules prescribed by the department:~~

~~(a) if the declaration is not required to be filed during the taxable year but is required to be filed on or before such February 15, such return shall for the purposes of this section be considered as such declaration; and~~

~~(b) if the tax shown on the return is greater than the estimated tax shown in a declaration previously made or in the last amendments thereof, such return shall for the purposes of this section be considered as the amendment of the declaration permitted by subsection (4) of this section to be filed on or before such February 15.~~ *Estimated taxes must be paid in four installments according to one of the following schedules:*

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	*Date*
First	*April 15*
Second	*June 15*
Third	*September 15*
Fourth	*January 15 of the following tax year*

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	*Date*
First	*15th day of the 4th month following the beginning of the tax year*
Second	*15th day of the 6th month following the beginning of the tax year*
Third	*15th day of the 9th month following the beginning of the tax year*
Fourth	*15th day of the month following the close of the tax year*

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending

before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	*Applicable Percentage*
First	*22.5%*
Second	*45%*
Third	*67.5%*
Fourth	*90%*

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased by the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter a penalty equal to 10% a year on the amount of the underpayment. The penalty is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the penalty in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due date for the installment.

(c) For the purpose of determining the penalty in subsection (5)(a), an estimated payment must be credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each married taxpayer filing separately on the same form, the penalty provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

(e) A penalty may not be imposed with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66⅔% of the taxpayer's gross income, as defined in 15-30-101(7), from farming or ranching operations, or both.

~~(6)~~*(7)* The department shall promulgate rules governing reasonable extensions of time for ~~filing declarations and~~ paying the estimated tax ~~except in the~~

~~case of taxpayers who are abroad, and no such.~~ *An* extension ~~shall~~ *may not* be for more than 6 months.

~~(7) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.~~

~~(8) Any individual who fails to file a declaration of estimated tax as required by this section is not subject to the penalties set forth in 15-30-321.~~"

Section 2. **Repealer.** Section 15-30-242, MCA, is repealed.

Section 3. **Appropriation.** There is appropriated from the general fund to the department of revenue $77,971 for fiscal year 1993 to implement the provisions of [this act].

Section 4. **Effective dates — applicability.** (1) Except for the purposes of subsection (2), [this act] is effective July 1, 1992, and applies to tax years beginning after December 31, 1992.

(2) For the purposes of promulgating administrative rules to implement [section 1], [this act] is effective on passage and approval.

Approved February 4, 1992.

CHAPTER NO. 18

[HB 17]

AN ACT TRANSFERRING TO THE GENERAL FUND THE REMAINING FUND BALANCE FROM THE GAMBLING LICENSE FEE ACCOUNT; AMENDING SECTION 23-5-306, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-306, MCA, is amended to read:

"**23-5-306. Live card game table — permit — fees — disposition of fees.** (1) A person who has been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for consumption on the premises may be granted an annual permit for the placement of live card game tables. If one or more live card game tables were legally operated on a premises on January 15, 1989, and the premises were not on that date licensed under 16-4-401(2) but were licensed on that date to sell food, cigarettes, or any other consumable product, an operator's license and an annual permit for the placement of live card game tables may be granted to the person who legally operated the premises on January 15, 1989.

(2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed operator's premises may not be prorated and must be:

(a) $250 for the first table; and

(b) $500 for each additional table.

(3) The department shall retain for administrative purposes $100 of the fee collected under this part for each live card game table.

(4) ~~The~~ *Except as provided in subsection (5), the* department shall forward on a quarterly basis the remaining balance of the fee collected under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the live card game table is located for deposit to the county or municipal treasury. A county is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and towns within the county. The local government portion of this fee is statutorily appropriated to the department, as provided in 17-7-502, for deposit to the county or municipal treasury.

(5) On June 30, 1993, the department shall transfer to the general fund the remaining fund balance from the account funded by this section."

Section 2. **Effective date — termination.** [This act] is effective on passage and approval and terminates July 1, 1993.

Approved February 4, 1992.

CHAPTER NO. 19

[HB 21]

AN ACT TRANSFERRING TO THE GENERAL FUND $250,000 FROM THE CRIME VICTIMS COMPENSATION ACCOUNT; AMENDING SECTION 53-9-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-9-109, MCA, is amended to read:

"53-9-109. Crime victims compensation account. *(1)* There is a crime victims compensation and assistance account in the state special revenue fund. There shall be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. ~~The~~ *Except as provided in subsection (2), the* money in the account is to be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the division. ~~No~~ *Except as provided in subsection (2), no* fund balance in the account at the end of a fiscal year may be deposited in the general fund.

(2) On or before June 30, 1992, the division shall transfer $250,000 from the crime victims compensation and assistance account to the general fund."

Section 2. **Effective date — termination.** [This act] is effective on passage and approval and terminates July 1, 1992.

Approved February 4, 1992.

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING THE OFFICIAL ESTIMATE, CONTAINED IN HOUSE JOINT RESOLUTION NO. 24, LAWS OF 1991, OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 1992-93 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING THE JUNE 30, 1991, GENERAL FUND AND STATE EQUALIZATION ACCOUNT BALANCES THAT WERE ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR THE REMAINDER OF FISCAL YEAR 1992 AND FOR FISCAL YEAR 1993; AND ESTABLISHING AN ESTIMATE OF THE NON-GENERAL FUND REVENUES FOR THE STATE EQUALIZATION ACCOUNT.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail the estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution prohibits the Legislature from appropriating funds in excess of the anticipated revenue of the state; and

WHEREAS, it became apparent shortly after the adjournment of the 52nd regular session that there would be a shortfall in anticipated revenue, primarily in individual income taxes, oil severance taxes, and interest earnings; and

WHEREAS, the Office of Budget and Program Planning has projected that revenue collections for fiscal years 1991, 1992, and 1993 will be $73.3 million less than estimated by the Legislature in House Joint Resolution No. 24; and

WHEREAS, section 10, Chapter 787, Laws of 1991 (codified as section 17-7-140, MCA), delegates authority to the Governor to reduce appropriations in the event of a shortfall in revenue; and

WHEREAS, for the last 20 years, the Montana Legislature has similarly delegated this authority to the Governor in the general appropriations acts; and

WHEREAS, the Governor signed Executive Order No. 28-91, which directed state agencies and the University System to balance the state budget by reducing expenditures, transferring fund balances, revising revenue estimates, and transferring other funds; and

WHEREAS, several associations affiliated with the University System and four legislators filed suit in the Montana First Judicial District, Lewis and Clark County, challenging the constitutionality of the Montana Legislature's delegation of authority to the Governor to reduce appropriations, as provided in section 17-7-140, MCA; and

WHEREAS, the official statement for the issuance of $85 million in tax revenue and anticipation notes indicated that the Governor would call a special session of the Legislature if he was enjoined from balancing the budget under Executive Order No. 28-91 and if there were no available alternatives for the management of the state's budget on a financially sound basis; and

WHEREAS, the Governor issued a call for a special session to begin January 6, 1992, to address the disparity between budgeted expenditures and anticipated revenue; and

WHEREAS, the Montana Legislature must revise its revenue estimates to responsibly deal with the budget crisis; and

WHEREAS, section 5-18-107(5), MCA, requires the Revenue Oversight Committee to estimate the amount of revenue projected to be available for legislative appropriation for use until amended or until final adoption of the estimate by both houses; and

WHEREAS, the Revenue Oversight Committee, in anticipation of the special session, has revised its assumptions relating to revenue estimates for individual and corporation income taxes, oil and coal severance taxes, earnings on investments, statewide mill levies, and lottery receipts; and

WHEREAS, because of the complexity of economic variables involved in revenue forecasting and the diversity of sources from which state revenues are obtained, the Committee limited its revised assumptions to those areas described above; and

WHEREAS, given the magnitude of the fiscal crisis facing the State of Montana and given the Legislature's constitutional responsibility to balance the budget, it is in the best interests of the state that revenue forecasts be discussed and determined in public hearings at which all interested people may attend and participate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state general fund revenue for fiscal years 1992 and 1993 is estimated to be $469,896,000 and $484,634,000, respectively. The school foundation revenue for fiscal years 1992 and 1993 is estimated to be $375,407,000 and $371,494,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accepts for budget purposes the unreserved fund balance of $58,700,000 for the general fund and $9,482,000 for the state equalization account, prepared according to generally accepted accounting principles as published in the audited state financial statements as of June 30, 1991.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use, as contemplated in section 5-18-107(5), MCA, the revenue estimates contained in this resolution as the official revenue estimates for fiscal years 1992 and 1993.

JANUARY 1992 SPECIAL SESSION

GENERAL FUND REVENUE

The revised projections for total general fund revenue during the 1992-93 biennium are based on an assumption of a continuation of Montana law as it existed on January 1, 1992.

The revenue estimates contained in the following tables are based on the assumptions stated previously in this resolution and those listed in the following tables.

ECONOMIC ASSUMPTIONS

Revenue Oversight Committee

YEAR	ASSUMPTION	CY/FY 1991	CY/FY 1992	CY/FY 1993
	MT Population July 1 (Thousands)	800.000	804.000	808.000
	MT Population > = 16 July 1 (Thousands)	609.000	613.000	617.000
	MT Population 18-24 July 1 (Thousands)	67.000	64.000	61.000
CY	MT Nonfarm Employment (Thousands)	300.800	304.500	307.100
CY	MT Personal Income (Billions)	$12.506	$12.969	$13.586
CY	MT Nonfarm Wage & Salary Income (Billions)	$5.964	$6.229	$6.497
CY	Interest & Dividend Income (Percent change)	5.570%	4.440%	4.300%
CY	Net Business Income (Percent change)	5.570%	4.440%	4.300%
CY	Capital Gains/Losses Income (Percent change)	0.300%	0.300%	0.300%
CY	Rent/Royalty/Partnership Income (Percent change)	14.000%	12.000%	10.000%
CY	Other Nonwage & Salary Income (Percent change)	5.570%	4.440%	4.300%
CY	CPI Percent Change	4.130%	3.500%	4.000%
CY	U.S. Corporate Profits Before Taxes (Billions)	$282.000	$310.900	$349.300
CY	Short-Term Interest Rate	6.080%	5.800%	6.500%
CY	Long-Term Interest Rate	8.840%	8.500%	9.500%
CY	Prime Interest Rate	9.810%	10.000%	10.000%
FY	Treasury Cash Average Balance (Millions)	$273.426	$239.636	$211.601
FY	TRANS Issue (Millions)	$0.000	$85.000	$145.000
FY	Basis Points (Percentage)	0.000%	1.000%	1.000%
FY	Individual Income Tax Audits (Millions)	$11.266	$14.077	$16.397
FY	Legislative Audits (Millions)	$0.000	$0.750	$0.750
FY	Corporation Tax Audits (Millions)	$8.109	$10.155	$13.257
FY	Other Audits (Millions)			$0.200
CY	Total Oil Production (Million bbls.)	18.358	17.807	17.273
CY	Montana Oil Price	$18.200	$18.000	$18.000
FY	Statewide Taxable Valuation (Millions)	$1,564.317	$1,572.956	$1,601.896
CY	Total Coal Production (Million tons)	35.182	34.515	34.375
CY	Montana Coal Price (CSP)	$7.564	$7.540	$7.530
FY	Coal Tax Credits (Millions)	$4.996	$2.449	$0.000
CY	Total Natural Gas Production (M MCF)	45.622	47.304	47.437
CY	Montana Natural Gas Price ($/MCF)	$1.773	$1.907	$2.097
CY	Copper Production (M lbs.)	135.762	137.863	130.776
CY	Gold Production (M ozs.)	0.348	0.345	0.347
CY	Silver Production (M ozs.)	6.449	6.454	6.457
CY	Lead Production (M lbs.)	11.665	11.674	11.739
CY	Zinc Production (M lbs.)	32.029	32.421	32.602
CY	Molybdenum Production (M lbs.)	14.100	10.900	9.300
CY	Palladium Production (M ozs.)	0.200	0.222	0.290
CY	Platinum Production (M ozs.)	0.061	0.067	0.088
CY	Copper Price	$1.046	$1.038	$1.042
CY	Gold Price	$400.675	$400.675	$400.675
CY	Silver Price	$4.775	$4.775	$4.775
CY	Lead Price	$0.209	$0.209	$0.209
CY	Zinc Price	$0.502	$0.502	$0.502

YEAR	ASSUMPTION	CY/FY 1991	CY/FY 1992	CY/FY 1993
CY	Molybdenum Price	$3.119	$3.112	$3.115
CY	Palladium Price	$132.725	$132.725	$132.725
CY	Platinum Price	$453.253	$453.253	$453.253
FY	Forest Receipts (Millions)	$11.150	$7.753	$7.705
FY	Permanent Trust Gains/Losses (Millions)	$1.195	$1.195	$1.195
FY	Common School Trust Gains/Losses (Millions)	$1.231	$1.231	$1.231
FY	Resource Ind. Trust Gains/Losses (Millions)	$0.339	$0.339	$0.339
FY	Park Acq. Trust Gains/Losses (Millions)	$0.054	$0.054	$0.054
FY	Liquor Unit Sales (Millions)	4.780	4.680	4.582
FY	Wine Unit Sales (Millions)	0.100	0.083	0.067
FY	Liquor Cost Per Unit	$4.977	$5.066	$5.156
FY	Wine Cost Per Unit	$3.258	$3.372	$3.483
FY	Liquor Division Budget (Percent change)	0.000%	0.000%	0.000%
FY	Cigarette Packs (Millions)	68.874	68.068	67.156
FY	Tobacco Value (Millions)	$7.626	$8.053	$8.490
FY	Insurance Premiums Growth (Percent change)	1.890%	1.890%	1.890%
FY	Insurance Premiums Tax Credit	$3.231	$4.311	$5.391
FY	Police & Firemen Retirement (Millions)	$6.213	$6.391	$6.479
CY	Telephone Taxable Income (Percent change)	$234.185	$241.724	$250.770
CY	Kilowatt Hours Produced (Millions)	22,664.000	22,682.000	22,663.000
FY	Barrels of Beer (Millions)	0.702	0.706	0.711
CY	Freight Line Earnings (Millions)	$21.757	$21.768	$21.699
FY	Liters of Wine (Millions)	5.036	4.907	4.785
FY	Video Machine Net Income (Millions)	$126.079	$139.382	$150.333
FY	Statewide Vehicle Value (Millions)	$1,905.049	$1,935.412	$1,986.326
FY	Per Capita Lottery Sales	$27.000	$32.700	$35.400

Current Law
General Fund Revenue Estimates
(In Millions)

Source of Revenue	Estimated FY 1992	Estimated FY 1993	Estimated FY 1992 and 1993
Individual Income Tax	$199.084000	$203.714000	$402.798000
Corporation License Tax	32.517000	37.190000	69.707000
Coal Severance Tax	6.086000	5.864000	11.950000
Oil Severance Tax	16.466000	15.908000	32.374000
Interest on Investments	17.660000	21.717000	39.377000
Long-Range Bond Excess	42.551000	43.932000	86.483000
Coal Trust Interest Income	43.103000	44.188000	87.291000
Insurance Premiums Tax	18.518000	17.885000	36.403000
Public Institutions Reimb.	13.448000	13.028000	26.476000
Liquor Profits	5.363000	4.301000	9.664000
Liquor Excise Tax	5.710000	5.691000	11.401000
Inheritance Tax	9.704000	9.969000	19.673000
Metal Mines Tax	4.661000	4.460000	9.121000
Electrical Energy Tax	4.239000	4.241000	8.480000
Driver's License Tax	1.571000	1.577000	3.148000
Telephone License Tax	4.009000	4.325000	8.334000
Beer License Tax	1.272000	1.280000	2.552000
Natural Gas Severance Tax	1.634000	1.816000	3.450000
Other Revenue Sources	21.683000	22.237000	43.920000
Freight Line Tax	1.197000	1.193000	2.390000
Wine Tax	0.785000	0.766000	1.551000
Video Gaming Income Tax	6.973000	7.448000	14.421000
Motor Vehicle Account	7.882000	8.056000	15.938000
Vehicle Fees	2.710000	2.781000	5.491000

Source of Revenue	Estimated FY 1992	Estimated FY 1993	Estimated FY 1992 and 1993
Public Contractor's Tax	1.070000	1.067000	2.137000
Grand Total	$469.896000	$484.634000	$954.530000

Current Law
Foundation Program Revenue Estimates
(In Millions)

Source of Revenue	Estimated FY 1992	Estimated FY 1993	Estimated FY 1992 and 1993
State Revenue			
Income Tax	$90.349000	$92.450000	$182.799000
Corporation Tax	15.193000	17.376000	32.569000
Coal Tax	4.508000	4.344000	8.852000
Interest & Income	37.897000	38.808000	76.705000
U.S. Oil & Gas Royalties	25.005000	24.395000	49.400000
Education Trust Interest	0.054000	0.055000	0.109000
State Equal. Account Interest	0.290000	0.000000	0.290000
Permanent Trust Interest	7.606000	7.798000	15.404000
Lottery	5.025000	5.048000	10.073000
Statewide 40 Mills	63.003000	64.161000	127.164000
Miscellaneous	14.937000	8.838000	23.775000
County Levy Surplus	0.000000	0.000000	0.000000
Total State	$263.867000	$263.273000	$527.140000
Statewide Taxable Valuation	1572.956000	1601.896000	Not Applicable
County Revenue			
55 Mills	$86.513000	$88.104000	$174.617000
Elementary Transportation	0.000000	0.000000	0.000000
Cash Reappropriated	6.718000	1.119000	7.837000
Forest Funds	1.744000	1.409000	3.153000
Taylor Grazing	0.119000	0.114000	0.233000
Miscellaneous	17.439000	18.374000	35.813000
High School Tuition	-0.993000	-0.899000	-1.892000
Total County	$111.540000	$108.221000	$219.761000
Total State & County	$375.407000	$371.494000	$746.901000

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DIRECTOR OF THE DEPARTMENT OF COMMERCE TO REVIEW THE FUNDS AND FUND BALANCES OF THE BOARDS ATTACHED TO THE DEPARTMENT AND TO REPORT THE FINDINGS TO THE REVENUE OVERSIGHT COMMITTEE AND THE LEGISLATIVE FINANCE COMMITTEE.

WHEREAS, the State of Montana will face continued fiscal problems in the 1995 biennium; and

WHEREAS, the various boards attached to the Department of Commerce have financial resources totaling in excess of $5 billion; and

WHEREAS, these resources should be carefully reviewed to determine if the resources are being used to properly meet the needs of the state and if any of the resources can be transferred to the general fund in order to help address the state's fiscal problems; and

WHEREAS, the Governor has directed this special session to "consider action that would consider transfer of various funds and the diversion of revenues from other funds to the general fund".

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Director of the Department of Commerce review the various funds and fund balances of the boards attached to the Department and present the findings and any proposed actions to the Revenue Oversight Committee and the Legislative Finance Committee.

CODE SECTIONS AFFECTED

Title-Ch.-Sec.	Action	Chapter	Bill #
2-4-313	amended	Ch. 6	HB 9
2-6-211	amended	Ch. 6	HB 9
13-10-102	enacted	Ch. 2	SB 2
15-30-241	amended	Ch. 17	HB 14
15-30-242	repealed effective 07/01/92	Ch. 17	HB 14
15-35-108	amended	Ch. 8	HB 13
15-35-108	amended	Ch. 16	HB 10
17-3-1003	amended	Ch. 14	HB 3
17-5-701	amended	Ch. 3	HB 19
17-5-703	amended	Ch. 12	SB 5
17-5-704	amended	Ch. 12	SB 5
17-6-310	amended	Ch. 12	SB 5
17-7-301	amended	Ch. 11	SB 4
17-7-311	enacted	Ch. 11	SB 4
19-15-101	amended	Ch. 10	SB 1
19-15-102	amended	Ch. 10	SB 1
20-9-341	amended	Ch. 14	HB 3
20-9-466	enacted	Ch. 12	SB 5
20-9-467	enacted	Ch. 12	SB 5
20-9-601	amended	Ch. 14	HB 3
22-2-304	amended	Ch. 8	HB 13
23-5-306	amended	Ch. 18	HB 17
39-51-404	amended	Ch. 15	HB 4
39-51-406	amended	Ch. 15	HB 4
53-1-302	amended	Ch. 4	HB 5
53-9-109	amended	Ch. 19	HB 21
61-2-107	amended	Ch. 5	HB 6
61-2-108	amended	Ch. 5	HB 6
61-5-121	amended	Ch. 5	HB 6
61-12-504	amended	Ch. 5	HB 6
77-1-602	amended	Ch. 14	HB 3
90-3-305	amended	Ch. 9	HB 18
90-3-525	amended	Ch. 9	HB 18
90-6-701	enacted	Ch. 3	HB 19
90-6-702	enacted	Ch. 3	HB 19
90-6-703	enacted	Ch. 3	HB 19
90-6-710	enacted	Ch. 3	HB 19

SESSION LAWS AFFECTED

Laws Affected	Action	Chapter	Bill #
Laws of 1991			
Ch. 526, sec. 9	amended	Ch. 13	HB 2
Ch. 546, sec. 2	amended	Ch. 13	HB 2
Ch. 551, sec. 12	amended	Ch. 7	HB 12
Ch. 552, sec. 5	amended	Ch. 7	HB 12

Laws Affected	Action	Chapter	Bill #
Ch. 559, sec. 4	amended	Ch. 13	HB 2
Ch. 604, sec. 16	amended	Ch. 13	HB 2
Ch. 634, sec. 6	amended	Ch. 13	HB 2
Ch. 707, sec. 1	amended	Ch. 13	HB 2
Ch. 720, sec. 16	amended	Ch. 13	HB 2
Ch. 725, sec. 7	repealed	Ch. 13	HB 2
Ch. 753, sec. 1	amended	Ch. 13	HB 2
Ch. 765, sec. 12	amended	Ch. 13	HB 2
Ch. 774, sec. 6	amended	Ch. 13	HB 2
Ch. 781, sec. 9	amended	Ch. 13	HB 2
Ch. 815, sec. 2, 6, 7, 9, 15, 16	amended	Ch. 13	HB 2
Ch. 816, sec. 5	amended	Ch. 13	HB 2
Ch. 820, sec. 1	amended	Ch. 13	HB 2
Ch. 823, sec. 22	amended	Ch. 10	SB 1

BILL NUMBER

TO

CHAPTER NUMBER

Bill No.	Chapter No.
HB 1	Ch. 1
HB 2	Ch. 13
HB 3	Ch. 14
HB 4	Ch. 15
HB 5	Ch. 4
HB 6	Ch. 5
HB 9	Ch. 6
HB 10	Ch. 16
HB 12	Ch. 7
HB 13	Ch. 8
HB 14	Ch. 17
HB 17	Ch. 18
HB 18	Ch. 9
HB 19	Ch. 3
HB 21	Ch. 19
SB 1	Ch. 10
SB 2	Ch. 2
SB 4	Ch. 11
SB 5	Ch. 12

CHAPTER NUMBER

TO

BILL NUMBER

Chapter No.	Bill No.
Ch. 1	HB 1
Ch. 2	SB 2
Ch. 3	HB 19
Ch. 4	HB 5
Ch. 5	HB 6
Ch. 6	HB 9
Ch. 7	HB 12
Ch. 8	HB 13
Ch. 9	HB 18
Ch. 10	SB 1
Ch. 11	SB 4
Ch. 12	SB 5
Ch. 13	HB 2
Ch. 14	HB 3
Ch. 15	HB 4
Ch. 16	HB 10
Ch. 17	HB 14
Ch. 18	HB 17
Ch. 19	HB 21

EFFECTIVE DATES

BY CHAPTER NUMBER

Chapter No.		Bill No.		Effective Date
Ch. 1		HB	1	01/13/92
Ch. 2		SB	2	01/14/92
Ch. 3		HB	19	(Contingent upon voter approval*)
Ch. 4		HB	5	01/21/92
Ch. 5	(§§ 1-4, 7)	HB	6	01/21/92
	(§§ 5, 6)	HB	6	07/01/93
Ch. 6		HB	9	01/21/92
Ch. 7		HB	12	01/21/92
Ch. 8		HB	13	07/01/92
Ch. 9		HB	18	01/21/92

Chapter No.	Bill No.	Effective Date
Ch. 10 (§§ 1, 4)	SB 1	01/21/92
(§§ 2, 3)	SB 1	07/01/92
Ch. 11	SB 4	01/21/92
Ch. 12 (§§ 1-6, 8)	SB 5	01/21/92
Ch. 13	HB 2	02/04/92
Ch. 14	HB 3	02/04/92
Ch. 15	HB 4	02/04/92
Ch. 16	HB 10	02/04/92
Ch. 17	HB 14	07/01/92
Ch. 18	HB 17	02/04/92
Ch. 19	HB 21	02/04/92

*If HB 19 is passed and approved by the electorate, then section 3 of SB 5 and section 4 of HB 19 are void and section 7 of SB 5 is effective on the date of approval by the electorate.

EFFECTIVE DATES BY DATE

Effective Date	Chapter No.	Bill No.
01/13/92	Ch. 1	HB 1
01/14/92	Ch. 2	SB 2
01/21/92	Ch. 4	HB 5
01/21/92	Ch. 5	HB 6 (§§ 1-4, 7)
01/21/92	Ch. 6	HB 9
01/21/92	Ch. 7	HB 12
01/21/92	Ch. 9	HB 18
01/21/92	Ch. 10	SB 1 (§§ 1 & 4)
01/21/92	Ch. 11	SB 4
01/21/92	Ch. 12	SB 5 (§§ 1-6, 8)
02/04/92	Ch. 13	HB 2
02/04/92	Ch. 14	HB 3
02/04/92	Ch. 15	HB 4
02/04/92	Ch. 16	HB 10
02/04/92	Ch. 18	HB 17
02/04/92	Ch. 19	HB 21
07/01/92	Ch. 8	HB 13
07/01/92	Ch. 10	SB 1 (§§ 2 & 3)
07/01/92	Ch. 17	HB 14
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Contingent upon voter approval*	Ch. 3	HB 19

*If HB 19 is passed and approved by the electorate, then section 3 of SB 5 and section 4 of HB 19 are void and section 7 of SB 5 is effective on the date of approval by the electorate.

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Ch.	Sec.	MCA
1	1	Operations appropriations
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	3	Effective date
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3	1-11	Referendum creating treasure state endowment program
4	1	53-1-302
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	7	Effective dates — termination
6	1	2-4-313
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7	1	Sec. 12, Ch. 551, L. 1991
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	3	Effective date
8	1	15-35-108
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9	1	90-3-305
	2	90-3-525
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10	1	Sec. 22, Ch. 823, L. 1991
	2	19-15-101
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	4	Effective dates — retroactive applicability
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	2	17-7-311
	3	Codification instruction
	4	Effective date
12	1	20-9-466
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	3	17-5-703 (void on approval by electorate of Ch. 3, Sp. L. January 1992)
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	8	Effective dates — coordination
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	3	Sec. 2, Ch. 546, L. 1991
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	5	Sec. 16, Ch. 604, L. 1991
	6	Sec. 6, Ch. 634, L. 1991
	7	Sec. 1, Ch. 707, L. 1991
	8	Sec. 16, Ch. 720, L. 1991
	9	Sec. 1, Ch. 753, L. 1991
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	12	Sec. 9, Ch. 781, L. 1991
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	14	Sec. 1, Ch. 820, L. 1991
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	2	Effective date — termination
17	1	15-30-241
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	3	Appropriation
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18	1	23-5-306
	2	Effective date — termination
19	1	53-9-109
	2	Effective date — termination

SESSION LAWS

Enacted by the

FIFTY-SECOND LEGISLATURE IN SPECIAL SESSION

Held at Helena, the Seat of Government
July 6, 1992, through July 18, 1992

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA LEGISLATIVE COUNCIL

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CHAPTER NO. 1

[SB 1]

AN ACT CHANGING THE FIRST DISTRIBUTION DATE FOR STATE EQUALIZATION AID PAYMENTS TO SCHOOL DISTRICTS FROM JULY 15 TO JULY 31 OF THE SCHOOL FISCAL YEAR; AMENDING SECTION 20-9-344, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-344, MCA, is amended to read:

"**20-9-344. Purpose of state equalization aid and duties of board of public education for distribution — conditions of first payment.** (1) The money available for state equalization aid must be distributed and apportioned to provide:

(a) an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings and grounds, and transportation; and

(b) the Montana educational telecommunications network as provided in 20-32-101.

(2) The board of public education shall administer and distribute the state equalization aid in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid in accordance with the provisions of law and in a manner that provides for monthly distribution to each district of its foundation program amount and to each county and district distribution of its guaranteed tax base aid;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education may not increase or decrease the state equalization aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) The board of public education may order the superintendent of public instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(4) Prior to any proposed order by the board of public education to withhold distribution of state equalization aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(5) If a district or county receives more state equalization aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(6) (a) The first foundation program payment and guaranteed tax base aid payment must be based on an estimate of 20% of the entitlement of each district or county and distributed by July ~~15~~ *31* of the school fiscal year.

(b) Each subsequent monthly payment must be at least 7% of the entitlement of each district or county."

Section 2. **Effective date — termination.** [This act] is effective on passage and approval and terminates June 30, 1993.

Approved July 13, 1992.

CHAPTER NO. 2

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE SECOND SPECIAL SESSION OF THE 52ND LEGISLATURE, CONVENING JULY 6, 1992, AND FOR OTHER RELATED PURPOSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Operations appropriations.** The following amounts are appropriated from the general fund for fiscal year 1993 for the operation of the second special session of the 52nd legislature, convening July 6, 1992:

House of Representatives	$254,166
Senate	$125,394
Legislative Council	$136,326

Section 2. **Legislative fiscal analyst appropriation.** The following amount is appropriated from the general fund to the office of the legislative fiscal analyst for fiscal year 1993 for preparation, printing, and distribution of fiscal information relating to the second special session of the 52nd legislature:

Legislative Fiscal Analyst	$9,000

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved July 15, 1992.

CHAPTER NO. 3

[HB 6]

AN ACT TRANSFERRING $1,133,624 FROM THE LONG-RANGE BUILDING PROGRAM FUND IN THE CAPITAL PROJECTS FUND TYPE TO THE GENERAL FUND; AMENDING SECTION 16-11-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-11-119, MCA, is amended to read:

"**16-11-119. Disposition of taxes — retirement of bonds.** ~~All moneys~~ *(1) Except as provided in subsection (2), all money* collected under the provisions of 16-11-111, less the expense of collecting ~~all~~ the taxes ~~levied, imposed, and assessed by said section~~, ~~shall~~ *must* be paid to the state treasurer and deposited as follows: 70.89% in the long-range building program fund in the debt service fund type and 29.11% in the long-range building program fund in the capital projects fund type.

(2) In fiscal year 1993, $1,133,624 is transferred from the long-range building program fund in the capital projects fund type to the general fund."

Section 2. **Effective date — termination.** [This act] is effective on passage and approval and terminates June 30, 1993.

Approved July 21, 1992.

CHAPTER NO. 4

[HB 12]

AN ACT REVISING THE TIME IN WHICH THE COUNTY TREASURER MUST REMIT MONEY BELONGING TO THE STATE AND COLLECTED BY THE COUNTY TREASURER DURING THE MONTHS OF JUNE AND DECEMBER; AMENDING SECTION 15-1-504, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-504, MCA, is amended to read:

"**15-1-504. Settlement of county treasurer with state treasurer.** ~~The~~ *(1) Except as provided in subsections (2) and (3), the* county treasurer, between the 1st and 20th days of each month, shall remit to the state treasurer all money belonging to the state that was collected by the county treasurer during the preceding month. The remittance must be accompanied by a detailed report upon a form that the state treasurer prescribes. The state treasurer may assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section.

(2) By June 20 of each year, the county treasurer shall remit to the state treasurer all money belonging to the state that was collected by the county treasurer by June 15, in addition to the amount collected during the preceding month. In July, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of June.

(3) By December 20 of each year, the county treasurer shall remit to the state treasurer all money belonging to the state that was collected by the county treasurer by December 15, in addition to the amount collected during the preceding month. In January, the county treasurer shall remit all money belonging to the state that was collected by the county treasurer during the remainder of December."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved July 21, 1992.

CHAPTER NO. 5

[HB 8]

AN ACT CLARIFYING THAT THE GOVERNOR HAS THE AUTHORITY TO DIRECT AGENCIES TO REDUCE SPENDING IN THE EVENT OF A PROJECTED GENERAL FUND BUDGET DEFICIT; PROVIDING GUIDELINES FOR DIRECTING AGENCIES TO REDUCE GENERAL FUND SPENDING; PROVIDING PROCEDURES TO BE USED IN DETERMINING WHEN A PROJECTED GENERAL FUND BUDGET DEFICIT EXISTS AND IN ESTABLISHING REDUCTIONS IN GENERAL FUND SPENDING; CLARIFYING THAT REVERSIONS FROM ALL GENERAL FUND APPROPRIATIONS THAT RESULT FROM REDUCTIONS IN SPENDING MUST REVERT TO THE GENERAL FUND; DEFINING THE TERM "PROJECTED GENERAL FUND BUDGET DEFICIT"; REQUIRING A DEPARTMENT HEAD TO PRIORITIZE THE DUTIES OF THE DEPARTMENT IN SUBMITTING A BUDGET IN ORDER TO ASSIST THE GOVERNOR IN MAKING DECISIONS CONCERNING REDUCTIONS IN SPENDING; AMENDING SECTIONS 17-7-111, 17-7-140, 17-7-304, AND 20-9-351, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-140, MCA, is amended to read:

"17-7-140. Reduction ~~of appropriation~~ *in spending*. (1) *(a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue.* Except as provided in subsection (2), in the event of a ~~shortfall in revenue~~ *projected general fund budget deficit,* the governor, *taking into account the criteria provided in subsection (1)(b),* ~~may~~ *shall direct agencies to* reduce ~~appropriations~~ *spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium.* An ~~appropriation~~ *agency* may not be ~~reduced~~ *required to reduce general fund spending for any program, as defined in each general appropriations act,* by more than ~~15%~~ *10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.*

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) ~~The appropriations~~ *Reductions in spending* for the following may not be ~~reduced~~ *directed by the governor*:

(a) payment of interest and principal on state debt;

(b) the legislative branch;

(c) the judicial branch;

(d) the school foundation program, including special education; and

(e) salaries of elected officials during their terms of office.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for the biennium is less than 2% of the general fund appropriations for the second fiscal year of the biennium. In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

(b) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-18-107, the budget director shall notify the revenue oversight committee of the estimated amount. Within 20 days of notification, the revenue oversight committee shall provide the budget director with any recommendations concerning the amount. The budget director shall

consider any recommendations of the revenue oversight committee prior to certifying a projected general fund budget deficit to the governor."

Section 2. Section 17-7-304, MCA, is amended to read:

"**17-7-304. Disposal of unexpended appropriations.** (1) All ~~moneys~~ *money* appropriated for any specific purpose except those appropriated for the university system units listed in subsection (2) shall, after the expiration of the time for which ~~so~~ appropriated, revert to the several funds and accounts from which originally appropriated. However, any unexpended balance in any specific appropriation may be used for the years for which the appropriation was made.

(2) Except as provided in 17-2-108 *and subsection (3) of this section,* all money appropriated for the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college of the university of Montana at Dillon, the agricultural experiment station with central offices at Bozeman, the forest and conservation experiment station with central offices at Missoula, the cooperative extension service with central offices at Bozeman, the bureau of mines and geology with central offices in Butte, and the vocational-technical centers at Billings, Butte, Great Falls, Helena, and Missoula must, after the expiration of the time for which appropriated, revert to an account held by the board of regents. The board of regents is authorized to maintain a fund balance. There is a statutory appropriation, as provided in 17-7-502, to use the funds held in this account in accordance with a long-term plan for major and deferred maintenance expenditures and equipment or fixed assets purchases prepared by the affected university system units and approved by the board of regents. The affected university system units may, with the approval of the board of regents, modify the long-term plan at any time to address changing needs and priorities. The board of regents shall communicate the plan to each legislature, to the finance committee when requested by the committee, and to the office of budget and program planning.

(3) Subsection (2) does not apply to reversions that are the result of a reduction in spending directed by the governor pursuant to 17-7-140. Any amount that is a result of a reduction in spending directed by the governor must revert to the fund or account from which it was originally appropriated. (Subsection (2) terminates June 30, 1996—sec. 23, Ch. 787, L. 1991.) "

Section 3. Section 20-9-351, MCA, is amended to read:

"**20-9-351. Funding of deficiency in state equalization aid.** If the money available for state equalization aid *is not the result of a reduction in spending under 17-7-140 and* is not sufficient to provide the foundation program schedule support determined in 20-9-348 and the guaranteed tax base aid required under 20-9-366 through 20-9-369, the superintendent of public instruction shall request the budget director to submit a request for a supplemental appropriation in the second year of the biennium that is sufficient to complete the funding of guaranteed tax base aid and the foundation programs of the elementary or secondary schools, or both, for the current biennium."

Section 4. Section 17-7-111, MCA, is amended to read:

"17-7-111. Agency program budgets — form distribution and contents. (1) In the preparation of a state budget, the budget director shall, not later than July 1 in the year preceding the convening of the legislature, distribute to all state offices and departments, including the judicial branch and the legislative branch, the proper forms necessary for the preparation of budget estimates. These forms shall be prescribed by the budget director to procure the information required by subsection (2).

(2) The agency budget requests, when completed by the budget office, must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary for current level expenditures and for each modification request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget in such manner as to show a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by schedules classifying receipts and disbursements contained therein by fund and, where applicable, organizational unit.

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current and subsequent biennium;

(c) a detailed schedule of receipts, by accounting entity within each fund, indicating classification and source of funds;

(d) an agency schedule summarizing past and proposed spending plans and the means of financing the proposed plan. Information presented shall include the following:

(i) a statement of agency goals and objectives and a statement of goals and objectives for each program of the agency. Such goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives. *The goals and objectives must contain a list of duties prioritized by the department director to reflect the director's opinion concerning the importance of the duties assigned to the agency by law. Any discretionary programs established by the agency that are not required by law must also be enumerated.*

(ii) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program; and

(iii) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(e) any other information the budget director feels is necessary for the preparation of a budget.

(3) The budget director must also prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation shall be presented by department, institution, agency, or branch by funding source, with a description of each proposed project; and

(b) the proposed pay plan schedule for all executive branch employees, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(4) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (4). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums."

Section 5. **Effective date — termination.** [This act] is effective on passage and approval, and [section 2] terminates June 30, 1996.

Approved July 24, 1992.

CHAPTER NO. 6

[HB 62]

AN ACT PROVIDING FOR A RELIABLE CASH FLOW TO SCHOOL DISTRICTS BY ALLOWING STATE ADVANCES FOR COUNTY EQUALIZATION COLLECTIONS; REQUIRING THE STATE TREASURER TO ASSESS COUNTIES AN INTEREST CHARGE OF 10 PERCENT A YEAR ON ALL MONEY NOT REMITTED TO THE STATE BY THE 20TH DAY OF EACH MONTH; REDUCING THE LEVEL OF ALLOWABLE SCHOOL DISTRICT GENERAL FUND OPERATING RESERVES TO 10 PERCENT; DELAYING THE PAYMENT OF THE FULL AMOUNT OF THE FOUNDATION PROGRAM PAYMENT TO EACH DISTRICT IN JUNE 1993; PROVIDING FOR AN EMERGENCY BUDGET AMENDMENT TAX LEVY; REQUIRING THE SU-

PERINTENDENT OF PUBLIC INSTRUCTION TO REQUEST AN OPINION FROM THE U.S. DEPARTMENT OF EDUCATION; AMENDING SECTIONS 15-1-504, 20-9-104, 20-9-212, 20-9-331, 20-9-333, 20-9-334, 20-9-335, 20-9-344, 20-9-346, AND 20-9-347, MCA; AND PROVIDING EFFECTIVE DATES AND RETROACTIVE APPLICABILITY DATES.

STATEMENT OF INTENT

A statement of intent is required for this bill because the superintendent of public instruction is granted rulemaking authority in 20-9-347(2) to adopt rules with regard to state advances to support the county equalization collections for foundation program funding under 20-9-331 and 20-9-333. The procedure is intended to ensure that the county equalization revenue is fully realized by school districts in a timely manner, regardless of delinquent or protested taxes. It is anticipated that the county superintendent of schools will continue to calculate and report to the school districts the revenue generated in support of elementary and high school county equalization for foundation program funding.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-504, MCA, is amended to read:

"**15-1-504. Settlement of county treasurer with state treasurer.** The county treasurer, between the 1st and 20th days of each month, shall remit to the state treasurer all money belonging to the state that was collected by the county treasurer during the preceding month. The remittance must be accompanied by a detailed report upon a form that the state treasurer prescribes. The state treasurer ~~may~~ *shall* assess counties an interest charge of 10% a year on all money not remitted within 5 days from the time required by this section. *Any interest collected under this subsection must be deposited in the state general fund.*"

Section 2. Section 20-9-104, MCA, is amended to read:

"**20-9-104. General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) ~~and (6)~~ *through (7)*, the amount of the general fund balance that is earmarked as operating reserve may not exceed ~~the following percentages~~ *10%* of the final general fund budget for the ensuing school fiscal year~~:~~

~~(a) 35% for a district that did not receive state equalization aid during the current school fiscal year;~~

~~(b) 30% for a district that received state equalization aid equal to 25% or less of its foundation program schedule entitlement in the current school fiscal year; and~~

~~(c) 20% for a district that received state equalization aid equal to more than 25% of its foundation program schedule entitlement in the current school fiscal year.~~

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) ~~Any unreserved fund balance that is equal to or less than the prior year's excess~~ *Excess* reserves as provided in subsection (5) may be ~~used~~ *appropriated* to reduce the permissive levy provided by 20-9-145 or to reduce the voted levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b)(iii).

(5) ~~The~~ *For fiscal year 1994 and subsequent fiscal years, the* limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than one or more of the following:

(a) any amount received under Public Law 81-874;

(b) the unused balance of any amount received:

(i) in settlement of tax payments protested in a prior school fiscal year;

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

(c) any amount received as a general bonus payment under 20-6-401.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.

(7) For fiscal year 1993, the limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the amounts identified by a school district as one or more of the following:

(a) any amount received under Public Law 81-874;

(b) the unused balance of any amount received:

(i) in settlement of tax payments protested in a prior school fiscal year;

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

(c) any amount received as a general bonus payment under 20-6-401."

Section 3. Section 20-9-212, MCA, is amended to read:

"**20-9-212. Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts which are

entitled to a portion of the money according to the apportionments ordered by the county superintendent. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs;

(b) the basic special tax for high schools in support of the high school foundation programs;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, which may be authorized by law and levied by the county commissioners.

(2) whenever requested, notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included in the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included in the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied.

(7) send all revenue received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months thereafter until the end of the school fiscal year;

(8) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(9) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(10) invest the money of any district as directed by the trustees of the district within 3 working days of the direction;

(11) each month give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, outstanding warrants, registered warrants, amounts and types of revenue received, and the cash balance;

(12) remit promptly to the state treasurer receipts for the county tax for a vocational-technical center when levied by the board of county commissioners under the provisions of 20-16-202; ~~and~~

(13) invest the money received from the basic county tax in support of the elementary foundation programs and the basic special tax in support of the high school foundation programs within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) and (1)(b).

(14) remit on a monthly basis to the state treasurer, in accordance with the provisions of 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333 for elementary and high school district foundation program support, including all interest earned and excluding any amount required for high school out-of-county tuition under the provisions of 20-9-334, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 4. Section 20-9-331, MCA, is amended to read:

"**20-9-331. Basic county tax and other revenues for county equalization of the elementary district foundation program.** (1) The county commissioners of each county shall levy an annual basic tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state foundation program support. The revenue collected from this levy must be apportioned to the support of the *elementary* foundation programs of the ~~elementary~~ school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the foundation programs of all elementary districts of the county.

(b) If the basic levy *and other revenue* prescribed by this section produces more revenue than is required to ~~finance the difference determined in subsection (1)(a)~~ *repay a state advance for county equalization,* the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

~~(c) If revenue from the basic levy prescribed by this section when combined with the other revenue from subsection (2) is insufficient to fully fund the percentage determined in 20-9-347(1)(b) and the county is eligible for an apportionment of state equalization aid under the provisions of 20-9-347(1)(c), the county superintendent shall notify the superintendent of public instruction of the deficiency. The superintendent of public instruction shall increase the state equalization aid payments to the districts in the affected county to offset the deficiency. A payment may not be made under this subsection (c) that allows a district to receive foundation program funding in excess of the foundation program amount of the district.~~

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary ~~district~~ foundation ~~programs~~ *program* of the county as prescribed in ~~20-9-334~~ *20-9-335*, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the common school fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(h) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204."

Section 5. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic special levy and other revenues for county equalization of high school district foundation program. (1) The county commissioners of each county shall levy an annual basic special tax for high schools of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204, for the purposes of local and state foundation program support. The revenue collected from this levy must be apportioned to the support of the foundation programs of high school districts in the county and to the state special revenue fund, state equalization aid account, in the following manner:

(a) In order to determine the amount of revenue raised by this levy which is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the foundation programs of all high school districts of the county.

(b) If the basic levy *and other revenue* prescribed by this section ~~produces~~ *produce* more revenue than is required to ~~finance the difference determined in subsection (1)(a)~~ *repay a state advance for county equalization*, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state special revenue fund, state equalization aid account, immediately upon occurrence of a surplus balance and each subsequent month thereafter, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

~~(c) If revenue from the basic levy prescribed by this section when combined with the other revenue from subsection (2) is insufficient to fully fund the percentage determined in 20-9-347(1)(b) and the county is eligible for an apportionment of state equalization aid under the provisions of 20-9-347(1)(c), the county superintendent shall notify the superintendent of public instruction of the deficiency. The superintendent of public instruction shall increase the state equalization aid payments to the districts in the affected county to offset the deficiency. A payment may not be made under this subsection (c) that allows a district to receive foundation program funding in excess of the foundation program amount of the district.~~

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school ~~district~~ foundation ~~programs~~ *program* of the county as prescribed in ~~20-9-334~~ *20-9-335*, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988; and

(e) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204."

Section 6. Section 20-9-334, MCA, is amended to read:

"20-9-334. Apportionment of county equalization moneys ~~by county superintendent —~~ *high school out-of-county tuition obligations.* *(1)* The county superintendent shall ~~separately apportion the~~ *calculate the apportionment of* revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for high schools account to the several districts of the county ~~on a monthly basis~~. The apportionments shall be known as "county equalization moneys". ~~Before the~~

(2) The county superintendent ~~makes the monthly apportionments, he~~ shall *direct the county treasurer to* deduct from the revenues available in the basic special tax for high schools account, *prior to remittance of the funds to the state treasurer under the provisions of 15-1-504 and 20-9-212,* the amount required for the month to pay the county's obligation for high school out-of-county tuition."

Section 7. Section 20-9-335, MCA, is amended to read:

"20-9-335. Formula for apportionment of county equalization moneys. (1) ~~After making such deductions prescribed in 20-9-334, the~~ *The* county superintendent shall ~~apportion the remaining amount of moneys~~ *calculate the apportionment of revenue* available in the basic county tax account ~~to the several public elementary districts of the county~~ and in the basic special tax for high schools account ~~to the several public secondary districts of the county in proportion to their needs under the foundation program~~ in accordance with the following procedure:

(a) determine the percentage that the county equalization moneys available for the support of the *elementary* foundation ~~programs of the public elementary~~ *program of the* districts in the county is of the total ~~amount of the~~ *elementary* foundation ~~programs~~ *program* of all ~~public elementary~~ districts *in the county*;

(b) multiply the *elementary* foundation program amount of each ~~public elementary~~ district by the percentage determined in subsection (1)(a) above to determine the portion of the county equalization moneys available to each ~~public elementary~~ *school* district.

(2) The above procedure shall also be applied for ~~public secondary districts~~ *the high school foundation program after the deduction of the county's obligation for high school out-of-county tuition.*

(3) ~~No territory~~ *Territory* situated within a county ~~shall~~ *may not* be excluded from the ~~apportionment~~ *calculations* of the county equalization moneys under this section solely because ~~such~~ *the* territory lies within the boundaries of a joint district. Cash balances to the credit of any district at the end of a school fiscal year ~~shall~~ *may* not be considered in the apportionment procedure prescribed in this section.

(4) The county equalization moneys ~~apportioned~~ *reported* under these procedures ~~shall constitute~~ *are* the first source of revenue ~~in calculating the~~ *for* financing ~~of~~ the ~~public~~ elementary and ~~secondary district~~ *high school* foundation program *payments.* ~~The county superintendent shall use the apportionment procedure prescribed in this section in computing the estimated revenues for the financing of the ensuing year's foundation program for budgeting purposes.~~"

Section 8. Section 20-9-344, MCA, is amended to read:

"**20-9-344. Purpose of state equalization aid and duties of board of public education for distribution ~~— conditions of first payment.~~** (1) The money available for state equalization aid must be distributed and apportioned to provide:

(a) an annual minimum operating revenue for the elementary and high schools in each county, exclusive of revenues required for debt service and for the payment of any costs and expense incurred in connection with any adult education program, recreation program, school food services program, new buildings and grounds, and transportation; and

(b) the Montana educational telecommunications network as provided in 20-32-101.

(2) The board of public education shall administer and distribute the state equalization aid *and state advances for county equalization* in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of state equalization aid *and state advances for county equalization* in accordance with the provisions of law ~~and in a manner that provides for monthly distribution to each district of its foundation program amount and to each county and district distribution of its guaranteed tax base aid~~;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) order the superintendent of public instruction to distribute the state equalization aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of state equalization aid, the board of public education may not increase or decrease the state equalization aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(3) The board of public education may order the superintendent of public instruction to withhold distribution of state equalization aid or order the county superintendent of schools to withhold county equalization money from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(4) Prior to any proposed order by the board of public education to withhold distribution of state equalization aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(5) If a district or county receives more state equalization aid than it is entitled to, the county treasurer shall return the overpayment to the state upon

the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(6) ~~(a) The first~~ *Except as provided in 20-9-347(3), the* foundation program payment and guaranteed tax base aid payment must be ~~based on an estimate of 20% of the entitlement of each district or county and~~ distributed ~~by July 15 of the school fiscal year.~~

~~(b) Each subsequent monthly payment must be at least 7% of the entitlement of each district or county~~ *according to the following schedule:*

(a) from August to May of the school fiscal year, 8% of the foundation program payment to each district;

(b) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county;

(c) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

(d) in June of:

(i) the 1993 school fiscal year, one-half of the remaining foundation program payment of each district and on July 15, 1993, the remaining school fiscal year 1993 foundation program payment of each district; and

(ii) the school fiscal year, the remaining foundation program payment to each district.

(7) The distribution of foundation program payments and guaranteed tax base aid provided for in subsection (6) must occur by the last working day of each month."

Section 9. Section 20-9-346, MCA, is amended to read:

"20-9-346. **Duties of the superintendent of public instruction for state equalization aid distribution.** The superintendent of public instruction shall administer the distribution of the state equalization aid by:

(1) establishing the annual entitlement of each district and county to state equalization aid, based on the data reported in the retirement and general fund budgets for each district that have been duly adopted for the current school fiscal year and verified by the superintendent of public instruction and by applying the verified data under the provisions of the state equalization aid allocation procedure prescribed in 20-9-347;

(2) ~~recommending to the board of public education the entitlement of all districts and counties to state equalization aid to enable the board of public education to order the distribution of state equalization aid;~~

~~(3)~~ distributing by state warrant or electronic transfer the state equalization aid *and state advances for county equalization*, for each district or county entitled to the aid, to the county treasurer of the respective county or county where the district is located, in accordance with the distribution ordered by the board of public education;

~~(4)~~*(3)* keeping a record ~~in his office~~ of the full and complete data concerning money available for state equalization aid, *state advances for county equalization,* and the entitlements for state equalization aid of the districts of the state;

~~(5)~~*(4)* reporting to the board of public education the estimated amount that will be available for state equalization aid; and

~~(6)~~*(5)* reporting to the legislature as provided in 5-11-210:

(a) the figures and data available ~~in his office~~ concerning distributions of state equalization aid during the preceding 2 school fiscal years;

(b) the amount of state equalization aid then available;

(c) the apportionment made of the available money but not yet distributed; ~~and~~

(d) the latest estimate of accruals of money available for state equalization aid*; and*

(e) the amount of state advances and repayment for county equalization."

Section 10. Section 20-9-347, MCA, is amended to read:

"**20-9-347. Formula for state equalization aid apportionment in support of foundation program — *exceptions.*** (1) The superintendent of public instruction shall apportion the state equalization aid available for support of the foundation program, individually for the elementary districts of a county or the high school districts of a county, in accordance with 20-9-346 and on the basis of the following procedure:

(a) Determine the percentage that the total funds available to all counties in the state in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all counties.

(b) Determine the percentage that the total funds available in each county in support of the foundation programs in the county (excluding state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all districts of the county.

(c) Counties in which the percentage determined in subsection (1)(b) exceeds the percentage determined in subsection (1)(a) are not entitled to an apportionment of the state equalization aid in support of the foundation program.

(d) After elimination of the counties referred to in subsection (1)(c), determine the percentage that the total money available to all remaining counties in support of the foundation program (including the state money available for state equalization aid in support of the foundation program) is of the total amount of the foundation programs of all remaining counties.

(e) Each district of each remaining county is entitled to an apportionment of the state equalization aid in support of the foundation program equal to the difference between the percentage determined in subsection (1)(d) and the percentage determined for the county in subsection (1)(b) multiplied by the foundation program amount for the district.

(2) The superintendent of public instruction shall*:*

(a) supply the county treasurer and the county superintendent with a report of the apportionments of state equalization aid in support of the foundation program of each district of the county, and the state equalization aid in support of the foundation program must be apportioned to the districts in accordance with the report*;*

(b) in the manner described in 20-9-344, provide for a state advance to each county in an amount that is no less than the amount anticipated to be raised for the basic county tax fund as provided in 20-9-331 and for the basic special tax fund as provided in 20-9-333;

(c) adopt rules to implement the provisions of subsection (2)(b).

(3) (a) The superintendent of public instruction is authorized to adjust the schedule prescribed in 20-9-344 for distribution of the foundation program and guaranteed tax base aid payments if the distribution will cause a district to register warrants under the provisions of 20-9-212(9).

(b) To qualify for an adjustment in the payment schedule, a district shall demonstrate to the superintendent of public instruction, in the manner required by the office, that the payment schedule prescribed in 20-9-344 will result in insufficient money available in all funds of the district to make payment of the district's warrants. The county treasurer shall confirm the anticipated deficit. Nothing in this section may be construed to authorize the superintendent of public instruction to exceed a district's annual payment for state and county equalization aid."

Section 11. **Emergency budget amendment tax levy.** When a budget amendment has been approved by the superintendent of public instruction under 20-9-161(2) and a district does not have sufficient funds, including insurance proceeds, to finance the budget amendment, the district may levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment.

Section 12. Section 20-9-104, MCA, is amended to read:

"**20-9-104. General fund operating reserve.** (1) At the end of each school fiscal year, the trustees of each district shall designate the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) ~~and (6)~~ *through (7)*, the amount of the general fund balance that is earmarked as operating reserve may not exceed ~~the following percentages~~ *10%* of the final general fund budget for the ensuing school fiscal year~~:~~

~~(a) 35% for a district that did not receive state equalization aid during the current school fiscal year;~~

~~(b) 30% for a district that received state equalization aid equal to 25% or less of its foundation program schedule entitlement in the current school fiscal year; and~~

~~(c) 20% for a district that received state equalization aid equal to more than 25% of its foundation program schedule entitlement in the current school fiscal year.~~

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Any unreserved fund balance that is equal to or less than the prior year's excess reserves as provided in subsection (5) may be used to reduce the permissive levy provided by 20-9-145 or to reduce the voted levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriated under subsection (3) is fund balance reappropriated and must be used for property tax reduction as provided in 20-9-141(1)(b)(iii).

(5) ~~The~~ *For fiscal year 1994 and subsequent fiscal years, the* limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than one or more of the following:

(a) any amount received under Public Law 81-874 *in the current school fiscal year*;

(b) the unused balance of any amount received:

(i) in settlement of tax payments protested in a prior school fiscal year;

(ii) in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents; and

(iii) in delinquent taxes from a prior school fiscal year; or

(c) any amount received as a general bonus payment under 20-6-401.

(6) The limitation of subsection (1) does not apply when the amount earmarked as operating reserve is $10,000 or less.

(7) A district that received Public Law 81-874 money in a prior year and that must reduce its operating reserve to 10% pursuant to this section in the next school fiscal year may consider a percentage of the unreserved fund balance to be an excess amount as provided in subsection (5). The percentage of unreserved fund balance that may be considered an excess amount is the average of the 3 previous years' ratio of total district general fund revenue to Public Law 81-874 money received."

Section 13. **Superintendent to request opinion.** Within 30 days of [the effective date of section 2], the superintendent of public instruction shall request an opinion from the U.S. department of education as to whether [section 12] complies with federal law for the use of Public Law 81-874 funds.

Section 14. **Coordination instruction.** (1) If House Bill No. 12 is passed and approved and if it includes a section that amends 15-1-504, then [section 1 of this act], amending 15-1-504, is void.

(2) If [this act] is passed and approved, then Senate Bill No. 1 is void August 1, 1993.

Section 15. **Effective dates — retroactive applicability — contingent voidness.** (1) [Section 1] is effective August 1, 1992.

(2) [Sections 3 through 10] are effective on passage and approval and apply retroactively, within the meaning of 1-2-109, to revenue collections under 20-9-331 and 20-9-333 for the school fiscal year beginning July 1, 1992.

(3) [Section 2] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to school district general fund end-of-the-year fund balances for the school fiscal year ending June 30, 1992.

(4) [Sections 11, 13, 14, and this section] are effective on passage and approval.

(5) (a) [Section 12] is effective on the date that the superintendent of public instruction certifies to the governor that written approval of [section 12] has been received from the U.S. department of education and applies to the school fiscal year beginning July 1, 1993.

(b) [Section 2] is void on the date that [section 12] is effective.

Approved July 24, 1992.

CHAPTER NO. 7

[SB 10]

AN ACT GENERALLY REVISING THE LAWS RELATING TO GENERAL RELIEF; REDUCING BENEFITS FOR THE FIRST 2 MONTHS OF RESIDENCY; LIMITING ELIGIBILITY FOR GENERAL RELIEF MEDICAL ASSISTANCE; REDEFINING THE CLASSES OF PERSONS ELIGIBLE FOR GENERAL RELIEF; REVISING THE CONDITIONS OF ELIGIBILITY; CREATING A SELF-SUFFICIENCY PROGRAM FOR CERTAIN UNEMPLOYED PERSONS; EXPANDING THE TIME PERIOD FOR JOB SEARCH, TRAINING, WORKFARE, OR SELF-SUFFICIENCY PROGRAMS PRIOR TO RECEIPT OF BENEFITS; AMENDING SECTIONS 53-3-109, 53-3-121, 53-3-122, 53-3-201, 53-3-205, 53-3-209, 53-3-211, 53-3-212, 53-3-215, 53-3-303, 53-3-304, 53-3-305, 53-3-307, 53-3-310, 53-3-314, 53-3-321, 53-3-322, 53-3-323, 53-3-324, 53-3-325, 53-3-326, 53-3-327, AND 53-3-328, MCA; AND REPEALING SECTION 53-3-206, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-3-109, MCA, is amended to read:

"**53-3-109. Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Acute medical need" means an illness, injury, or other serious medical condition that:

(a) demands urgent medical attention; and

(b) is expected to last less than 12 months if treated.

(2) "Basic necessities" means food, shelter, utilities, and personal needs.

(3) "Children" means minor and adult children who reside in the same household with their parents. The term includes both adoptive and natural children.

(4) "Chronic illness" or "chronically ill" means the condition of a person who is diagnosed as having an illness, injury, or physical or mental impairment that:

(a) is expected to last for a continuous period of at least 12 months; and

(b) would be considered a disability under 42 U.S.C. 1382(c) if evaluated under criteria used to determine eligibility for the federal supplemental security income program.

(5) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(6) "Employable" means the condition of a person who is not unemployable, as determined by a vocational specialist. A person who is employable is transitionally needy and is not eligible for general relief ~~for basic necessities~~ except as provided in 53-3-215.

(7) "General relief" ~~or "general relief assistance"~~ means a program of ~~public~~ assistance for basic necessities and medical needs for those persons determined to be eligible for such assistance.

(8) "Household" means:

(a) a collective body of persons consisting of spouses or parents and their children who reside together in the same residence; or

(b) all other persons who by choice or necessity are mutually dependent upon each other for basic necessities and who reside in the same residence.

(9) "Income" means the value of all property of any nature, earned, unearned, or in-kind, including benefits, that is reasonably certain to be received or is actually received during the month by members of a household.

(10) "Lump-sum income" means a nonrecurring source of income received in a single payment by a household during any eligibility period, including but not limited to proceeds from a lawsuit, insurance settlement, inheritance, lump-sum retirement, veterans' or unemployment benefits; benefits received under the federal Social Security Act; prizes; and tax refunds.

(11) "New to Montana" means a person who has been a Montana resident for 1 month or less at the time of application.

~~(11)~~*(12)* "Presumptive income" means the amount of financial assistance that a person would have received under the aid to families with dependent children program, as provided for in Title 53, chapter 4, part 2, if the person had not been determined ineligible due to receipt of lump-sum income, overpayment, fraud, or failure or refusal to comply with requirements for continued participation in the program.

~~(12)~~*(13)* "Resource" means all real and personal property retained after the calendar month of its receipt and which the household or a member of the household has a legal right to sell or liquidate.

~~(13)~~*(14)* "Secure facility" means any facility in which a person may be lawfully held against his will by federal, state, or local authorities.

(15) "Self-sufficiency program" means a program designed to enable temporarily unemployable persons to achieve self-sufficiency and includes any combination of a self-sufficiency plan, concentrated rehabilitation activities, or support services.

~~(14)~~*(16)* "Serious barrier to employment" means a limitation in obtaining employment, as determined by a vocational specialist, that results from:

(a) a lack of work skills, experience, or training necessary to secure employment;

(b) the failure to attain a high school education or its equivalent; or

(c) illiteracy.

~~(15)~~*(17)* "Serious medical condition" means a mental or physical condition that causes a serious health risk to a person and for which treatment is medically necessary. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner, and the department may confirm the diagnosis through an expert medical review. Necessary treatment includes essential medical care and other services that the department determines, by rule, to be medically necessary. A serious medical condition is limited to chronic illness, an acute medical need, or a medical condition that requires services in order for a person to obtain or retain employment.

(18) "Temporarily unemployable" means the condition of a person who suffers from a temporary illness, injury, or incapacity that is medically certifiable and that prevents the person from becoming immediately employable in any substantial, gainful employment, as determined by a vocational specialist, and who:

(a) is at least 55 years of age and who has a limited ability because of advanced age to obtain or retain suitable employment, as determined by a vocational specialist; or

(b) would not be considered disabled under 42 U.S.C. 1382(c) if evaluated under criteria used to determine eligibility for the federal supplemental security income program.

~~(16)~~*(19)* (a) "Unemployable" means the condition of a person who:

~~(i) is at least 55 years of age and has a limited ability to obtain or retain suitable employment because of advanced age, as determined by a vocational specialist;~~

~~(ii)~~*(i)* has a serious physical, emotional, or mental handicap that is medically certified and that prevents him from being employed in any substantial, gainful employment, as determined by a vocational specialist; or

~~(iii)~~*(ii)* suffers from a permanent ~~or temporary~~ illness, injury, or incapacity that is medically certified and that prevents the person from working in any substantial, gainful employment, as determined by a vocational specialist.

(b) A person who is unemployable is chronically needy and must be provided general relief as provided in 53-3-215.

~~(17)~~*(20)* "Vocational specialist" means an employment counselor or other experienced personnel who are qualified to evaluate a recipient's ability to work in substantial, gainful employment."

Section 2. Section 53-3-121, MCA, is amended to read:

"**53-3-121. Legislative findings.** The legislature finds that:

(1) Article XII, section 3, of the Montana constitution grants the legislature authority to determine the public policy governing the provision of public assistance;

(2) public policy requires that certain persons who are in need should be provided with assistance through programs of general relief;

(3) general relief ~~assistance~~, along with other assistance programs, should be available to provide:

(a) basic necessities that allow minimum subsistence compatible with decency and health; and

(b) financial assistance for medical services necessary for the treatment of a person's serious medical condition. However, general relief medical assistance should not be available to nonindigent persons who have catastrophic medical expenses.

(4) general relief ~~assistance~~ should not be available to those persons who have adequate income or resources to support themselves, nor should general relief ~~assistance~~ be provided in duplication of services and benefits available through other federal or state assistance programs;

(5) the legislature, in order to allocate scarce welfare resources to those most in need, may establish a reasonable classification that distinguishes between persons who are chronically in need of assistance and persons who are transitionally needy; and

(6) as the basis for the classification of recipients, it is reasonable to conclude that:

(a) some persons are in need of assistance because their ~~age or~~ physical, emotional, or mental condition renders them incapable of substantial, gainful employment. Such persons are chronically needy and should be entitled to general relief ~~assistance~~ for the duration of their need.

(b) some persons are in need of assistance because they are unemployed ~~or~~, lack the skills, training, or experience to become employed, *or suffer from a temporary disability*. Such persons should be considered transitionally needy and should be provided only temporary, interim assistance and state help in obtaining gainful employment. In addition, because some persons who are transitionally needy suffer from serious personal problems or barriers to employment, the state should provide assistance to enable these persons to overcome the problems that impair their employment potential."

Section 3. Section 53-3-122, MCA, is amended to read:

"**53-3-122. Legislative policy and intent.** Consistent with the findings in 53-3-121, the legislature intends that:

(1) general relief ~~assistance~~ should be provided to those in need, but only to the extent of such need;

(2) unemployable persons, because they are chronically in need, should be afforded general relief for as long as they have need for such assistance;

(3) temporarily unemployable persons, being transitionally needy, may be granted 6 months of general relief for basic necessities during a 12-month period, which relief will be available only if those persons participate in a self-sufficiency program as required by 53-3-304;

~~(3)~~*(4)* employable persons, being transitionally needy, should be granted 4 months of general relief ~~for basic necessities~~, which relief will be available only if such persons participate in a job search, training, and work program as required by 53-3-304; and

~~(4)~~*(5)* in recognition that not all employable persons are ready to participate in the work force and that the state has a duty to protect the welfare of children, ~~nonmedical~~ general relief should be provided for 6 months to persons who meet the eligibility criteria provided in 53-3-215."

Section 4. Section 53-3-201, MCA, is amended to read:

"**53-3-201. Residency requirements.** (1) Any person otherwise qualified who makes his home in Montana with the intent to become a resident shall be eligible for general relief.

(2) Persons new to Montana are eligible for general relief reduced benefits for the first 2 months of their Montana residency.

~~(2)~~*(3)* If a person is absent from the state voluntarily, he is ineligible for general relief in Montana.

~~(3)~~*(4)* Aliens found to be illegally within the United States are not eligible for relief from state funds.

~~(4)~~*(5)* Nonresidents or interstate transients may receive temporary relief from county funds in cases of extreme necessity and destitution until they are returned at state expense to their state of residence or origin."

Section 5. Section 53-3-205, MCA, is amended to read:

"**53-3-205. Eligibility for general relief.** (1) Except as otherwise provided under this chapter, a person may receive general relief ~~for basic necessities~~ if the household is determined to be eligible under the provisions of this section.

(2) A person is eligible for general relief ~~assistance~~ if his total household income, including presumptive income but exclusive of the earned income disregard provided ~~for~~ in subsection ~~(3)~~ *(4)*, does not exceed the amount established by the department by rule. The department shall establish *eligibility and* the amount *of benefits to be granted*, taking into account the size of the household and the estimated number of eligible households. *Eligibility and the* ~~The~~ amount *of benefits to be granted* must be based on a percentage of the federal poverty index. The percentage is established in the state general appropriations act.

(3) The maximum benefit amount to be granted to a person new to Montana must be reduced by $50 per month for each of the first 2 months of the person's residency.

~~(3)~~*(4)* For 4 consecutive months, the first $30 plus one-third of the remainder of the total income earned each month by each household member who is a current recipient must be disregarded in determining a household's eligibility for general relief ~~assistance~~. If the total household income, exclusive of this amount, exceeds the amount established by the department under subsection (2), the household is not eligible for general relief ~~assistance~~. A current recipient is one who has been receiving general relief ~~assistance~~ for at least 1 complete calendar month.

~~(4)~~*(5)* (a) If a person's household income exceeds the monthly income standard provided in subsection (2) because of receipt of lump-sum income, he is ineligible for general relief ~~assistance~~ for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard. Any income remaining from this calculation will be considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the lump-sum income was used to pay medical bills for a serious medical condition.

~~(c) Ineligibility due to the receipt of lump-sum income [illegible]es not preclude eligibility for general relief medical assistance.~~

~~(5)~~*(6)* All applicants for and recipients of general relief ~~assistance~~ who reside in the same residence are considered as one household.

~~(6)~~*(7)* Eligibility for ~~nonmedical~~ general relief ~~assistance~~ must be determined prospectively, based on household income and other relevant circumstances reasonably certain to exist in the month in which assistance is to be provided. Once eligibility is determined, ~~an individual must be paid benefits~~ *general relief will be provided* in accordance with ~~the method provided for in~~ *53-3-310 and* 53-3-311.

~~(7)~~*(8)* (a) Except as provided in subsection ~~(7)(b)~~ *(8)(b)*, the equity value of all household resources must be considered available to meet the needs of the individual applying for general relief.

(b) The following resources of a household must be excluded from consideration of resources for eligibility purposes:

(i) the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

(ii) a motor vehicle that has no more than $1,500 in equity value;

(iii) personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

(iv) tools of a trade that are essential to the current or future employment of a household member.

~~(8)~~*(9)* A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

~~(9)~~*(10)* A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

~~(10)~~*(11)* For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

(12) A household is ineligible to receive general relief if the household is ineligible for either of the public assistance programs commonly referred to as medicaid and aid to families with dependent children because of overpayment, fraud, or failure or refusal to comply with requirements for continued participation in either program. The period of ineligibility for the household or individual household members is the same as the period of ineligibility for medicaid or the aid to families with dependent children program or, if ineligible for both programs, whichever period of ineligibility is longer.

~~(11)~~*(13)* Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination."

Section 6. Section 53-3-209, MCA, is amended to read:

"**53-3-209. Period of eligibility.** (1) The period of eligibility for receipt of general relief ~~for basic necessities~~ is 1 month. Except as provided in subsection (3), a person may seek to establish eligibility for the succeeding month prior to the end of the current month of eligibility.

(2) Eligibility for general relief medical assistance is granted for a period of 1 month and terminates when the serious medical condition of the person has been treated. Except as provided in subsection (3), continued eligibility for general relief medical assistance may be established in any subsequent month.

(3) The period of eligibility for any type of general relief ~~assistance~~ terminates at any time the county welfare board or the department determines that the household:

(a) no longer meets the applicable eligibility requirements; or

(b) received general relief ~~assistance~~ by means of fraud or mistake."

Section 7. Section 53-3-211, MCA, is amended to read:

"**53-3-211. Ineligibility due to voluntary termination of employment.** (1) A person is not eligible to receive general relief ~~assistance~~ for a period of 3 months if he has voluntarily left employment without good cause connected to such employment. *The period of ineligibility begins on the first day of the next month in which the person would otherwise be eligible for general relief.*

(2) For purposes of subsection (1), a person has voluntarily left employment with good cause if he has left work because of:

(a) a compelling reason directly related to the job under circumstances that would cause a reasonably prudent person to leave his employment;

(b) work conditions that pose an undue risk of personal injury, illness, or harm;

(c) unlawful discrimination, harassment, or other mistreatment by the employer; or

(d) personal illness or injury and, after recovering from such illness or injury, he returns to his employer and finds no suitable work available."

Section 8. Section 53-3-212, MCA, is amended to read:

"**53-3-212. Ineligibility because of discharge due to misconduct.** (1) A person is ineligible to receive general relief ~~assistance~~ for a period of 3 months if he has been discharged or suspended from employment for misconduct related to the individual's work or affecting his employment. *The period of ineligibility begins on the first day of the next month in which the person would otherwise be eligible for general relief.*

(2) For purposes of subsection (1), "misconduct" means:

(a) intentional, willful, or wanton disregard of the employer's interest or of the employee's duties and obligations to his employer;

(b) material breach of the employee's duty to his employer as found in:

(i) the employee's deliberate violation or disregard of standards of behavior that the employer has a right to expect of his employee; or

(ii) carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional or substantial disregard of the employer's interest;

(c) dishonesty toward the employer, including acts such as deliberate falsification of company records, theft, deliberate deception, lying, and other statements or acts that demonstrate a willful or wanton disregard of the employer's interest;

(d) excessive, unexcused absences from work or repeated, unexcused tardiness by the employee;

(e) insubordination; or

(f) assault, threats of violence, provoking a fight, or stealing from a fellow employee if committed on the premises of the employer.

(3) The following do not constitute misconduct within the meaning of subsection (1):

(a) mere inefficiency or unsatisfactory conduct of the employee;

(b) inadvertence or ordinary negligence in isolated instances; or

(c) good faith errors in judgment or discretion."

Section 9. Section 53-3-215, MCA, is amended to read:

"**53-3-215. Eligibility classifications — duration of assistance.** (1) For purposes of eligibility, a recipient of general relief must be classified as either employable, *temporarily unemployable,* or unemployable.

(2) Unemployable persons may receive general relief for as long as they remain eligible.

(3) Except as provided in subsection (4), employable persons who are otherwise eligible may receive general relief ~~for basic necessities~~ for a period not to exceed 4 months in any 12-month period.

(4) An employable person may receive ~~nonmedical~~ general relief for a maximum of 6 months in any 12-month period if such person:

(a) has a serious barrier to employment and is willing to participate in a program to overcome that employment barrier;

(b) suffers from drug or alcohol dependency and, subject to available funding, is undergoing active treatment in an approved program; or

(c) is the head of a household that includes minor dependent children and is enrolled in a job search, training, ~~and work~~ *workfare, or self-sufficiency* program as required by 53-3-304.

(5) A temporarily unemployable person complying with 53-3-303 may receive general relief for a maximum of 6 months in any 12-month period.

~~(5)~~*(6)* Assistance granted prior to January 1, 1990, may not be considered in determining eligibility.

(7) Subsections (3) and (4) do not apply to general relief medical assistance."

Section 10. Section 53-3-303, MCA, is amended to read:

"**53-3-303. Conditions of eligibility.** (1) As a condition of eligibility for general relief ~~assistance~~, an employable *or temporarily unemployable* recipient must:

(a) register for employment with the department of labor and industry;

(b) maintain an active job registration file; ~~and~~

(c) comply with and actively participate in any job search, training, workfare, or self-sufficiency program required by the department; and

~~(c)~~*(d)* actively pursue and accept available employment within his or her capability.

(2) Refusal without good cause to comply with the requirements of subsection (1) will render the individual recipient, but not the rest of that recipient's household, ineligible for general relief ~~assistance~~ for 3 months following the first refusal and for 6 months following any subsequent refusal. *The period of ineligibility begins on the first day of the next month in which the person would otherwise be eligible for general relief.*"

Section 11. Section 53-3-304, MCA, is amended to read:

"**53-3-304. Power to require employable *and temporarily unemployable* recipients to participate in job search, training, ~~and~~ workfare, *and self-sufficiency* programs.** (1) The department shall initiate, promote, and develop job search, training, ~~and~~ workfare, *and self-sufficiency* programs that will provide *any combination of* employment, training, ~~and~~ work experience, *or self-sufficiency* for persons receiving general relief ~~assistance~~ under the provisions of this chapter. These programs must be designed to:

(a) preserve and improve the work habits and skills of recipients for whom jobs are not otherwise immediately available; ~~and~~

(b) provide training and work experience that will enable recipients to find regular, sustainable employment*; and*

(c) provide necessary supportive services and training in order to overcome any condition of temporary unemployability.

(2) For each county with state-assumed welfare services, the department shall institute job search, training, ~~and~~ workfare, *and self-sufficiency* programs as provided ~~for~~ in subsection (1).

(3) Except as otherwise provided in this chapter, in a county with state-assumed welfare services, an employable *or temporarily unemployable* recipient of general relief ~~assistance~~ shall enroll in a structured job search, ~~and~~ training, *or self-sufficiency* program, *as required,* at an employment office or other site designated by the department. The ~~program~~ *programs* may include the following elements:

(a) assessment and testing;

(b) an employability plan;

(c) a requirement that recipients participate for a minimum of 40 hours a week in a combination of activities, including workfare as provided in subsection (4), unless they are prevented with good cause from participating in such activities;

(d) remedial education or job skills training, if it is called for in the employability plan and if it provides for immediate referral to an appropriate Job Training Partnership Act program;

(e) a job readiness and job search program that may include:

(i) self-assessment and occupational testing;

(ii) instruction in completing applications, writing resumes, and preparing for interviews;

(iii) identification of and contact with potential employers;

(iv) participation in simulated job interviews; and

(v) intensive job search activity and prompt placements for recipients who are ready to enter the work force;

(f) a supervised effort to find employment;

(g) efforts to address barriers to employment;

(h) an expectation that recipients must be employed at the end of the program; ~~and~~

(i) followup and monitoring of program performance*;*

(j) supportive services necessary to overcome temporary unemployability;

(k) a self-sufficiency plan; and

(l) concentrated rehabilitation activities.

(4) In addition to the training required in subsection (3), the county department of public welfare or the department of social and rehabilitation services may require a recipient to participate in a workfare program. The purpose of the workfare program is to provide work experience and training for general relief recipients in specifically created work projects operated by a public agency or a private, nonprofit agency. A workfare program established under this section must provide that:

(a) a currently employed worker may not be displaced by any recipient (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits);

(b) a recipient may not be given a work experience or training assignment if:

(i) the assignment would fill an established, unfilled vacancy that exists because an employee has been laid off; or

(ii) the employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy with a general relief recipient;

(c) a recipient may not be required to participate in a workfare program if participation is determined to interfere with:

(i) participation in a job search ~~or job~~, training, *or self-sufficiency* program; or

(ii) attendance in a secondary education program;

(d) the maximum number of hours that a recipient may be required to participate in a workfare program and job search, ~~and~~ training, *and self-sufficiency* programs may not exceed 40 hours in a week.

(5) The county department of public welfare or the department of social and rehabilitation services, as the case may be, shall provide coverage under the Workers' Compensation Act for those recipients of general relief participating in the workfare program and may enter into such agreements with the department of labor and industry as may be necessary to carry out the provisions of this section.

(6) Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the area where it is proposed to assign the recipient to a workfare project, an opportunity must be provided for that organization to submit comments with respect to such proposal.

(7) A workfare program may not impair existing contracts for services or collective bargaining agreements, and a workfare program that would be inconsistent with the terms of a collective bargaining agreement may not be undertaken without the written concurrence of the labor organization and employer concerned.

(8) No program established under this section may include any political, partisan, or lobbying activities. The department shall deny funds to any program involved in such activities."

Section 12. Section 53-3-305, MCA, is amended to read:

"**53-3-305. Effect of refusal to participate in mandatory programs.** Any recipient of general relief who is subject to the provisions of 53-3-304 and 53-3-321 and who without good cause refuses to participate in a required program or to perform work assigned to him as therein provided shall lose eligibility for general relief for 3 months following the first refusal and for 6 months following any subsequent refusal. *The period of ineligibility begins on the first day of the next month in which the person would otherwise be eligible for general relief.*"

Section 13. Section 53-3-307, MCA, is amended to read:

"**53-3-307. County medical assistance not to be paid from state funds — exception.** (1) County general relief medical assistance ~~under 53-3-206~~ shall not be entitled to be paid from state funds.

(2) Medical expenses arising from accidental injury to interstate transients shall be paid from county funds and reimbursed by the state upon submission of a proper claim."

Section 14. Section 53-3-310, MCA, is amended to read:

"**53-3-310. Scope of general relief medical assistance — limitations.** (1) General relief medical assistance is limited to ~~those services medically necessary to treat a person's serious medical condition~~ *inpatient and outpatient hospital services, physician services, and prescription drugs*. Assistance may not exceed the scope or duration of similar services provided under the Montana medicaid program pursuant to Title 53, chapter 6, part 1, and rules adopted by the department to administer the program.

(2) General relief medical assistance in a county without state-assumed welfare services must, within the limitations of subsection (1), be provided in amounts determined by the county welfare board.

(3) General relief medical assistance in counties with state-assumed welfare services must, within the limitations of subsection (1), be provided in amounts not to exceed payments under the medicaid program. Services must be limited to the least costly method of alleviating the serious medical condition.

(4) General relief medical assistance is limited to covered medical needs not met by other services or benefits available to the person. Available services or benefits include but are not limited to health and accident insurance, veterans' benefits, industrial accident benefits, medicare and medicaid benefits, and other liable third parties.

(5) A person who is chronically ill may receive general relief medical assistance for services limited to treatment of a serious medical condition related to chronic illness.

(6) A person who has an acute medical need but who is not chronically ill may receive general relief medical assistance but only for services necessary to treat a serious medical condition that requires immediate medical attention to alleviate a serious health risk.

(7) A child less than 18 years of age may receive the same scope and duration of services as provided under the Montana medicaid program provided for in Title 53, chapter 6.

(8) A person who requires medical services in order to obtain or retain employment may receive services similar to those provided under the Montana medicaid program but only for the duration of need.

(9) Except as provided in subsection (7), nothing in this chapter may be construed to require the same scope of medical services as provided under the Montana medicaid program."

Section 15. Section 53-3-311, MCA, is amended to read:

"**53-3-311. Amount of general relief ~~for basic necessities~~.** (1) In a county without state-assumed welfare services, the amounts of general relief

~~for basic necessities~~ must be determined and adopted at the discretion of the county welfare board.

(2) In a county with state-assumed welfare services, the amount of general relief ~~for basic necessities~~ available to an eligible household is the amount determined for the same size household pursuant to 53-3-205(2) *and (3)*, less countable income and resources not excluded in 53-3-205~~(3)~~*(4)* and ~~(7)~~*(8)*.

(a) Countable income during the first 2 months of continuous eligibility is the income the household is likely to receive during the benefit month, less the amounts excluded in 53-3-205(2).

(b) Countable income in the third and all consecutive continuous months of eligibility is the income the household received in the second calendar month immediately preceding the benefit month less the amounts excluded in 53-3-205(2)."

Section 16. Section 53-3-321, MCA, is amended to read:

"**53-3-321. Services for recipients in need of special assistance.** (1) Unless otherwise exempted, in a county with state-assumed welfare services, a person who has a serious barrier to employment, *who is temporarily unemployable,* or who suffers from drug or alcohol dependency shall report to *any combination of* a job search, training, ~~and~~ workfare, *or self-sufficiency* program, *as required by the department,* for the purpose of receiving an assessment to determine whether the person is likely to benefit from counseling, therapy, or rehabilitation. The agency shall require that the person be enrolled in ~~either~~ *any combination of*:

(a) a job search, training, ~~and~~ workfare, *or self-sufficiency* program established under 53-3-304, except that ~~he~~ *the person* need not participate in the job search program under 53-3-304(3)(e) until the agency determines that ~~he~~ *the person* is ready to participate in the work force; or

(b) a program designed specifically to help that person overcome problems that impair the potential for employment.

(2) Subject to available funding, a program provided for in subsection (1)(b) may include the following elements:

(a) assessment and testing;

(b) an employability *or self-sufficiency* plan;

(c) remedial education or job skills training, if required by the employability *or self-sufficiency* plan; ~~and~~

(d) a chemical dependency assessment; and

~~(d)~~*(e)* services, including counseling, therapy, and rehabilitation, to address serious barriers to employment and drug or alcohol dependency.

(3) In order to encourage rehabilitation, the department may restrict services to persons suffering from drug or alcohol dependency to one intervention through the provision of services described in subsections (2)(a) through ~~(2)(d)~~ *(2)(e)*. ~~The department may continue to provide up to 3 months of additional~~

~~benefits for those persons participating in a drug or alcohol rehabilitation program. This 3-month extension extends those limitations in 53-3-215.~~"

Section 17. Section 53-3-322, MCA, is amended to read:

"**53-3-322. Payment after performance.** (1) The department may by rule withhold general relief ~~assistance~~ or limit payments to shelter or personal needs until all employable *or temporarily unemployable* members of the household have completed ~~2~~ *4* full weeks in a structured job search, training, ~~or~~ workfare, *or self-sufficiency* program as required in 53-3-304.

(2) A person is ineligible for assistance under subsection (1) if:

(a) the person fails to cooperate with the department in its investigation of eligibility; or

(b) the department's investigation during the ~~2-week~~ *4-week* period described in subsection (1) discloses that the person is ineligible to receive assistance."

Section 18. Section 53-3-323, MCA, is amended to read:

"**53-3-323. Limitation of services.** (1) The department may limit the scope and availability of programs and services under 53-3-304 as may be necessary because of:

(a) the actual needs of an individual, as determined in accordance with an employability *or self-sufficiency* plan;

(b) funding limitations;

(c) service limitations;

(d) limitations caused by the lack of available employment in the area; and

(e) an insufficient number of recipients in an area to justify establishment of *any combination of a* job search, training, ~~and~~ workfare, *or self-sufficiency* ~~programs~~ *program*.

(2) Recipients residing in areas where programs and services are restricted because of subsection (1) are exempt from mandatory participation in a job search, training, ~~and~~ workfare, *or self-sufficiency* program."

Section 19. Section 53-3-324, MCA, is amended to read:

"**53-3-324. Employability *and self-sufficiency* ~~plan~~ *plans*.** (1) The department shall develop or contract for the development of an employability *or self-sufficiency* plan, *as appropriate,* for each participant enrolled in *a* job search, training, ~~and~~ workfare, *or self-sufficiency* ~~programs~~ *program* provided for in 53-3-304.

(2) The department may contract for assessment and testing if:

(a) it determines there is a need for assessment and testing in order to develop ~~an employability~~ *a* plan; and

(b) funds are available for such services."

Section 20. Section 53-3-325, MCA, is amended to read:

"**53-3-325. Transition-to-work allowance.** (1) As an alternative to the programs and services provided ~~for~~ in 53-3-304, the department may pay recipients a transition-to-work allowance. This allowance may be used only for relocation expenses for recipients who have obtained employment in another county or state.

(2) Notwithstanding any other provision of this chapter, a person who elects to receive the allowance provided ~~for~~ in subsection (1) is ineligible for general relief ~~assistance~~ for a period of 16 months."

Section 21. Section 53-3-326, MCA, is amended to read:

"**53-3-326. Transportation assistance.** The department may provide necessary transportation or reimbursement of transportation costs for persons enrolled in job search, training, ~~and~~ workfare, *or self-sufficiency* programs provided ~~for~~ in 53-3-304."

Section 22. Section 53-3-327, MCA, is amended to read:

"**53-3-327. Performance standards — monitoring and evaluation of program.** (1) The department shall provide standards to measure the performance and effectiveness of the general relief job search, training, ~~and~~ workfare, *and self-sufficiency* ~~program~~ *programs* provided ~~for~~ in 53-3-304. The standards must consist of an objective, quantifiable measure of the extent to which participation in the program increases the employment and earnings of participants and decreases their dependency on public assistance.

(2) In order to determine whether performance standards are met, the department shall monitor and evaluate the program on the basis of appropriate factors that must include the following:

(a) the placement of participants in unsubsidized employment;

(b) the retention of participants in unsubsidized employment;

(c) the increase in earnings, including hourly wages, of participants due to placement in unsubsidized employment;

(d) the reduction in the number of individuals and families receiving general relief; and

(e) the amount of reductions in payments for general relief.

(3) In monitoring and evaluating the performance of the program, the department shall determine the reasons for high and low levels of performance, administrative efficiencies, and program coordination."

Section 23. Section 53-3-328, MCA, is amended to read:

"**53-3-328. Employability determination — reassessment of additional eligibility.** During the final month of eligibility, a vocational specialist shall conduct a reassessment of each applicant for ~~nonmedical~~ general relief to determine whether the applicant should be reclassified as employable, *temporarily unemployable,* or unemployable or should remain classified as having serious barriers to employment ~~and benefits extended according to 53-3-321(3)~~. The reassessment must include an evaluation of the applicant's education, training, experience, and ability to work in substantial, gainful employment."

Section 24. **Repealer.** Section 53-3-206, MCA, is repealed.

Approved August 6, 1992.

CHAPTER NO. 8

[HB 7]

AN ACT IMPLEMENTING BUDGET REDUCTIONS BY REVISING THE TIME FOR APPROVING AN OPERATING BUDGET; AMENDING SECTION 17-7-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-138, MCA, is amended to read:

"17-7-138. Operating budget. (1) Expenditures by a state agency must be made in substantial compliance with an operating budget approved by an approving authority. Substantial compliance means that a first-level category in the operating budget may not be exceeded by more than 5%. Except as provided in subsection (2), the expenditure of money appropriated in the general appropriations act is contingent upon approval of an operating budget ~~by August 1 of each fiscal year~~ *approved by an approving authority within 45 days after the effective date of the general appropriations act or a revision of the general appropriations act.* An approved original operating budget must comply with state law and any statement of intent adopted as part of a bill.

(2) The expenditure of money appropriated in the general appropriations act to the university system units, as defined in 17-7-102, is contingent upon approval of an operating budget by October 1 of each fiscal year. All other requirements in this section apply to the university system.

(3) The operating budget for money appropriated by the general appropriations act must be separate from the operating budget for money appropriated by another law except a law appropriating money for the state pay plan or any portion of the state pay plan. Each operating budget must include expenditures for each agency program, detailed at least by first-level categories as provided in 17-1-102(3). Each agency shall record its operating budget and any approved changes on the statewide budget and accounting system. Forms used for changing an operating budget must reference the current, complete, and approved operating budget, show the proposed changes to the operating budget, and reference any other pending documents to change the operating budget."

Section 2. **Effective date — termination.** [This act] is effective on passage and approval and terminates June 30, 1993.

Approved August 6, 1992.

CHAPTER NO. 9

[HB 22]

AN ACT REDUCING STATE TRANSPORTATION REIMBURSEMENT FOR SPECIAL EDUCATION CHILDREN FROM 100 PERCENT TO 50 PERCENT; AMENDING SECTIONS 20-7-442 AND 20-10-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-7-442, MCA, is amended to read:

"**20-7-442. State transportation reimbursement for special education children.** Districts providing children with transportation to a special education class or program and complying with the special education transportation regulations promulgated by the superintendent of public instruction shall be eligible for a transportation reimbursement. The reimbursement shall be calculated from a schedule established by the superintendent of public instruction with the state providing ~~100%~~ *50%* of the reimbursement."

Section 2. Section 20-10-144, MCA, is amended to read:

"**20-10-144. Computation of revenues and net tax levy requirements for district transportation fund budget.** Before the fourth Monday of July and in accordance with 20-9-123, the county superintendent shall compute the revenue available to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule amount" of the preliminary budget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate per bus mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by such district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted on the preliminary budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the preliminary budget must be reduced to the limitation amount and used in this determination of the schedule amount.

(2) (a) The schedule amount determined in subsection (1) or the total preliminary transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be ~~100%~~ *50%* of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of cash for reappropriation and other sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and cash reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of Title I of Public Law 81-874 or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transportation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for his child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504(2), 61-3-521, 61-3-537, and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated net proceeds taxes for new production, as defined in 15-23-601, and local government severance taxes on any other production occurring after December 31, 1988;

(h) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(i) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation budget amount; and

(b) subtracting the amount of money available to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the second Monday of August by the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 3. **Effective date.** [This act] is effective on passage and approval.

Approved August 6, 1992.

CHAPTER NO. 10

[HB 24]

AN ACT REVISING THE TAXATION OF RAILROAD CAR COMPANIES; TAXING RAILROAD CAR COMPANY PROPERTY AS CLASS TWELVE PROPERTY; PROVIDING FOR TRANSITION TO THE REVISED METHOD OF TAXATION FOR TAX YEARS 1991 AND 1992; AMENDING SECTIONS 15-6-145, 15-23-101, 15-23-103, 15-23-104, 15-23-105, 15-23-201, AND 20-15-403, MCA; REPEALING SECTIONS 15-55-101, 15-55-102, 15-55-103, 15-55-104, 15-55-105, 15-55-106, 15-55-108, 15-55-109, 15-55-110, AND 15-55-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

STATEMENT OF INTENT

The intent of [this act] is to ensure that the taxation of property belonging to railroad car companies is within the requirements of the Railroad Revitalization and Regulatory Reform Act of 1976.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-145, MCA, is amended to read:

"**15-6-145. Class twelve property — description — taxable percentage.** (1) Class twelve property includes all *property of a railroad car company as defined in [section 7], all* railroad transportation property as described in the Railroad Revitalization and Regulatory Reform Act of 1976 as it read on January 1, 1986, and all airline transportation property as described in the Tax Equity and Fiscal Responsibility Act of 1982 as it read on January 1, 1986.

(2) For the tax year beginning January 1, 1991, and for each tax year thereafter, class twelve property is taxed at the percentage rate "R", to be determined by the department as provided in subsection (3), or 12%, whichever is less.

(3) R = A/B where:

(a) A is the total statewide taxable value of all commercial property, except class twelve property, as commercial property is described in 15-1-101(1)(d); and

(b) B is the total statewide market value of all commercial property, except class twelve property, as commercial property is described in 15-1-101(1)(d).

(4) (a) For the taxable year beginning January 1, 1986, and for every taxable year thereafter, the department shall conduct a sales assessment ratio study of all commercial and industrial real property and improvements. The study must be based on:

(i) assessments of such property as of January 1 of the year for which the study is being conducted; and

(ii) a statistically valid sample of sales using data from realty transfer certificates filed during the same taxable year or from the immediately preceding taxable year, but only if a sufficient number of certificates is unavailable from the current taxable year to provide a statistically valid sample.

(b) The department shall determine the value-weighted mean sales assessment ratio "M" for all such property and reduce the taxable value of property described in subsection (4) only, by multiplying the total statewide taxable value of property described in subsection (4)(a) by "M" prior to calculating "A" in subsection (3)(a).

(c) The adjustment referred to in subsection (4)(b) will be made beginning January 1, 1986, and in each subsequent tax year to equalize the railroad taxable values.

(5) For the purpose of complying with the Railroad Revitalization and Regulatory Reform Act of 1976, as it read on January 1, 1986, the rate "R" referred to in this section is the equalized average tax rate generally applicable to commercial and industrial property, except class twelve property, as commercial property is defined in 15-1-101(1)(d)."

Section 2. Section 15-23-101, MCA, is amended to read:

"**15-23-101. Properties centrally assessed.** The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property of railroads *and railroad car companies* operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(3) all property of scheduled airlines;

(4) the net proceeds of mines and of oil and gas wells;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) which is subject to the provisions of Title 15, chapter 24, part 12."

Section 3. Section 15-23-103, MCA, is amended to read:

"**15-23-103. Due date of reports and returns — extensions.** (1) Except as provided in subsection (2) and 15-23-602, each report or return described in 15-23-301, 15-23-402, 15-23-502, or 15-23-701 shall be delivered to the department on or before March 31 each year.

(2) Each report or return for a natural gas or oil pipeline described in 15-23-301 must be delivered to the department on or before April 15 each year.

(3) Each report described in 15-23-201, 15-23-515, ~~or~~ 15-23-516, *or [section 8]* must be delivered to the department before April 15 each year.

(4) The department may for good cause extend the time for filing a return or report for not more than 30 days."

Section 4. Section 15-23-104, MCA, is amended to read:

"**15-23-104. Failure to file — estimate by department — penalty.** *(1)* If any person fails to file a report or return within the time established in 15-23-103 or by such later date as the department may approve, the department shall estimate the value of the property to have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 15-23-506, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 15-35-107. In estimating the value of all other property subject to assessment under parts 2 through 4 of this chapter, the department shall proceed under 15-1-303. In estimating value under this section, the department may subpoena a person or his agent as specified in 15-1-302. An assessment pursuant to parts 5 through 8 of this chapter based on estimated value or imputed value is subject to review under 15-1-211. Each month or part of a month a report is delinquent, the department shall impose and collect a $25 penalty, the total not to exceed

$200, and shall deposit such penalty to the credit of the general fund. The department will also inform its agents in the counties of the delinquency, and, *except as provided in [subsection (2)],* the agents shall assess a penalty of 1% of the tax due for each month or part of a month the report is delinquent.

(2) For a delinquency in reporting under [section 8], the department shall assess a penalty of 1% of the tax due for each month or part of a month that the report is delinquent."

Section 5. Section 15-23-105, MCA, is amended to read:

"**15-23-105. Apportionment among counties.** The department shall apportion the value of property assessed under 15-23-101, 15-23-202, or 15-23-403, *other than railroad car company property,* among the counties in which such property is located. Apportionment shall be on a mileage basis or on the basis of the original installed cost of the centrally assessed property located in the respective counties. If the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage or on the basis of the original installed cost of the centrally assessed property located in the respective counties, the department may adopt such other method or basis of apportionment as may be just or proper."

Section 6. Section 15-23-201, MCA, is amended to read:

"**15-23-201. Assessment of railroads.** The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating any railroad in more than one county in this state or more than one state must on or before April 15 each year furnish the department a statement signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending December 31 immediately preceding:

(1) the whole number of miles of railroad in the state and, where the line is partly out of the state, the whole number of miles without the state and the whole number within the state, owned or operated by such corporation, person, or association;

(2) the value of the roadway, roadbed, and rails of the whole railroad and the value of the same within the state;

(3) the width of the right-of-way;

(4) the number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state;

(5) the number, kind, and value of rolling stock owned and operated in the state;

(6) the number, kind, and value of rolling stock used in the state but not owned by the party making the returns;

(7) the number, kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns or by and upon other railroads;

(8) the whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state;

(9) the number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof of all engines; passenger, mail, express, baggage, freight, and other cars; or property owned or leased by such corporation, person, or association;

(10) the number of sleeping and dining cars not owned by such corporation, person, or association but used in operating the railroads of such corporation, person, or association in the state or on the line of the road without the state during each month of the year for which the return is made; also the number of miles each month the cars have been run or operated within and without the state;

(11) a description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road has once been given, no other annual description thereof is necessary unless the road has been changed. Whenever the road or any portion of the road is advertised to be sold or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad or the right-of-way for the same. If such statement is not furnished as above provided, the assessment made by the department upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12) the gross earnings of the entire road;

(13) the gross earnings of the road within the state and, if the railroad is let to other operators, how much was derived by the lessor as rental;

(14) the cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;

(15) net income for such year and amount of dividend declared;

(16) capital stock authorized;

(17) capital stock paid in;

(18) funded debt;

(19) number of shares authorized;

(20) number of shares of stock issued;

(21) number, kind, and total number of miles traveled within the state by railroad cars owned by railroad car companies; and

~~(21)~~*(22)* any other facts the department may require."

Section 7. **Definitions.** As used in [sections 7 through 13], unless the context requires otherwise, the following definitions apply:

(1) "Average levy" means the rate of taxation determined under 15-24-103.

(2) "Person" includes an individual, firm, association, company, partnership, corporation, joint-stock company, agency, syndicate, or cooperative.

(3) "Private railroad cars" means all railroad cars that:

(a) are not owned by a railroad company operating in this state;

(b) are used for transporting persons or freight; and

(c) are not otherwise assessed for property taxation in this state.

(4) "Railroad car company" means any person, other than a railroad company, engaged in operating, leasing, or furnishing private railroad cars, whether or not owned by that person, for the transportation of persons or freight over railroad lines located wholly or partially within this state.

Section 8. **Annual report.** Each railroad car company shall, annually and within the time requirements of 15-23-103(3) and (4), file with the department of revenue a report, signed and sworn to by one of its designated officers, that provides the following information as of the preceding December 31:

(1) the name and nature of the business of the company;

(2) the number, kind, acquisition cost, date of acquisition, and name of owner of its private railroad cars;

(3) the cost of additions and betterment, special equipment, racks, protective equipment, or any other modification or improvement to a car since acquisition;

(4) the total car miles traveled, loaded and unloaded, within the state during the calendar year preceding the date of filing;

(5) the total car miles traveled, loaded and unloaded, within and outside of the state during the calendar year preceding the date of filing;

(6) the average number of miles traveled by each class of car during the year;

(7) the description and location of real and personal property that is owned by the railroad car company and that is subject to taxation within this state; and

(8) any other facts the department may require.

Section 9. **Assessment — allocation — taxable value.** (1) The department of revenue shall assess the property in the name of the railroad car company owning the property unless the property is reported by another person leasing or operating the property.

(2) The allocation of property to this state must be made on the basis of the car miles traveled within the state to the total car miles traveled unless the department by administrative rule adopts a different formula.

(3) In determining taxable value, the department shall use the percentage rate "R", as provided in 15-6-145, to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended.

Section 10. **Determination of tax — payment.** (1) On or before the third Monday in October, the department of revenue shall compute the tax on railroad car company property by multiplying the taxable value of the property by the average levy.

(2) After determining the tax, the department shall send to the last-known address of each railroad car company subject to taxation a written notice, postage prepaid, showing the amount of taxes due for the current year and any delinquent amount for prior years. The notice must include the taxable value of the property and the average levy used to compute the tax.

(3) The tax is due and payable to the department under the provisions of 15-16-102. A tax not received by the department within the time requirements of 15-16-102 is delinquent and subject to penalty and interest under that section.

Section 11. **Deposit of taxes.** All taxes, penalties, and interest collected by the department of revenue under [sections 7 through 13] must be deposited in the general fund.

Section 12. **Lien — collection actions.** (1) A tax due under [sections 7 through 13] is a lien on all real and personal property of the railroad car company to the same extent as are other taxes under 15-16-401 and 15-16-402.

(2) The department may at any time after the taxes are delinquent use the following collection actions:

(a) seizure and sale of personal property, as provided in 15-17-911, with the department having the same authority as the county treasurer;

(b) suit for collection in district court; or

(c) issuance of a warrant for distraint, as provided in Title 15, chapter 1, part 7.

(3) The use of one collection method does not prevent the department from using other collection methods.

Section 13. **Transition.** (1) On or before October 31, 1992, each railroad car company shall submit to the department of revenue the information needed to make an assessment and to compute the tax for tax year 1991. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes due. Taxes are due and payable within 30 days after the tax notice is postmarked.

(2) Any freight line company license taxes paid by or on behalf of a railroad car company in 1992 for taxes owed under the provisions of Title 15, chapter 55,

for tax year 1991 must be credited against the tax owed by the company under [sections 7 through 13]. If the tax paid under Title 15, chapter 55, exceeds the amount of tax owed under [sections 7 through 13], the state treasurer shall refund the difference without interest.

(3) On or before October 31, 1992, each railroad car company shall submit to the department the information needed to make the assessment and to compute the tax for tax year 1992, as provided for in [sections 7 through 13]. The department shall use the average levy for this computation and shall notify the railroad car companies of the amount of the taxes owed. The taxes for 1992 are due and payable within 30 days after the tax notice is postmarked.

Section 14. Section 20-15-403, MCA, is amended to read:

"**20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, ~~15-55-106,~~ 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 15. **Repealer.** Sections 15-55-101, 15-55-102, 15-55-103, 15-55-104, 15-55-105, 15-55-106, 15-55-108, 15-55-109, 15-55-110, and 15-55-111, MCA, are repealed.

Section 16. **Codification instruction.** [Sections 7 through 12] are intended to be codified as an integral part of Title 15, chapter 23, and the provisions of Title 15, chapter 23, apply to [sections 7 through 12].

Section 17. **Effective date — retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1990.

Section 18. **Termination.** [Section 13] terminates January 1, 1994.

Approved August 6, 1992.

CHAPTER NO. 11

[HB 41]

AN ACT TRANSFERRING THE FUND BALANCE IN VARIOUS ACCOUNTS TO THE GENERAL FUND; TRANSFERRING $220,000 FROM THE ACCOMMODATIONS TAX ACCOUNT TO THE GENERAL FUND; TRANSFERRING $300,000 FROM THE STATE TRAFFIC EDUCATION ACCOUNT TO THE GENERAL FUND; TRANSFERRING $100,000 FROM THE CRIME VICTIMS COMPENSATION AND ASSISTANCE ACCOUNT TO THE GENERAL FUND; TRANSFERRING $750,000 FROM THE HIGHWAY PATROL RETIREMENT CLEARING ACCOUNT TO THE GENERAL FUND; TRANSFERRING $400,000 FROM THE BUILDING CODES STATE SPECIAL REVENUE ACCOUNT TO THE GENERAL FUND; TRANSFERRING $500,000 FROM THE HOUSING AUTHORITY ENTERPRISE FUND TO THE GENERAL FUND; AMENDING SECTIONS 15-65-121, 20-7-504, 50-60-508, 53-9-109, 61-5-121, AND 90-6-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-65-121, MCA, is amended to read:

"**15-65-121. Distribution of tax proceeds — general fund loan authority.** (1) ~~The~~ *Except as provided in subsection (5), the* proceeds of the tax imposed by 15-65-111 must be deposited in an account in the state special revenue fund to the credit of the department of revenue. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds as provided in subsections (1)(a) through (1)(c), the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the general fund. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the general fund is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, and to the university system, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program; and

(c) the balance of the proceeds as follows:

(i) 75% to be used directly by the department of commerce;

(ii) except as provided in subsection (1)(c)(iii), 25% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide;

(iii) if 25% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located is to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

(4) The department of commerce may use general fund loans for efficient implementation of this section.

(5) On or before September 1, 1992, the department shall transfer $220,000 from the state special revenue account specified in subsection (1) to the general fund."

Section 2. Section 20-7-504, MCA, is amended to read:

"**20-7-504. State traffic education account — proceeds earmarked for the account.** (1) There is a traffic education account in the treasury of the state of Montana. ~~There~~ *Except as provided in subsection (4), there* must be paid into this account a portion of the fines and forfeitures collected in any court except a justice's court from persons apprehended or arrested by highway patrol officers or department of transportation peace officers for any violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 relating to the operation or use of motor vehicles in the following amounts:

(a) if a fine is imposed, 25% of the fine imposed;

(b) if multiple offenses are involved, 25% of the total sum of all fines imposed;

(c) if a fine is suspended, in whole or in part, 25% of the fine actually paid; and

(d) if any deposit of bail is made for an offense to which this section applies and the bail is forfeited, 25% of the forfeited bail.

(2) A portion of all money from the collection of fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses must be contributed to the traffic education account as provided in 61-5-121.

(3) Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 20-7-513 and 20-7-514 and must be available to support only approved motorcycle safety training courses, appropriate motorcycle safety instructor training, and other related motorcycle safety training activities.

(4) On [the effective date of this act], the superintendent of public instruction shall transfer $300,000 from the state traffic education account to the general fund."

Section 3. Section 50-60-508, MCA, is amended to read:

"**50-60-508. Permit fees.** (1) The department of commerce shall establish permit fees in accordance with the Montana Administrative Procedure Act, and *except as provided in subsection (3),* the fees shall be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code.

(2) For the purpose of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved.

(3) On or before September 1, 1992, the department shall transfer $400,000 from the building codes state special revenue account to the general fund."

Section 4. Section 53-9-109, MCA, is amended to read:

"**53-9-109. Crime victims compensation *and assistance* account.** *(1)* There is a crime victims compensation and assistance account in the state special revenue fund. There shall be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. ~~The~~ *Except as provided in subsection (2), the* money in the account is to be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the division. ~~No~~ *Except as provided in subsection (2), no* fund balance in the account at the end of a fiscal year may be deposited in the general fund.

(2) On or before September 1, 1992, the division shall transfer $100,000 from the crime victims compensation and assistance account to the general fund."

Section 5. Section 61-5-121, MCA, is amended to read:

"**61-5-121.** *(Temporary)* **Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial vehicle operator's endorsements provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) ~~The~~ *Except as provided in subsection (4), the* amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) Except as provided in subsection (3), if the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing licenses or duplicate licenses.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) Except as provided in subsection (3), if the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state special revenue fund for use by the department to defray the costs of issuing motorcycle endorsements.

(d) The amount of 17.5% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) The amount of 53.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each commercial vehicle operator's endorsement fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g).

(3) On or before June 30, 1993, the balance in the driver's license collections account in the state special revenue fund collected pursuant to subsections (1)(b)(ii) and (1)(c)(ii) must be transferred to the general fund.

(4) On or before September 1, 1992, the department shall transfer $750,000 from the state special revenue fund provided for in subsection (1)(a) to the general fund. (Terminates July 1, 1993—sec. 7(1), Ch. 5, Sp. L. January 1992.)

61-5-121. *(Effective July 1, 1993)* **Disposition of fees.** (1) The disposition of the fees from driver's licenses provided for in 61-5-111(7)(a), motorcycle endorsements provided for in 61-5-111(7)(b), commercial vehicle operator's endorsements provided for in 61-5-111(7)(c), and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 25% of each driver's license fee and of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404. Funds transferred from the account are statutorily appropriated, as provided in 17-7-502, to the pension trust fund.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 3.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the county general fund.

(ii) If the fees are collected by the department, the amount provided for in subsection (1)(b)(i) must be deposited into the general fund.

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 5% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the general fund.

(d) The amount of 17.5% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 53.75% of each driver's license fee and of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 3.75% of each commercial vehicle operator's endorsement fee must be deposited into the county general fund, otherwise all of the fee must be deposited in the state general fund.

(g) The amount of 95% of each motorcycle endorsement fee must be deposited into the state traffic education account in the state special revenue fund.

(2) (a) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, he shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. He shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial vehicle operator's endorsements, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, the state traffic education account, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

Section 6. Section 90-6-107, MCA, is amended to read:

"**90-6-107. Deposit and expenditure of funds.** (1) There is a housing authority enterprise fund in the proprietary fund type as provided for in 17-2-102(1)(b). All funds from the proceeds of bonds issued under this part, fees, and other moneys received by the board, moneys appropriated by the legislature for the use of the board in carrying out this part, and moneys made available from any other source for the use of the board shall be deposited in the housing authority enterprise fund except where otherwise provided *in subsection (4) or* by law. All funds deposited in the housing authority enterprise fund, except funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part, are continuously appropriated to and may be expended by the board for the purposes authorized in this part.

(2) There is a capital reserve account in the housing authority enterprise fund provided for in subsection (1). The capital reserve account consists of the aggregate of moneys retained by the board under existing agreements with bondholders as the minimum capital reserve requirement described in 90-6-119 for each bond issue sold by the board.

(3) Funds appropriated by the legislature for use of the board in payment of expenses incurred in carrying out this part shall be deposited in the housing authority enterprise fund. Funds expended by the board under this subsection shall be repaid by the board from the fees and charges collected under this part and from any other moneys available for such repayment in accordance with this part.

(4) On or before September 1, 1992, the board shall transfer $500,000 from the fund specified in subsection (1) to the general fund."

Section 7. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act]

is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. **Effective date — termination.** (1) [This act] is effective on passage and approval.

(2) [Sections 1 through 6] terminate September 2, 1992.

Approved August 6, 1992.

CHAPTER NO. 12

[HB 51]

AN ACT PROVIDING FOR THE STATUTORY APPROPRIATION OF MONEY TO THE GOVERNOR FOR AN EMERGENCY OR DISASTER DUE TO FIRE; AMENDING SECTION 10-3-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-312, MCA, is amended to read:

"10-3-312. **Maximum expenditure by governor — appropriation.** (1) *(a)* Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and ~~he~~ *the governor* is authorized to expend from the general fund, an amount not to exceed $2 million in any biennium.

(b) Whenever an emergency or disaster due to fire is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $3 million in any biennium. The amount appropriated in this subsection (b) may be combined with the amount appropriated in subsection (1)(a) for an emergency or disaster due to fire.

(2) In the event of the recovery of money expended under this section, the spending authority must be reinstated to a level reflecting the recovery.

~~(2)~~*(3)* If a disaster is declared by the president of the United States, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and he is authorized to expend from the general fund, an amount not to exceed $500,000 during the biennium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178."

Section 2. **Effective date.** [This act] is effective on passage and approval.

Approved August 6, 1992.

CHAPTER NO. 13

[HB 52]

AN ACT PLACING THE NEW PROPERTY TAX VALUES DETERMINED DURING THE RECENT REAPPRAISAL CYCLE ON THE TAX ROLLS FOR

THE 1993 TAX YEAR INSTEAD OF THE 1994 TAX YEAR; PROVIDING AN EXTENSION OF THE REAPPRAISAL CYCLE FOR CLASS THREE AGRICULTURAL LAND, WHICH REAPPRAISED VALUES MUST BE PLACED ON THE TAX ROLLS IN THE YEAR FOLLOWING COMPLETION OF THE REAPPRAISAL CYCLE; AMENDING SECTIONS 15-7-111, 15-7-132, AND 15-7-133, MCA, AND SECTIONS 13, 14, AND 15, CHAPTER 680, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13, Chapter 680, Laws of 1991, is amended to read:

"Section 13. **Applicability dates.** (1) [Section 2] applies retroactively, within the meaning of 1-2-109, to property tax year 1991 and is applicable to taxable years 1992 and 1993.

(2) [~~Sections~~ *Section* 6 ~~through 9~~] ~~apply~~ *applies* to all taxable years beginning after December 31, 1993.

(3) [Section 5] applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1990.

(4) [Sections 7 through 9] apply to all taxable years beginning after December 31, 1992."

Section 2. Section 14, Chapter 680, Laws of 1991, is amended to read:

"Section 14. **Termination.** [Sections 1 and 2] terminate December 31, ~~1993~~ *1992."*

Section 3. Section 15, Chapter 680, Laws of 1991, is amended to read:

"Section 15. **Effective dates.** (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, [this act] is effective on passage and approval.

(2) [Sections 6 ~~through~~ *and* 10] are effective July 1, 1993.

(3) [Sections 7 through 9] are effective January 1, 1993."

Section 4. Section 15-7-111, MCA, is amended to read:

"**15-7-111.** *(Temporary)* **Periodic revaluation of taxable property — publication of sales assessment ratio studies — appeal of revaluations — public hearing.** (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state at least every 5 years. A comprehensive written reappraisal plan shall be promulgated by the department. The reappraisal plan adopted shall provide that all property in each county shall be revalued at least every 5 years. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners in each county.

(2) The new values determined during a revaluation cycle must be provided to the taxpayers at the end of the revaluation cycle but may not be placed on the tax rolls until 1 year following the completion of the revaluation cycle.

(3) A taxpayer shall appeal the new value in advance of its placement on the tax rolls by filing an appeal pursuant to 15-15-102 before the first Monday

in June or 15 days after receiving notice of the new valuation amount, whichever is later, or be barred from appealing for untimeliness.

(4) (a) For the taxable year beginning January 1, 1990, and for every taxable year thereafter, the department shall conduct a stratified sales assessment ratio study of all residential land and improvements, agricultural 1-acre homesites and improvements, and commercial land and improvements. Residential improvements include condominiums but do not include mobile homes or housetrailers that are not taxed as an improvement as defined in 15-1-101. The sales assessment ratio based on property sales finalized and recorded by no later than November 1 must be used to determine appraisals for the immediately succeeding tax year.

(b) (i) For tax year 1991, if the result of the stratified sales assessment ratio study performed pursuant to subsection (4)(a) on residential property for tax year 1990 shows for any area an assessment level of less than 80%, the department shall perform a reappraisal of the residential property in the area. The reappraisal must be performed using a computer-assisted mass appraisal system based on the market approach to value, using comparable sales of similar property. If insufficient sales are available for market modeling, the department shall reappraise the property using the cost approach to value.

(ii) For tax year 1992, if the result of the stratified sales assessment ratio study performed pursuant to subsection (4)(a) on residential property for tax year 1991 shows for any area an assessment level of less than 80% or a coefficient of dispersion with respect to the value weighted mean ratio of more than 20%, rounded to the nearest 0.1%, and an adjustment multiplier of 1.01 or greater, the department shall perform a reappraisal of the residential property in the area. The reappraisal must be performed using the same criteria provided in subsection (4)(b)(i).

(iii) For tax year 1993, if the result of the stratified sales assessment ratio study performed pursuant to subsection (4)(a) on residential property for tax year 1992 shows for any area an adjustment multiplier of 1.01 or greater, the department shall perform a reappraisal of the residential property in the area. The reappraisal must be performed using the same criteria provided in subsection (4)(b)(i).

(iv) For those areas subject to reappraisal under the provisions of subsection (4)(b)(i) for tax year 1992, the department shall compare the stratified sales assessment ratio study performed in 1991 to the 1991 assessed value to determine whether the area will be subject to further appraisal. If that comparison of residential property shows for the area a coefficient of dispersion with respect to the value weighted mean ratio of more than 20%, rounded to the nearest 0.1%, and an adjustment multiplier of 1.01 or greater, the department shall reappraise the area. The reappraisal must be performed using the same criteria provided in subsection (4)(b)(i).

(5) The study required in subsection (4) must be based on:

(a) commonly accepted statistical standards and methodology;

(b) a statistically valid sample of sales, using data from realty transfer certificates filed for up to 3 taxable years prior to the year the study is made, taking into account the dates of the included sales in the statistical analysis; and

(c) the assessments and sales for areas of the state that are economically, demographically, and geographically similar in order to determine the sales assessment ratios for a specific area.

(6) For purposes of conducting the study required by subsection (4), the department shall partition the state into as many as 100 areas for residential property and as many as 20 areas for commercial property. The areas must contain statistically sufficient numbers of sales and be as economically and demographically homogeneous as reasonably practicable.

(7) The department shall use the following procedure to validate sales information:

(a) Department staff who did not participate in the determination of appraised values are required to review the sales transactions evidenced by a realty transfer certificate. The review must be conducted to determine whether each sale used in the study was a valid, arm's-length transaction. Only valid, arm's-length sales may be used in the sales assessment ratio study.

(b) The sales information entered in the computer-assisted appraisal system is considered confidential, as provided in 15-7-308. However, the department shall annually publish a report containing the results of all sales assessment ratio studies done in each of the areas described in subsection (6). The report containing the results of the study must be made available to the public by request or by general disclosure.

(c) The department shall exclude from the sales assessment ratio study any parcels in which the improvements have been remodeled, reconstructed, or expanded between the time of the assessment and the time of the sales.

(d) The department shall exclude sales assessment ratios of less than 50% or greater than 200%.

(8) (a) The department shall have equalized property values throughout the state and may not make further adjustments to values under this section when the assessments for each stratum within each area identified in subsection (6) are rescaled to bring all ratios to within plus or minus 5% of common value 1 and when the sample size produces a standard error of less than 5%.

(b) Under the method described in subsection (8)(a), taxable property in each area is considered revalued for each tax year, based on the results of the sales assessment ratio study and the adjustments required by that study.

(c) Assessments in an area are considered equalized under subsection (8)(a) if the ratio for the area is within plus or minus 5% of common value 1.

(9) If the results of the stratified sales assessment ratio study required under this section show an increase in the percentage adjustment in excess of 10% in an area designation, the department shall conduct a public hearing in that area designation to present information showing the reasons for the increase.

~~15-7-111. *(Effective July 1, 1993)* Periodic revaluation of taxable property — public hearing. (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state at least every 3 years. A comprehensive written reappraisal plan shall be promulgated by the department. The reappraisal plan adopted shall provide that all property in each county shall be revalued at least every 3 years. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners in each county.~~

~~(2) (a) Residential improvements include condominiums but do not include mobile homes or housetrailers that are not taxed as an improvement as defined in 15-1-101.~~

~~(b) (i) For tax year 1991, if the result of the stratified sales assessment ratio study performed on residential property for tax year 1990 shows for any area an assessment level of less than 80%, the department shall perform a reappraisal of the residential property in the area. The reappraisal must be performed using a computer-assisted mass appraisal system based on the market approach to value, using comparable sales of similar property. If insufficient sales are available for market modeling, the department shall reappraise the property using the cost approach to value.~~

~~(ii) For tax year 1992, if the result of the stratified sales assessment ratio study performed on residential property for tax year 1991 shows for any area an assessment level of less than 80% or a coefficient of dispersion with respect to the value weighted mean ratio of more than 20%, rounded to the nearest 0.1%, and an adjustment multiplier of 1.01 or greater, the department shall perform a reappraisal of the residential property in the area. The reappraisal must be performed using the same criteria provided in subsection (2)(b)(i).~~

~~(iii) For tax year 1993, if the result of the stratified sales assessment ratio study performed on residential property for tax year 1992 shows for any area an adjustment multiplier of 1.01 or greater, the department shall perform a reappraisal of the residential property in the area. The reappraisal must be performed using the same criteria provided in subsection (2)(b)(i).~~

~~(iv) For those areas subject to reappraisal under the provisions of subsection (2)(b)(i) for tax year 1992, the department shall compare the stratified sales assessment ratio study performed in 1991 to the 1991 assessed value to determine whether the area will be subject to further appraisal. If that comparison of residential property shows for the area a coefficient of dispersion with respect to the value weighted mean ratio of more than 20%, rounded to the nearest 0.1%, and an adjustment multiplier of 1.01 or greater, the department shall reappraise the area. The reappraisal must be performed using the same criteria provided in subsection (2)(b)(i).~~

~~(3) If the results of the stratified sales assessment ratio study required under this section show an increase in the percentage adjustment in excess of 10% in an area designation, the department shall conduct a public hearing in that area designation to present information showing the reasons for the increase.~~

15-7-111. *(Effective January 1, ~~1994~~ 1993)* **Periodic revaluation of taxable property.** ~~The~~ *(1) The department of revenue shall administer and* *supervise a program for the revaluation of all taxable property within the state. The department shall complete this revaluation program by December 31, 1996. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all property in each county be revalued by December 31, 1996. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county.*

(2) *Beginning January 1, 1997, the* department of revenue shall administer and supervise a program for the revaluation of all taxable property within the state at least every 3 years. A comprehensive written reappraisal plan ~~shall~~ *must* be promulgated by the department. The reappraisal plan adopted ~~shall~~ *must* provide that all property in each county ~~shall~~ be revalued at least every 3 years. The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners ~~in~~ *of* each county."

Section 5. Section 15-7-132, MCA, is amended to read:

"**15-7-132.** *(Temporary)* **Purpose.** (1) It is the purpose of 5-18-115 and 15-7-131 through 15-7-133 to provide an additional 2 years for completion of the current revaluation cycle, implemented pursuant to 15-7-111 through 15-7-114, in order to permit the department of revenue to comply with the revaluation requirements of 15-7-111 through 15-7-114 in a manner that implements the policy provided for in 15-7-131.

(2) It is not necessary for the department to commence another ~~5-year~~ revaluation cycle ~~pursuant to 15-7-111~~ until January 1, 1993. *(Repealed effective July 1, 1993—sec. 10, Ch. 680, L. 1991.)* "

Section 6. Section 15-7-133, MCA, is amended to read:

"**15-7-133.** *(Temporary)* **Extension of current revaluation cycle.** (1) Notwithstanding the provisions of 15-7-111 through 15-7-114, the current revaluation cycle, implementing 15-7-111, scheduled to end on December 31, 1990, and representing a 5-year period commencing January 1, 1986, is hereby extended for an additional 2 years, ending December 31, 1992. The new values determined during this period must be placed on the tax rolls in ~~accordance with 15-7-111(2)~~ *the year immediately following the completion of the revaluation cycle.*

(2) It is not necessary for the department to commence another ~~5-year~~ revaluation cycle pursuant to 15-7-111 until January 1, 1993.

(3) The extension provided for in subsection (1) does not affect the validity of any assessment made or any taxes levied during the period from January 1, 1986, to December 31, 1992. *(Repealed effective July 1, 1993—sec. 10, Ch. 680, L. 1991.)* "

Section 7. **Extension of reappraisal cycle for class three land.** Notwithstanding any other provisions of this code, the reappraisal cycle for class three land commencing January 1, 1986, must be extended to December 31, 1993. The new values determined during this period must be placed on the tax rolls in the year immediately following the completion of the revaluation cycle for class three land.

Section 8. **Effective date.** [This act] is effective on passage and approval.

Approved August 6, 1992.

CHAPTER NO. 14

[HB 54]

AN ACT REVISING THE METHOD OF CALCULATING THE INDIVIDUAL INCOME TAXES DUE FROM NONRESIDENT AND TEMPORARY RESIDENT TAXPAYERS; AMENDING SECTIONS 15-30-101, 15-30-105, 15-30-112, 15-30-122, 15-30-131, 15-30-132, 15-30-136, AND 15-30-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-101, MCA, is amended to read:

"**15-30-101. Definitions.** For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by subsection (2) of 15-30-103, in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by ~~subsections (7) and (8) of~~ 15-30-112*(6)*, in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by subsection (2) of 15-30-122, in effect on June 30 of the taxable year.

(2) "Consumer price index" means the consumer price index, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenue.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign country" or "foreign government" means any jurisdiction other than the one embraced within the United States, its territories and possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 or

as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June, 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

(12) "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(13) "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code, or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profitsharing plans to the extent that the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code to the extent that the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts after cessation of regular employment received from fully matured, privately purchased annuity contracts.

(14) "Purposely" is as defined in 45-2-101.

(15) "Received", for the purpose of computation of taxable income under this chapter, means received or accrued and the term "received or accrued" shall be

construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

(16) "Resident" applies only to natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(17) "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

(18) "Taxable year" means the taxpayer's taxable year for federal income tax purposes.

(19) "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

Section 2. Section 15-30-105, MCA, is amended to read:

"**15-30-105. Tax on nonresident — alternative tax based on gross sales.** (1) A like tax is imposed upon every person not resident of this state, which tax shall be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to his entire net income ~~as herein defined from all property owned and from every business, trade, profession, or occupation carried on in this state~~. *After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana.*

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, every nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Section 3. Section 15-30-112, MCA, is amended to read:

"**15-30-112. Exemptions.** (1) Except as provided in ~~subsections (7) and (8)~~ *subsection (6)*, in the case of an individual, the exemptions provided by subsections (2) through ~~(6)~~ *(5)* shall be allowed as deductions in computing taxable income.

(2) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(3) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse has attained the age of 65 before the close of such taxable year and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(4) (a) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the taxpayer if he is blind at the close of his taxable year.

(b) An additional exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for the spouse of the taxpayer if a separate return is made by the taxpayer and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For the purposes of this subsection (4)(b), the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer, except that if the spouse dies during such taxable year, such determination shall be made as of the time of such death.

(c) For purposes of this subsection (4), an individual is blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses or if his visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(5) (a) An exemption of $800 shall be allowed for taxable years beginning after December 31, 1978, for each dependent:

(i) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than $800; or

(ii) who is a child of the taxpayer and who:

(A) has not attained the age of 19 years at the close of the calendar year in which the taxable year of the taxpayer begins; or

(B) is a student.

(b) No exemption shall be allowed under this subsection for any dependent who has made a joint return with his spouse for the taxable year beginning in the calendar year in which the taxable year of the taxpayer begins.

(c) For purposes of subsection (5)(a)(ii), the term "child" means an individual who is a son, stepson, daughter, or stepdaughter of the taxpayer.

(d) For purposes of subsection (5)(a)(ii)(B), the term "student" means an individual who, during each of 5 calendar months during the calendar year in which the taxable year of the taxpayer begins:

(i) is a full-time student at an educational institution; or

(ii) is pursuing a full-time course of institutional on-farm training under the supervision of an accredited agent of an educational institution or of a state or political subdivision of a state. For purposes of this subsection (5)(d)(ii), the term "educational institution" means only an educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on.

~~(6) In the case of a nonresident taxpayer, the exemption deduction shall be prorated according to the ratio the taxpayer's Montana adjusted gross income bears to his federal adjusted gross income.~~

~~(7) For taxable years beginning after December 31, 1978, and before January 1, 1981, the amount allowed as a deduction in subsections (2) through (6) shall be adjusted as provided under section 9, Chapter 698, Laws of 1979 as amended by section 4, Chapter 548, Laws of 1981.~~

~~(8)~~*(6)* ~~For taxable years beginning after December 31, 1980, the~~ *The* department, by November 1 of each year, shall multiply all the exemptions provided in this section ~~unadjusted by subsection (7)~~ by the inflation factor for that taxable year and round the product to the nearest $10. The resulting adjusted exemptions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103."

Section 4. Section 15-30-122, MCA, is amended to read:

"**15-30-122. Standard deduction.** (1) ~~In the case of a resident individual, a~~ *A* standard deduction equal to 20% of adjusted gross income shall be allowed if elected by the taxpayer on his return. The standard deduction shall be in lieu of all deductions allowed under 15-30-121. The maximum standard deduction shall be $1,500, as adjusted under the provisions of subsection (2), except that in the case of a single joint return of husband and wife or in the case of a single individual who qualifies to file as a head of household on his federal income tax return, the maximum standard deduction shall be $3,000, as adjusted under the provisions of subsection (2). The standard deduction shall not be allowed to either the husband or the wife if the tax of one of the spouses is determined without regard to the standard deduction. For purposes of this section, the determination of whether an individual is married shall be made as of the last day of the taxable year; provided, however, if one of the spouses dies during the taxable year, the determination shall be made as of the date of death.

(2) By November 1 of each year, the department shall multiply the maximum standard deduction for single returns by the inflation factor for that taxable year and round the product to the nearest $10. The standard deduction for joint returns and qualified head of household returns shall be twice the amount for single returns. The resulting adjusted deductions are effective for that taxable year and shall be used in calculating the tax imposed in 15-30-103."

Section 5. Section 15-30-131, MCA, is amended to read:

"**15-30-131. Nonresident and temporary resident taxpayers — adjusted gross income ~~—deductions~~.** ~~(1)~~ In the case of a taxpayer other than a resident of this state, adjusted gross income includes the entire amount of adjusted gross income ~~from sources within this state but shall not include income from annuities, interest on bank deposits, interest on bonds, notes, or other interest-bearing obligations, or dividends on stock of corporations except to the extent to which the same shall be a part of income from any business, trade, profession, or occupation carried on in this state~~ *as provided for in 15-30-111*. ~~Interest income from installment sales of real or tangible commercial or business property located in Montana must be included in adjusted gross income. Adjusted gross income from sources within and without this state shall be allocated and apportioned under rules prescribed by the department.~~

~~(2) In the case of a taxpayer other than a resident of this state who is a resident of a state that imposes a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to those directly connected with the production of Montana income.~~

~~(3) In the case of a taxpayer other than a resident of this state who is a resident of a state that does not impose a tax on the income of natural persons residing within that state, the deductions allowed in computing net income are restricted to the greater of those directly relating to the production of Montana income or a prorated amount of those allowed under 15-30-121. For the purposes of this subsection, deductions allowed under 15-30-121 apply only to earned income and must be prorated according to the ratio that the taxpayer's Montana earned income bears to his federal earned income.~~

~~(4) A temporary resident shall be allowed those deductions and the credit under 15-32-109 allowed a resident to the extent that such deductions or credit were actually incurred or expended in the state of Montana during the course of his residency.~~

~~(5) For the purposes of this section, "earned income" shall be defined as the same term is defined in section 43 of the Internal Revenue Code, or as that section may subsequently be amended.~~

~~(6) Notwithstanding the provisions of subsections (2) and (3), any contribution made after December 31, 1982, to the state of Montana or a political subdivision thereof shall be an allowable deduction in computing net income. The deduction is subject to the limitations set forth in section 170 of the Internal Revenue Code of 1954, as labeled or amended.~~

~~(7) For purposes of this section, "installment sales" means sales in which the buyer agrees to pay the seller in one or more deferred installments.~~"

Section 6. Section 15-30-132, MCA, is amended to read:

"**15-30-132. Change from nonresident to resident or vice versa.** If a taxpayer changes his status from that of resident to that of nonresident or from that of nonresident to that of resident during the taxable year, he shall file a return ~~covering the fraction of the year during which he was a resident~~. ~~The exemptions provided in 15-30-112 shall be prorated on the ratio the Montana~~

~~adjusted gross income bears to federal adjusted gross income. A Montana citizen moving out of the state, abandoning his residence in the state, and establishing a residence elsewhere must file a return on the fractional basis.~~ If ~~he~~ *a resident* obtains employment outside the state ~~without abandoning his Montana residence~~, ~~then~~ income from such employment is taxable in Montana."

Section 7. Section 15-30-136, MCA, is amended to read:

"**15-30-136. Computation of income of estates or trusts — exemption.** (1) Except as otherwise provided in this chapter, "gross income" of estates or trusts means all income from whatever source derived in the taxable year, including but not limited to the following items:

(a) dividends;

(b) interest received or accrued, including interest received on obligations of another state or territory or a county, municipality, district, or other political subdivision thereof, but excluding interest income from obligations of:

(i) the United States government or the state of Montana;

(ii) a school district; or

(iii) a county, municipality, district, or other political subdivision of the state;

(c) income from partnerships and other fiduciaries;

(d) gross rents and royalties;

(e) gain from sale or exchange of property, including those gains that are excluded from gross income for federal fiduciary income tax purposes by section 641(c) of the Internal Revenue Code of 1954, as amended;

(f) gross profit from trade or business; and

(g) refunds recovered on federal income tax, to the extent the deduction of such tax resulted in a reduction of Montana income tax liability.

(2) In computing net income, there are allowed as deductions:

(a) interest expenses deductible for federal tax purposes according to section 163 of the Internal Revenue Code of 1954, as amended;

(b) taxes paid or accrued within the taxable year, including but not limited to federal income tax, but excluding Montana income tax;

(c) that fiduciary's portion of depreciation or depletion which is deductible for federal tax purposes according to sections 167, 611, and 642 of the Internal Revenue Code of 1954, as amended;

(d) charitable contributions that are deductible for federal tax purposes according to section 642(c) of the Internal Revenue Code of 1954, as amended;

(e) administrative expenses claimed for federal income tax purposes, according to sections 212 and 642(g) of the Internal Revenue Code of 1954, as amended, if such expenses were not claimed as a deduction in the determination of Montana inheritance tax;

(f) losses from fire, storm, shipwreck, or other casualty or from theft, to the extent not compensated for by insurance or otherwise, that are deductible for federal tax purposes according to section 165 of the Internal Revenue Code of 1954, as amended;

(g) net operating loss deductions allowed for federal income tax under section 642(d) of the Internal Revenue Code of 1954, as amended, except estates may not claim losses that are deductible on the decedent's final return;

(h) Montana income tax refunds or tax refund credits.

(3) The following additional deductions shall be allowed in deriving taxable income of estates and trusts:

(a) any amount of income for the taxable year currently required to be distributed to beneficiaries for such year;

(b) any other amounts properly paid or credited or required to be distributed for the taxable year;

(c) the amount of 60% of the excess of the net long-term capital gain over the net short-term capital loss for the taxable year.

(4) The exemption allowed for estates and trusts is that exemption provided in 15-30-112(2)(a) and ~~15-30-112(8)~~ *(6)*."

Section 8. Section 15-30-142, MCA, is amended to read:

"**15-30-142. Returns and payment of tax — penalty and interest — refunds — credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than $1,000, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the taxable year of more than $2,000, as adjusted under the provisions of subsection (7), shall be liable for a return to be filed on such forms and according to such rules as the department may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by $800, as adjusted under the provisions of 15-30-112~~(7) and (8)~~ *(6)*, for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 15-30-112(3) and (4). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 15-30-112(2), (3), and (4)~~, as prorated according to 15-30-112(6)~~.

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after

the time for filing the return of either has expired unless the department so consents.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 15-30-202 and/or any payment made by reason of an estimated tax return provided for in 15-30-241; provided, however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this chapter. If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the taxable year. These adjusted amounts are effective for that taxable year, and persons having gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each taxable year must contain instructions and tables based on the adjusted base year structure for that taxable year."

Section 9. **Effective date.** [This act] is effective on passage and approval.

Section 10. **Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991.

Approved August 6, 1992.

CHAPTER NO. 15

[HB 44]

AN ACT IMPOSING A 7 PERCENT SURTAX ON TAXES LEVIED BY THE STATE OF MONTANA; LIMITING THE APPLICABILITY OF EACH SURTAX; IMPOSING A 2.3 PERCENT SURTAX ON INDIVIDUAL AND CORPORATE INCOME TAXES FOR TAX YEAR 1992 AND A 4.7 PERCENT

SURTAX ON INDIVIDUAL AND CORPORATE INCOME TAXES FOR TAX YEAR 1993; IMPOSING A GENERAL FUND STABILIZATION TAX ON COAL; ALLOCATING THE ADDITIONAL REVENUE OTHER THAN THE ADDITIONAL FUEL TAX REVENUE TO THE GENERAL FUND; AMENDING SECTIONS 15-31-121, 15-37-117, 16-1-410, 16-1-411, 16-11-111, 16-11-119, 16-11-202, 23-5-610, 33-2-705, 61-3-502, AND 82-11-135, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, APPLICABILITY DATES, AND TERMINATION DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Surtax — distribution.** (1) Each person required to pay the coal gross proceeds tax under this part shall pay, in addition to the tax liability determined under 15-23-703, a surtax of 7% of the tax liability.

(2) Notwithstanding the provisions of 15-23-707, the money received from county treasurers from the surtax collected under this section must be deposited to the credit of the state general fund.

Section 2. **Surtax.** Each person required to file a Montana individual income tax return shall pay, in addition to the tax liability computed as required in 15-30-103, a surtax of 2.3% of the tax liability for tax year 1992 and a surtax of 4.7% of the tax liability for tax year 1993.

Section 3. Section 15-31-121, MCA, is amended to read:

"**15-31-121. Rate of tax — minimum tax — surtax.** (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 shall be 6 3⁄4% of all net income for the taxable period. The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 shall be 7% of all taxable net income for the taxable period.

(3) Every corporation subject to taxation under this part shall, in any event, pay a minimum tax of not less than $50.

(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add, as a surtax ~~for tax year 1988~~, ~~4%~~ *for tax year 1992, 2.3% of the tax liability and, as a surtax for tax year 1993, 4.7%* of the tax liability, and the amount so derived is the amount due the state.

(5) The additional tax collected under subsection (4) must be deposited to the credit of the state general fund."

Section 4. **General fund stabilization tax.** (1) Each coal mine operator required to pay the severance tax under Title 15, chapter 35, shall pay a general fund stabilization tax. The general fund stabilization tax is an amount equal to 7% of the tax liability computed under 15-35-103.

(2) The tax must be deposited to the credit of the state general fund.

Section 5. **Surtax.** (1) Each person required to pay the severance tax under this chapter on oil and gas production, other than production from a stripper well, shall pay, in addition to the tax liability computed as required in 15-36-101 and 15-36-121, a surtax of 7% of the tax liability.

(2) The additional tax must be deposited to the credit of the state general fund.

Section 6. **Surtax — distribution.** Each person required to pay the metal mines license tax under this part shall pay, in addition to the tax liability computed as required in 15-37-103, a surtax of 7% of the tax liability.

Section 7. Section 15-37-117, MCA, is amended to read:

"**15-37-117. Disposition of metalliferous mines license taxes.** (1) ~~Metalliferous~~ *Except as provided in subsection (4), metalliferous* mines license taxes collected under the provisions of this part are allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the state resource indemnity trust fund, 15.5% of total collections each year;

(d) to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan or, if no impact plan has been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(d)(i) to be further allocated as follows:

(A) 33 ⅓% is allocated to the county for planning or economic development activities;

(B) 33 ⅓% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 ⅓% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)(d) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(d). The allocation to the county described by subsection (1)(d) is a statutory appropriation pursuant to 17-7-502.

(4) The proceeds of the surtax collected under [section 6] must be deposited to the credit of the general fund."

Section 8. **Surtax.** Each person required to pay the license tax on micaceous minerals under this part shall pay, in addition to the tax liability computed as required in 15-37-201, a surtax of 7% of the tax liability.

Section 9. **Surtax.** (1) Each person required to pay the resource indemnity trust tax under this part shall pay, in addition to the tax liability computed as required in 15-38-104, a surtax of 7% of the tax liability.

(2) The additional tax must be deposited to the credit of the state general fund.

Section 10. **Surtax.** Each person required to pay the electric energy producers' license tax under this part shall pay, in addition to the tax liability computed as required in 15-51-101, a surtax of 7% of the tax liability.

Section 11. **Surtax.** Each person required to pay the telephone company license tax under this part shall pay, in addition to the tax liability computed as required in 15-53-101, a surtax of 7% of the tax liability.

Section 12. **Surtax.** Each person required to pay the freight line company license tax under this part shall pay, in addition to the tax liability computed as required in 15-55-102, a surtax of 7% of the tax liability.

Section 13. **Surtax.** Each person required to pay the cement and gypsum producers' license tax under this part shall pay, in addition to the tax liability computed as required in 15-59-102, a surtax of 7% of the tax liability.

Section 14. **Surtax.** Each person required to pay the cement dealers' license tax under this part shall pay, in addition to the tax liability computed as required in 15-59-201, a surtax of 7% of the tax liability.

Section 15. **Additional tax — allocation.** (1) An additional tax is imposed on the user of a facility at a rate equal to 0.28% of the accommodation charge collected by the facility.

(2) The additional tax must be deposited to the credit of the state general fund.

Section 16. **Surtax.** Each distributor required to pay the gasoline license tax under this part shall pay, in addition to the tax liability computed as required in 15-70-204, a surtax of 7% of the tax liability.

Section 17. **Surtax — diesel fuel and volatile liquids.** Each special fuel dealer subject to taxation under this part shall pay, in addition to the tax liability computed as required in 15-70-321, a surtax of 7% of the tax liability.

Section 18. **Surtax — special fuels.** Each special fuel user subject to taxation under this part shall pay, in addition to the tax liability computed as required in 15-70-322, a surtax of 7% of the tax liability.

Section 19. **Surtax.** Each owner or operator subject to a license tax fee under this part shall pay, in addition to the license tax fee determined under 15-71-101(1), a surtax of 7% of the liability.

Section 20. **Surtax on liquor — distribution.** (1) In addition to the amount of tax liability determined under 16-1-401 through 16-1-403, each person subject to taxation under 16-1-401 through 16-1-403 shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must be deposited to the credit of the state general fund.

Section 21. **Surtax on beer — distribution.** (1) After the amount of tax liability has been determined under 16-1-406 and 16-1-408, each wholesaler subject to taxation under this part shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must be deposited to the credit of the state general fund.

Section 22. **Surtax on table wine — distribution.** (1) In addition to the amount of tax liability determined under 16-1-411, each table wine distributor subject to taxation under this part shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must be deposited to the credit of the state general fund.

Section 23. Section 16-1-410, MCA, is amended to read:

"**16-1-410. Tax revenue allocation.** ~~All~~ *Subject to [section 21], all* revenue received from taxes on beer under 16-1-406 and 16-1-408 over and above $1.50 per barrel of 31 gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the state special revenue fund. The money in the account is statutorily appropriated, as provided in 17-7-502, to the state treasurer who shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it may not receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the remaining incorporated cities and towns. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, maintenance of the transportation system, and public health."

Section 24. Section 16-1-411, MCA, is amended to read:

"**16-1-411. Tax on wine.** (1) A tax of 27 cents per liter is hereby levied and imposed on table wine imported by any table wine distributor or the department.

(2) (a) The tax on table wine imported by a table wine distributor shall be paid by the table wine distributor by the 15th day of the month following sale

of the table wine from the table wine distributor's warehouse. Failure to file a table wine tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in 16-1-409.

(b) The tax on table wine imported by the department shall be collected at the time of sale.

(3) The tax paid by a table wine distributor in accordance with subsection (2)(a) and the tax collected by the department in accordance with subsection (2)(b) shall be distributed as follows:

(a) 16 cents to the state general fund; and

(b) of the remaining 11 cents:

(i) 8.34 cents to the state special revenue fund to the credit of the department of corrections and human services for the treatment, rehabilitation, and prevention of alcoholism;

(ii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(iii) 1 1/3 cents is statutorily appropriated, as provided in 17-7-502, to the department, for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The ~~tax~~ *taxes* computed and paid in accordance with *16-2-301, [section 22], and* this section shall be the only ~~tax~~ *taxes* imposed by the state or any of its subdivisions, including cities and towns.

(5) The proceeds of the surtax imposed by [section 22] must be deposited in the state general fund."

Section 25. Section 16-11-111, MCA, is amended to read:

"**16-11-111. Cigarette sales tax.** There is levied, imposed, and assessed and there must be collected and paid to the state of Montana upon cigarettes sold or possessed in this state an excise tax of ~~18~~ *19.26* cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes."

Section 26. Section 16-11-119, MCA, is amended to read:

"**16-11-119. Disposition of taxes — retirement of bonds.** All moneys collected under the provisions of 16-11-111, less the expense of collecting all the taxes levied, imposed, and assessed by said section, shall be paid to the state treasurer and deposited as follows: ~~70.89%~~ *72.79%* in the long-range building program fund in the debt service fund type and ~~29.11%~~ *27.21%* in the long-range building program fund in the capital projects fund type."

Section 27. Section 16-11-202, MCA, is amended to read:

"**16-11-202. Tax on sale of tobacco other than cigarettes — imposed on retail consumer — rate of tax.** (1) All taxes paid pursuant to the provisions of this section shall be exclusively presumed to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, such payment shall be considered as an advance payment and shall be added to the price of tobacco products other than cigarettes and recovered from the ultimate consumer or user. Any person selling tobacco products other than cigarettes at retail shall state or separately display in the premises where such products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section shall in no way affect the method of collection of such tax as hereinafter provided.

(2) There is hereby levied, imposed, and assessed upon tobacco products other than cigarettes sold or possessed in this state and there shall be collected and paid to the state of Montana a tax of ~~12-½%~~ *13.38%* of the wholesale price of such products to the wholesaler, excepting therefrom such products as may be shipped from Montana and destined for retail sale and consumption outside the state of Montana."

Section 28. **Surtax — distribution.** (1) In addition to the amount of tax liability determined under 23-5-610, each licensed operator subject to taxation under this part shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must be deposited to the credit of the state general fund.

Section 29. Section 23-5-610, MCA, is amended to read:

"23-5-610. Video gambling machine gross income tax — records — distribution — quarterly statement and payment. (1) A licensed operator issued a permit under this part shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine licensed under this part. A licensed operator may deduct from the gross income amounts equal to amounts stolen from machines if the amounts are not repaid by insurance and if a law enforcement agency investigated the theft.

(2) A licensed operator issued a permit under this part shall keep a record of the gross income from each machine in such form as the department may require. The records must at all times during the business hours of the licensee be subject to inspection by the department.

(3) A licensed operator issued a permit under this part shall, within 15 days after the end of each quarter, complete and deliver to the department a statement showing the total gross income from each video gambling machine licensed to him, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information as the department may require.

(4) (a) The department shall forward one-third of the tax collected under subsection (3) *and the surtax imposed by [section 28]* to the general fund.

(b) The department shall forward the remaining two-thirds of the tax collected under subsection (3) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection (3) is statutorily appropriated to the department as provided in 17-7-502 for deposit to the county or municipal treasury."

Section 30. Section 33-2-705, MCA, is amended to read:

"**33-2-705. Report on premiums and other consideration — tax.** (1) Each authorized insurer and each formerly authorized insurer with respect to premiums so received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in form as prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to such property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from such total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to such policies. As to title insurance, "premium" includes the total charge for such insurance. No deduction shall be made of the cash surrender values of policies. Considerations received on annuity contracts shall not be included in total direct premium income and shall not be subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1) above, each such insurer shall pay to the commissioner a tax upon such net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid hereunder by an insurer on account of premiums received for fire insurance shall be separately specified in the report as required by the commissioner, for apportionment as provided by law. Where insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make such reasonable allocation from such entire premium to the fire portion of the coverage as shall be stated in such report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the ~~premium tax~~ *taxes* provided by this ~~section~~ *part* shall be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) The commissioner may suspend or revoke the certificate of authority of any insurer which fails to pay its taxes as required under this section.

(6) In addition to the penalty provided for in subsection (5), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of $100 a day for each day the tax remains unpaid past the due date or 1% of the amount owed in tax, whichever is greater.

(7) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which such tax liability is accrued."

Section 31. **Surtax — distribution.** (1) In addition to the amount of tax liability determined under 33-2-311, 33-2-705, 33-2-710, or 33-22-1205, each insurer subject to taxation under 33-2-311, 33-2-705, 33-2-710, or 33-22-1205 shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must be deposited to the credit of the state general fund.

Section 32. Section 61-3-502, MCA, is amended to read:

"61-3-502. Sales tax on new motor vehicles — exemptions. (1) In consideration of the right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when he applies for his original Montana license through the county treasurer.

(2) Except as provided in subsections (4) and (5), the sales tax is:

(a) 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 ⅛% of the list price during the second quarter of the year;

(c) ¾ of 1% during the third quarter of the year;

(d) ⅜ of 1% during the fourth quarter of the year.

(3) If the manufacturer or importer fails to furnish the f.o.b. factory list price or f.o.b. port-of-entry list price, the department may use published price lists.

(4) The new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 ½% of the f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purchased.

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.

(6) ~~The~~ *Except as provided in [section 33], the* proceeds from this tax must be remitted to the state treasurer every 30 days for credit to the state highway account of the state special revenue fund.

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) (a) The applicant for original registration of any new and unused motor vehicle, or a new motor vehicle furnished without charge by a dealer to a school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state, whether or not previously licensed or titled to the school district (except a mobile home as defined in 15-1-101(1)), acquired by original contract after January 1 of any year, is required, whenever the vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by this section irrespective of whether the vehicle was in the state of Montana on January 1 of the year.

(b) No motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from such limits are exempt from subsection (1).

(b) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state where those motor vehicles are used exclusively for transportation of agricultural workers are also exempt from subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in 61-4-103 are exempt from subsection (1) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only, and in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business."

Section 33. **Surtax — distribution.** (1) In addition to the amount of tax liability determined under 61-3-502, each purchaser of a new vehicle subject to taxation under this part shall pay, as a surtax, 7% of the tax liability.

(2) The surtax imposed by this section must be deposited to the credit of the state general fund.

Section 34. **Surtax.** Each person required to pay a fee under this part shall pay, in addition to the fee, a surtax of 7% of the fee.

Section 35. Section 82-11-135, MCA, is amended to read:

"**82-11-135. Money earmarked for board expenses.** ~~All~~ *Except as provided in [section 36], all* money collected under this chapter shall be deposited in the state special revenue fund by the state treasurer and shall be used for the purpose of paying all expenses of the board and for no other purpose. All these moneys shall be used by the board subject to biennial appropriations by the legislature. Income and interest from investment of the board's moneys in the state special revenue fund shall be credited to the board."

Section 36. **Surtax.** (1) Each person required to pay the tax under this part shall pay, in addition to the tax liability determined under 82-11-131, a surtax of 7% of the tax liability.

(2) The additional tax must be deposited to the credit of the general fund.

Section 37. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 23, part 7, and the provisions of Title 15, chapter 23, part 7, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 2].

(3) [Section 4] is intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [section 4].

(4) [Section 5] is intended to be codified as an integral part of Title 15, chapter 36, part 1, and the provisions of Title 15, chapter 36, part 1, apply to [section 5].

(5) [Section 6] is intended to be codified as an integral part of Title 15, chapter 37, part 1, and the provisions of Title 15, chapter 37, part 1, apply to [section 6].

(6) [Section 8] is intended to be codified as an integral part of Title 15, chapter 37, part 2, and the provisions of Title 15, chapter 37, part 2, apply to [section 8].

(7) [Section 9] is intended to be codified as an integral part of Title 15, chapter 38, part 1, and the provisions of Title 15, chapter 38, part 1, apply to [section 9].

(8) [Section 10] is intended to be codified as an integral part of Title 15, chapter 51, part 1, and the provisions of Title 15, chapter 51, part 1, apply to [section 10].

(9) [Section 11] is intended to be codified as an integral part of Title 15, chapter 53, part 1, and the provisions of Title 15, chapter 53, part 1, apply to [section 11].

(10) [Section 12] is intended to be codified as an integral part of Title 15, chapter 55, part 1, and the provisions of Title 15, chapter 55, part 1, apply to [section 12].

(11) [Section 13] is intended to be codified as an integral part of Title 15, chapter 59, part 1, and the provisions of Title 15, chapter 59, part 1, apply to [section 13].

(12) [Section 14] is intended to be codified as an integral part of Title 15, chapter 59, part 2, and the provisions of Title 15, chapter 59, part 2, apply to [section 14].

(13) [Section 15] is intended to be codified as an integral part of Title 15, chapter 65, part 1, and the provisions of Title 15, chapter 65, part 1, apply to [section 15].

(14) [Section 16] is intended to be codified as an integral part of Title 15, chapter 70, part 2, and the provisions of Title 15, chapter 70, part 2, apply to [section 16].

(15) [Sections 17 and 18] are intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [sections 17 and 18].

(16) [Section 19] is intended to be codified as an integral part of Title 15, chapter 71, part 1, and the provisions of Title 15, chapter 71, part 1, apply to [section 19].

(17) [Sections 20 through 22] are intended to be codified as an integral part of Title 16, chapter 1, part 4, and the provisions of Title 16, chapter 1, part 4, apply to [sections 20 through 22].

(18) [Section 28] is intended to be codified as an integral part of Title 23, chapter 5, part 6, and the provisions of Title 23, chapter 5, part 6, apply to [section 28].

(19) [Section 31] is intended to be codified as an integral part of Title 33, chapter 2, part 7, and the provisions of Title 33, chapter 2, part 7, apply to [section 31].

(20) [Section 33] is intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [section 33].

(21) [Section 34] is intended to be codified as an integral part of Title 61, chapter 10, part 2, and the provisions of Title 61, chapter 10, part 2, apply to [section 34].

(22) [Section 36] is intended to be codified as an integral part of Title 82, chapter 11, part 1, and the provisions of Title 82, chapter 11, part 1, apply to [section 36].

Section 38. **Effective date.** [This act] is effective on passage and approval.

Section 39. **Applicability — termination.** (1) (a) [Sections 2 and 3] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1991, and before January 1, 1994. The department of revenue shall adjust withholding tables for the month beginning September 1, 1992, in order to collect the full amount of the 2.3% surtax imposed in [section 2] during the remainder of this calendar year.

(b) [Sections 2 and 3] terminate upon receipt of taxes for tax year 1993.

(2) (a) [Sections 4, 5, and 8] apply retroactively, within the meaning of 1-2-109, to production occurring after June 30, 1992, and before July 1, 1993.

(b) [Sections 4, 5, and 8] terminate upon receipt of taxes on production occurring prior to July 1, 1993.

(3) (a) [Sections 1, 6, 7, and 9] apply retroactively, within the meaning of 1-2-109, to production occurring after December 31, 1991, and before January 1, 1993.

(b) [Sections 1, 6, 7, and 9] terminate upon receipt of taxes on production occurring prior to January 1, 1993.

(4) (a) [Sections 10, 11, 13, 14, 18, 28, and 29] apply retroactively, within the meaning of 1-2-109, to tax liabilities for calendar quarters beginning after June 30, 1992, and before July 1, 1993.

(b) [Sections 10, 11, 13, 14, 18, 28, and 29] terminate upon receipt of taxes for the quarter ending June 30, 1993.

(5) (a) [Sections 16, 17, 20, 21, 22 through 24, and 32 through 34] apply for 1 calendar year to tax or fee liabilities for months beginning after [the effective date of this act].

(b) [Sections 16, 17, 20, 21, 22 through 24, and 32 through 34] terminate upon receipt of taxes or fees for the final month of applicability.

(6) (a) [Sections 19, 35, and 36] apply to the tax year beginning after December 31, 1992, and ending before January 1, 1994.

(b) [Sections 19, 35, and 36] terminate upon receipt of taxes for tax year 1993.

(7) (a) [Sections 12 and 15] apply to tax liabilities for calendar quarters beginning after September 30, 1992, and before October 1, 1993.

(b) [Sections 12 and 15] terminate upon receipt of taxes for the quarter ending September 30, 1993.

(8) (a) [Sections 25 through 27] apply for 1 calendar year to tax liabilities beginning 1 day after [the effective date of this act].

(b) [Sections 25 through 27] terminate 1 year after [the effective date of this act].

(9) (a) [Sections 30 and 31] apply retroactively, within the meaning of 1-2-109, to the tax year beginning after December 31, 1991.

(b) [Sections 30 and 31] terminate upon receipt of taxes for the calendar year ending December 31, 1992.

Section 40. **Coordination instruction.** If House Bill No. 24 is passed and approved, then [section 12 of this act] is void.

Effective pursuant to Article VI, sec. 10, Mont. Const., on August 14, 1992.

CHAPTER NO. 16

[HB 58]

AN ACT PROHIBITING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FROM ISSUING CERTAIN PERMITS FOR THE IN-

CINERATION OF SOLID WASTES OR HAZARDOUS WASTES OR FOR THE USE OF HAZARDOUS WASTE-DERIVED FUEL; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, efforts are underway to locate facilities in Montana that would incinerate solid wastes or hazardous wastes and to locate other facilities that burn hazardous waste-derived fuels; and

WHEREAS, the Legislature is concerned that current state law does not provide adequate protection for the human and physical environment, including impacts to public health, safety, and welfare and property values, from the impacts of solid waste or hazardous waste incinerator facilities or other facilities that burn hazardous waste-derived fuels; and

WHEREAS, the Legislature desires to fully consider the impacts of solid waste and hazardous waste incinerators or other facilities that burn hazardous waste-derived fuels during the 53rd Regular Session.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Moratorium on certain solid and hazardous waste incinerator permits.** (1) Except for remedial actions pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to 75-10-405(2)(c) or 75-10-416, until October 1, 1993, the department may not issue a permit to a solid or hazardous waste incinerator subject to the requirements of 75-2-215.

(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely manner in adopting rules implementing 75-2-215 and in processing air quality permit applications required under 75-2-211 for solid or hazardous waste incinerators.

Section 2. **Moratorium on certain solid waste facility permits.** (1) Except for remedial actions pursuant to Title 75, chapter 10, part 7, or corrective actions pursuant to 75-10-405(2)(c) or 75-10-416, until October 1, 1993, the department may not issue a license under 75-10-221 for a solid waste facility if the facility is also subject to the requirements of 75-2-215.

(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely manner in processing solid waste applications required under 75-10-221.

Section 3. **Moratorium on certain hazardous waste facility permits.** (1) Until October 1, 1993, the department may not issue a permit under 75-10-406 for a boiler or industrial furnace that burns hazardous waste or hazardous waste-derived fuel.

(2) Notwithstanding the provisions of (1), the department shall proceed in a reasonable and timely manner in adopting rules implementing 75-10-406 and in processing applications required under 75-10-406.

Section 4. **Codification instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 75, chapter 2, part 2, and the provisions of Title 75, chapter 2, part 2, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 75, chapter 10, part 2, and the provisions of Title 75, chapter 10, part 2, apply to [section 2].

(3) [Section 3] is intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [section 3].

Section 5. **Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Effective date.** [This act] is effective on passage and approval.

Effective pursuant to Article VI, sec. 10, Mont. Const., on August 14, 1992.

CHAPTER NO. 17

[HB 2]

AN ACT GENERALLY REVISING APPROPRIATIONS FOR FISCAL YEAR 1993; AMENDING THE GENERAL APPROPRIATIONS ACT OF 1991 AND OTHER ACTS APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1993; PROVIDING CONDITIONS AND LIMITATIONS RELATING TO THE APPROPRIATIONS; AMENDING SECTIONS 1, 2, 11, AND 14, CHAPTER 13, SPECIAL LAWS OF JANUARY 1992, SECTION 13, CHAPTER 774, LAWS OF 1991, SECTION 3, CHAPTER 775, LAWS OF 1991, AND SECTION 1, CHAPTER 779, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1, Chapter 13, Special Laws of January 1992, is amended to read:

"Section 1. Section 1, Chapter 815, Laws of 1991, is amended to read:

"Section 1. **Short title.** [This act] may be cited as "The General Appropriations Act of 1991".

~~Section 2. **Limit on personal services transfer — exceptions.** (1) Funds appropriated for personal services or indicated in legislative intent as having been appropriated for personal services may not be expended under any other category unless the approving authority approves a specific agency request for the 1993 biennium only, which request is justified either on the basis of documented cost savings or as specified in subsection (2). The approving authority shall submit its analysis of the cost savings to the legislative auditor, with wages and fringe benefits separately documented from other cost savings. The legislative audit committee shall review the approving authority's analysis and report to the 53rd legislature on the savings realized.~~

~~(2) If an agency is unable to recruit and hire professional positions funded in the appropriation, funds appropriated for personal services may be used to~~

~~fund an agreement or contract to provide services that are identical to those services performed by an authorized position. The amount used for the agreement or contract may not be more than the amount authorized for the position less any personal services reduction. The agency director shall certify to the approving authority, as defined in 17-7-102, or his designated representative that the agency is unable to fill the position and that the services performed by that position are necessary.~~

Section 2. ***Agency management responsibility.*** *For fiscal 1993, as a result of the fiscal condition of the state and the significant budget reductions required for all state agencies, the legislature, meeting in the July 1992 special session:*

(1) expresses its intent that each state agency is expected to manage its available resources prudently to avoid, to the maximum extent feasible, requiring fiscal 1993 general fund supplemental appropriations requests that are to be stringently analyzed prior to consideration by the 53rd legislature; and

(2) approves flexible management responsibility, within the constraints of this section, subject to the limitations of 17-7-138 and 17-7-139, for each agency in order that the agency may adjust spending authority within and among programs for personal services, operating expenses, equipment, capital outlay, grants, and transfers.

Section 3. **First level expenditures.** The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this bill, showing first level expenditures and funding for the 1993 biennium, are adopted as legislative intent.

Section 4. **Reorganization.** If any agency reorganizes during the 1993 biennium, the agency shall present for fiscal 1992 and fiscal 1993 by program:

(1) a restatement of the FTE records and financial records consistent with the reorganized structure; and

(2) a comparison of the original operating budget to the revised operating budget that reflects the reorganization. Reorganization means transfer of functions or five or more FTE from one program to another.

Section 5. **Natural resources damage assessment repayment.** In the natural resource damage assessment and litigation against the atlantic richfield company, the state shall seek repayment of any funds appropriated in [this act] that are expended by a state agency for the purpose of conducting the assessment and/or litigation. This repayment must include interest on the funds at a rate commensurate with rates earned in the short-term investment pool.

Section 6. **Budget reduction.** The line item for "budget reduction" reduces the agency's total general fund appropriation. The agency, with the approval of the approving authority as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

~~Section 7. **Vacant positions.** If a budgeted position remains unfilled for more than 6 months, the position may be filled only after approval by the approving authority. The approving authority shall document in writing the~~

~~justification and approval for filling each position that was vacant for more than 6 months and shall provide the documentation to the office of budget and program planning and to the office of the legislative fiscal analyst if requested. If a budgeted position remains unfilled for more than 1 year, the approving authority may not include the position in the budget request base for the executive budget request that will be presented to the 53rd legislature. The budget request presented to the 53rd legislature must include an analysis of vacant positions subject to the approval requirement in this section and must specifically identify those positions that remained unfilled for more than 1 year and are included in the budget request as modifications.~~

Section ~~8~~ *7.* **Severability.** If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, such decision does not affect the validity of the remaining portions of [this act].

Section ~~9~~ *8.* **Audit cost.** Amounts appropriated for audits may be transferred between fiscal years. Agencies shall reserve enough cash in each fund to pay for audit costs and shall, to the maximum extent allowable under federal regulations, charge audit costs to federal funds. The budget director shall increase the agency line item appropriations for legislative audits by amounts that total the amount appropriated for the 1993 biennium from the legislative auditor's special revenue fund for the purpose of state pay plan funding. The budget director shall allocate the amounts on the same basis that current line items for legislative audits in agency budgets are allocated in [this act].

Section ~~10~~ *9.* **Technical allocation costs.** For agencies with internal cost allocation plans funded with proprietary revenues, the budget director shall adjust agency appropriations by amounts necessary to increase the budgets for indirect costs attributable to pay increases in an agency's indirect cost pool appropriated in the state pay plan bill. Funding for this appropriation consists of general fund money and other funds in an amount proportionate to the funding allocated for budgeting indirect cost assessments in [this act].

Section ~~11~~ *10.* **Account analysis.** All agencies shall reexamine their proprietary accounts and designated subfunds and report to the legislative auditor's office after fiscal year 1992 the specific plans for spending the accounts, the monthly or daily account balances, and whether the accounts have adequate amounts of revenue and fund balances and the plans to reduce or add monies to the accounts.

Section ~~12~~ *11.* **Totals not appropriations.** The totals shown in [this act] are for informational purposes only and are not appropriations.

Section ~~13~~ *12.* **Fund balance transfers and revenue estimate increases.** The legislative auditor shall transfer to the general fund from state agency audit fees $22,159 in fiscal 1992. The legislative auditor shall transfer to the general fund from special audit reimbursements $10,200 in fiscal 1993. The legislative auditor shall work with agencies to ensure that $33,140 of bond assessment fees is deposited in the general fund in fiscal 1993.

The law library program in the judiciary is directed to increase fees for automated legal data base and telefax services. The program must deposit to the general fund $11,000 in fiscal 1992 and $26,000 in fiscal 1993 from such fee revenue increases.

The governor's office shall transfer to the general fund from the ARCO Clark Fork state special revenue account $28,000 in fiscal 1992. The governor is directed to sell the governor's airplane for an amount sufficient to deposit approximately $575,000 in the general fund in fiscal 1992 after selling costs.

The secretary of state is directed to raise annual corporation report fees by an amount sufficient to deposit an additional $150,000 in the general fund beginning in fiscal 1993.

The department of justice shall transfer to the general fund from the driver improvement fees state special revenue account $2,700 in fiscal 1993. The department of justice shall transfer to the general fund from the criminal lab state special revenue account $21,700 in fiscal 1993.

The department of administration shall transfer to the general fund from photocopy pool proprietary funds $46,000 each year of the biennium. The department of administration shall transfer to the general fund from computer services and telecommunications proprietary funds $100,000 in fiscal 1992.

The public employees' retirement division shall transfer to the general fund from social security contributions and interest earnings $120,547 in fiscal 1992 and $24,000 in fiscal 1993.

The department of military affairs shall transfer to the general fund from federal national guard funds $183,431 over the biennium. The department of military affairs shall transfer to the general fund from federal contract reimbursements $40,000 over the biennium.

The department of social and rehabilitation services shall transfer to the general fund from the child support enforcement account all cash balance remaining at the end of fiscal 1992. Any cash balance in the account in excess of $500,000 at the end of fiscal 1993 must be deposited in the general fund. Upon final determination of all general fund money in the social and rehabilitation services department's unreconciled special revenue fund balance (in the approximate total amount of $2,530,153), any funds remaining in the special revenue fund to which the state is entitled must be deposited in the general fund.

There must be retained in the local impact account, established under 90-6-202, for the purpose of reverting to the state special revenue account for school equalization aid to public schools an amount not less than $500,000 in fiscal 1992 and $1,635,363 in fiscal 1993.

The department of corrections and human services shall transfer to the general fund from additional estimated insurance, medicaid, and medicare reimbursements $999,162 in fiscal 1992 and $792,870 in fiscal 1993. The department of corrections and human services shall transfer to the general fund from the additional fiscal 1990 cost settlement $1,050,012 in fiscal 1992. The department of corrections and human services shall transfer to the general fund $513,454 from estimated charges for court-ordered evaluations in fiscal 1993.

The department of natural resources and conservation shall transfer to the general fund from the water adjudication special revenue account $154,000 in fiscal 1993.

The department of transportation shall transfer to the general fund from motor pool proprietary funds $218,000 in fiscal 1993.

~~Section 14. **Montana university system vacancy.** The Montana university system, with the exception of the office of the commissioner of higher education, is excluded from the vacant position provisions in [section 7].~~

*Section 13. **Reduction in personal services — exemption.** Current funding level budget requests for the 1995 biennium submitted by each executive and legislative branch agency and the commissioner of higher education, but excluding the balance of the Montana university system, under Title 17, chapter 7, part 1, must include a reduction in personal services equivalent to 5% of the personal services amount specified in each agency's approved operating plan submitted under 17-7-138 for fiscal 1993, which plan reflects the appropriation changes made by the legislature during the January 1992 special session. Authorized FTEs and the budget of the positions must be reduced to equal the percentage reduction in personal services. The job title, grade, and budget for each position reduced must be the same as shown in each agency's fiscal 1994 and fiscal 1995 budget request package provided by the office of budget and program planning. Agencies with 20 or fewer FTEs and agencies allocated to a department for administrative purposes only in accordance with 2-15-121 are exempt from this section. For the purposes of this section and the calculations required in this section, personal services do not include per diem compensation paid to board members, council members, commission members, or legislators.*

*Section 14. **Deposit of available cash in the general fund and the school equalization accounts.** (1) The department of administration is directed to ensure that all available cash from the following revenue sources attributable to fiscal 1993 be deposited in the general fund and the school equalization aid account by June 30, 1993:*

(a) insurance premium tax ($5.5 million);

(b) permanent coal tax trust interest ($6.6 million);

(c) liquor excise tax ($0.5 million); and

(d) common school permanent trust interest and income ($4.7 million).

(2) The amount shown for each revenue source in subsections (1)(a) through (1)(d) is based on the estimate prepared by the department of administration.

Section 15. **Effective date.** [This act] is effective on passage and approval.

Section 16. **Appropriations.** The following money is appropriated for the respective fiscal years:

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

A. GENERAL GOVERNMENT AND HIGHWAYS

LEGISLATIVE AUDITOR (1101)												
1. Audit and Examination Program (01)	1,075,633	1,108,855				2,184,488	~~1,146,687~~ 1,107,259	1,104,805				~~2,251,492~~ 2,212,064
a. Additional Audit Staff (Line Item)		117,631				117,631		117,376				117,376
b. Legislative Automation Plan (Line Item)	6,401	6,151				12,552	12,706	12,208				24,914
c. Adjusted Cost Estimates (Line Item)	12,476	11,987				24,463	4,040	3,883				7,923
d. Sunrise Application Evaluations (Line Item)								5,000				5,000
e. SB 264 — Actuarial Evaluation (Line Item)		20,000				20,000						
f. Audits of School-Related Organizations (Line Item)		4,000				4,000						
g. Privatization Alternatives — Additional Audit Staff (Line Item)	24,837					24,837	24,778					24,778
h. New Audit Work — Additional Audit Staff (Line Item)	24,837					24,837	24,778					24,778
i. State Compensation Mutual Insurance Fund (Line Item)		24,837				24,837		24,778				24,778
2. Budget Reduction (Line Item)	5,668					5,668	~~5,637~~ 18,131					~~5,637~~ 18,131
Total	1,138,516	1,293,461				2,431,977	~~1,207,352~~ 1,155,430	1,268,050				~~2,475,402~~ 2,423,480

LEGISLATIVE FISCAL ANALYST (1102)

1. Analysis and Review (01)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	781,974					781,974	830,965					830,965
a. Legislative Contingencies (Line Item)	18,700					18,700						
b. Legislative Requests (Line Item)	18,700					18,700						
2. Budget Reduction (Line Item)	4,221					4,221	~~4,260~~ 4,318					~~4,260~~ 4,318
Total	815,153					815,153	~~826,705~~ 826,647					~~826,705~~ 826,647
Items 1a and 1b are biennial appropriations.												
LEGISLATIVE COUNCIL (1104)												
1. Interim Studies and Conferences (05)	444,046	12,000				456,046						
2. Reimbursable Activities Program (07)		593,470				593,470		251,120				251,120
3. *Legislative Council Operations (10)*	1,300,694	458,726				1,759,420	1,834,120	254,363				2,088,483
a. 1991 Base Pay Adjustment (Line Item)	34,161					34,161	5,000					5,000
b. One Added FTE (Line Item)	23,865					23,865						
c. Reapportionment Technical Support (Line Item)	103,486					103,486	11,213					11,213
d. Legislative Computer Network (Line Item)	69,530					69,530	70,166					70,166
4. Budget Reduction (Line Item)	10,918					10,918	~~9,052~~ 92,394					~~9,052~~ 92,394

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total	1,964,864	1,064,196				3,029,060	~~1,910,647~~ 1,828,105	505,483				~~2,416,130~~ 2,333,588

Item 1 is a biennial appropriation. Individual activities are budgeted as follows:

Joint Interim Committees	$ 82,470
Statewide Issues	25,000
Districting and Apportionment Commission	43,000
Revenue Oversight Committee	37,983
Administrative Code Committee	14,048
Select Committee on Indian Affairs	7,200
Commission on Uniform State Laws	30,000
National Conference of State Legislatures	189,706
Northwest Economic Region Conference	20,000
Regional Conferences	32,000
State Aircraft Study	12,000

Expenditure of funds for item 3d is contingent on approval by the joint legislative administration committee.

The legislative council may allocate money appropriated in item 1 among the individual activities listed above in order to complete work assigned by the legislature.

A biennial appropriation not to exceed $30,000 from pension trust funds is made to the legislative council for the purpose of conducting an interim study on retirement systems. Of the total appropriation, 12.5% must be made from the teachers' retirement pension fund. The remaining 87.5% must be made from the various pension trust funds administered by the public employees' retirement board in proportion to the membership of each system.

The revenue oversight committee may use part of the appropriation provided in item 1 for the support of the activities of the coal tax oversight subcommittee.

Item 1 includes $12,000 for an interim study of state-owned aircraft to determine the most economical method of managing the aircraft. The committee on committees of the senate and the speaker of the house of representatives shall, respectively, appoint four senators and four representatives, two from each party, to serve on the aircraft study interim committee.

The unobligated portions of the appropriations in Chapter 1, Special Laws of January 1992, ~~are on March 1, 1992, reappropriated to the legislative council and may be spent for an interim study upon unanimous agreement of the president of the senate, senate minority leader, speaker of the house, and house minority leader. The leaders may determine the membership and scope of the interim committees~~ *($145,426) must revert to the general fund.*

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total

Any portion of the $189,706 appropriation contained in item 1 for the national conference of state legislatures that is unobligated as of [the effective date of this act] must revert to the general fund.

ENVIRONMENTAL QUALITY COUNCIL (1111)

	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
1. Environmental Quality Program (01)	263,125	1,058				264,183	261,465					261,465
a. Additional Staff (Line Item)	15,800					15,800	15,800					15,800
2. Water Policy Committee (02)		25,393				25,393						
3. Budget Reduction (Line Item)	1,410					1,410	~~1,390~~ *16,863*					~~1,390~~ *16,863*
Total	277,515	26,451				303,966	~~275,875~~ *260,402*					~~275,875~~ *260,402*

Item 2 is a biennial appropriation.

If the environmental quality council is successful in securing $15,473 of private or federal funds during fiscal 1993, those funds are appropriated to the environmental quality council to replace the $15,473 general fund reduction implemented during the July 1992 special session.

CONSUMER COUNSEL (1112)

	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
1. Administration Program (01)		805,775				805,775		828,517				828,517
a. Contract Services (Line Item)		100,000				100,000		100,000				100,000
b. Increased Travel (Line Item)		6,607				6,607		6,591				6,591
Total		912,382				912,382		935,108				935,108

Item 1a is for expert witness fees for unanticipated cases.

JUDICIARY (2110)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Supreme Court Operations (01)	1,305,273					1,305,273	1,302,950					1,302,950
a. Audit (Line Item)	15,626					15,626						
b. Court Automation (HB 320) (Line Item)	101,646					101,646	101,647					101,647
c. Law Clerk Parity (Line Item)	13,767					13,767	13,749					13,749
d. Clerk of Court Training (Line Item)	4,000					4,000	4,000					4,000
e. SB 228 — Judicial Salary Increase (Line Item)	25,105					25,105	56,203					56,203
2. Boards and Commissions (02)	230,936					230,936	230,921					230,921
a. Judicial Standards (Line Item)	2,445					2,445	2,445					2,445
3. Law Library (03)	524,709					524,709	538,985					538,985
a. Automated Legal Data Bases (Line Item)	192,050					192,050	202,773					202,773
b. Law Book Inflation (Line Item)	10,556					10,556	9,265					9,265
4. District Court Operations (04)	2,534,319					2,534,319	2,527,692					2,527,692
a. SB 228 — Judicial Salary Increase (Line Item)	125,348					125,348	289,212					289,212
b. 21st Judicial District Salary, Training, Travel (Line Item)							32,770					32,770
c. SB 228 — Judicial Salary Increase (Line Item)							4,166					4,166
5. Water Courts Supervision (05)		459,161				459,161		475,084				475,084
a. Audit (Line Item)		1,736				1,736						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
b. SB 228 — Judicial Salary Increase (Line Item)		3,440				3,440		8,004				8,004
6. Clerk of Court (06)	161,375					161,375	160,961					160,961
a. Salary Increase — Deputy Clerk of Supreme Court (Line Item)	3,323					3,323	3,323					3,323
7. District Court Criminal Reimbursement Program (07)	2,682,579					2,682,579	3,062,573					3,062,573
a. Audit (Line Item)	1,848					1,848						
8. Budget Reduction (Line Item)	39,629					39,629	~~52,060~~ *136,936*					~~52,060~~ *138,936*
Total	7,895,276	464,337				8,359,613	~~8,451,575~~ *8,404,699*	483,088				~~8,974,663~~ *8,887,787*

Except for $16,000 for law library use, expenditures in item 3a are limited to the amount of revenue collected from reimbursable automated legal data base usage by other entities.

If revenue deposited to the general fund under the provisions of 61-3-509 is less than the appropriation for district court reimbursement, the supreme court administrator shall reduce the reimbursement to an amount equal to the revenue collected.

GOVERNOR'S OFFICE (3101)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Executive Office Program (01)	982,796	83,221	1			1,066,018	978,859	83,186				1,062,045
a. Audit (Line Item)	18,152					18,152						
2. Mansion Maintenance Program (02)	53,922					53,922	54,639					54,639
3. Air Transportation Program (03)	463,655	10,000				473,655	126,271	10,000				136,271
4. Office of Budget and Program Planning (04)	771,356					771,856	770,706					770,706
a. Audit (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	17,362					17,362						
b. Equipment Replacement (Line Item)	4,000					4,000						
c. Special Session (Line Item)	8,111					8,111						
5. Northwest Regional Power Act (09)			403,124			403,124			402,853			402,853
6. Lieutenant Governor (12)	159,367	6,000				165,367	150,186	15,000				165,186
7. Citizens' Advocate Office (16)	53,030		15,000			68,030	53,715		15,000			68,715
8. Mental Disabilities Board of Visitors (20)	140,286		47,037			187,323	141,554		47,037			188,591
9. Budget Reduction (Line Item)	72,321					72,321	~~54,007~~ *144,500*					~~54,007~~ *144,500*
Total	2,600,216	99,221	465,162			3,164,599	~~2,221,923~~ *2,131,430*	108,186	464,890			~~2,794,999~~ *2,704,506*

Public funds may not be used to support the governor's radio newsline, a telephone service providing recorded news briefs.

The citizens' advocate office may not be eliminated.

The governor's aircraft is to be sold, with the proceeds from the sale to be deposited in the general fund. The appropriation in item 3 includes $175,000 to purchase a new aircraft.

SECRETARY OF STATE'S OFFICE (3201)

	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Records Management Program (01)	948,712					948,712	~~935,751~~ *901,350*					~~935,751~~ *901,350*
a. Audit (Line Item)	13,416					13,416						
2. Administrative Code Program (03)		174,064				174,064		175,298				175,298

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
a. Audit (Line Item)		2,368				2,368						
3. State Agency Record Management (05)				331,332		331,332				332,856		332,856
4. Budget Reduction (Line Item)	4,845					4,845	~~4,751~~ 8,409					~~4,751~~ 8,409
Total	957,283	176,432		331,332		1,465,047	~~931,000~~ 892,941	175,298		332,856		~~1,439,154~~ 1,401,095
COMMISSIONER OF POLITICAL PRACTICES (3202)												
1. Administration (01)	111,249					111,249	113,562					113,562
a. Audit (Line Item)	2,526					2,526						
b. Part-Time Assistant (Line Item)	10,406					10,406						
c. Staff Termination Pay (Line Item)	1,150					1,150	550					550
d. Legal Fees and Court Costs (Line Item)	27,844					27,844						
2. Budget Reduction (Line Item)	627					627	591					591
Total	152,548					152,548	113,521					113,521

Items 1b and 1d are biennial appropriations.

The commissioner of political practices may use funds from the biennial appropriation identified in item 1b for a 0.5 FTE part-time assistant to meet the biennial budget reduction of $17,156.

The commissioner of political practices is to charge a fee for the Campaign Finance Report book that is sufficient to recover the costs of printing and distribution of the book. Public libraries are exempt from the charge for the book. The proceeds from the sale of the book, as well as the fees collected for reimbursement of copier charges, must be deposited in the general fund.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
STATE AUDITOR'S OFFICE (3401)												
1. Central Management (01)	236,418					236,418	226,850					226,850
a. Audit (Line Item)	5,048					5,048						
b. Computer System Replacement (Line Item)	97,930					97,930	41,656					41,656
2. State Payroll (02)	195,109	194,227				389,336	176,690	209,540				386,230
a. Audit (Line Item)	33,461					33,461						
b. Payroll System Data Processing — ISD (Line Item)		160,218				160,218		144,394				144,394
3. Insurance Program (03)	917,308					917,308	868,897	41,850				910,747
a. Audit (Line Item)	5,050					5,050						
b. Medicare Compliance Specialist (Line Item)	29,354					29,354	27,304					27,304
c. Office Equipment (Line Item)	998					998	1,495					1,495
4. Securities Program (04)	284,001					284,001	281,587					281,587
a. Audit (Line Item)	5,050					5,050						
b. Office Equipment (Line Item)	140					140						
5. Fiscal Control and Management Program (10)	303,591	146,999		149,562		600,152	300,050	146,832		136,588		583,470
a. Audit (Line Item)	33,467					33,467						

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
b. Warrant System Data Processing — ISD (Line Item)	99,268					99,268	89,464					89,464
6. Budget Reduction (Line Item)	63,036					63,036	~~29,932~~ *114,172*					~~29,932~~ *114,172*
Total	2,183,157	501,444		149,562		2,834,163	~~1,984,061~~ *1,899,821*	542,616		136,588		~~2,663,265~~ *2,579,025*

The appropriation in item 1b is for a computer system. The agency shall follow the system design recommendations approved by the information services division of the department of administration.

The state auditor shall implement a fee system for the purpose of recovering the operational cost of issuing warrants from all user agencies on an equitable basis. It is intended that, beginning in fiscal 1994, the general fund must be reimbursed for services provided to user agencies that are not funded entirely by the general fund. Revenues collected as reimbursement fees from user agencies for costs of issuing state warrants must be deposited in a state special revenue account. The state auditor shall submit the cost recovery plan and the 1995 biennium fee schedule by agency to the office of budget and program planning and to the legislative fiscal analyst by June 1, 1992.

CRIME CONTROL DIVISION (4107)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Justice System Support Service (01)	402,254	58,665	166,462			627,381	~~429,550~~ *409,791*	58,665	156,462			~~644,685~~ *624,918*
a. Audit (Line Item)	5,176					5,176						
b. Crime Victims' Compensation Pass-Through Grants (Line Item)		379,920				379,920		379,920				379,920
c. Juvenile Justice Pass-Through Grants (Line Item)			221,500			221,500			221,500			221,500
d. Victims' Assistance Pass-Through Grants (Line Item)			224,000			224,000			224,000			224,000
e. Drug Education Pass-Through Grants (Line Item)			427,000			427,000			427,000			427,000
f. Drug Enforcement Pass-Through Grants (Line Item)			1,240,000			1,240,000			1,250,000			1,250,000
g. Narcotics Control — Grant Administration (Line Item)	27,000		18,101			45,101	24,427		30,675			55,102

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
h. Drug Enforcement Pass-Through Grants (Modified) (Line Item)			904,000			904,000			921,000			921,000
i. Juvenile Justice — Support Services (Line Item)	7,500					7,500	7,500					7,500
j. Victims' Assistance — Grant Administration (Line Item)		29,116				29,116		25,985				25,985
k. Victims' Assistance Pass-Through Grants (Modified) (Line Item)			109,000			109,000			109,000			109,000
l. Drug Education — Grant Administration (Line Item)			11,720			11,720			11,720			11,720
m. Drug Education Pass-Through Grants (Modified) (Line Item)			115,218			115,218			115,218			115,218
n. SB 321 — Victim of DUI Offenders (Line Item)		73,038				73,038		72,538				72,538
o. SB 370 — D.A.R.E. Program (Line Item)		16,200				16,200		16,200				16,200
p. SB 379 — Probation and Parole Officer Standards (Line Item)	6,579					6,579	100					100
2. Budget Reduction (Line Item)	2,412					2,412	2,522					2,522
Total	446,097	556,939	3,437,001			4,440,037	~~459,063~~ 439,296	553,308	3,466,575			~~4,478,946~~ 4,459,179

Items 1b through 1f, 1h, 1k, and 1m are biennial appropriations.

All remaining federal pass-through grant appropriation authority for the 1991 biennium is authorized to continue into fiscal 1992 and fiscal 1993.

The board of crime control shall charge tuition and fees sufficient to reimburse the general fund for costs associated with the juvenile justice training program and for technical assistance provided to local law enforcement agencies. The tuition and fees collected must be deposited in the general fund.

HIGHWAY TRAFFIC SAFETY (4108)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Highway Traffic Safety Division (36)	184,080	74,087	904,614			1,162,781	184,080	74,686	903,504			1,162,270
a. Audit (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		1,013	1,013			2,026						
2. Budget Reduction (Line Item)	1,000					1,000	1,000					1,000
Total	183,080	75,100	905,627			1,163,807	183,080	74,686	903,504			1,161,270
DEPARTMENT OF JUSTICE (4110)												
1. Legal Services Division (01)	845,681	311,771	1			1,157,451	938,193	212,972				1,151,165
a. Case-Related Travel (Line Item)	9,500					9,500	9,500					9,500
b. Legal Fees and Expert Witnesses (Line Item)	100,000					100,000						
c. Attorney-Indian Legal Jurisdiction (Line Item)	47,837					47,837	43,239					43,239
d. Litigation Costs (Line Item)	400,000					400,000						
2. Agency Legal Services (06)				571,894		571,894				571,855		571,855
3. Gambling Control Division (07)		1,387,007				1,387,007		1,386,606				1,386,606
a. Gambling Control Expansion (Line Item)		305,785				305,785		207,001				207,001
4. Motor Vehicle Division (12)	4,331,014	124,254	48,538			4,503,806	4,641,381	85,419	48,534			4,775,334
a. HB 646 — Additional Handicap Parking Display Cards (Line Item)	15,000					15,000	2,500					2,500
b. HB 568 — Driver's License Express Stations (Line Item)	708,000					708,000	710,000					710,000
5. Highway Patrol Division (13)		10,800,052	486,937			11,286,989		10,658,603	485,011			11,143,614
a. Additional Patrol Officers and Dispatchers (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		302,290				302,290		211,109				211,109
b. Handheld Radios (Line Item)		51,000				51,000						
6. Law Enforcement Services Division (18)	902,303	348,539	21,196			1,272,038	881,303	327,085	31,044			1,239,432
a. Special Investigation — West (Line Item)	112,942		336,898			449,840	114,550		343,649			458,199
b. Fire Prevention Grant (Line Item)			9,976			9,976						
c. Identification Bureau Federal Grant (Line Item)			88,636			88,636			88,643			88,643
d. HB 809 — Fire Marshal Bureau Expansion (Line Item)	69,000					69,000	~~126,624~~					~~126,624~~
							25,000					*25,000*
7. County Attorney Payroll (19)	1,014,148					1,014,148	1,015,435					1,015,435
a. HB 155 — County Attorney Salary Increase (Line Item)	136,000					136,000	333,000					333,000
8. Law Enforcement Academy Division (22)	607,208					607,208	606,858					606,858
9. Central Services Division (28)	167,823	196,198		9,334		373,355	169,654	196,952		9,401		376,007
a. Audit (Line Item)	16,628	19,440		925		36,993						
10. Data Processing Division (29)	651,393	240,969				892,362	645,373	246,847				892,220
a. Data Processing Air Conditioner (Line Item)	45,000					45,000	4,400					4,400
11. Extradition and Transportation of Prisoners (30)	143,648					143,648	143,640					143,640
12. Forensic Science Division (32)	930,630	243,667				1,174,297	864,061	226,237				1,090,298
13. Budget Reduction (Line Item)	304,762					304,762	~~381,749~~					~~381,749~~

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
							688,635					*688,635*
Total	10,948,993	14,330,972	992,180	582,153		26,854,298	~~10,867,962~~ *10,459,452*	13,758,831	996,881	581,256		~~26,204,930~~ *25,796,420*

Items 1b and 1d are biennial appropriations.

The legislature recognizes that costs associated with the Crow coal case, water rights, and tribal litigation may exceed the appropriation in item 1, and in that event, the department will need to request a supplemental appropriation from the 1993 legislature to adequately represent the state.

If federal funds are not obtained for item 6a in fiscal 1993, the general fund appropriation, as amended by [this act], must be increased and the federal appropriation, as amended by [this act], must be decreased by the same amount.

In the event that a pay plan bill is passed and approved that includes salary increases for county attorneys, item 7a must be reduced by the amount included in the pay plan bill for county attorney salaries.

In implementing the appropriations under item 3, the legislature urges the department and Indian tribes to negotiate in good faith in order to reach, on a temporary basis, the status quo for Indian and non-Indian gaming operators. The department and Indian tribes are urged to enter into long-term agreements to implement the federal Indian gaming laws for the benefit of tribal and state government.

A minimum of $100,000 in item 13 must be allocated to programs other than the motor vehicle division.

DEPARTMENT OF TRANSPORTATION (5401)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. General Operations Program (01)		6,534,444	1,988,234			8,522,678		6,311,881	1,986,661			8,298,542
a. Audit (Line Item)		71,028				71,028						
b. Road Reporting System (Line Item)		12,750				12,750		13,630				13,630
c. Map Digitizing (Line Item)		120,000				120,000		120,000				120,000
d. Kalispell Bypass Study (Line Item)			150,000			150,000						
e. SB 164 — Department of Transportation Organization Costs (Line Item)		105,128				105,128		30,061				30,061
2. Construction Program (02)		63,254,325	142,709,034			205,963,359		66,640,533	144,241,767			210,882,300
a. City Park Rest Areas (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		200,000				200,000		200,000				200,000
3. Maintenance Program (03)		46,944,095				46,944,095		46,728,864				46,728,864
a. Monitoring/Upgrading Underground Fuel Tanks (Line Item)		1,109,800				1,109,800		1,109,800				1,109,800
4. State Motor Pool (07)				748,341		748,341				~~594,076~~ 376,076		~~594,076~~ 376,076
5. Equipment Program (08)				13,390,277		13,390,277				13,249,710		13,249,710
6. Interfund Transfers Program (11)		14,208,404				14,208,404		17,149,771				17,149,771
7. Stores Inventory (12)		15,460,726				15,460,726		14,901,886				14,901,886
8. Gross Vehicle Weight Division (22)		3,540,044				3,540,044		3,637,061				3,637,061
a. Automated Weigh Stations (Line Item)		243,820				243,820		68,700				68,700
b. Gross Vehicle Weight Officer Training (Line Item)		30,165				30,165		25,165				25,165
Total		151,834,729	144,847,268	14,138,618		310,820,615		156,937,352	146,228,428	~~13,843,786~~ 13,625,786		~~317,009,566~~ 316,791,566

The department is directed to submit to the 1993 legislature a construction work plan for the 1995 biennium that is detailed by year and project. This work plan must specify, by road system or project area, proposed projects on which $1 million or more would be spent during the 1995 biennium and an aggregate cost for projects with anticipated expenditures of less than $1 million. Costs must be detailed by year and project.

The department may adjust appropriations and FTE in the construction, interfund transfers, and maintenance programs between fiscal years to reflect actual expenditures related to the construction work plan and maintenance activities.

The department may adjust appropriations in the construction program between fund types, provided that the adjustment does not exceed 10% of the total appropriation established by the legislature for the construction program. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning, and all fund transfers of over $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

The department is directed to conduct a cost responsibility study to determine the appropriate ratio of highway user fees based on road wear caused by each type of user. The department shall provide a report of study results and a recommended fee structure to the legislative finance committee by June 1, 1992.

State highway commission commissioners cannot be flown to or from highway commission meetings in state-owned aircraft unless documented cost savings over other transportation options can be achieved.

DEPARTMENT OF REVENUE (5801)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Director's Office (01)	733,247		168,644	428,424		1,330,315	741,509		168,425	428,716		1,338,650
a. Audit (Line Item)	32,474	1,563		89,079		123,116						
2. Centralized Services Division (02)	706,656	8,607				715,263	700,416	8,589				709,005
3. Data Processing Division (03)	880,323	53,525		450,445		1,384,293	875,910	43,428		451,108		1,370,446
a. Workers' Compensation Payroll Tax (Line Item)		39,887				39,887		34,165				34,165
4. Liquor Division (05)												
a. Liquor Licensing Bureau (Line Item)				249,743		249,743				249,656		249,656
5. Income Tax (06)	3,315,923	286,506				3,602,429	3,162,629	293,880				3,456,509
a. Workers' Compensation Payroll Tax (Line Item)		91,992				91,992		75,074				75,074
b. Accounts Receivable (Line Item)	91,931					91,931	78,141					78,141
c. Equipment Replacement (Line Item)	66,389					66,389	27,614					27,614
d. Computer Processing Costs (Line Item)	98,384					98,384	72,417					72,417
e. Revenue Collection (Line Item)	91,713					91,713	78,723					78,723
f. Revenue Enhancement	39,667					39,667	126,761					126,761
g. *Implement HB 44 and HB 54 (Line Item)*												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
							50,000					50,000
6. Corporation Tax (07)	1,224,148	63,186	129,145			1,416,479	1,238,282	63,193	129,156			1,430,631
7. Property Tax Division (08)												
a. Elected and Deputy Assessors	1,649,662					1,649,662	1,651,923					1,651,923
b. Appraisers and Other Assessors	6,558,578					6,558,578	6,557,512					6,557,512
c. Property Assessment Program	2,956,963					2,956,963	2,956,882					2,956,882
d. Cyclical Reappraisal Costs (Line Item)	22,000					22,000	249,000					249,000
e. Computer-Assisted Mass Appraisal System (CAMAS) Costs (Line Item)	333,281					333,281	276,281					276,281
8. Motor Fuel Tax (10)		620,119				620,119		617,287				617,287
9. *Implement HB 24 — Freight Line Tax (Line Item)*							35,000					35,000
~~9~~ *10.* Budget Reduction (Line Item)	94,138					94,138	~~94,195~~ 674,476					~~94,195~~ 674,476
Total	18,707,201	1,165,385	297,789	1,217,691		21,388,066	~~18,699,805~~ 18,204,524	1,135,616	297,581	1,129,480		~~21,262,482~~ 20,767,201

Liquor division proprietary funds necessary to maintain adequate inventories of liquor and wine and to operate the state liquor operation are appropriated. During the 1993 biennium, the division shall attempt to return at least 10% of net sales. Net sales are gross sales less discounts and all taxes collected. The division shall limit operational expenses of the liquor merchandising system to not more than 15% of the net sales. Operational expenses may not include product costs, freight charges, expenses allocable to other divisions, or licensing bureau expenses.

An agent operating a state agency liquor store has the preference right to renew the agent's agency agreement by accepting the terms of the request for bids as those terms existed before January 1, 1991, and by meeting the highest bid made by any other applicant. Those agency agreements that contain renewal options must be honored according to the terms of the agency contract and request for bids in existence prior to January 1, 1991.

Funds appropriated in item 7e may be used only for consulting contracts to support CAMAS or to support appraisers' use of CAMAS, for debt service costs to fund equipment acquisition, and for computer maintenance contracts.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
DEPARTMENT OF ADMINISTRATION (6101)												
1. Director's Office (01)	230,097			61,572		291,669	229,139			60,818		289,957
2. Accounting Program (03)	998,836			29,350		1,028,186	989,477			29,297		1,018,774
a. Audit (Line Item)	38,771					38,771						
3. Architecture and Engineering Program (04)		672,098			664,006	1,336,104		682,019			672,552	1,354,571
a. Audit (Line Item)		1,370				1,370						
b. Capitol Restoration Commission (Line Item)		11,634				11,634		11,634				11,634
c. Expanded Long-Range Building Plan (Line Item)		51,242			51,242	102,484		53,670			53,670	107,340
4. Procurement and Printing Division (06)	408,724			6,111,843		6,520,567	412,625			6,380,662		6,793,287
a. Audit (Line Item)				19,788		19,788						
b. Pass-Through Printing (Line Item)				3,412,515		3,412,515				3,543,765		3,543,765
c. Federal Surplus Property (Line Item)				87,000		87,000				87,000		87,000
5. Information Services Division (07)												
a. Audit (Line Item)				58,140		58,140						
b. Contracted Systems Development (Line Item)				200,000		200,000						
c. Computer Services				7,982,061		7,982,061				8,193,261		8,193,261
d. Telecommunications												

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
				8,385,973		8,385,973				7,924,699		7,924,699
e. Emergency 911				75,567		75,567				76,712		76,712
f. Armory Computer Upgrade (Line Item)				75,000		75,000				75,000		75,000
g. Public Safety Communication (Line Item)				82,000		82,000				57,000		57,000
h. ISD — Growth in Workload (Line Item)				500,000		500,000				500,000		500,000
i. ISD — Networks (Line Item)				796,499		796,499				796,504		796,504
j. Mainframe Disaster Backup (Line Item)				179,000		179,000				144,000		144,000
k. Student Long Distance (Line Item)				323,768		323,768				323,771		323,771
l. Telephone System Upgrades (Line Item)				229,000		229,000				229,000		229,000
m. Family Services Computer System (Line Item)				78,200		78,200				93,200		93,200
6. General Services Program (08)	211,750			2,275,260	58,419	2,545,429	220,164			2,347,743	58,426	2,626,333
a. Audit (Line Item)				7,672		7,672						
b. Utilities Cost (Line Item)	141,083			1,034,607		1,175,690	143,409			1,051,670		1,195,079
7. Mail and Distribution Bureau (13)				1,639,686		1,639,686				1,642,234		1,642,234
a. Audit (Line Item)				3,526		3,526						
b. Postage Machines (Line Item)				6,500		6,500				6,500		6,500
c. Expanded Mail Services (Line Item)				174,087		174,087				174,087		174,087
8. State Personnel Division (23)												

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
	873,414			543,037		1,416,451	869,093			548,217		1,417,310
a. Audit (Line Item)				1,176		1,176						
b. Group Insurance Benefits System (Line Item)				36,500		36,500				21,500		21,500
c. State Employee Combined Campaign (Line Item)		10,000				10,000		10,000				10,000
d. Professional Development Center Growth in Workload (Line Item)				9,112		9,112				21,180		21,180
e. Communications for Group Insurance Requirements (Line Item)				8,000		8,000				8,000		8,000
f. Genetics Program (Line Item)				20,252		20,252				20,252		20,252
9. Tort Claims Division (24)				2,101,132		2,101,132				2,153,202		2,153,202
a. Audit (Line Item)				7,036		7,036						
b. Tort Claims — Contracts (Line Item)				500,000		500,000				500,000		500,000
10. State Tax Appeal Board (37)	374,783					374,783	375,073					375,073
11. Budget Reduction (Line Item)	48,934					48,934	~~88,156~~ *223,735*					~~88,156~~ *223,735*
Total	3,228,524	746,344		37,054,859	773,667	41,803,394	~~3,150,824~~ *3,015,245*	757,323		37,009,274	784,648	~~41,702,069~~ *41,566,490*

Item 5b is a biennial appropriation.

The governor-elect program is appropriated all necessary expenses, *up to $50,000 from* the general fund in fiscal 1993, to implement the provisions of 2-15-221.

The department shall develop and submit a cost recovery plan for each of its proprietary operations to the office of budget and program planning and the legislative fiscal analyst by August 1, 1992.

Funds remaining in the capitol land grant account of the capital projects fund, after the appropriations are met for the general services division of the department of administration and any projects provided for in Chapter 774, Laws of 1991, are appropriated to the long-range building debt service fund for the payment of principal and interest on bond issues for public buildings at the capitol for executive, legislative, and judicial purposes, as outlined in section 12 of The Enabling Act. This appropriation is for the biennium ending June 30, 1993, and is not to exceed the annual debt service required on these bonds.

The appropriation in item 6 in the other column includes $58,801 in fiscal 1992 and $58,801 in fiscal 1993 from the capital projects fund.

In item 6, the department may charge a maximum of $3.28 a square foot in fiscal 1992 and $3.34 a square foot in fiscal 1993 for office space in state-owned buildings.

Item 6b may be used only to pay utilities costs.

The department may charge a maximum overhead rate of 6% each year in item 7.

The department is appropriated funds to pay the deductible portion of each claim incurred and covered by a deductible insurance plan from the deductible reserve fund authorized in 2-9-202(2).

By July 15, 1992, the tort claims division shall present to the legislative finance committee proposed changes in the method or methods of determining and allocating insurance premiums to state agencies. The division shall review with the legislative finance committee the proposal and potential fiscal impacts before the rate methodology is adopted and before premiums are included in agency budget requests by the office of budget and program planning.

In item 9b, the department is authorized to hire 0.5 clerical FTE.

The public service commission is considering a proposal allowing large state natural gas customers to purchase their own supplies of gas directly from gas producers. Recognizing the likelihood of a changing natural gas procurement environment, the governor is authorized, if the proposal is approved by the commission, to designate a lead agency to implement a coordinated natural gas procurement program for affected state agencies and the university system.

STATE COMPENSATION MUTUAL INSURANCE FUND (6103)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. State Compensation Mutual Insurance Fund (01)		25,082		121,856,189		121,881,271				128,877,379		128,877,379
a. Audit (Line Item)				83,655		83,655						
b. Claims Management Program (Line Item)				912,563		912,563				910,494		910,494
c. Audit Bureau (Line Item)				304,304		304,304				303,699		303,699
d. HB 187 — Construction Premiums (Line Item)				228,629		228,629				194,830		194,830
Total		25,082		123,385,340		123,410,422				130,286,402		130,286,402

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
PUBLIC EMPLOYEES' RETIREMENT BOARD (6104)												
1. Public Employees' Retirement Program (35)					837,589	837,589					816,990	816,990
a. Audit (Line Item)					36,303	36,303						
b. Public Employees' Retirement Division — Rewrite Data Processing System (Line Item)					301,289	301,289					79,224	79,224
c. Program Improvements (*Line Item*)					50,387	50,387					56,952	56,952
Total					1,225,568	1,225,568					953,166	953,166

The amounts listed in items 1, 1a, 1b, and 1c are appropriated from the pension trust fund.

The board is appropriated $3,860 from pension trust funds in fiscal 1992 and $2,360 from pension trust funds in fiscal 1993.

The board is appropriated $5,000 from pension trust funds in fiscal 1992 and $5,000 from pension trust funds in fiscal 1993.

The board is appropriated $25,000 from pension trust funds in fiscal 1992 and $5,000 from pension trust funds in fiscal 1993.

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
TEACHERS' RETIREMENT BOARD (6105)												
1. Teachers' Retirement Program (01)					469,647	469,647					461,222	461,222
a. Audit (Line Item)					23,676	23,676						
b. Data Processing and Service Upgrades (Line Item)					147,380	147,380					108,380	108,380
c. System Enhancements for Legislated Changes (*Line Item*)					25,000	25,000						
Total					665,703	665,703					569,602	569,602

The amounts listed in items 1, 1a, 1b, and 1c are appropriated from the pension trust fund.

DEPARTMENT OF MILITARY AFFAIRS (6701)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration Program (01)	217,838					217,838	212,991					212,991
a. Audit (Line Item)	5,920					5,920						
2. Army National Guard Program (12)	895,780		1,108,021			2,003,801	855,851		1,156,411			2,012,262
a. Repair and Maintenance (Line Item)	118,375					118,375						
b. Environmental Program (Line Item)	9,275		41,099			50,374	9,228		40,833			50,061
3. Air National Guard Program (13)	180,429		1,402,315			1,582,744	182,313		1,411,460			1,593,773
a. Repair and Maintenance (Line Item)	14,000		42,000			56,000						
4. Disaster Coordination Response (21)	218,140		235,009			453,149	217,697		234,558			452,255
a. Audit (Line Item)	4,262		4,262			8,524						
5. Emergency Management Development (24)			263,904			263,904			263,572			263,572
a. Audit (Line Item)			3,314			3,314						
b. Earthquake Program (Line Item)			46,187			46,187			46,190			46,190
6. Local Reimbursement — DES (29)			564,000			564,000			540,000			540,000
7. Veterans' Affairs Program (31)	468,438	9,672	35,557			513,667	468,162	9,669	35,456			513,287
a. Audit (Line Item)	5,918					5,918						
b. Veterans' Cemetery Construction (Line Item)		22,500				22,500		31,500	45,000			76,500
8. Budget Reduction (Line Item)	31,834					31,834	~~67,732~~					~~67,732~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
							98,625					98,625
Total	2,106,541	32,172	3,745,668			5,884,381	~~1,878,510~~	41,169	3,773,480			~~5,693,159~~
							1,847,617					5,662,266

Items 2a and 3a are biennial appropriations.

In item 3, up to two firefighter FTE may be added if the current contract is modified or becomes unnecessary.

In item 5b, the department shall direct the earthquake program to local schools to the *maximum extent possible.*

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
TOTAL SECTION A	53,604,964	173,304,647	154,690,695	176,859,555	2,664,938	561,124,799	~~53,201,903~~	177,276,114	156,131,339	~~183,319,642~~	2,307,416	~~572,236,414~~
							51,662,210			183,101,642		570,478,721

B. HUMAN SERVICES

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES (5301)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
1. Director's Office (01)	127,926		43,874	386,783		558,583	125,091		43,844	384,008		552,943
a. Personnel Specialist (Line Item)				25,529		25,529				25,472		25,472
b. Legal Services Charge System (Line Item)	76,265					76,265	76,265					76,265
2. Central Services (02)	516,150	884,325	213,254	785,266		2,398,995	476,950	864,763	211,795	786,845		2,340,353
a. Audit (Line Item)				53,666		53,666						
b. Laboratory Contingency (Line Item)		100,000				100,000						
c. Support Staff (Line Item)				46,922		46,922				46,818		46,818
d. Newborn Pku Screening (Line Item)		76,552				76,552		28,772				28,772
e. Safe Drinking Water — Laboratory Certification (Line Item)		40,479				40,479		39,853				39,853
f. Safe Drinking Water — Public Health Laboratory (Line Item)		39,847				39,847		39,306				39,306
3. Environmental Sciences (03)	822,917	1,402,369	728,237	145,559		3,099,082	~~814,875~~ 704,875	~~1,401,616~~ 1,511,616	715,549	142,903		3,074,943
a. Air Quality (Line Item)		84,972	248,386			333,358		80,771	247,976			328,747
b. Asbestos Control (Line Item)		92,919				92,919		92,239				92,239
c. Natural Resources Lawsuit (Line Item)		4,908,049				4,908,049						
d. Air Quality — *Permits* (Line Item)		301,338				301,338		297,979				297,979

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
e. Pay Exceptions — Environmental Specialist (Line Item)		24,128	58,799			82,927		23,715	57,825			81,540
f. HB 987 — Regulation of Public Accommodations (Line Item)		10,125				10,125		10,125				10,125
g. HB 988 — Regulation of Campgrounds, Trailer Courts, Etc. (Line Item)		15,750				15,750		15,750				15,750
h. HB 989 — Regulation of Food Establishments (Line Item)		165,000				165,000		165,000				165,000
i. HB 994 — Regulation of Swimming Pools (Line Item)		76,500				76,500		76,500				76,500
4. Solid and Hazardous Waste (04)	168,716	2,269,828	7,504,734			9,943,278	166,794	2,280,766	7,483,177			9,930,737
a. Hazardous Waste (Line Item)		48,628	147,306			195,934		47,823	144,889			192,712
b. Landfill Management (Line Item)		138,367				138,367		136,501				136,501
c. Landfill Management — EQC (Line Item)		297,066				297,066		298,376				298,376
d. BN/ARCO Special Projects (Line Item)		312,348				312,348		308,898				308,898
e. Pay Exceptions — Environmental Specialist (Line Item)	13,725	125,490	99,973			239,188	13,491	124,583	98,317			236,391
f. Exemption for Noncommercial Waste — HB 660 (Line Item)		95,008				95,008		95,008				95,008
5. Water Quality (05)	160,280	521,550	2,079,210			2,761,040	158,211	516,550	2,057,121			2,731,882
a. Agriculture Monitoring (Line Item)		15,000				15,000		15,000				15,000
b. Ground Water Pollution (Line Item)			112,373			112,373			111,203			111,203
c. Wastewater Operators (Line Item)		10,787				10,787		8,901				8,901
d. Subdivisions (Line Item)	44,386					44,386	40,213					40,213

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
e. Safe Drinking Water (Line Item)		625,017	303,823			928,840		622,756	302,363			925,119
f. Nonpoint Source Pollution (Line Item)			1,423,271			1,423,271			1,422,188			1,422,188
g. Ground Water — EQC (Line Item)		101,494				101,494		99,903				99,903
h. Ground Water — EQC Lawyer (Line Item)			46,378			46,378			45,590			45,590
i. Pay Exceptions — Environmental Specialist (Line Item)	7,036	42,983	75,215			125,234	6,436	45,023	73,969			125,428
j. SB 136 — Water Quality Districts (Line Item)		18,539				18,539		18,504				18,504
6. Health Services and Medical Facilities (06)	474,831	45,753	230,678			751,262	469,155	45,455	231,110			745,720
a. HB 445 — Health Planning Specialist (Line Item)	16,289					16,289	16,251					16,251
7. Family/Maternal and Child Health Bureau (07)	97,985		15,082,316			15,180,301	97,272		14,859,001			14,956,273
a. Child Nutrition (Line Item)			1,634,000			1,634,000			2,642,000			2,642,000
b. WIC (Line Item)			1,122,486			1,122,486			1,122,486			1,122,486
c. MIAMI Program (Line Item)	171,468					171,468	169,608					169,608
8. Preventive Health Bureau (08)	199,076	60,020	1,120,301			1,379,397	91,795	65,874	1,111,683			1,269,352
a. Chronic Disease Prevention (Line Item)			40,054			40,054			39,850			39,850
b. AIDS Education (Line Item)			20,000			20,000			20,000			20,000
c. Sexually Transmitted Diseases (Line Item)			79,556			79,556			78,656			78,656
d. AIDS (Line Item)			33,583			33,583			32,751			32,751

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
e. Vaccine (Line Item)			103,540			103,540			101,774			101,774
9. Licensing and Certification (09)	371,607		912,381			1,283,988	407,528		876,281			1,283,809
a. OBRA (Line Item)	47,681		802,065			849,746	64,101		724,616			788,717
b. Hearings — OBRA (Line Item)	10,275		126,727			137,002	13,700		123,302			137,002
10. Budget Reduction II							*134,053*					*134,053*
Total	3,326,613	12,950,231	34,392,520	1,443,725		52,113,089	~~3,207,736~~ *2,963,683*	~~7,866,310~~ *7,976,310*	34,979,316	1,386,046		~~47,439,408~~ *47,305,355*

Item 3c is a biennial appropriation.

The total appropriation for the department includes $2,204,426 in fiscal 1992 and $2,204,426 in fiscal 1993 from the maternal and child health block grant. To the extent revenue from the grant exceeds these amounts, it must be distributed to the counties, based upon identifiable needs. To the extent revenue from the grant is less than these amounts, allocations must be reduced proportionately among state programs and grants to counties.

The total appropriation for the department includes $644,771 in fiscal 1992 and $644,771 in fiscal 1993 from the preventive health block grant. To the extent revenue from the grant exceeds these amounts, it must be distributed at the discretion of the director of the department, based upon identifiable health care needs. To the extent revenue from the grant is less than these amounts, the director of the department shall make program reductions.

Funds appropriated to the department for indirect cost recovery may be expended only for that purpose.

The director's office includes $82,897 of general fund money each year within the legal unit that may be used only to pay legal services billed to programs funded by the general fund within the department. None of this appropriation may be transferred to other programs.

Item 2 includes a total of $25,000 of general fund each year that must be used to perform tests as needed on behalf of the food and consumer safety and occupational health bureaus within the department. If these funds are not needed for testing in the food and consumer safety and occupational health bureaus, they may be expended for other services within the laboratories.

It is the intent of the legislature that the department determine the feasibility of funding the public health and chemistry laboratories through proprietary and special revenue accounts with little or no use of general fund money, except as specified to support testing for the food and consumer safety and occupational health bureaus. If the department determines that such accounting is feasible and saves general fund money, then on or after July 1, 1991, the department may request that the approving authority authorize a proprietary account and reduce the general fund appropriation by a like amount. If this occurs, the general fund appropriation must remain at $25,000 to provide necessary testing for the food and consumer safety and occupational health bureaus.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Item 2b is a biennial appropriation that may be used only if the demand for reimbursable services requires expenditures for supplies, materials, and communications in excess of the appropriated levels of $184,820 in fiscal 1992 and $184,597 in fiscal 1993.

The department is authorized to receive an interentity loan from the general fund for no more than $4,928,894 for the purpose of conducting the Clark Fork natural resources damage assessment and litigation against the atlantic richfield company (ARCO). Repayment of this loan is extended through the end of the 1993 biennium in accordance with 17-2-107. The repayment must include interest on the amount loaned at a rate commensurate with rates earned in the short-term investment pool.

The natural resource damage litigation program policy committee is formed to ensure cooperation and unity among the state's natural resource agencies in carrying out their responsibilities as representatives of the governor, who is the trustee of the state's natural resources. The policy committee shall guide and make natural resource damage litigation program policy recommendations. The appropriation of $4,928,894 to continue the natural resources lawsuit against ARCO must be overseen by the policy committee, which consists of the following individuals or their designated representatives: the governor's energy and environmental policy advisor; the directors of the departments of health and environmental sciences and fish, wildlife, and parks; and the commissioner of the department of state lands. The attorney general or his designated representative may act in an advisory capacity to the natural resource damage litigation program policy committee.

None of the appropriation for the licensing, certification, and construction bureau may be transferred to any other program in the department.

The legislative fiscal analyst is directed to recalculate the indirect cost assessments to department programs, using the following rates applied to 100% of personal services:

	FY 92	FY 93
General Rate	14.00%	12.00%
Environmental Sciences Division	3.00%	3.00%
Statewide Cost Allocation	3.75%	3.75%

The appropriation in item 3 in the fiscal year 1993 state special revenue column includes $110,000 to be generated by increased fees in the air quality bureau.

Items 3e, 4e, and 5i may be used only to pay for the blanket "pay exception — environmental specialist" class series and associated indirect costs, authorized by the department of administration on April 11, 1991.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Job Service Division (01)												
		88,244	11,386,520			11,474,764		88,236	11,336,977			11,425,213
a. Federal Economic Dislocated Worker Adjustment and Assistance/Trade Adjustment Assistance Program (Line Item)												
			247,869			247,869			247,534			247,534
b. Jobs for Montana Graduates (Line Item)												
			126,517			126,517			124,485			124,485
2. Unemployment Insurance (02)												
			3,741,488			3,741,488			3,701,445			3,701,445
a. Unemployment Insurance Accounts Receivable (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
			126,312			126,312			102,208			102,208
3. Commissioner/Centralized Services (03)												
				2,711,023		2,711,023				2,664,153		2,664,153
a. Audit (Line Item)												
				66,293		66,293						
4. Employment Relations (04)												
	423,224	1,359,095	680,030	389,277		2,851,626	394,028	1,317,950	684,365	389,094		2,785,437
a. Consideration of Investment Income — *HB 187 (Line Item)*												
		44,438				44,438		38,485				38,485
5. Legal Services Division (06)												
		243,463	458,877	133,095		835,435		244,610	461,562	132,946		839,118
6. Research, Safety, and Training (07)												
		727,437	2,027,353			2,754,790		728,061	1,995,263			2,723,324
7. Human Rights Commission (08)												
	283,438		101,470			384,908	288,063		101,463			389,526
a. Human Rights Backlog (Line Item)												
	16,461					16,461	8,690					8,690
8. Workers' Compensation Judge (09)												
		356,165				356,165		355,643				355,643
9. Job Training Grants (50)												
			13,940,510			13,940,510			14,158,765			14,158,765
a. Project Work Program Contracts (Line Item)												
			286,145			286,145			286,145			286,145
b. Federal Economic Dislocated Worker Adjustment and Assistance/Trade Adjustment Assistance Grants (Line Item)												
			596,435			596,435			664,793			664,793
c. Job Training Partnership Act Funding (Line Item)												
			1,267,759			1,267,759			1,732,241			1,732,241
10. Budget Reduction II (Line Item)												
							13,171					*13,171*
Total	723,123	2,818,842	34,987,285	3,299,688		41,828,938	~~690,781~~ *677,610*	2,772,985	35,597,246	3,186,193		~~42,247,205~~ *42,234,034*

All unappropriated revenue to and fund balance in the unemployment insurance administrative tax account is appropriated to a reserve fund for job service administrative costs, except amounts, up to $100,000 per fiscal year, necessary to comply with federal requirements that a cost allocation plan for nonunemployment insurance tax collections be established. The amount of unappropriated funds for deposit into the reserve must be determined after all other unemployment insurance administrative tax appropriations are funded. The job service reserve fund must be maintained within the unemployment insurance administrative tax account. Interest earned on the job service reserve must be deposited into the job service reserve fund. Sufficient funds from the job service reserve are appropriated to the department to fund the job service federal fund appropriation in fiscal 1992 and fiscal 1993, contingent upon receipt of federal funds for the support of job service functions that are less than the level received in fiscal 1991. Funds in the job service reserve may not be transferred to the unemployment insurance trust fund until January 30, 1993, except in the case that an amount is necessary to reduce the employer contribution schedule for the coming year. Any transfer prior to January 30, 1993, must be reviewed by the legislative finance committee.

The department, in concert with other interested parties, shall prepare formal guidelines for use of the unemployment insurance administrative tax funds and present these guidelines to the 53rd legislature. At a minimum, the guidelines must include a prioritization of programs and activities to be funded. The criteria for prioritization must include the following considerations:

(1) loss of federal funding, impact on rural communities, and employer/employee-related functions; and

(2) the establishment and maintenance of a reserve fund to ensure that employment security services continue in the event of federal fund reductions.

The department shall provide information to the 53rd legislature regarding the actual amount collected by the 3 FTE added to collect unemployment insurance accounts receivable.

The department is appropriated up to $1 million each year from funds referred to in 39-71-502 and 39-71-901 to pay uninsured employer and subsequent injury benefits as required by 39-71-503 and 39-71-907.

Funds appropriated in item 1b must be distributed to the office of public instruction for administration of the jobs for Montana's graduates program.

The budget director shall increase item 8 by the amount necessary to bring the salary and benefits of the workers' compensation judge to the levels authorized by Chapter 656, Laws of 1991, less any increase provided for in the pay plan bill.

Funds appropriated in item 9c to replace federal fund reductions in Job Training Partnership Act (JTPA) programs statewide are one-time only funds and may be used only if and to the extent federal JTPA funds allocated to the state are less than the amount allocated in state fiscal year 1991. Unspent funds revert to the job service reserve fund in the unemployment insurance administrative tax account.

During fiscal 1993, the department is authorized to use unemployment insurance administrative tax funds appropriated for funding the JTPA as state matching funds for federal funds appropriated to the department of social and rehabilitation services for the job opportunities and basic skills (JOBS) program.

The amount of unemployment insurance administrative tax funding for the jobs for Montana's graduates program may not be increased.

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES (6901)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Proprietary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Proprietary	Fiscal 1993 Other	Fiscal 1993 Total
1. Family Assistance (01)	16,328,532	806,543	48,365,516			65,500,591	~~16,066,913~~	~~801,900~~	~~48,101,330~~			~~64,970,231~~
							16,387,151	824,972	48,909,593			66,121,716
a. Food Stamp Employment and Training (Line Item)			96,000			96,000			96,000			96,000

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
b. Day-Care Rate Increase (Line Item)												
			118,077			118,077			204,806			204,806
c. Food Stamp Job Search Support (Line Item)												
	43,750					43,750	43,750					43,750
d. Statewide Jobs Program (Line Item)												
	709,367		1,931,001			2,640,368	709,367		1,931,001			2,640,368
e. AFDC/General Assistance at 42% of Federal Poverty Index (Line Item)												
	537,529	29,142	1,135,730			1,702,401	~~1,199,024~~ *814,731*	~~67,925~~ *53,684*	~~2,622,980~~ *2,187,605*			~~3,889,929~~ *3,056,020*
2. Eligibility Determination Program (03)												
	2,463,835	2,436,980	4,523,828			9,424,643	2,461,200	2,434,448	4,519,060			9,414,708
3. Administrative and Support Services (04)												
	615,002	307,237	1,517,425	1		2,439,665	616,482	308,621	1,522,310			2,447,414
a. Audit (Line Item)												
	68,690	6,284	74,974			149,948						
b. Grant Writing (Line Item)												
		11,250	22,500			33,750		11,250	22,500			33,750
4. Child Support Enforcement (05)												
		1,225,772	2,443,455			3,669,227		~~1,215,076~~ *1,891,383*	~~2,441,553~~ *3,754,385*			~~3,656,629~~ *5,645,768*
a. Contracted Employees (Line Item)												
		109,756	246,512			356,268		101,511	250,652			352,163
b. Collection of Parental Contribution to Out-of-Home Care — HB 993 (Line Item)												
		10,145	19,692			29,837		*10,294*	*19,981*			30,275
5. State-Assumed County Administration (06)												
	606,151		500,578			1,106,729	596,195		500,752			1,096,947
6. Medical Assistance (07)												
	57,081,847	7,590,929	170,346,054			235,018,830	~~53,861,591~~ *53,745,591*	7,975,494	169,647,004			~~231,484,089~~ *231,368,089*
a. OBRA-90 (Line Item)												
	282,998		631,829			914,827	1,169,322		2,470,104			3,639,426
b. Hospital Rate Study/Cost Containment (Line Item)												
	292,080		142,080			434,160	191,300		41,300			232,600
c. Baby Your Baby (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		134,000	134,000			268,000						
d. Nurses' Aide Testing (Line Item)	86,400		86,400			172,800	86,400		86,400			172,800
e. Nursing Home Rate Rebase (Line Item)	1,110,746		2,815,539			3,926,285	2,644,514		6,766,569			9,411,083
f. Elderly Waiver Expansion (Line Item)	74,888		189,827			264,715	100,134		256,216			356,350
g. Residential Psychiatric (Line Item)			4,490,088			4,490,088			4,516,295			4,516,295
h. Increase Ob/Gyn/Ped Physicians' Rates (Line Item)	817,510		2,072,241			2,889,751	1,078,433		2,759,406			3,837,839
i. Health Clinics Expansion (Line Item)	18,388		46,612			65,000	18,265		46,735			65,000
j. Ambulance Provider Increase (Line Item)	139,729		354,189			493,918	138,791		355,127			493,918
k. Pregnant Women Targeted Case Management (Line Item)	139,484		353,566			493,050	138,574		354,572			493,146
l. Provider Rate Increase (Line Item)	3,181		8,068			11,249	6,354		16,258			22,612
m. Operating Cost Implementation of SB 391 (Line Item)	62,298		119,299			181,597	86,551		90,752			177,303
n. Managed Care Benefit Costs of SB 391 (Line Item)							143,566		367,346			510,912
o. Targeted Case Management Benefits Costs for the Mentally Ill — SB 391 (Line Item)			1,510,752			1,510,752			1,524,996			1,524,996
p. Federal Medicaid Reimbursement for State Institutions — HB 93 (Line Item)			104,334			104,334			109,288			109,288
7. Audit and Program Compliance Division (08)	575,770	7,445	809,479			1,392,694	567,733	7,430	809,185			1,384,348
8. Office of Management, Analysis, and Systems (09)	1,697,497	534,238	2,933,450	1		5,165,186	2,055,708	578,011	3,474,121			6,107,840
a. TDD Project Implementation (Line Item)		67,072				67,072		70,890				70,890
b. TEAMS Operations (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	438,795					438,795	485,182					485,182
c. SEARCHS Operations (Line Item)		196,337	2,433,698			2,630,035		226,975	1,322,777			1,549,752
9. Vocational Rehabilitation Program (10)	965,693	688,058	6,416,932			8,070,683	966,386	687,966	6,278,353			7,932,705
a. JTPA Administration (Line Item)			15,000			15,000			15,000			15,000
b. Provider Rate Increase (Line Item)	51,952		199,957			251,909	104,422		401,908			506,330
c. JTPA Additional Training (Line Item)			25,000			25,000			25,000			25,000
d. Program Expansion (Line Item)	155,455					155,455	155,455					155,455
10. Disability Determination Program (11)			2,655,318			2,655,318			2,654,349			2,654,349
11. Visual Services Program (13)	280,319		958,316			1,248,635	279,374		967,493			1,246,867
a. Provider Rate Increase (Line Item)	7,204		21,654			28,858	14,476		43,520			57,996
12. Developmental Disabilities Program (14)	9,206,205		16,042,689			25,248,894	9,265,498		15,975,818			25,241,316
a. Provider Rate Increase (Line Item)	931,226		328,892			1,260,118	1,916,428		676,848			2,593,276
b. Program Expansion (Line Item)	95,483		245,527			341,010	181,779		467,431			649,210
c. DD System Phase IV Implementation (Line Item)	725,745		568,430			1,294,175	813,331		1,517,728			2,331,059
d. DD System Phase I and II Implementation (Line Item)	391,794		762,564			1,154,358	389,156		761,753			1,150,909
e. DD Part H Expansion (Line Item)	477,059		364,627			841,686	897,059		244,627			1,141,686
f. Increased Title XIX Funding (Line Item)			500,000			500,000			500,000			500,000
g. Montana Youth Initiative (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
			86,000			86,000			86,000			86,000
h. Chapter I OPI DD Treatment (Line Item)												
			90,000			90,000			90,000			90,000
i. OBRA-87 (Line Item)												
							296,516		762,470			1,058,986
13. Developmental Disabilities Advisory Council (15)												
			304,696			304,696			304,672			304,672
a. DDPAC Grant Increased Administration (Line Item)												
			9,977			9,977			10,004			10,004
b. DDPAC Grant Increased Benefits (Line Item)												
			32,500			32,500			32,500			32,500
14. Budget Reduction (Line Item)												
	50,000					50,000	~~100,000~~					~~100,000~~
							537,877					*537,877*
Total												
	97,432,602	14,161,188	280,214,872	2		391,808,664	~~99,646,029~~	~~14,497,079~~	~~289,062,850~~	1		~~403,205,959~~
							99,027,297	*15,182,929*	*290,748,570*			*404,958,797*

The department is authorized to retain 7.5% of the federal community services block grant and pass through the remaining 92.5% to the human resource development councils (HRDC). If during fiscal 1992 or fiscal 1993, the block grant falls below the federal fiscal year 1990 grant level, the department shall retain only 5% and pass through the remaining 95% to the HRDCs.

Item 1b is funding for rate increases to day-care providers. Beginning October 1, 1991, the department shall increase day-care provider rates up to 75% of the "local market rate" (the maximum allowed under federal regulations). If federal regulations permit the use of funds from the new "child care and development block grant" for these increases, the department shall decrease the general fund appropriations by the amount of block grant funds available.

Funds appropriated in [this act] may not be expended for at-risk day-care services. Other funds approved by the budget amendment process may be used to fund at-risk day care.

~~Item 1c is additional funding to set~~ AFDC and general assistance payment levels ~~at~~ *shall* be 42% of the federal poverty index *in fiscal 1992 and through August in fiscal 1993. Effective September 1, 1992, AFDC and general assistance payments shall be 40.5% of the federal poverty index.*

The department may, beginning October 1, 1991, pay AFDC recipients a transition-to-work allowance. The allowance may be used for travel and relocation expenses of the recipient and family to another county or state. AFDC recipients are eligible to receive this allowance under rules adopted by the department. The rules may establish limitations on the amount to be paid and require that the recipient have verification of employment, an employment interview, or acceptance into an approved educational or training program. Expenses for a transition-to-work allowance may be paid from the appropriation for AFDC benefits.

The department is authorized to use federal funds appropriated for the job opportunities and basic skills (JOBS) program to match general fund money available within the department and unemployment insurance administrative tax funds appropriated to the department of labor and industry for funding the Job Training Partnership Act (JTPA).

		Fiscal 1992						Fiscal 1993			
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

The state share of the AFDC-related support collections and all AFDC and non-AFDC federal incentive payments must be deposited in a state special revenue account from which the state's share of the administrative and operational costs of the child support enforcement program must be paid. The legislature intends that, during the 1993 biennium, the department collect $1.25 for each $1 expended for administrative and operational costs from the account. Expenditures made from the account for state medicaid match or development of the SEARCHS computer project are not considered administrative or operational expenditures for purposes of this requirement. The department shall transfer to the general fund from the child support enforcement account all cash balance remaining at the end of fiscal 1992. Any cash balance in the account in excess of $500,000 at the end of fiscal 1993 must be deposited in the general fund.

The department is authorized to transfer funds among appropriations for medicaid primary care, medicaid nursing care, medicare buy-in, state medical, and the home and community-based waiver program. Except as provided below, funds transferred to the medicaid waiver program may not be used to increase the number of recipients receiving waiver services but must be used solely for covering cost increases above the appropriated level.

The department may utilize funds appropriated for medicaid nursing care to increase the number of recipients in the home and community-based waiver program during the 1993 biennium under the following conditions:

(1) During the 1993 biennium, no more than 25 nursing residents who are appropriate for waiver services may be transferred from nursing facilities to the waiver program.

(2) Per diem waiver costs for residents moved from nursing facilities may not exceed the statewide average medicaid per diem cost of intermediate nursing care.

(3) The department shall keep records of each resident transferred under this provision and submit to the 53rd legislature a report on the number of residents transferred and any cost savings achieved as a result of the transfers.

The legislature intends that expenditures for all executive budget modifications for provider rate increases approved by the legislature be limited to dollar amounts appropriated rather than percentage increases on which the original estimates may have been based. The department will be in compliance with this provision if:

(1) it estimates total costs for each medicaid service category in June, prior to the beginning of each fiscal year of the 1993 biennium; and

(2) the percentage increases or base adjustments approved by the department are limited to the dollar amount appropriated for each budget modification.

The department may not expand or reduce the amount, scope, or duration of benefits provided to recipients under the medicaid primary care or nursing care programs during the 1993 biennium unless Title XIX of the federal Social Security Act is amended to require expansion or reduction of benefits as a condition of the state receiving federal financial participation. This provision may not be construed to prohibit the department from implementing coverage provided in 53-6-101(3)(l).

The rate increases in items 6e and 6h are funded beginning October 1, 1991.

Upon final determination of all general fund money in the department's unreconciled special revenue fund balance (in the approximate total amount of $2,530,153) and the deposit of these funds in the general fund, $438,795 in fiscal 1992 and $485,182 in fiscal 1993 are appropriated to fund the additional general fund costs of the TEAMS project in item 8b. Any funds remaining in the special revenue fund to which the state is entitled must be deposited in the general fund.

However, if a subsequent reconciliation concludes that funds transferred from the unreconciled account to the general fund belong to the federal government, the department may request a general fund supplemental appropriation to repay the federal funds.

Chapter 707, Laws of 1991, required the department to transfer all money in the federal special revenue account (number 03143) associated with the former department of community affairs grant closeouts reported in the April 1990 legislative audit report. If a subsequent reconciliation of this account concludes that any of the funds transferred from the account to the general fund belong to the federal government, the department may request a general fund supplemental appropriation to repay the federal funds.

It is the intent of the legislature that annualized expenses for operation of SEARCHS not exceed $1,500,000. This amount includes expenses for any facilities management contracting that may be utilized for system operations, computer processing costs directly associated with operation of the system, and other personal services and nonpersonal services costs directly charged to the management and operation of the system. The department may not proceed with development of SEARCHS until it has demonstrated to the satisfaction of the governor's office of budget and program planning and to the legislative finance committee that the projected annualized operational costs of the system will not exceed the limit imposed in this statement of intent.

Item 9b is funding for a 4.5% rate increase each year of the 1993 biennium to providers of vocational rehabilitation services.

Item 11a is funding for a 4.5% rate increase each year of the 1993 biennium to providers of visual services.

The department is authorized to transfer funds between appropriations for the vocational rehabilitation and visual services programs.

Item 12a is funding for a 4.5% rate increase each year of the 1993 biennium to providers of developmental disabilities services.

The department may pursue funding under the federal ICF/MR program for additional intensive service slots funded by the 1991 legislature if the federal government fails to approve adequate medicaid waiver funding under the home and community-based waiver program.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
DEPARTMENT OF FAMILY SERVICES (6911)												
1. Management Support (01)												
	1,616,806	14,806	535,741			2,167,353	1,591,661	14,784	527,236			2,133,681
a. Audit (Line Item)												
	62,036		38,982			101,018						
b. Management Information System (Line Item)												
	80,037		8,893			88,930						
c. Management Increases (Line Item)												
	109,849		81,583			191,432	102,829		75,227			178,056
d. Division Directors (Line Item)												
	40,082		7,073			47,155	37,789		6,669			44,458
2. Community Services (02)												
	21,330,914	2,607,131	12,468,661			36,406,706	19,594,866	2,614,818	12,578,766			34,788,470
a. Child Care and Development Block Grant (Line Item)												
			2,373,287			2,373,287			2,641,716			2,641,716
b. Staff Increases (Line Item)												
	233,293		41,169			274,462	224,699		39,653			264,352
c. Montana Developmental Center Phases I and II SSI (Line Item)												
	27,072					27,072	27,072					27,072
d. Montana Developmental Center Phase IV Child Placement (Line Item)												
	42,435		107,565			150,000	84,300		215,700			300,000

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
e. Montana Developmental Center Phase IV Case Management (Line Item)	29,664		51,546			81,210	29,665		51,535			81,200
f. Montana Developmental Center Phase IV SSI (Line Item)	19,740					19,740	53,580					53,580
g. Youth Treatment Services (Line Item)	1,170,737					1,170,737	1,599,095					1,599,095
h. Field Equipment (Line Item)	20,000					20,000	20,000					20,000
i. Native American Services (Line Item)	280,863		711,937			992,800	278,977		713,823			992,800
j. SB 37 — Aftercare Services (Line Item)	5,105					5,105	33,613					33,613
3. Mountain View (03)	1,964,695	3,134	103,807			2,071,636	1,981,694	3,135	103,877			2,088,706
a. Staff Increases (Line Item)	34,902					34,902	33,675					33,675
4. Pine Hills School (04)	3,205,244	314,045	303,489			3,822,778	3,220,172	320,180	303,344			3,843,696
a. Industries Program (Line Item)		6,000				6,000		6,000				6,000
b. Staff Increases (Line Item)	61,757					61,757	61,707					61,707
Total	30,335,231	2,945,116	16,833,733			50,114,080	28,975,394	2,958,917	17,257,566			49,191,877

Item 1b is a biennial appropriation.

The department shall submit to the 53rd legislature a report detailing the numbers of developmentally disabled (DD) clients served by the department in fiscal 1992 and the actual fiscal 1992 general fund and federal fund expenditures for that service.

The department may provide DD targeted case management through increases in staff, or it may contract for the targeted case management services. The department may transfer the targeted case management program for the developmentally disabled to the department of social and rehabilitation services during the 1993 biennium.

Included in item 2 is a general fund appropriation of $38,708 in fiscal 1992 and $58,083 in fiscal 1993 for increases to day-care providers. Beginning October 1, 1991, the department shall increase day-care provider rates up to 75% of the "local market rate" (the maximum allowed under federal regulations). If federal regulations permit the use of funds from the new "child care and development block grant" for these increases, the department shall decrease the general fund appropriations by the amount of block grant funds available.

In item 2a, the department is appropriated federal funds of $2,373,287 in fiscal 1992 and $2,641,716 in fiscal 1993 for improving the availability and quality of day care. The department shall issue a report to the 53rd legislature detailing the numbers and types of services provided and the actual fiscal 1992 expenditures for those services.

In item 2g, at least $1.3 million for the biennium must be reserved for residential treatment services.

In item 2i, the department may use the funds to contract for direct services on reservations or pay for placement services.

The continuum of service plan is to be presented to the legislative finance committee during calendar 1991 for its review and comment. After review by the committee and consideration of recommendations and upon implementation of the plan, all funds are to be spent in accordance with the plan. The goal of the plan is to develop a comprehensive child welfare service system by July 1, 1993. The system must include but not be limited to family-based services, foster care, therapeutic foster care, group care, residential treatment, and psychiatric hospitalization for youth. Funds appropriated for the youth foster care program may not be transferred to the medicaid program administered by the department.

The department may not issue a contract for the refinancing project until the contract has been reviewed by the legislative finance committee.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
TOTAL SECTION B	131,817,569	32,875,377	366,428,410	4,743,415		535,864,771	~~132,519,946~~ 131,643,984	~~[illegible]~~ 26,891,141	~~376,896,578~~ 378,582,698	4,572,240		~~542,084,449~~ 543,690,063

C. NATURAL RESOURCES

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
PUBLIC SERVICE REGULATION (4201)												
1. Public Service Regulation Program (01)	1,791,853		25,137	19,397		1,836,387	1,806,581		25,113	19,380		1,851,074
a. Audit (Line Item)	15,784					15,784						
b. Consultants (Line Item)	50,000					50,000						
c. Travel and Registration (Line Item)	25,000					25,000						
d. Exempt Positions Salaries (Line Item)	14,400					14,400	14,400					14,400
e. Public Service Commission Relocation — SB 164 (Line Item)	176,310					176,310	108,120					108,120
f. Regulation of Log Hauling — HB 192 (Line Item)	23,639					23,639	20,027					20,027
Total	2,096,986		25,137	19,397		2,141,520	1,949,128		25,113	19,380		1,993,621

Items 1b and 1c are biennial appropriations.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)												
1. Management Services Division (01)		1,184,123	471,046	1,845,483		3,500,654		1,231,525	469,542	1,839,404		3,540,471
a. Audit (Line Item)		53,666				53,666						
b. Legislative Contract Authority (Line Item)			65,000			65,000			65,000			65,000
c. Fiscal Management Position (Line Item)		33,801				33,801		32,425				32,425
d. Vehicle Account (Line Item)				163,000		163,000				169,000		169,000
2. Field Services Division (02)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		2,139,230	451,282	106,137		2,696,649		2,158,078	457,296	101,115		2,716,489
a. Block Management (Line Item)		170,581				170,581		170,469				170,469
b. Fishing and Motorboat Access (Line Item)		9,880	29,642			39,522		9,863	29,591			39,454
c. Microcomputer Support (Line Item)		30,731				30,731		30,665				30,665
d. Block Management — Executive Planning Process (Line Item)		234,494				234,494		234,496				234,496
e. Game Damage (Line Item)		50,000				50,000		75,000				75,000
f. Sporting Information (Line Item)		17,000				17,000		17,000				17,000
g. License Agent Commissions (Line Item)		10,300				10,300		97,300				97,300
h. Development and Maintenance of Department Property (Line Item)		60,000				60,000		60,000				60,000
i. Computerize Land Records (Line Item)		35,000				35,000		35,000				35,000
j. Cherry Creek Reservoir (Line Item)		100,000	50,000			150,000						
k. License Drawings — HB 91 (Line Item)		9,864				9,864		7,297				7,297
3. Fisheries Division (03)		2,507,264	2,162,190		18,600	4,688,054		2,367,417	2,130,525			4,497,942
a. Water Leasing Study (Line Item)			60,000			60,000						
b. Legislative Contract Authority (Line Item)			1,245,000			1,245,000			1,505,000			1,505,000
c. Missouri Basin Reservations (Line Item)		41,706	125,120			166,826						
d. Streambank Projects (Line Item)		10,000	31,000			41,000		10,000	31,000			41,000
e. USFS Fisheries Data Project (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		11,958	41,873			55,831		14,233	42,700			56,933
f. Evaluate Fish Population (Line Item)		27,060	81,180			108,240		27,051	81,152			108,203
g. Fishing and Motorboat Access (Line Item)		8,006	24,017			32,023		8,089	24,264			32,353
h. Flathead Lake Fishery (Line Item)		5,785	17,354			23,139		5,971	17,911			23,882
i. Clark Fork River Investigation (Line Item)		12,318	36,953			49,271		12,317	36,952			49,269
j. Fish Hatchery Operations (Line Item)		13,750	41,250			55,000		13,750	41,250			55,000
k. Evaluation of Fish Introductions — HB 576 (Line Item)		18,750	56,250			75,000						
l. Paddlefish Roe — HB 115 (Line Item)		26,000				26,000		26,000				26,000
m. Water Measuring Devices — HB 908 (Line Item)		7,250				7,250		21,750				21,750
4. Law Enforcement Division (04)		3,958,760	190,882			4,149,642		3,991,839	190,713			4,182,552
a. Legislative Contract Authority (Line Item)			40,000			40,000			40,000			40,000
b. Special Investigations (Line Item)		110,580				110,580		110,547				110,547
c. Enforcement Relocation (Line Item)		27,000				27,000		27,000				27,000
5. Wildlife Division (05)		2,500,661	2,288,629			4,789,290		2,519,720	2,306,357			4,826,077
a. Upland Game Birds (Line Item)		1,853,386				1,853,386						
b. Legislative Contract Authority (Line Item)			1,404,500			1,404,500			1,331,500			1,331,500
c. Sun River Game Management Area (Line Item)		35,000				35,000						
d. Habitat/Timber Sales Plans (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		16,250				16,250		16,250				16,250
e. Canyon Ferry Wildlife Management Area (Line Item)		7,404				7,404		7,398				7,398
f. Helicopter Rental (Line Item)		45,300	45,300			90,600		45,300	45,300			90,600
g. Upland Game Bird Increase (Line Item)		125,000				125,000						
h. Development and Maintenance of Real Property — SB 252 (Line Item)		532,026				532,026						
6. Parks Division (06)	50,323	3,378,402	289,215	256,913		3,974,853	50,324	3,405,876	289,122	271,732		4,017,054
a. Land and Water Conservation Fund (Line Item)			700,000			700,000						
b. Legislative Contract Authority (Line Item)			25,000			25,000			25,000			25,000
c. Park Futures Committee (Line Item)	338,273					338,273	337,903					337,903
d. Fishing Access Maintenance (Line Item)		49,549				49,549		49,550				49,550
e. Capitol Grounds Maintenance (Line Item)				27,265		27,265				27,258		27,258
f. Off-Highway Vehicles — HB 309 (Line Item)		98,580				98,580		98,580				98,580
7. Conservation Education Division (08)		1,237,193	149,842			1,387,035		1,241,942	156,244			1,398,186
a. Shooting Ranges (Line Item)		150,049				150,049						
b. Legislative Contract Authority (Line Item)			30,000			30,000			30,000			30,000
c. Watchable Wildlife (Line Item)		29,333				29,333		29,334				29,334
d. Aquatic Education (Line Item)		2,748	8,244			10,992		2,748	8,244			10,992
e. Update Hunter Education (Line Item)												

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
		6,250	18,750			25,000		6,250	18,750			25,000
f. Off-Highway Vehicles — HB 309 (Line Item)		10,900				10,900		10,900				10,900
8. Administration (09)		1,608,450	552,491			2,160,941		1,597,938	550,990			2,148,928
a. Legislative Contract Authority (Line Item)			100,000			100,000			100,000			100,000
b. Legal Services — Executive Planning Process (Line Item)		33,798				33,798		33,801				33,801
c. Tribal Relations (Line Item)		40,000				40,000		40,000				40,000
d. *Interagency Support (Line Item)*		25,000				25,000		25,000				25,000
e. Geographic Information System (Line Item)		50,000				50,000		40,000				40,000
f. Regional Offices Support (Line Item)		75,000				75,000		75,000				75,000
g. Sikes Act (Line Item)		150,000	20,000			170,000						
h. Predator Control (Line Item)		20,000				20,000		20,000				20,000
i. Legal Services (Line Item)		12,300				12,300		12,300				12,300
9. *Budget Reduction II (Line Item)*							16,025					16,025
Total	388,596	23,019,436	10,852,012	2,398,798	18,600	36,677,442	~~388,227~~ 372,202	20,072,969	10,024,403	2,408,509		~~32,894,108~~ 32,878,083

Items 2j, 3a, 3c, 3k, 5a, 5c, 5g, 5h, 6a, 7a, and 8g are biennial appropriations.

If the department receives private funds, it may increase its state special revenue appropriation and decrease its federal revenue appropriation by like amounts.

The appropriation for the legislative contract authority in items 1b, 3b, 4a, 5b, 6b, 7b, and 8a is subject to the following provisions:

		Fiscal 1992						Fiscal 1993			
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(3) A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects, with the related amount of expenditures for each project.

The department shall conduct a study of the options and methods available for allocating administrative costs to the various state special revenue funds managed by the agency. The department shall present the findings of its study to the legislative finance committee by July 1, 1992, along with its recommendation, affected accounts, and any required statute changes.

Item 2f contains $17,000 a year to develop informational displays for use by license agents, and item 2g contains $10,300 in fiscal 1992 and $97,300 in fiscal 1993 for increases in license agents' commissions. Chapter 592, Laws of 1991, increased certain fishing and hunting license fees.

Item 2h contains $60,000 a year from the general license account for development and maintenance of wildlife management areas, waterfowl projects, parks, and fishing access sites. This appropriation is reduced by the amount of funds Chapter 319, Laws of 1991, provided the general license account for the management of wildlife management areas. Chapter 319, Laws of 1991, revised allocation of funds for development and maintenance of wildlife habitat.

Item 3 contains $18,600 in fiscal 1992 to contract with the U.S. fish and wildlife service to raise Kokanee salmon fingerlings at the Creston national fish hatchery. If a second raceway shelter at the Creston national fish hatchery is not purchased, this appropriation is reduced by $8,220.

Item 3i contains $50,042 in fiscal 1992 and $50,040 in fiscal 1993, appropriated for aquatic resource data collection on the Upper Clark Fork River in connection with the state's resource damage assessment suit against ARCO. The department shall present to the 53rd legislature the results of this project. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base. In the litigation, the state shall seek reimbursement for all expenses incurred by the department associated with the assessment and litigation. Reimbursement must include interest on the amount commensurate with rates earned in the short-term investment pool.

Item 4c contains $27,000 a year for employee relocation expenses. The department shall present the 53rd legislature with a report on historical expenditures for employee relocation. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 6 contains $246,266 from federal funds and $55,000 from the general fund in fiscal 1992 and $246,173 from federal funds and $55,000 from the general fund in fiscal 1993 for the Montana conservation corps. It is the intent of the legislature that the department provide a liaison position to coordinate this program with the human resource development council.

Item 8 contains $5,500 in fiscal 1992 to print the department's 5-year strategic plan. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Item 8e contains $50,000 in fiscal 1992 and $40,000 in fiscal 1993 for a pilot project to evaluate potential uses of a geographic information system within the department. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

Fish, wildlife, and parks commission commissioners cannot be flown to or from fish, wildlife, and parks commission meetings in state-owned aircraft unless documented cost savings over other transportation options can be achieved.

DEPARTMENT OF STATE LANDS (5501)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Central Management Program (01)	1,374,154	97,627	112,654	188,024		1,772,459	1,379,585	95,037	112,596	185,611		1,772,829
a. Audit (Line Item)	41,038					41,038						
b. Trust Land Access (Line Item)	250,000					250,000						
c. Helena Office Support Staff (Line Item)	16,451	31,796				48,247	16,350	31,796				48,146
d. Royalty Auditor Travel Expense (Line Item)		10,469				10,469		10,469				10,469
e. Revised Lease for Office Space (Line Item)	82,992					82,992	82,992					82,992
2. Reclamation Program (03)	274,691	626,141	8,589,719			9,490,551	270,767	630,754	8,589,223			9,490,744
a. Opencut Bond Forfeiture (Line Item)		100,000				100,000						
b. Hard-Rock Reclamation (Line Item)		100,000				100,000						
c. Hard-Rock Bond Forfeiture (Line Item)		100,000				100,000						
d. Environmental Analysis (Line Item)		3,000,000				3,000,000						
e. Coal Bureau Workload (Line Item)		47,176	97,199			144,375		51,039	104,628			155,667
f. Abandoned Mine Rent (Line Item)			17,784			17,784			17,784			17,784
g. Hard-Rock Workload (Line Item)		123,609				123,609		116,747				116,747
h. Coal and Uranium Rent (Line Item)		5,335	12,449			17,784		5,335	12,449			17,784
i. Hard-Rock Increase (Line Item)		100,000				100,000		100,000				100,000
j. Environmental Compliance (Line Item)		129,289				129,289		106,190				106,190

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
k. SB 253 — Opencut Reclamation (Line Item)												
		15,500				15,500		15,500				15,500
3. Land Administration Program (04)												
	661,122	255,640				916,762	687,276	255,819				943,095
a. Trust Land Management (Line Item)												
	90,629					90,629	115,923					115,923
b. Cabinsite Sales (Line Item)												
		70,000				70,000						
4. Forestry (25)												
	5,396,740	2,963,314	385,005			8,745,059	5,406,382	2,962,595	385,266			8,754,243
a. Federal Fire Reimbursement (Line Item)												
			44,000			44,000			44,000			44,000
b. State/County Cooperative Fire (Line Item)												
	43,040	21,517				64,557	42,670	21,333				64,003
c. Slash Increase (Line Item)												
		31,384				31,384		31,385				31,385
d. Urban Forestry Assistance (Line Item)												
			156,759			156,759			156,764			156,764
e. Forest Resource Management Program (Line Item)												
			336,974			336,974			259,465			259,465
f. Best Management Practices Audit (Line Item)												
	10,000					10,000						
g. Block 5 and Philipsburg Fire (Line Item)												
	67,425	33,712				101,137	68,458	34,228				102,686
h. Best Management Practices Work (Line Item)												
	23,435					23,435	23,437					~~23,437~~
									19,320			42,757
i. Forestry Capital Equipment (Line Item)												
	100,383	42,117				142,500	100,383	42,117				142,500
j. HB 731 — Streamside Management Zones (Line Item)												
	52,463					52,463	37,018					37,018
k. Fire Supplemental (Line Item)												
	5,573,650					5,573,650						
l. *Fire Suppression Costs (Line Item)*												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
							1,000,000					1,000,000
5. *Budget Reduction II (Line Item)*							337,419					337,419
Total	14,058,213	7,904,626	9,752,543	188,024		31,903,406	~~8,231,241~~ 8,893,822	4,510,344	~~9,682,175~~ 9,701,495	185,611		~~22,609,371~~ 23,291,272

The $250,000 general fund appropriation in item 1b is to be used for an economic study ($200,000) of the surface uses of state lands, with emphasis on recreation uses, and for startup costs ($50,000) of the recreational access program mandated in Chapter 609, Laws of 1991. The study of recreational uses must be performed by an economist with experience in analysis of the economic value of recreation.

Items 2a through 2d, 3b, and 4f are biennial appropriations.

The department shall conduct a study of the options and methods available for allocating administrative costs to the various state special revenue funds managed by the agency. The department shall present the findings of its study to the legislative finance committee by July 1, 1992, along with its recommendation, affected accounts, and any required statute changes.

Item 2i contains $100,000 a year for the hard-rock increase modification.

The legislature recommends that the board of land commissioners amend its cabinsite rules to require lessees who apply for sale of their cabinsites to reimburse the department for all expenses it incurs in processing the sale applications.

Item 2k grants spending authority to implement Chapter 431, Laws of 1991.

Item ~~4~~ *4h* contains ~~$24,400~~ *$23,437* a year from the general fund to provide training and materials on best management practices to loggers and forest landowners. If federal funds are received for this purpose, the general fund appropriation must be reduced by a like amount.

Item 4d contains $173,100 a year of federal funds for the urban forestry assistance program. The department shall emphasize replacing dead, diseased, and infected trees in Montana communities. Replacement trees that are adapted to and will survive in Montana must be used.

Item 4f contains $10,000 in fiscal 1992 as a biennial appropriation to coordinate and conduct, in consultation with the environmental quality council, audits of the application and effectiveness of voluntary best management practices for timber sales.

Item 4l is to be used only to pay fire suppression costs incurred by the department of state lands.

Federal fire reimbursement funds are those funds received for expenses incurred from loaning department personnel to federal agencies to assist in fire suppression activities. Only those federal funds received as reimbursement of expenses credited against the department's state forestry operational budget are considered federal fire reimbursement funds. All other federal funds received must be deposited into the general fund. The department shall report federal fire reimbursement expenditures on state accounting records, and the records must be separate from current level operations.

DEPARTMENT OF LIVESTOCK (5603)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Centralized Services Program (01)	62,794	352,967	38,170			453,931	~~62,714~~	~~352,623~~ 415,337	38,135			453,472
a. Audit (Line Item)	3,899	16,620				20,519						
2. Diagnostic Laboratory Program (03)	269,947	498,215				768,162	~~314,978~~ *127,692*	~~453,263~~ *640,549*				768,241
3. Disease Control Program (04)		482,783				482,783		483,794				483,794
4. Milk and Egg Program (05)	150,313		30,707			181,020	149,680		31,268			180,948
5. Inspection and Control Program (06)		2,095,424				2,095,424		1,981,982				1,981,982
a. Livestock Workload Increase (Line Item)		53,861				53,861		53,794				53,794
6. Predator Control Program (08)		374,162				374,162		272,266				272,266
a. Section 8 (Line Item)		20,000				20,000		20,000				20,000
7. Rabies Control (09)		15,000				15,000		15,000				15,000
8. Meat and Poultry Inspection Program (10)	225,720		225,721			451,441	225,510		225,510			451,020
9. *Budget Reduction II (Line Item)*							*32,491*					*32,491*
Total	712,673	3,909,032	294,598			4,916,303	~~752,882~~ *470,391*	~~3,632,722~~ *3,882,722*	294,913			~~4,680,517~~ *4,648,026*

In implementing the appropriation in item 1, the department shall apportion $62,714 of state special revenue funding to the various special levies collected, based upon the percentage of support from centralized services for the support of the activity supported by the levy.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

In implementing the increase in state special revenue funding in item 2, the department shall use existing balances in the state special revenue accounts from levies designated to support the activity.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. Centralized Services (21)	1,192,924	390,391	4,391			1,587,706	1,218,000	390,121	4,364			1,612,485
a. Audit (Line Item)	42,617					42,617						
b. State of Montana, et al. v. United States Army Corps of Engineers, et al. (Line Item)	25,000					25,000						
2. Oil and Gas Regulation (22)		1,151,230				1,151,230		1,136,578				1,136,578
a. Oil and Gas Environmental Impact Statement — Montana Environmental Policy Act Compliance (Line Item)		50,000				50,000		50,000				50,000
3. Conservation and Resource Development Division (23)	299	1,052,194	54,765			1,107,258	2,079	1,053,717	54,782			1,110,578
a. Statewide Resource Conservation and Development Coordinator (Line Item)	14,470		14,471			28,941	14,438		14,438			28,876
b. Statewide Resource Conservation and Development Operating Expenses (Line Item)	19,887		19,887			39,774						
c. HB 701 — Implementation of Clean Coal Technology Project (Line Item)		20,000				20,000						
d. Pay Exceptions (Line Item)		8,361				8,361		8,106				8,106
e. *Treasure State Endowment*							*20,000*					*20,000*
4. Water Resources and Planning (24)	2,214,949	2,228,436	81,316			4,524,701	2,339,042	2,091,112	51,022			4,481,176
a. Broadwater Equipment (Line Item)		336,000				336,000						
b. Rehabilitation of State-Owned Water Projects (Line Item)		891,000				891,000						
c. Poplar River Monitoring (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		33,050				33,050		33,750				33,750
d. Middle Creek Dam (Line Item)			3,896,925			3,896,925						
e. Smith River (Line Item)			1,600,000			1,600,000						
f. Tongue River (Line Item)		400,000	1,600,000			2,000,000						
g. Missouri Basin Reservation (Line Item)		82,505				82,505		82,317				82,317
h. Missouri River Operating Expenses (Line Item)		288,743				288,743						
i. Hydrologist Pay Exceptions (Line Item)		71,113				71,113		71,113				71,113
j. Pay Exceptions (Line Item)	27,374	90,736				118,110	27,374	90,736				118,110
~~k. Treasure State Endowment — HB 19~~							~~20,000~~					~~20,000~~
5. Reserved Water Rights Compact Commission (25)	123,948	283,447				407,395	150,119	282,652				432,771
a. Pay Exceptions (Line Item)	3,948	7,331				11,279	3,936	7,311				11,247
b. Hydrologist Pay Exceptions (Line Item)		11,440				11,440		11,410				11,410
6. Energy Planning (26)	444,452	1,268,725	1,093,701			2,806,878	444,825	1,288,920	1,095,275			2,829,020
a. Rock Creek Mitigation (Line Item)		400,000				400,000						
b. Lake Broadview (Line Item)		30,000				30,000						
c. Energy Conservation (Line Item)			107,000			107,000			334,500			334,500
d. Pay Exceptions (Line Item)	10,349	1,150				11,499	10,042	1,117				11,159
7. *Budget Reduction (Line Item)*												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
							182,314					182,314
Total	4,120,217	9,095,852	8,472,456			21,688,525	~~4,229,855~~ 4,047,541	6,598,960	1,554,381			~~12,383,196~~ 12,200,882

Items 1b, 3b, 3c, 4a, 4b, 4d through 4f, 4h, 6a, and 6b are biennial appropriations.

All indirect charges collected on oil overcharge funds are appropriated for transfer to the general fund.

Included in centralized services funding is $10,000 a year of indirect funds from major facility siting fees. If major facility siting activities generate more than $20,000 of indirect funds over the biennium, the additional major facility siting fee indirect funds must be used to fund centralized service operations and an equal amount of centralized service division general fund money must be reverted.

The board of oil and gas conservation is appropriated $110,000 a year from federal special revenue, contingent upon receiving federal funds from the environmental protection agency for the underground injection control program.

The department is authorized up to $700,000 from the account established in 76-14-112 for rangeland loans during the 1993 biennium.

The department is appropriated up to $1 million over the biennium from the account established in 85-1-604 for purchase of prior liens on property held as loan security as required by 85-1-618.

All funds deposited into the state special revenue account established in 76-15-530 are appropriated to the department for distribution as grants to conservation districts.

~~The general fund appropriation in items 3a and 3b may be expended only as a match for an equal amount of federal funds.~~

Funds appropriated in item 4a must be used to repair and replace equipment at the Broadwater hydropower project and to service the Broadwater hydropower project bond debt if revenue deposited in the debt service account is insufficient for this purpose.

~~Item 4k is to implement House Bill No. 19 and is contingent on passage of House Bill No. 19 and on electoral approval.~~

Funds received under the provisions of 85-1-514(4) are appropriated to the department for the purpose of performing duties required under 85-1-514.

Any revenue collected in the state water project hydroelectric power generation special revenue account established in Chapter 370, Laws of 1991, is appropriated to the department for the rehabilitation of the Tongue River dam. The revenue will be used only if federal authorization for the project rehabilitation is secured.

Any fines collected under the provisions of Title 85, chapter 2, and deposited in the water right appropriation account in accordance with 85-2-318 are appropriated to the department to carry out the enforcement functions required under 85-2-114.

Funds received from bonds required by 37-43-306 are appropriated to the department for the purpose of performing remedial action on water wells, providing compensation for damages caused by water well violations, or paying administrative costs incurred by the board of water well contractors.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

In spending eligible federal energy funds appropriated in item 6, the department shall give priority to developing a self-sustaining program for retrofitting school buildings with energy conservation measures that is similar to the state building energy conservation program established by Title 90, chapter 4, part 6, for state buildings. The department shall submit to the 53rd legislature proposed legislation necessary to implement the school building energy conservation program.

The department is appropriated up to $700,000 from the Rock Creek mitigation special account in addition to the $400,000 appropriated in item 6a. The total appropriation for item 6a may not exceed $1,100,000 over the biennium.

~~The department may not reduce general fund appropriations for the statewide resource conservation and development coordinator or the statewide resource conservation and development operating expenses as shown in items 3a and 3b.~~

The department of natural resources and conservation shall transfer to the general fund from the water adjudication special revenue account $154,000 in fiscal 1993.

DEPARTMENT OF AGRICULTURE (6201)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Centralized Services Division (15)	175,911	188,091	24,504		33,509	422,015	177,241	188,060	24,448		33,443	423,192
a. Audit (Line Item)	26,733					26,733						
2. State Grain Laboratory (25)		458,676				458,676		460,209				460,209
a. Grain Laboratory Increase (Line Item)		61,804				61,804		41,772				41,772
3. Environmental Management Division (30)	224,622	1,863,365	257,774			2,345,761	111,959	1,986,743	257,776			2,356,478
a. Pesticide Program Workload (Line Item)		57,086				57,086		58,962				58,962
b. Ground Water Program Workload (Line Item)		224,295	68,515			292,810		220,278	68,437			288,715
4. Plant Industry Division (40)	448,926	143,851	9,144	11,198		613,119	443,564	146,063	9,189	11,251		610,067
5. Agricultural Development (50)	215,674	1,751,048	82,696		251,536	2,300,954	210,854	1,755,791	83,491		252,580	2,302,716
6. *Budget Reduction II (Line Item)*							*41,231*					*41,231*
Total	1,091,866	4,748,216	442,633	11,198	285,045	6,578,958	~~943,618~~	4,857,878	443,341	11,251	286,023	~~6,542,111~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
							902,387					6,500,880

Item 3a contains $58,361 in fiscal 1992 and $60,281 in *fiscal* 1993 *for* an increase in the pesticide program. Item 3b contains $294,883 in fiscal 1992 and $291,090 in fiscal 1993 for an increase in the ground water program.

The department is authorized to make grants to state agencies from the growth through agriculture account, as approved by the Montana agriculture development council in accordance with Title 90, chapter 9. The state agency that receives a grant from the Montana agriculture development council is authorized additional appropriation authority equal to the grant amount.

The department shall report to the legislative finance committee during fiscal 1992 on the feasibility of the department *selling its portfolio of rural assistance program loans to the board of investments, thus enabling it to increase its loan capability.*

DEPARTMENT OF COMMERCE (6501)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Public Safety Division (01)		70,842		65,338		136,180		70,841		65,250		136,091
a. Audit (Line Item)				464		464						
2. Weights and Measures Bureau (02)	427,469					427,469	406,477					406,477
a. Audit (Line Item)	1,394					1,394						
b. Equipment Replacement (Line Item)	59,386					59,386	15,000					15,000
3. Financial Division (36)		821,173				821,173		821,241				821,241
a. Audit (Line Item)		2,434				2,434						
b. Bank Analysis Computers (Line Item)		27,773				27,773		4,450				4,450
4. Milk Control Bureau (37)		283,503				283,503		284,272				284,272
a. Audit (Line Item)		835				835						
5. Professional and Occupational Licensing Bureau (39)		2,047,292		859,146		2,906,438		2,028,181		858,739		2,886,920
a. Audit (Line Item)				7,703		7,703						
b. Impairment Program — Dentists (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
		25,000				25,000		25,000				25,000
c. Miscellaneous Legislation (Line Item)		191,641		73,818		265,459		160,482		62,845		223,327
6. Aeronautics Division (40)		599,341	73,599	63,713		736,653		600,391	73,592	63,653		737,636
a. Audit (Line Item)		1,912		144		2,056						
b. West Yellowstone Airport (Line Item)				17,000		17,000						
7. Transportation Division (50)	370,761	62,102	879,734			1,312,597	~~341,074~~	71,250	850,835			~~1,263,159~~
							281,074					*1,203,159*
a. Audit (Line Item)	1,466		978			2,444						
b. McCarty Farms (Line Item)	165,483					165,483						
c. Local Rail Assistance Grant (Line Item)			500,000			500,000						
d. Construction Loan Fund (Line Item)		1,800,000				1,800,000						
8. Business Development Division (51)	727,808	347,062	2,192,329			3,267,199	708,868	347,065	2,192,326			3,248,259
a. Audit (Line Item)	2,633		1,316			3,949						
b. Business Development Division (Line Item)		35,000				35,000		35,000				35,000
c. Defense Logistics Agency Contract (Line Item)		48,839	110,760			159,599		48,841	110,768			159,609
d. EDA/CDBG Revolving Fund (Line Item)			168,922			168,922			169,926			169,926
e. Canadian Trade Office (Line Item)	14,816	55,000				69,816	14,741	55,000				69,741
f. International Affairs Coordinator (Line Item)		53,540				53,540		53,544				53,544

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
g. Small Business Development Centers Expansion (Line Item)			75,000			75,000			100,000			100,000
h. General Revision of Montana Capital Company Act — HB 901 (Line Item)		42,385				42,385		39,385				39,385
9. Montana Promotion Division (52)		4,752,177				4,752,177		4,757,953				4,757,953
a. Audit (Line Item)		11,283				11,283						
b. Montana Promotional Division (Line Item)		1,034,028				1,034,028		1,352,234				1,352,234
10. Community Development Bureau (60)	220,058	2,295,493	20,099,524			22,615,075	219,837	1,160,916	20,110,416			21,491,169
a. Audit (Line Item)	1,881	2,794	12,748			17,423						
b. Section 8 Grant Increase (Line Item)			1,000,390			1,000,390			1,000,390			1,000,390
c. Treasure State Endowment — HB 19							35,000					35,000
11. Office of Research and Information Services (61)	296,192					296,192	282,276					282,276
a. Audit (Line Item)	874					874						
b. Automation of Census (Line Item)	58,061					58,061	37,266					37,266
12. Local Government Services — Audit (62)	86,770			1,101,410		1,188,180	86,737			1,101,007		1,187,744
a. Audit (Line Item)				3,244		3,244						
b. Local Government Services Peer Review (Line Item)				10,000		10,000						
c. Single Audit Act — HB 328 (Line Item)				143,137		143,137				144,859		144,859
13. Local Government Services — Systems (63)	49,741			186,588		236,329	49,605			186,329		235,934

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Audit (Line Item)				818		818						
14. Local Government Assistance — Administration (64)				115,466		115,466				115,810		115,810
a. Audit (Line Item)				302		302						
15. Building Codes Bureau (65)	30,058	1,220,487				1,250,545	30,016	1,220,959				1,250,975
a. Audit (Line Item)	125	3,625				3,750						
b. Vehicle Replacement (Line Item)		191,424				191,424						
16. Indian Affairs Coordinator (70)	98,398					98,398	98,457					98,457
a. Audit (Line Item)	278					278						
b. EEO Grant — Indian Affairs (Line Item)			97,536			97,536			96,992			96,992
17. Health Facilities Authority (71)				116,141		116,141				116,093		116,093
a. Audit (Line Item)				6,100		6,100						
18. Montana Science and Technology Alliance (73)	398,556					398,556	409,420					409,420
a. Audit (Line Item)	10,658					10,658						
b. R & D Loans — SB 242 (Line Item)	50,000					50,000	50,000					50,000
19. Board of Housing (74)				1,972,226		1,972,226				1,965,745		1,965,745
a. Audit (Line Item)				57,095		57,095						
20. Investments Division (75)				1,544,640		1,544,640				1,544,164		1,544,164

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Audit (Line Item)				104,059		104,059						
b. Additional FTE BOI/HFA Bond (Line Item)				21,658		21,658				21,609		21,609
c. Investment Portfolio Managers (Line Item)				46,179		46,179				92,367		92,367
21. Montana State Lottery (77)				3,004,658		3,004,658				3,007,793		3,007,793
a. Audit (Line Item)				132,861		132,861						
b. Montana Lottery (Line Item)				3,466,783		3,466,783				3,275,782		3,275,782
c. Lottery Vehicles (Line Item)										55,500		55,500
d. *Budget Reduction II*										*93,627*		*93,627*
22. Board of Horseracing (78)		302,171				302,171		302,820				302,820
a. Audit (Line Item)		944				944						
23. Director/Management Services (81)	103,705			749,470		853,175	103,820			748,881		852,701
a. Audit (Line Item)	299			78,920		79,219						
24. Budget Reduction	16,333					16,333	~~54,667~~ *160,738*					~~54,667~~ *160,738*
Total	3,160,537	16,330,100	25,212,836	13,949,081		58,652,554	~~2,833,927~~ *2,667,856*	13,439,825	24,705,245	~~13,426,426~~ *13,332,799*		~~54,405,423~~ *54,145,725*

Item 5 contains $3,000 in fiscal 1992 and $2,000 in fiscal 1993 for the board of dentistry to implement mandatory continuing professional education requirements for dentists and dental hygienists.

Item 6 contains $33,176 in fiscal 1992 and $33,226 in fiscal 1993. These amounts are not to be used for moving costs associated with the department of transportation.

Item 7 contains $31,081 from the general fund and $20,721 from federal funds in fiscal 1992 for moving costs associated with the department of transportation.

Item 7b is for litigation costs associated with the McCarty Farms case. The department shall seek to recover all general fund expenditures plus interest at a rate of 10% from any settlement in this case.

Items 7b through 7d are biennial appropriations.

Item 8c contains $110,760 a year of federal funds to provide assistance for small businesses in contracting with the federal government. General fund money may not be used in place of these federal funds.

The department is authorized to seek and expend private or other funds to replace $77,921 of state special revenue included in item 8f. If the department is successful in securing private or other funds, the accommodations tax state special revenue account appropriation is reduced by $38,959 in fiscal 1992 and $38,962 in fiscal 1993.

Item 10c is to implement House Bill No. 19 and is contingent on passage of House Bill No. 19 and on electoral approval.

Item 11b contains $58,061 in fiscal 1992 and $37,266 in fiscal 1993 for automation of census data. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from this item in the current level base.

All revenue deposited in the science and technology development special revenue account, as established in 90-3-305, is appropriated to the Montana board of science and technology development.

In eliminating the certified communities program, the business development division may retain the 1.0 FTE associated with that program.

	Fiscal 1992					Fiscal 1993					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
TOTAL SECTION C											
25,629,088	65,007,262	55,052,215	16,566,498	303,645	162,558,708	~~19,320,878~~ 19,303,327	~~53,112,658~~ 53,362,698	~~46,729,571~~ 46,748,891	~~16,051,177~~ 15,957,550	286,023	~~135,500,347~~ 135,658,489

D. INSTITUTIONS AND CULTURAL EDUCATION

MONTANA ARTS COUNCIL (5114)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Promotion of the Arts (01)	115,869	116,778	198,277			430,924	11,558	220,636	198,253			430,447
a. Audit (Line Item)	15,784					15,784						
b. Federal Grants — Biennial (Line Item)			307,470			307,470						
c. Federal Grants — Biennial (Line Item)			35,000			35,000						
d. Federal Grants (Line Item)			11,535			11,535			11,535			11,535
e. Federal Grants — Biennial (Line Item)			231,130			231,130						
2. *Budget Reduction (Line Item)*							*1,349*					*1,349*
Total	131,653	116,778	783,412			1,031,843	~~11,558~~ *10,209*	220,636	209,788			~~441,982~~ *440,633*

Items 1b, 1c, and 1e (federal grants awarded to local communities and schools) are biennial appropriations.

LIBRARY COMMISSION (5115)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. State Library Operations (01)	895,977	157,431	363,927			1,417,335	~~939,658~~ *937,251*	153,905	368,406			~~1,461,969~~ *1,459,562*
a. Audit (Line Item)	15,784					15,784						
b. Federal Grants — Biennial (Line Item)			1,286,476			1,286,476						
c. Blind and Physically Handicapped — FTE and Associated Equipment (Line Item)	22,319					22,319	19,097					19,097

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
d. Library of Congress Dues (Line Item)	1,500					1,500	3,000					3,000
e. Local Library Assistance — Biennial (Line Item)	194,664					194,664						
f. Western Library Network Equipment (Line Item)		10,000				10,000						
2. Natural Resource Information Services (07)		236,442	14,871			251,313		236,440	14,871			251,311
a. Contract Authority — Biennial (Line Item)			650,000			650,000						
3. *Budget Reduction (Line Item)*							30,030					30,030
Total	1,130,244	403,873	2,315,274			3,849,391	~~961,755~~ 929,318	390,345	383,277			~~1,735,377~~ 1,702,940

Item 1b (federal grants for local libraries) is a biennial appropriation.

Item 1d (appropriation for library of congress dues) may not be included in the current level base in the agency budget request for the 1995 biennium.

Item 1e (general fund state aid to local libraries) is a biennial appropriation.

In the event coal severance tax allocated to the state library under 15-35-108(3)(f) exceeds the amounts appropriated to the state library for fiscal 1992 and fiscal 1993, the additional funds are appropriated to the state library commission for pass-through to the library federations.

The biennial appropriation for the legislative contract authority in item 2a is subject to the following provisions:

(1) Legislative contract authority applies only to federal and private funds.

(2) Legislative contract authority expenditures must be reported on state accounting records. The records must be separate from current level operations.

(3) A report must be submitted by the library commission to the legislative fiscal analyst following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

HISTORICAL SOCIETY (5117)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration Program (01)	478,737	82,762	33,392			594,891	~~481,242~~ 463,742	82,233	33,383			~~596,858~~ 579,358

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
a. Audit (Line Item)	16,707					16,707						
b. Trustees' Reimbursement (Line Item)	7,654					7,654	7,654					7,654
c. Capitol Tour Guides (Line Item)	22,105					22,105	~~22,016~~ *10,816*					~~22,016~~ *10,816*
2. Library Program (02)	396,256	2,148		27,588		425,992	~~396,300~~ *393,300*	~~1,559~~ *4,559*		28,316		426,175
3. Museum Program (03)	193,340	19,487		4,121		216,948	187,385	19,487		4,121		210,993
a. Electronic Security (Line Item)	5,000					5,000						
4. Publication Program (04)	48,135			472,778		520,913	48,134			475,867		524,001
a. Audit (Line Item)				1,374		1,374						
b. Merchandise Authority (Line Item)				30,000		30,000				30,000		30,000
c. Milwaukee Mitigation (Line Item)			13,500			13,500						
5. Historical Sites Preservation (06)	65,551		571,751			637,302	~~63,717~~ *34,632*		~~574,211~~ *603,296*			637,928
a. Audit (Line Item)	768		4,038			4,806						
b. Computers — Federal (Line Item)			11,400			11,400						
Total	1,234,253	104,397	634,081	535,861		2,508,592	~~1,207,240~~ *1,145,663*	~~103,279~~ *106,279*	~~607,594~~ *636,679*	538,304		~~2,456,425~~ *2,426,925*

In item 1, $16,221 in fiscal 1992 and $16,181 in fiscal 1993 are to offset vacancy savings that will revert to the general fund if not needed to pay personnel costs during the biennium. The agency has the authority to move these funds between programs by transfer to meet the expenses experienced.

The proprietary authority for a statutorily required transfer of general fund money in the magazine program must be increased by the same amount as the pay plan increase for FTEs supported by the general fund.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES (6401)												
1. Central Operations Division (10)	1,520,604					1,520,604	~~1,546,713~~ 1,482,646					~~1,546,713~~ 1,482,646
a. Audit (Line Item)	123,438	41,150	8,512	6,838		179,938						
b. Board of Pardons Staff (Line Item)	30,995					30,995	26,910					26,910
c. Information System Enhancement (Line Item)	130,665					130,665	128,024					128,024
2. Corrections Division (20)	21,234,267	1,302,651	155,023	3,077,232		25,769,173	~~20,927,059~~ 20,858,830	~~1,303,227~~ 1,275,882	~~155,056~~ 142,977	3,080,854		~~25,466,196~~ 25,358,543
a. Corrections Medical (Line Item)	1,869,975					1,869,975						
b. Staffing for Additional Capacity (Line Item)	560,823					560,823	759,892					759,892
c. Operating Cost Increases (Line Item)	80,663					80,663	80,663					80,663
d. SRFC Chemical Dependency (Line Item)		38,350				38,350		38,282				38,282
e. Female Population Increase (Line Item)	77,058					77,058	99,214					99,214
f. WCC Additional Staff (Line Item)	43,306					43,306	43,034					43,034
g. Local Jurisdiction Sentencing (Line Item)		17,264				17,264	17,301	17,265				34,566
h. Prerelease Expansion (Line Item)	72,240					72,240	358,145					358,145

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
i. House Arrest (Line Item)							45,000					45,000
j. Great Falls ISP (Line Item)	105,597					105,597	70,600					70,600
k. Probation and Parole Officer Increase (Line Item)	95,930					95,930	134,526					134,526
l. Jail — Graduated Sanctions (Line Item)							66,120					66,120
m. Targeted Case Managers (*Line Item*)	54,244					54,244	54,128					54,128
n. BLSC Operating Increases (Line Item)	3,110					3,110	3,110					3,110
o. New Women's Prerelease Center (Line Item)	40,740					40,740	237,043					237,043
p. Community Prerelease Provider Increases (Line Item)	27,132					27,132	54,807					54,807
q. Gallehon Turner Trial (Line Item)	75,000					75,000						
r. Maximum Disturbance Legal Costs (*Line Item*)	25,000					25,000						
s. Reception Overflow (Line Item)	41,000					41,000						
t. Food Costs (Line Item)	78,782					78,782						
u. Jail Payments — Parole Violators (Line Item)	66,120					66,120	66,120					66,120
3. Mental Health Division (30)	29,460,517	742,323	1,021,946			31,224,786	~~29,919,438~~ *29,798,231*	753,509	1,021,947			~~31,694,894~~ *31,573,687*
a. Child and Adolescent Service System Program (Line Item)			13,405			13,405						
b. Federal Data Grant (Line Item)			107,100			107,100			26,775			26,775
c. Service Provider Increases (Line Item)												

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
	106,381					106,381	~~214,809~~					~~214,809~~
							124,466					*124,466*
d. CFA Additional Staff (Line Item)	36,100					36,100	36,100					36,100
e. Homeless Block Grants (Line Item)			275,000			275,000			275,000			275,000
f. HB 93 — Utilization Fee on Nursing Facilities (Line Item)	32,370					32,370	64,740					64,740
4. Chemical Dependency Division (40)	226,877	1,556,082	2,032,317			3,815,276	226,877	1,544,395	2,032,298			3,803,570
a. Alternative Chemical Dependency Services (Line Item)			20,817			20,817			41,666			41,666
b. Community Youth Activity-2 (Line Item)			507,276			507,276			15,610			15,610
c. Chemical Dependency Data Grant (Line Item)			65,788			65,788			16,447			16,447
d. HB 93 — Utilization Fee on Nursing Facilities (Line Item)	16,612					16,612	33,224					33,224
5. Developmental Disability Division (50)	13,724,186	30,227	13,356			13,767,969	~~12,753,705~~	30,251	2,440			~~12,786,396~~
							12,720,979					*12,753,670*
a. MDC ICF/MR Certification (Line Item)	89,278					89,278	45,633					45,633
b. Eastmont ICF/MR Certification (Line Item)	136,720					136,720	137,102					137,102
6. Veterans' Nursing Home Division (60)	587,137	1,223,606	851,408			2,662,151	578,781	1,259,167	855,109			2,693,057
a. HB 93 — Utilization Fee on Nursing Facilities (Line Item)	30,200					30,200	60,400					60,400
7. *Budget Reduction II (Line Item)*							*292,023*					*292,023*
Total	70,803,267	4,951,653	5,071,948	3,084,070		83,910,938	~~60,789,290~~	~~4,946,096~~	~~4,442,340~~	3,080,854		~~81,258,596~~

Fiscal 1992						Fiscal 1993					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
						68,120,623	4,918,751	4,430,269			80,550,497

Contracts negotiated or renegotiated by the department may not extend beyond the end of the 1993 biennium unless they contain the clause "subject to legislative appropriation of funds for this contract".

If the department is unable to recruit and hire professional positions funded in the appropriation and required for patient treatment and/or certification, it may transfer up to 100% of the aggregate personal services cost of each class of vacant position or the cost of the required contract, whichever is less, to operating expenses for the purpose of contracting for services that would have been provided if that position were filled. The department shall certify to the governor or his designated representative that:

(1) the department is unable to fill the position or positions; and

(2) the services that would be provided by that position if filled and by the proposed contract are necessary for either federal medicaid certification or the treatment requirements of its correctional institutions.

Within the industries operations in item 2, the department may submit budget amendments to hire 1 FTE marketing representative, 2 FTE shop supervisors, and 1 FTE prison industries procurement coordinator if funding is available.

Within the industries training program in item 2, the department may submit budget amendments to hire 1 FTE vehicle maintenance shop supervisor if funding is available.

The department is authorized to maintain a cash balance of not more than $16,000 at the end of each fiscal year in the prison industries training proprietary account. Any funds in excess of $16,000 in the proprietary account are to offset the general fund appropriation.

Item 2a, the corrections medical budget, is a biennial appropriation.

The department shall submit budget amendments for the local jurisdiction sentencing option program in item 2g if federal funding becomes available. The total general fund and state special fund share of the program may not exceed 50% and must revert to the respective funds to the extent that federal funding is less than $35,000.

Item 2m contains $55,276 in fiscal 1992 and $55,158 in fiscal 1993 for two targeted case managers at the prison. In preparing the 1995 biennial budget for legislative consideration, the office of budget and program planning and the legislative fiscal analyst's office may not include the expenditures from the above items in the current level base.

Transfers may be made between line items within the mental health division and the alcohol and drug abuse division (chemical dependency) for the purpose of accurately allocating operating expenses associated with the alcohol and drug programs on the Galen campus upon approval of the governor or his designated representative.

Included in item 3 are $22,492,426 in fiscal 1992 and $22,717,860 in fiscal 1993 for the operation of Montana state hospital. Except for approved transfers to the chemical dependency division for the purpose of accurately allocating operating expenses associated with the alcohol and drug programs on the Galen campus, no more than 5% of these funds may be transferred.

In item 3, the department may transfer appropriation authority from the personal services category to the operating expense category of the mental health division budget upon approval by the governor or his designated representative for costs associated with the Ihler lawsuit and the pilot projects in Kalispell, Missoula, and Butte.

In item 3, the department may transfer appropriation authority from the personal services category to the operating expense category of the mental health division budget upon approval by the governor or his designated representative for costs, up to $1,000,000 for the 1993 biennium, associated with responding to the district court ruling on the Ihler lawsuit.

Included in the appropriation for the Montana state hospital chemical dependency program within item 4 are $1,408,733 in fiscal 1992 and $1,413,201 in fiscal 1993 for the operation of the Galen chemical dependency program. No more than 5% of these funds may be transferred.

The department shall continue to provide acute hospital care, intermediate nursing care, and chemical dependency services at the Montana state hospital at Warm Springs and Galen without significant changes in the program at either campus, except for approved changes on the Warm Springs campus to implement the district court ruling on the Ihler lawsuit.

In item 5, the department may transfer appropriation authority from the personal services category to the operating expense category of the Montana developmental center budget upon approval of the governor or his designated representative if the downsizing does not take place on schedule.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
TOTAL SECTION D	73,299,417	5,576,701	8,804,715	3,619,931		91,300,764	~~70,969,059~~ 70,205,813	~~5,660,356~~ 5,636,011	~~5,643,007~~ 5,660,013	3,619,158		~~85,092,380~~ 85,120,995

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

E. EDUCATION

University units are defined in 17-7-102(16). For all university units, except the office of the commissioner of higher education, all funds, other than plant funds appropriated in Chapter 774, Laws of 1991, relating to long-range building, and current unrestricted operating funds, are appropriated contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The budget must contain detailed revenue and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. All movement of funds between the current unrestricted subfund and the designated subfund account entities must be clearly identified in the state budgeting and accounting system.

Programs for the university units' budgets, except the office of the commissioner of higher education, include instruction, organized research, public service, academic support, student services, institutional support, operation and maintenance of plant, and scholarships and fellowships.

All university units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the national center for higher education management systems program classification structure, along with the college and university business administration (CUBA) system, as a minimum standard for achieving consistency.

Any tuition added through budget amendment in fiscal 1992 and fiscal 1993 may, in the discretion of the board of regents, be distributed among agencies of the Montana university system with the following restriction: tuitions may not be budget amended either directly or indirectly to increase the budget of the office of the commissioner of higher education.

The general fund reduction to the Montana university system is not contingent on or tied to any action concerning the operation of state liquor stores.

The legislature recommends that the reductions in higher education system units budgets be reductions in expenses and specifically requests that the board of regents not increase tuition charges to compensate for budget cuts.

The legislature recommends that reductions be made in duplicated programs, in- and out-of-state travel, and delays in new programs.

The legislature recommends that no reductions be made in library expenditures at any of the units of the Montana university system in response to budget reductions made in the July 1992 special session.

OFFICE OF PUBLIC INSTRUCTION (3501)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration (06)	3,540,725	470,021	4,248,382	904,728		9,163,856	~~3,338,424~~ 3,199,214	381,305	4,089,022	887,460		~~8,696,211~~ 8,557,001
a. Audit (Line Item)				52,087		52,087						
2. Distribution to Schools (09)												
a. Special Education ~~(Line Item)~~	32,845,797					32,845,797	32,845,797					32,845,797
b. Special Education Contingency — Biennial ~~(Line Item)~~	2,031,163					2,031,163						
c. Transportation ~~(Line Item)~~	6,483,120	3,908,166				10,391,286	~~6,493,558~~	3,914,457				~~10,408,015~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
							5,693,558					9,608,015
d. School Lunch ~~(Line Item)~~	599,397					599,397	599,397					599,397
e. Gifted and Talented ~~(Line Item)~~	276,000					276,000	276,000					276,000
f. Secondary Vocational Education — Biennial ~~(Line Item)~~	1,656,000					1,656,000						
g. Adult Education ~~(Line Item)~~	250,000					250,000	250,000					250,000
h. Impact Aid ~~(Line Item)~~	4,600					4,600	4,600					4,600
i. Education of the Handicapped — Part B Biennial ~~(Line Item)~~			1,356,000			1,356,000						
j. Job Training Partnership Act — Biennial ~~(Line Item)~~			1,017,200			1,017,200						
k. Adult Basic Education — Biennial ~~(Line Item)~~			1,198,000			1,198,000						
l. McKinney Homeless Act — Biennial ~~(Line Item)~~			140,400			140,400						
m. Preschool Incentive — Biennial ~~(Line Item)~~			230,000			230,000						
n. Vocational Education — Biennial ~~(Line Item)~~			5,000,000			5,000,000						
o. English Literacy — Biennial ~~(Line Item)~~			25,000			25,000						
p. Education of the Handicapped — Part D Biennial ~~(Line Item)~~			45,000			45,000						
q. Chapter 1 — Biennial ~~(Line Item)~~			180,000			180,000						
r. Section 20-9-351 Supplemental Funding — Biennial (Line Item)	~~24,130,000~~ 32,000,000					~~24,130,000~~ 32,000,000						
Total												

Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
~~71,816,802~~	4,378,187	13,439,982	956,815		~~90,591,786~~	~~43,807,770~~	4,295,762	4,089,022	887,460		~~53,080,922~~
79,686,802					*98,461,786*	*42,868,566*					*52,140,810*

Item 1 includes $81,564 in fiscal 1992 and $81,810 in fiscal 1993 in the state special revenue fund from the traffic safety account for motorcycle safety.

The legislature approved the addition of *0.5 FTE from the federal national origins grant and* 0.5 FTE from the federal school foods grant. These funds are in item 1.

Included in item 1 is a biennial appropriation of $136,000 from the general fund and $82,000 from the state special revenue fund for audiology services.

The superintendent of public instruction may use any unexpended general fund appropriation, excluding item 2r, school equalization supplemental funding, in distributions to schools, program 09, to restore the appropriations for special education contingency, gifted and talented, secondary vocational education, and out-of-district placements up to but not exceeding the amount authorized by Chapter 815 and Chapter 765, Laws of 1991. Any unexpended appropriation balances in fiscal 1992 in items 2a through 2h may be carried in and expended in fiscal 1993.

Item 2b is a biennial appropriation. This appropriation is for unforeseen expenses that may arise in special education programs in local districts. A district board of trustees may apply for an allocation from these funds by presenting to the superintendent of public instruction, for each child, a child-study (CST) report and an individual education plan (IEP) relating to this unforeseen expense or, if the need for additional personnel is due to caseload excess, a board of trustees' verification of completed IEPs and CSTs. In addition, a current listing of programs, caseloads, and related costs must be submitted. Contingency funds may be awarded for positions that have gone unfilled for an entire school year and for which regular state special education funds were not awarded. The agency may transfer any unused balance in this appropriation into the special education appropriation in item 2a.

Item 2c includes a reduction of $800,000 in the fiscal 1993 general fund appropriation. This reduction is contingent on the passage and approval of legislation reducing the state share of special education transportation from 100% to 50%. If this legislation is not enacted, the fiscal 1993 general fund transportation appropriation is restored to $6,493,558.

Item 2f is a biennial appropriation.

Items 2i through 2r are biennial appropriations.

All revenue received in the state traffic education account under the provisions of 20-7-504, is appropriated as provided in Title 20, chapter 7, part 5.

The agency may transfer funds among the items listed in 2a through 2q and between items 1 and 2, subject to the limitations of 17-7-139.

BILLINGS VOCATIONAL-TECHNICAL CENTER (3511)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. General Operations (01,07,44)	1,213,990				682,386	1,896,376	1,198,920				688,861	1,887,781
a. Audit (Line Item)	25,570					25,570						
2. Budget Reduction	9,773					9,773	81,545					81,545
3. Budget Reduction II							*49,027*					*49,027*

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total	1,229,787				682,386	1,912,173	~~1,117,375~~ *1,068,348*				688,861	~~1,806,236~~ *1,757,209*

Total audit costs are estimated to be $28,412 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

~~Item 2 reduces~~ *Items 2 and 3 reduce* the Billings vocational-technical center's total general fund appropriation. The Billings vocational-technical center, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

BUTTE VOCATIONAL-TECHNICAL CENTER (3512)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. General Operations (01,07,44)	1,432,620				351,978	1,784,598	1,463,460				353,473	1,816,933
a. Audit (Line Item)	26,992					26,992						
2. Budget Reduction	11,343					11,343	87,478					87,478
3. *Budget Reduction II*							*58,917*					*58,917*
Total	1,448,269				351,978	1,800,247	~~1,375,982~~ 1,317,065				353,473	~~1,729,455~~ *1,670,538*

Total audit costs are estimated to be $29,990 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

~~Item 2 reduces~~ *Items 2 and 3 reduce* the Butte vocational-technical center's total general fund appropriation. The Butte vocational-technical center, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

GREAT FALLS VOCATIONAL-TECHNICAL CENTER (3513)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. General Operations (01,07,44)	1,552,944				631,385	2,184,329	1,586,011				634,024	2,220,035
a. Audit (Line Item)	25,570					25,570						
2. Budget Reduction	12,520					12,520	110,576					110,576
3. *Budget Reduction II*							*64,767*					*64,767*

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
Total	1,565,994				631,385	2,197,379	~~1,475,435~~ *1,410,668*				634,024	~~2,109,459~~ *2,044,692*

Total audit costs are estimated to be $28,412 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

~~Item 2 reduces~~ *Items 2 and 3 reduce* the Great Falls vocational-technical center's total general fund appropriation. The Great Falls vocational-technical center, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

HELENA VOCATIONAL-TECHNICAL CENTER (3514)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. General Operations (01,07,44)	1,998,352				549,089	2,547,441	1,948,771				551,207	2,499,978
a. Audit (Line Item)	26,992					26,992						
2. Budget Reduction	15,788					15,788	115,834					115,834
3. *Budget Reduction II*							*79,040*					*79,040*
Total	2,009,556				549,089	2,558,645	~~1,832,937~~ *1,753,897*				551,207	~~2,384,144~~ *2,305,104*

Total audit costs are estimated to be $29,990 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

~~Item 2 reduces~~ *Items 2 and 3 reduce* the Helena vocational-technical center's total general fund appropriation. The Helena vocational-technical center, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

MISSOULA VOCATIONAL-TECHNICAL CENTER (3515)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. General Operations (01,07,44)	2,031,178				666,617	2,697,795	1,952,924				670,365	2,623,289
a. Audit (Line Item)	22,728					22,728						
2. Budget Reduction	16,101					16,101	114,410					114,410
3. *Budget Reduction II*												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
							80,600					80,600
Total	2,037,805				666,617	2,704,422	~~1,930,514~~ 1,757,914				670,365	~~2,600,879~~ 2,428,279

Total audit costs are estimated to be $25,254 for the biennium. Ten percent of these costs must be paid from funds other than those appropriated in items 1 and 1a.

~~Item 2 reduces~~ *Items 2 and 3 reduce* the Missoula vocational-technical center's total general fund appropriation. The Missoula vocational-technical center, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

The commissioner of higher education may transfer county millage collections among the centers. Total revenue received from the 1.5-mill levy that exceeds $965,005 in fiscal 1992 and $981,480 in fiscal 1993 is appropriated to the office of the commissioner of higher education for distribution to the vocational-technical centers and must be added by budget amendment by the board of regents in a manner so as to offset reductions in vocational-technical center appropriations in [this act] from the levels contained in The General Appropriations Act of 1991 and acts supplementary thereto.

It is the intent of the legislature that the board of regents have additional appropriation flexibility to operate the vocational-technical centers during the 1993 biennium. Therefore, the legislature has approved for each vocational-technical center a single appropriation for its general operations. The appropriation for each postsecondary vocational-technical center listed above is for the following programs: instruction, academic support, student services, institutional support, and operation and maintenance of plant. The vocational-technical centers are exempt from [section 2], which requires personal services line items.

It is further the intent of the legislature that all fiscal matters pertaining to the postsecondary vocational-technical centers during the 1993 biennium and the 1995 biennium budget request be recorded, maintained, and submitted, using the college and university business administration (CUBA) fund structure and functional expenditure classifications.

BOARD OF PUBLIC EDUCATION (5101)

	Fiscal 1992 General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	Fiscal 1993 General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Administration (01)	107,677	6,509				114,186	104,458	6,509				110,967
a. Audit (Line Item)	1,264					1,264						
2. Advisory Council (03)		71,665				71,665		71,527				71,527
a. Audit (Line Item)		1,262				1,262						
3. *Budget Reduction II (Line Item)*							*4,390*					*4,390*
Total												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	108,941	79,436				188,377	~~104,458~~	78,036				~~182,494~~
							100,068					178,104
COMMISSIONER OF HIGHER EDUCATION (5102)												
1. Administration Program (01)	864,771					864,771	853,079					853,079
a. Audit (Line Item)	20,519					20,519						
b. Regents Employee Reporting System (Line Item)	121,053					121,053	107,424					107,424
2. Student Assistance Program (02)	4,788,611		280,000			5,068,611	~~4,854,262~~		280,000			~~5,134,262~~
							4,724,568					5,004,568
a. Increased Supplemental Educational Opportunity Grant Match (Line Item)	63,590					63,590	63,590					63,590
b. Increased Perkins Loan Match (Line Item)	36,270					36,270	36,270					36,270
c. State Work Study — Minimum Wage Increase (Line Item)	105,203					105,203	105,203					105,203
3. Dwight D. Eisenhower Mathematics and Science Education Act (03)			249,842			249,842			249,842			249,842
4. Community College Assistance (04)	3,785,966					3,785,966	4,215,246					4,215,246
a. Audit (Line Item)	29,890					29,890						
5. Montana University System Group Insurance Program (05)				13,760,131		13,760,131				16,044,208		16,044,208
a. Group Insurance Additional Costs (Line Item)				139,801		139,801				140,249		140,249
6. Talent Search (06)			188,829			188,829			188,315			188,315
a. Talent Search Additional Federal Funds (Line Item)			48,793			48,793			48,792			48,792
7. Carl D. Perkins Administration (08)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	92,966		5,115,331			5,208,297	76,970		5,098,843			5,175,813
8. Guaranteed Student Loan Program (12)												
			1,409,410			1,409,410			1,408,634			1,408,634
a. Audit (Line Item)												
			6,630			6,630						
b. Guaranteed Student Loan Additional Workload (Line Item)												
			232,694			232,694			232,691			232,691
c. Supplemental Preclaims Unit (Line Item)												
			43,446			43,446			43,348			43,348
9. Board of Regents — Administration (13)												
	32,854					32,854	32,863					32,863
10. Board of Regents Bond Payments (14)												
	706,255					706,255	698,153					698,153
11. Vocational-Technical Center Administration (15)												
	96,575					96,575	96,338					96,338
a. Vocational-Technical Center Contingency (Line Item)												
	150,000					150,000						
12. Budget Reduction — Commissioner of Higher Education												
	362,913					362,913	153,920					153,920
13. Budget Reduction — Community Colleges												
	152,634					152,634	152,634					152,634
14. Tuition Increase												
											5,178,760	5,178,760
15. Budget Reduction II — Commissioner of Higher Education												
							53,952					*53,952*
16. Budget Reduction II — Community Colleges												
							162,504					*162,504*
17. Budget Increase II — Commissioner of Higher Education												
											4,537,653	*4,537,653*
Total	10,378,976		7,574,975	13,899,932		31,853,883	~~10,032,844~~		7,550,465	16,184,457	~~5,178,760~~	~~39,746,526~~
							10,486,694				*9,716,413*	*43,938,029*

Fiscal 1992						Fiscal 1993					
General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Item 2 includes $68,400 general fund in fiscal 1992 and $114,000 general fund in fiscal 1993 for three new medical student WICHE slots in fiscal 1992 and three continuing medical student WICHE slots and 2 new medical student WICHE slots in fiscal 1993.

The appropriation in item 4 provides 51% and 55% of the total unrestricted budgets for the community colleges in fiscal 1992 and fiscal 1993, respectively. The total unrestricted budgets for the community colleges must be approved by the board of regents.

The general fund appropriation for each community college includes 49% of the total audit cost. The remaining 51% of these costs are to be paid from funds other than those appropriated in items 4 and 4a. Audit costs may not exceed $18,000 each for Dawson and Miles community colleges and $25,000 for Flathead Valley community college for the biennium.

Item 11a is a biennial appropriation.

Items 12, ~~and~~ 13, *15, and 16* reduce the commissioner of higher education's total general fund appropriation. The commissioner of higher education, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

Item 14 is additional spending authority for tuition revenue. This tuition may, in the discretion of the board of regents, be distributed among agencies of the Montana university system with the following restriction: all tuition revenue must be distributed to agencies other than the office of the commissioner of higher education. It is the intent of the 52nd legislature that the board of regents increase total tuition and fee charges at the six university units by no more than $7 per credit hour for resident students and $47 per credit hour for nonresident students, which is the equivalent of the difference between charges at Montana state university and the university of Montana and the average of their peer institutions.

It is the intent of the 52nd legislature that the board of regents examine all revenue sources, including fees from students and other revenue sources not presently recognized within the formula funding of the Montana university system. It is the further intent that the board of regents utilize all possible economies and methods that will preserve access to and not limit enrollment of the units of the Montana university system. More specifically:

(1) before any major downsizing of student populations, there must be an independent evaluation of all student fees not within formula funding to determine if said fees should be placed within the formula. If more fees are appropriately placed within the formula, university units may be much closer to peer averages and there may be no need to reduce the current student population levels. The evaluation must be given to appropriate legislative committees.

(2) evaluation of appropriate student populations for each unit of the Montana university system must be conducted to determine how to best achieve optimum economies of scale for both benefits and costs; and

(3) a review of the western undergraduate exchange (WUE) program must be conducted to determine if the admission of nonresident students under the WUE program should be limited to parity participation to ensure that Montana resident students are not denied admission to their own institutions.

It is the intent of the 52nd legislature that no funds be transferred in fiscal 1993 from the student assistance program to any other program within the office of the commissioner of higher education.

The office of the commissioner of higher education is directed to study administrative structure and expenses within each unit of the university system and within the office of the commissioner of higher education to determine if operational efficiencies could be increased through consolidation or elimination of positions, or both, and to report its findings to the 53rd legislature.

The office of the commissioner of higher education is directed to conduct a study of the potential benefits of the sharing of county extension agents among rural counties and to report the findings of the study to the 53rd legislature.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total

Item 17 increases the spending authority of the commissioner of higher education and provides for the collection and use of the excess revenue resulting from additional students in the Montana university system. These funds are appropriated to the office of the commissioner of higher education for distribution by the board of regents to the units of the Montana university system.

UNIVERSITY OF MONTANA (5103)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Instruction (01)	15,528,473				9,107,892	24,636,275	15,504,308				9,148,531	24,652,839
2. Organized Research (02)	631,517					631,517	632,053					632,053
a. Bureau of Business and Economic Research (Line Item)	30,000					30,000						
3. Public Service (03)	306,560					306,560	426,596					426,596
4. Operation and Maintenance of Plant (07)	5,476,334					5,476,334	5,524,124					5,524,124
5. Scholarships and Fellowships (08)					1,228,074	1,228,074					1,228,074	1,228,074
6. Support (44)	6,762,601				5,342,998	12,105,599	6,777,328				5,384,625	12,161,953
a. Audit (Line Item)	55,244					55,244						
b. Minimum Wage (Line Item)	73,740					73,740	73,740					73,740
c. Library Books (Line Item)	281,715					281,715						
d. Regents' Employee Reporting System (Line Item)	25,766					25,766	25,766					25,766
7. Budget Reduction	451,183					451,183	2,672,011					2,672,011
8. *Budget Reduction II*							*1,112,503*					1,112,503
Total	28,720,767				15,678,874	44,399,641	~~26,291,904~~				15,761,230	~~42,053,134~~

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
							25,179,401					40,940,631

Total audit costs are estimated to be $110,488 for the biennium. Fifty percent of these costs must be paid from funds other than those appropriated in items 1 through 6.

Item 1 contains $130,000 from the general fund in fiscal 1992 and *$130,000 from the general fund* in fiscal 1993 for the university of Montana pharmacy school over and above the amount generated by the funding formula for the school of pharmacy. Any grant and donation made to the university of Montana for the express purpose of maintaining accreditation at the school of pharmacy may not reduce funds otherwise allocated from the current unrestricted fund. It is the intent of the legislature that the current unrestricted budget allocation by the university of Montana to the school of pharmacy not be reduced. It is the further intent of the legislature that these additional funds become part of the current level base budget for the university of Montana and be included in the 1995 biennium current level budget analysis prepared by the office of the legislative fiscal analyst and presented to the 53rd legislature.

Items 2a and 6c are biennial appropriations.

~~Item 7 reduces~~ *Items 7 and 8 reduce* the university of Montana's total general fund appropriation. The university of Montana, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

MONTANA STATE UNIVERSITY (5104)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri- etary	Other	Total
1. Instruction (01)	20,084,648				9,687,288	29,771,936	20,608,791				9,731,683	30,340,474
a. Nursing	313,388					313,388	584,443					584,443
b. NSF Mathematics Grant Match — *Biennial (Line Item)*	1,000,000					1,000,000						
2. Organized Research (02)	594,926					594,926	594,947					594,947
3. Public Service (03)	260,362					260,362	360,362					360,352
4. Operation and Maintenance of Plant (07)	5,978,306					5,978,306	6,042,058					6,042,058
5. Scholarships and Fellowships (08)					1,327,730	1,327,730					1,327,730	1,327,730
6. Support (44)	8,034,029				5,668,827	13,702,856	8,047,841				5,715,957	13,763,798
a. Audit (Line Item)	55,244					55,244						
b. Minimum Wage (Line Item)	75,232					75,232	75,232					75,232
c. Library Books (Line Item)	321,683					321,683						

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
d. Regents' Employee Reporting System (Line Item)	28,580					28,580	28,580					28,580
7. Budget Reduction	553,260					553,260	2,870,909					2,870,909
8. *Budget Reduction II*							*1,415,113*					*1,415,113*
Total	36,193,138				16,683,845	52,876,983	~~33,471,345~~ *32,056,232*				16,775,370	~~50,246,715~~ *48,831,602*

Total audit costs are estimated to be $110,488 for the biennium. Fifty percent of these costs must be paid from funds other than those appropriated in items 1 through 6.

Item 1b is a biennial appropriation and is contingent on the receipt of the national science foundation mathematics grant being awarded to Montana.

Item 6c is a biennial appropriation.

~~Item 7 reduces~~ *Items 7 and 8 reduce* Montana state university's total general fund appropriation. Montana state university, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY (5105)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Propri-etary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Propri-etary	Fiscal 1993 Other	Fiscal 1993 Total
1. Instruction (01)	3,417,769				2,035,482	5,453,251	3,411,274				2,043,500	5,454,774
2. Organized Research (02)	41,300					41,300	41,415					41,415
3. Operation and Maintenance of Plant (07)	1,545,483					1,545,483	1,557,023					1,557,023
4. Scholarships and Fellowships (08)					201,561	201,561					201,561	201,561
5. Support (44)	2,279,062				468,393	2,747,455	2,282,457				474,752	2,757,209
a. Audit (Line Item)	49,721					49,721						
b. Minimum Wage (Line Item)	35,041					35,041	35,041					35,041

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
c. Library Books (Line Item)	51,805					51,805						
d. Regents' Employee Reporting System (Line Item)	8,993					8,993	8,993					8,993
6. Budget Reduction	116,122					116,122	510,299					510,299
7. *Budget Reduction II*							*293,869*					*293,869*
Total	7,313,052				2,705,436	10,018,488	~~6,825,904~~ *6,532,035*				2,719,813	~~9,545,717~~ *9,251,848*

Total audit costs are estimated to be $66,294 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 5.

Item 5c is a biennial appropriation.

~~Item 6 reduces~~ *Items 6 and 7 reduce* the Montana college of mineral science and technology's total general fund appropriation. The Montana college of mineral science and technology, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

EASTERN MONTANA COLLEGE (5106)

	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Instruction (01)	3,232,818				4,979,980	8,212,798	3,095,181				5,004,703	8,099,884
2. Public Service (03)	253,236					253,236	254,033					254,033
3. Operation and Maintenance of Plant (07)	2,184,624					2,184,624	2,204,427					2,204,427
a. Apsaruke Hall Utilities (Line Item)	10,000					10,000	10,000					10,000
b. Billings SID (Line Item)	10,503					10,503	6,024					6,024
4. Scholarships and Fellowships (08)					382,715	382,715					382,715	382,715
5. Support (44)	5,027,976				117,382	5,145,358	5,025,779				124,827	5,150,606

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Audit (Line Item)	52,088					52,088						
b. Minimum Wage (Line Item)	35,563					35,563	35,563					35,563
c. Library Books (Line Item)	112,965					112,965						
d. Regents' Employee Reporting System (Line Item)	14,608					14,608	14,608					14,608
6. Budget Reduction	170,082					170,082	855,491					855,491
7. *Budget Reduction II*							*418,641*					*418,641*
Total	10,764,299				5,480,077	16,244,376	~~9,790,124~~ *9,371,483*				5,512,245	~~15,302,369~~ *14,883,728*

Total audit costs are estimated to be $69,450 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 5.

Item 3a is for utilities expense at Apsaruke hall only. Any unused funds revert to the general fund at the end of each fiscal year.

Item 5c is a biennial appropriation.

~~Item 6 reduces~~ *Items 6 and 7 reduce* eastern Montana college's total general fund appropriation. Eastern Montana college, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

NORTHERN MONTANA COLLEGE (5107)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. Instruction (01)	2,505,437				2,011,170	4,516,607	2,764,317				1,752,290	4,516,607
2. Public Service (03)					8,891	8,891					8,891	8,891
3. Operation and Maintenance of Plant (07)	1,166,288					1,166,288	1,177,153					1,177,153
4. Scholarships and Fellowships (08)					278,375	278,375					278,375	278,375
5. Support (44)	2,312,971				193,409	2,506,380	2,046,279				467,452	2,513,731

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
a. Audit (Line Item)	42,617					42,617						
b. Minimum Wage (Line Item)	39,730					39,730	39,730					39,730
c. Library Books (Line Item)	53,234					53,234						
d. Regents' Employee Reporting System (Line Item)	9,050					9,050	9,050					9,050
6. Budget Reduction	96,194					96,194	387,812					387,812
7. *Budget Reduction II*							*244,841*					*244,841*
Total	6,033,133				2,491,845	8,524,978	~~5,648,717~~ *5,403,876*				2,507,008	~~8,155,725~~ *7,910,884*

Total audit costs are estimated to be $56,823 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 5.

Item 5c is a biennial appropriation.

~~Item 6 reduces~~ *Items 6 and 7 reduce* northern Montana college's total general fund appropriation. Northern Montana college, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

WESTERN MONTANA COLLEGE OF THE UNIVERSITY OF MONTANA (5108)

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Instruction (01)	1,531,128				1,027,650	2,558,778	1,525,351				1,033,343	2,559,694
2. Operation and Maintenance of Plant (07)	738,270					738,270	743,101					743,101
3. Scholarships and Fellowships (08)					89,683	89,683					89,683	89,683
4. Support (44)	1,119,120				353,405	1,472,525	1,119,456				356,123	1,475,579
a. Audit (Line Item)	43,802					43,802						
b. Minimum Wage (Line Item)												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
	38,507					38,507	38,507					38,507
c. Library Books (Line Item)												
	31,158					31,158						
d. Regents' Employee Reporting System (Line Item)												
	8,865					8,865	8,865					8,865
5. Budget Reduction												
	55,504					55,504	250,655					250,655
6. *Budget Reduction II*												
							140,018					*140,018*
Total												
	3,455,346				1,470,738	4,926,084	~~3,185,625~~ *3,045,607*				1,479,149	~~4,664,774~~ *4,524,756*

Total audit costs are estimated to be $58,402 for the biennium. Twenty-five percent of these costs must be paid from funds other than those appropriated in items 1 through 4.

Item 4c is a biennial appropriation.

~~Item 5 reduces~~ *Items 5 and 6 reduce* western Montana college's total general fund appropriation. Western Montana college, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

Included within current unrestricted funds (contained in the "other" ~~fund~~ column) to the six university units is the sum of $11,887,000 in fiscal 1992 and $12,131,000 in fiscal 1993 from revenue generated under the provisions of 20-25-423. The department of revenue shall levy the full 6 mills as authorized in 20-25-423. Revenue received by the university system under the provisions of 20-25-423 that exceeds $11,887,000 in fiscal 1992 and $12,131,000 in fiscal 1993 is appropriated to the office of the commissioner of higher education for distribution to the university system and must be added by budget amendment by the board of regents in a manner so as to offset reductions in the university system ~~appropriations~~ *appropriation* in [this act] from the levels contained in The General Appropriations Act of 1991 and acts supplementary thereto.

It is understood by the 52nd legislature that the appropriations contained in [this act] for the six university units may result in the board of regents electing to limit or reduce enrollment during fiscal 1992 and fiscal 1993. It is the intent of the 52nd legislature that if actual enrollments during the 1993 biennium are fewer than the budgeted number of student full-time equivalents for the 1993 biennium, systemwide or by unit, the legislative fiscal analyst shall present to the 53rd legislature a current level budget for the six units, systemwide and by unit, no lower than the budgeted amount for the 1993 biennium.

It is understood by the 52nd legislature that shortfalls in student tuition due to enrollment declines may be presented to the 53rd legislature for a supplemental appropriation. These tuition shortfalls are not expected to be made up by per-student full-time equivalent tuition increases.

The 52nd legislature intends for the Montana university system to be subject to the personal services line item requirements contained in [section 2, Chapter 815, Laws of 1991, as amended by [this act]]. The dollar amount of the personal services line item is equal to the following:

(1) For the research, public service, and plant programs, the line item amount is equal to the personal services amount contained in table 3 of the Montana university system budget narrative accompanying [this act].

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(2) For the instruction program, the line item amount is equal to the personal services amount identified on the original regents'-approved operating budget each fiscal year but may be no less than the faculty compensation amount contained in table 3 of the Montana university system budget narrative accompanying [this act].

(3) For the support program, the line item amount is equal to the personal services amount identified on the original regents'-approved operating budget each fiscal year.

It is further the intent of the 52nd legislature that the original budgeted personal services by program on the regents' *employee reporting system* each fiscal year equal the original regents'-approved operating budget by program.

AGRICULTURAL EXPERIMENT STATION (5109)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Proprietary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Proprietary	Fiscal 1993 Other	Fiscal 1993 Total
1. Organized Research (02)	7,278,082				2,127,376	9,405.458	7,278,043				2,127.056	9,405,099
a. Biological Weed Control (Line Item)	60,000					60,000	80,572					80,572
2. Livestock and Range Research Station (15)					389,344	389,344					374,295	374,295
3. Budget Reduction	117,419					117,419	214,819					214,819
4. Budget Reduction II							*314,380*					*314,380*
Total	7,220,663				2,516,720	9,737,383	~~7,143,796~~ *6,829,416*				2,501,351	~~9,645,147~~ *9,330,767*

~~Item 3 reduces~~ *Items 3 and 4 reduce* the agricultural experiment station's *total general fund* appropriation. The agricultural experiment station, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

COOPERATIVE EXTENSION SERVICE (5110)

	Fiscal 1992 General Fund	Fiscal 1992 State Special Revenue	Fiscal 1992 Federal Special Revenue	Fiscal 1992 Proprietary	Fiscal 1992 Other	Fiscal 1992 Total	Fiscal 1993 General Fund	Fiscal 1993 State Special Revenue	Fiscal 1993 Federal Special Revenue	Fiscal 1993 Proprietary	Fiscal 1993 Other	Fiscal 1993 Total
1. Public Service (03)	2,778,004				1,987,347	4,765,351	2,769,940				1,987,404	4,757,344
2. Budget Reduction	44,746					44,746	82,408					82,408
3. Budget Reduction II							*121,134*					*121,134*
Total												

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
	2,733,258				1,987,347	4,720,605	~~2,687,532~~ *2,566,398*				1,987,404	~~4,674,936~~ *4,553,802*

~~Item 2 reduces~~ *Items 2 and 3 reduce* the cooperative extension service's total general fund appropriation. The cooperative extension service, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

FORESTRY AND CONSERVATION EXPERIMENT STATION (5111)

	Fiscal 1992 General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	Fiscal 1993 General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Research (02)	711,138					711,138	711,940					711,940
2. Budget Reduction	11,068					11,068	36,536					36,536
3. *Budget Reduction II*							*28,720*					*28,720*
Total	700,070					700,070	~~675,404~~ *646,684*					~~675,404~~ *646,684*

~~Item 2 reduces~~ *Items 2 and 3 reduce* the forestry and conservation experiment station's total general fund appropriation. The forestry and conservation experiment station, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

BUREAU OF MINES (5112)

	Fiscal 1992 General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	Fiscal 1993 General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
1. Bureau of Mines (11)	1,288,493				46,410	1,334,903	1,289,384				46,411	1,335,795
2. Budget Reduction	20,054					20,054	20,172					20,172
3. *Budget Reduction II*							*53,996*					*53,996*
Total	1,268,439				46,410	1,314,849	~~1,269,212~~ *1,215,216*				46,411	~~1,315,623~~ *1,261,627*

~~Item 2 reduces~~ *Items 2 and 3 reduce* the bureau of mines' total general fund appropriation. The bureau of mines, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
SCHOOL FOR THE DEAF AND BLIND (5113)												
1. Administration Program (01)	197,895					197,895	198,322					198,322
a. Audit (Line Item)	20,519					20,519						
2. General Services Program (02)	251,213					251,213	243,044					243,044
3. Student Services (03)	763,095		34,282			797,377	745,289		34,247			779,536
4. Education (04)	1,297,179	190,000	131,200			1,618,379	1,295,205	190,000	131,200			1,616,405
a. Supervising Teacher (Line Item)	33,249					33,249	33,256					33,256
Total	2,563,150	190,000	165,482			2,918,632	2,515,116	190,000	165,447			2,870,563

The Montana school for the deaf and blind is directed to study its administrative structure and expenses to determine if operational efficiencies could be increased through consolidation or elimination of positions, or both, and shall report its findings to the 53rd legislature.

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
MONTANA COUNCIL ON VOCATIONAL EDUCATION (5116)												
1. Administration Program (01)			135,578			135,578			135,650			135,650
a. Audit (Line Item)			4,104			4,104						
b. Increased Federal Funding (Line Item)			30,000			30,000			30,000			30,000
Total			169,682			169,682			165,650			165,650
FIRE SERVICES TRAINING SCHOOL (5119)												
1. Fire Services Training School (01)	236,279					236,279	219,064					219,064

	Fiscal 1992						Fiscal 1993					
	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Propri-etary	Other	Total
a. Audit (Line Item)												
	2,525					2,525						
2. Budget Reduction												
	3,818					3,818	6,442					6,442
3. Budget Reduction II												
							9,527					*9,527*
Total												
	234,986					234,986	~~312,622~~					~~312,622~~
							203,095					*203,095*

The fire services training school must be provided office, classroom, and storage space in the Great Falls vocational-technical center at no charge.

~~Item 2 reduces~~ *Items 2 and 3 reduce* the fire services training school's total general fund appropriation. The fire services training school, with the approval of the approving authority, as defined in 17-7-102, shall determine the proportional share of the amount to be applied to each program and reduce that program's appropriation accordingly.

	Fiscal 1992						Fiscal 1993					
TOTAL SECTION E												
	~~197,796,431~~	4,647,623	21,350,121	14,856,747	51,942,747	~~290,593,669~~	~~162,102,624~~	4,563,798	11,970,584	17,071,917	~~57,366,671~~	~~253,075,594~~
	205,666,431					*298,463,669*	*156,327,779*				*61,904,324*	*251,838,402*
TOTAL STATE FUNDING												
	~~482,147,469~~	281,411,610	606,326,156	216,646,146	54,911,330	~~1,641,442,711~~	~~430,123,204~~	~~268,708,257~~	~~[illegible]~~	~~224,634,134~~	~~59,960,110~~	~~1,588,707,104~~
	490,017,469					*1,649,312,711*	*429,143,113*	*269,729,762*	*599,093,525*	*224,322,507*	*64,497,763*	*1,586,786,670"*

Section 2. Section 2, Chapter 13, Special Laws of January 1992, is amended to read:

"Section 2. Section 9, Chapter 526, Laws of 1991, is amended to read:

"Section 9. **Appropriation.** There is appropriated for the biennium ending June 30, 1993, ~~$21,710~~ *$26,710* for travel costs, ~~and~~ per diem, and ~~administrative support costs and $40,000 for consultant costs~~ *committee expenses* from the general fund to the office of the legislative fiscal analyst for use by the joint committee on postsecondary education policy and budget.""

Section 3. Section 11, Chapter 13, Special Laws of January 1992, is amended to read:

"Section 11. Section 6, Chapter 774, Laws of 1991, is amended to read:

"Section 6. **Capital projects appropriations.** (1) The following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBPF	Other Funding Sources	
DEPARTMENT OF ADMINISTRATION			
Hazardous Material Abatement, Statewide	$ 594,625	$ 150,000	Auxiliary
State Building Energy Retrofit, Statewide		500,000	Nonstate State Special Revenue
		1,000,000	Federal Special Revenue
		500,000	Auxiliary or Other
Construction, Litigation, Architecture and Engineering Division	345,000		
Develop Alternate Water Supply, Capitol Complex		50,000	Proprietary Funds
Property Acquisition and Development, Capitol Complex		20,000	Capitol Land Grant
DEPARTMENT OF COMMERCE			
Improve Pavement and Lighting, Yellowstone Airport		51,773	Proprietary Funds
		465,957	Federal Special Revenue
DEPARTMENT OF EDUCATION			
Replace Academic Building Roof and Miscellaneous Repairs, Montana School for the Deaf and Blind	339,000		
DEPARTMENT OF FAMILY SERVICES			
Expand Security Fence, Pine Hills School	27,000		
Replace and Repair Roofs, Family Services	127,600		
DEPARTMENT OF FISH, WILDLIFE, AND PARKS			
Remove Underground Storage Tanks, Statewide		150,000	State Special Revenue
Headquarters Maintenance and Improvements, Statewide		85,000	State Special Revenue
Department Property Development, Statewide		360,000	State Special Revenue
State Park Maintenance and Development, Statewide		3,798,500	State Special Revenue
		1,124,500	Federal Special Revenue
Fish Hatchery Maintenance, Statewide		37,500	State Special Revenue
		112,500	Federal Special Revenue
Fishing Access Site Improvements, Statewide		286,000	State Special Revenue
		858,000	Federal Special Revenue
Motorboat Access Facilities, Statewide		67,000	State Special Revenue
		201,000	Federal Special Revenue
Wildlife Habitat Maintenance, Statewide		304,000	State Special Revenue
Waterfowl Habitat Enhancement, Statewide		349,500	State Special Revenue
DEPARTMENT OF HIGHWAYS			
Maintenance Projects, Statewide		450,000	Highways State Special Revenue

Construct and Expand Maintenance and Storage Buildings, Statewide		1,167,600	Highways State Special Revenue
		115,925	Federal Special Revenue
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES			
Replace Water and Steam Lines, Montana Developmental Center	116,708		
Replace Roofs, Institutions	30,000		
Moisture Protection, Eastmont Human Services Center	98,450		
Montana State Hospital Infrastructure Study	112,375		
Seal Buildings, Montana State Prison	25,000		
Building Improvements, Center for the Aged	105,015		
Replace Multipurpose Building Flooring, Montana State Hospital, Warm Springs	26,800		
Galen Repair Projects	181,000		
DEPARTMENT OF LABOR AND INDUSTRY			
Renovate and Expand Job Service, Great Falls		310,000	Federal Special Revenue
Various Major Maintenance Projects		209,450	Federal Special Revenue
DEPARTMENT OF STATE LANDS			
Construct Two Greenhouses, Missoula		191,900	State Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Kitchen Upgrade, Statewide	5,000		
Rifle Range Rehabilitation, Statewide	10,000	555,000	Federal Special Revenue
Armory Additions and Alterations, Statewide	1,000	16,155,000	Federal Special Revenue
Acquire Land and Preplan Armory, Billings	150,000	200,000	Federal Special Revenue
Expand Military Vehicle Compounds, Statewide	5,000	275,000	Federal Special Revenue
Federal Spending Authority		300,000	Federal Special Revenue
Libby Armory		827,000	Federal Special Revenue
MONTANA UNIVERSITY SYSTEM			
Primary Electrical Vault Disconnect, Eastern Montana College	31,000	14,000	Auxiliary
Install Fire Alarm System, University of Montana	70,000		
Replace and Improve Roofs, University System	1,154,550	350,000	Plant
Improve Underground Utilities, Phase I, University System	296,000	200,000	Auxiliary
Repair and Improve Heating System, Western Montana College	57,900		
Improve Handicapped Access, University System	335,000		
Replace Carpet, Great Falls Vo-Tech	60,000		
Improve Sidewalks and Fire Access, University System	86,000		
Window Retrofit Museum Building, Montana Tech	142,000		
Various Improvements, University of Montana		2,584,600	Federal, Higher Education Funds, and/or Donations
Centennial Mall, Montana State University		1,600,000	Plant
Remodel Student Union Building, Western Montana College		600,000	Auxiliary
Construct Engineering/Physical Sciences Complex, Montana State University	*452,765*	~~2,301,200~~ *2,215,435*	Higher Education Funds and/or Donations
Life Science Building, University of Montana		12,000,000	Federal Special Revenue
Construct Business Administration Building, University of Montana		1,858,320	Higher Education Funds and/or Donations
Multipurpose Building, Northern Agricultural Research Center	150,000	150,000	Higher Education Funds and/or Donations
Repair Northern Montana College Gymnasium	934,500	1,700,000	Higher Education Funds and/or Donations

(2) For purposes of obtaining cash for the construction litigation appropriation authority in [section 6(1)], the architecture and engineering division of the department of administration is authorized to request a budget amendment for transfer of any excess long-range building project funds from any agency so long as the amendment does not move funds required to complete any authorized agency project.

(3) The following money is appropriated to the department of administration in the indicated amounts for the purpose of planning projects described in [section 12] and authorized in [section 13]:

Agency/Project	LRBPF	Other Funding Sources	
Preliminary Design for Prison Expansion	$ 877,500		
Preliminary Design, University System:			
Engineering/Physical Sciences, MSU	~~1,165,290~~	*1,165,290*	*Higher Education Funds and/or Donations*
Business Administration, UM	~~604,705~~ *183,606*	*421,099*	*Higher Education Funds and/or Donations*

(4) The following money is appropriated to the department of administration for the university system:

Agency/Project	LRBPF	Other Funding Sources	
University System			
Deferred Maintenance Projects and Equipment Approved by the Board of Regents		$ 517,500	General Fund
Repair Northern Montana College Gymnasium		283,000	General Fund
Equipment for Eastern Montana College		600,000	General Fund
~~Construct Engineering/Physical Sciences Complex, Montana State University~~		~~367,000~~	~~General Fund~~

(5) Amounts not to exceed $490,000 of federal special revenue money and $163,333 of state special revenue money appropriated in the state parks maintenance and development statewide line item under subsection (1) may be added to the line item appropriations for motorboat access facilities statewide under subsection (1) or fishing access site acquisition statewide under [section 8(1)].""

Section 4. Section 13, Chapter 774, Laws of 1991, is amended to read:

"Section 13. **Authorization of bonds.** The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $61,260,830 for the projects described in [section 12] over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1991, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. *The board of examiners may issue and sell $29,836,345 of bonds during fiscal year 1993 and the remainder of the bonds in the 1994-95 biennium. The bonds issued and sold during fiscal year 1993 may not be used for projects at the university units.* The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds."

Section 5. Section 3, Chapter 775, Laws of 1991, is amended to read:

"Section 3. **Projects not completing requirements — loans reauthorized.** (1) The legislature finds that the following water development projects for which coal severance tax bonds were authorized to be issued by the 51st legislature in House Bill No. 778, Laws of 1989, may not complete the requirements necessary for the loan transaction prior to June 30, 1991. Coal severance tax bonds for the projects described in this section are reauthorized in the amounts listed at the interest rates authorized by the 51st legislature in House Bill No. 778, Laws of 1989, and described in this section to enable financing during the 1992-93 biennium, if necessary.

GROUP A Notwithstanding the provisions of [section 5], the interest rate for the project in this group must be 4% over a 30-year term or 3% if the lower interest rate is necessary to secure the federal loan.

	Loan Amount
EAST BENCH IRRIGATION DISTRICT	
Gravity Sprinkler Irrigation No. 3	$ 431,000

GROUP B Notwithstanding the provisions of [section 5], the interest rate for projects in this group may be 3% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
SOMERS COUNTY WATER AND SEWER DISTRICT	
Somers Sewer	$3,151,960
EVERGREEN WATER AND SEWER DISTRICT	
Wastewater Facilities	3,778,028

(If House Bill No. 648 is passed and approved, strike 3,778,028 in line 8 and insert 551,128.)

LAKE COUNTY/BIG ARM SEWER DISTRICT	
Big Arm Sewer	2,283,893

GROUP C Notwithstanding the provisions of [section 5], the interest rate for projects in this group may be 2% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
GLENDIVE, CITY OF	
Water Treatment Plant	$4,075,000
WHITEFISH, CITY OF	
Water Treatment and Distribution	6,035,800
WIBAUX, TOWN OF	
Water Storage Reservoir/Transmission Line	272,500
EAST GLACIER, TOWN OF	
Water System	484,270
PONDERA CONSERVATION DISTRICT	
Irrigation System Rehabilitation	750,000

GROUP D Notwithstanding the provisions of [section 5], the interest rate for projects in this group must be sold at the rate at which the state bond is sold for 20 years.

	Loan Amount
BROWNING, TOWN OF	
Sewage Treatment Facility Improvements	$ 447,014
~~ANACONDA-DEER LODGE COUNTY~~	
~~Wastewater Treatment Plant Effluent Disposal~~	~~500,000~~
EVERGREEN WATER AND SEWER DISTRICT	
Wastewater Facilities	*500,000*

GROUP E Notwithstanding the provisions of [section 5], the interest rate for the project in this group may be 4% below the long-term bond rate at which the state bond is sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bond is sold for the remaining 15 years.

	Loan Amount
DUTTON, TOWN OF	
Water Supply Construction	$ 150,000

(2) The 50th legislature, in House Bill No. 7, Laws of 1987, approved the sale of $26 million of coal severance tax bonds for development of the Broadwater dam hydropower project. Any unspent portion of these funds is reauthorized for expenditure until completion of the project."

Section 6. Section 1, Chapter 779, Laws of 1991, is amended to read:

"Section 1. **Appropriation.** There is appropriated the following amounts from the general fund to the department of military affairs for the upgrading and maintenance of the state veterans' cemetery *and for operation of the veterans' affairs program*:

Fiscal year 1992	$22,806
Fiscal year 1993	22,795"

Section 7. Section 14, Chapter 13, Special Laws of January 1992, is amended to read:

"Section 14. Section 1, Chapter 820, Laws of 1991, is amended to read:

"Section 1. **Appropriation.** There is appropriated from the general fund ~~$644,000~~ *$500,000* to the department of commerce for the Lewis and Clark national historic trail interpretive center for the biennium ending June 30, 1993. The money, along with the $300,000 of other funds specified in [section 2], is to be used to match federally appropriated funds on an 8-to-1 basis. The department of commerce shall administer the appropriation to add another tourism destination attraction in Montana. The department of commerce shall distribute the money for planning, design, and all phases of construction for a Lewis and Clark national historic trail interpretive center, as authorized in Public Law 100-552.""

Section 8. **Effective date.** [This act] is effective on passage and approval.

Effective pursuant to Article VI, sec. 10, Mont. Const., on August 16, 1992.

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT OF HONORABLE TED O. LYMPUS AS DISTRICT JUDGE, ELEVENTH JUDICIAL DISTRICT, KALISPELL, MONTANA, MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE PURSUANT TO SECTION 5-5-302, MCA.

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

As District Judge, Eleventh Judicial District, Kalispell, Montana, to replace former District Judge Leif "Bart" Erickson, Ted O. Lympus.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 52nd Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary, to the Secretary of State and a copy, certified by the Secretary, to the Governor pursuant to section 5-5-303, MCA.

Adopted July 13, 1992.

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXTENDING THE GOVERNOR'S STATE OF DISASTER DECLARATION DUE TO CONTINUING DROUGHT CONDITIONS.

WHEREAS, Montana is experiencing a prolonged drought, which is a natural disaster that imminently threatens damage, injury, or loss of property; and

WHEREAS, pursuant to section 10-3-104, MCA, the Governor has the discretionary power to suspend the provisions of any regulatory statute if strict compliance with the statute would in any way prevent, hinder, or delay necessary action in coping with a disaster; and

WHEREAS, the current drought condition requires the exercise of the Governor's authority to suspend regulatory authority of the state; and

WHEREAS, on June 8, 1992, the Governor issued Executive Order No. 13-92, proclaiming an emergency and suspending certain regulatory authorities of the Department of Natural Resources and Conservation under Title 85, chapter 2, MCA, commonly referred to as the Montana Water Use Act; and

WHEREAS, on June 29, 1992, the Governor issued Executive Order No. 14-92, proclaiming a disaster as a result of drought and continued the suspension ordered in Executive Order No. 13-92; and

WHEREAS, pursuant to section 10-3-303, MCA, a state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which must be determined by a declaration of a major disaster by the President of the United States or by a joint resolution of the Legislature declaring continuing conditions of the state of disaster.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature declares a continuing condition of disaster as a result of the drought.

(2) That the state of disaster must continue until terminated by the Governor as provided in section 10-3-303(4), MCA.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the publisher of each newspaper in the state.

Adopted July 17, 1992.

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING THE OFFICIAL ESTIMATE, CONTAINED IN HOUSE JOINT RESOLUTION NO. 1, SPECIAL LAWS OF JANUARY 1992, OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 1992-93 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING THE JUNE 30, 1991, GENERAL FUND AND STATE EQUALIZATION ACCOUNT BALANCES THAT WERE ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEAR 1992 AND FOR FISCAL YEAR 1993; AND ESTABLISHING AN ESTIMATE OF THE NONGENERAL FUND REVENUE FOR THE STATE EQUALIZATION ACCOUNT.

WHEREAS, Article VI, section 9, of the Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail the estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution prohibits the Legislature from appropriating funds in excess of the anticipated revenue of the state; and

WHEREAS, it became apparent after the adjournment of the January 1992 special session that there would be a shortfall in anticipated revenue, primarily in individual income taxes, oil-related taxes, and interest earnings; and

WHEREAS, the Governor issued a call for a special session to begin July 6, 1992, to address the disparity between budgeted expenditures and anticipated revenue; and

WHEREAS, the Montana Legislature must revise its revenue estimates to responsibly deal with the budget crisis; and

WHEREAS, section 5-18-107(5), MCA, requires the Revenue Oversight Committee, prior to each regular legislative session, to estimate the amount of revenue projected to be available for legislative appropriation, with that estimate to be used until amended or until finally adopted by both houses; and

WHEREAS, the Revenue Oversight Committee has revised its assumptions relating to revenue estimates, including estimates for individual and corporation income taxes, oil and coal severance taxes, earnings on investments, statewide mill levies, and lottery receipts; and

WHEREAS, given the magnitude of the fiscal crisis facing the State of Montana and given the Legislature's constitutional responsibility to balance the budget, it is in the best interests of the state that revenue forecasts be discussed and determined in public hearings at which all interested persons may attend and participate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state general fund revenue for fiscal years 1992 and 1993 is estimated to be $455,012,000 and $493,598,000, respectively. The school foundation revenue for fiscal years 1992 and 1993 is estimated to be $365,565,000 and $372,846,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accepts for budget purposes the unreserved fund balance of $58,700,000 for the general fund and $9,482,000 for the state equalization account, prepared according to generally accepted accounting principles as published in the audited state financial statements as of June 30, 1991.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use, as contemplated in section 5-18-107(5), MCA, the revenue estimates contained in this resolution as the official revenue estimates for fiscal years 1992 and 1993.

BE IT FURTHER RESOLVED, that the Board of Examiners, prior to issuing tax and revenue anticipation notes (TRANS) to investors outside of state government, look to borrowable funds within the various funds and accounts in the state treasury, including funds that can be borrowed from the Board of Investments as an investment by the Board of Investments at market interest rates and consistent with the prudent investor rule. Additionally, that the total net income potentially available to the State of Montana, including any arbitrage obtainable and all of the costs associated with issuing TRANS, be recognized by the Board of Examiners and by the Board of Investments and its staff when issuing TRANS or borrowing money from within the state treasury.

BE IT FURTHER RESOLVED, that all borrowable funds within the state treasury be taken into account in determining the cash balance available within the state treasury.

GENERAL FUND REVENUE

The revised projections for total general fund revenue during the 1992-93 biennium are based on an assumption of a continuation of Montana law as it existed on July 1, 1992.

The revenue estimates contained in the following tables are based on the assumptions stated previously in this resolution and those listed in the following tables.

ECONOMIC ASSUMPTIONS

Revenue Oversight Committee

YEAR	ASSUMPTION	CY/FY 1991	CY/FY 1992	CY/FY 1993
	MT Population July 1 (Thousands)	800.000	804.000	808.000
	MT Population >=16 July 1 (Thousands)	609.000	613.000	617.000
	MT Population 18-24 July 1 (Thousands)	67.000	64.000	61.000
CY	MT Nonfarm Employment (Thousands)	300.800	304.500	307.100
CY	MT Personal Income (Billions)	$12.506	$12.969	$13.586
CY	MT Nonfarm Wage & Salary Income (Billions)	$5.964	$6.229	$6.497
CY	Interest & Dividend Income (Percent change)	5.570%	4.440%	4.300%
CY	Net Business Income (Percent change)	5.570%	4.440%	4.300%
CY	Capital Gains/Losses Income (Percent change)	0.300%	0.300%	0.300%
CY	Rent/Royalty/Partnership Income (Percent change)	14.000%	12.000%	10.000%
CY	Other Nonwage & Salary Income (Percent change)	5.570%	4.440%	4.300%
CY	CPI Percent Change	4.130%	3.500%	4.000%
CY	U.S. Corporate Profits Before Taxes (Billions)	$282.000	$310.900	$349.300
CY	Short-Term Interest Rate	6.080%	5.800%	6.500%
CY	Long-Term Interest Rate	8.840%	8.500%	9.500%
CY	Prime Interest Rate	9.810%	10.000%	10.000%
FY	Treasury Cash Average Balance (Millions)	$273.426	$239.636	$211.601
FY	TRANS Issue (Millions)	$0.000	$85.000	$130.000
FY	Basis Points (Percentage)	0.000%	1.000%	1.000%
FY	Individual Income Tax Audits (Millions)	$11.266	$14.077	$16.397
FY	Legislative Audits (Millions)	$0.000	$0.750	$0.750
FY	Corporation Tax Audits (Millions)	$8.109	$10.155	$8.129
FY	Other Audits (Millions)			$0.200
CY	Total Oil Production (Million bbls.)	18.358	17.807	17.273
CY	Montana Oil Price	$18.200	$18.000	$18.000
FY	Statewide Taxable Valuation (Millions)	$1,564.317	$1,572.956	$1,601.896
CY	Total Coal Production (Million tons)	35.182	34.515	34.375
CY	Montana Coal Price (CSP)	$7.564	$7.540	$7.530
FY	Coal Tax Credits (Millions)	$4.996	$2.449	$0.000
CY	Total Natural Gas Production (M MCF)	45.622	47.304	47.437
CY	Montana Natural Gas Price ($/MCF)	$1.773	$1.907	$2.097
CY	Copper Production (M lbs.)	135.762	137.863	130.776
CY	Gold Production (M ozs.)	0.348	0.345	0.347
CY	Silver Production (M ozs.)	6.449	6.454	6.457
CY	Lead Production (M lbs.)	11.665	11.674	11.739
CY	Zinc Production (M lbs.)	32.029	32.421	32.602
CY	Molybdenum Production (M lbs.)	14.100	10.900	9.300
CY	Palladium Production (M ozs.)	0.200	0.222	0.290
CY	Platinum Production (M ozs.)	0.061	0.067	0.088

YEAR	ASSUMPTION	CY/FY 1991	CY/FY 1992	CY/FY 1993
CY	Copper Price	$1.046	$1.038	$1.042
CY	Gold Price	$400.675	$400.675	$400.675
CY	Silver Price	$4.775	$4.775	$4.775
CY	Lead Price	$0.209	$0.209	$0.209
CY	Zinc Price	$0.502	$0.502	$0.502
CY	Molybdenum Price	$3.119	$3.112	$3.115
CY	Palladium Price	$132.725	$132.725	$132.725
CY	Platinum Price	$453.253	$453.253	$453.253
FY	Forest Receipts (Millions)	$11.150	$7.753	$7.705
FY	Permanent Trust Gains/Losses (Millions)	$1.195	$1.195	$1.195
FY	Common School Trust Gains/Losses (Millions)	$1.231	$1.231	$1.231
FY	Resource Ind. Trust Gains/Losses (Millions)	$0.339	$0.339	$0.339
FY	Park Acq. Trust Gains/Losses (Millions)	$0.054	$0.054	$0.054
FY	Liquor Unit Sales (Millions)	4.780	4.680	4.582
FY	Wine Unit Sales (Millions)	0.100	0.083	0.067
FY	Liquor Cost Per Unit	$4.977	$5.066	$5.156
FY	Wine Cost Per Unit	$3.258	$3.372	$3.483
FY	Liquor Division Budget (Percent change)	0.000%	0.000%	0.000%
FY	Cigarette Packs (Millions)	68.874	68.068	67.156
FY	Tobacco Value (Millions)	$7.626	$8.053	$8.490
FY	Insurance Premiums Growth (Percent change)	1.890%	1.890%	1.890%
FY	Insurance Premiums Tax Credit	$3.231	$4.311	$5.391
FY	Police & Firefighters Retirement (Millions)	$6.213	$6.391	$6.479
CY	Telephone Taxable Income (Millions)	$234.165	$241.724	$250.770
CY	Kilowatt Hours Produced (Millions)	22,664.000	22,682.000	22,663.000
FY	Barrels of Beer (Millions)	0.702	0.706	0.711
CY	Freight Line Earnings (Millions)	$21.757	$21.768	$21.699
FY	Liters of Wine (Millions)	5.036	4.907	4.785
FY	Video Machine Net Income (Millions)	$126.079	$139.382	$150.333
FY	Statewide Vehicle Value (Millions)	$1,905.049	$1,935.412	$1,986.326
FY	Per Capita Lottery Sales	$27.000	$32.700	$35.400

Current Law
General Fund Revenue Estimates
(In Millions)

Source of Revenue	ESTIMATED FY 1992	ESTIMATED FY 1993	ESTIMATED FY 1992 and 1993
Individual Income Tax	$184.658	$211.449	$396.107
Corporation License Tax	33.250	36.186	69.436
Coal Severance Tax	6.684	11.461	18.145
Oil Severance Tax	16.350	15.796	32.146
Interest on Investments	16.719	17.975	34.694
Long-Range Bond Excess	41.515	44.830	86.345
Coal Trust Interest Income	39.358	40.349	79.707
Insurance Premiums Tax	20.734	20.025	40.759
Public Institutions Reimb.	15.301	15.217	30.518
Liquor Profits	5.363	4.301	9.664
Liquor Excise Tax	6.148	6.128	12.276
Inheritance Tax	10.394	10.678	21.072
Metal Mines Tax	3.819	3.654	7.473
Electrical Energy Tax	4.129	4.131	8.260
Driver's License Tax	1.700	1.706	3.406
Telephone License Tax	3.970	4.283	8.253
Beer License Tax	1.334	1.342	2.676
Natural Gas Severance Tax	1.117	1.241	2.358
Freight Line Tax	1.272	1.268	2.540
Wine Tax	0.816	0.796	1.612
Video Gaming Income Tax	7.825	8.360	16.185

Source of Revenue	ESTIMATED FY 1992	ESTIMATED FY 1993	ESTIMATED FY 1992 and 1993
Motor Vehicle Account	9.387	9.594	18.981
Vehicle Fees	2.995	3.073	6.068
Public Contractor's Tax	0.885	0.883	1.768
Other Revenue Sources	19.289	18.872	38.161
Grand Total	$455.012	$493.598	$948.610

Current Law
Foundation Program Revenue Estimates
(In Millions)

Source of Revenue	ESTIMATED FY 1992	ESTIMATED FY 1993	ESTIMATED FY 1992 and 1993
State Revenue			
Income Tax	$83.801	$95.960	$179.761
Corporation Tax	15.535	16.906	32.441
Coal Tax	4.951	4.771	9.722
Interest & Income	39.473	42.003	81.476
U.S. Oil & Gas Royalties	21.150	20.634	41.784
Education Trust Interest	0.100	0.102	0.202
Permanent Trust Interest	6.946	7.121	14.067
Lottery	5.500	5.525	11.025
Statewide 40 Mills	61.632	62.765	124.397
Miscellaneous	14.937	8.838	23.775
Total State	$254.025	$264.625	$518.650
Statewide Taxable Valuation	$1572.956000	$1601.896000	Not Applicable
County Revenue			
55 Mills	$86.513	$88.104	$174.617
Cash Reappropriated	6.718	1.119	7.837
Forest Funds	1.744	1.409	3.153
Taylor Grazing	0.119	0.114	0.233
Miscellaneous	17.439	18.374	35.813
High School Tuition	(0.993)	(0.899)	(1.892)
Total County	$111.540	$108.221	$219.761
Total State & County	$365.565	$372.846	$738.411
Grand Total GF and SEA	$820.577	$866.444	$1,687.021

Adopted July 16, 1992.

CODE SECTIONS AFFECTED

Title-Ch.-Sec.	Action	Chapter	Bill #
10-3-312	amended	Ch. 12	HB 51
15-1-504	amended	Ch. 4	HB 12
15-1-516	enacted	Ch. 15	HB 44
15-6-145	amended	Ch. 10	HB 24
15-7-111	amended	Ch. 13	HB 52
15-7-132	amended	Ch. 13	HB 52
15-7-133	amended	Ch. 13	HB 52
15-7-134	enacted	Ch. 13	HB 52
15-23-101	amended	Ch. 10	HB 24
15-23-103	amended	Ch. 10	HB 24
15-23-104	amended	Ch. 10	HB 24
15-23-105	amended	Ch. 10	HB 24
15-23-201	amended	Ch. 10	HB 24
15-23-211	enacted	Ch. 10	HB 24
15-23-212	enacted	Ch. 10	HB 24
15-23-213	enacted	Ch. 10	HB 24
15-23-214	enacted	Ch. 10	HB 24
15-23-215	enacted	Ch. 10	HB 24
15-23-216	enacted	Ch. 10	HB 24
15-23-716	enacted	Ch. 15	HB 44
15-30-101	amended	Ch. 14	HB 54
15-30-105	amended	Ch. 14	HB 54
15-30-112	amended	Ch. 14	HB 54
15-30-122	amended	Ch. 14	HB 54
15-30-131	amended	Ch. 14	HB 54
15-30-132	amended	Ch. 14	HB 54
15-30-136	amended	Ch. 14	HB 54
15-30-142	amended	Ch. 14	HB 54
15-30-199	enacted	Ch. 15	HB 44
15-31-121	amended	Ch. 15	HB 44
15-36-126	enacted	Ch. 15	HB 44
15-37-117	amended	Ch. 15	HB 44
15-37-126	enacted	Ch. 15	HB 44
15-37-226	enacted	Ch. 15	HB 44
15-38-136	enacted	Ch. 15	HB 44
15-51-126	enacted	Ch. 15	HB 44
15-53-126	enacted	Ch. 15	HB 44
15-55-101	repealed	Ch. 10	HB 24
15-55-102	repealed	Ch. 10	HB 24
15-55-103	repealed	Ch. 10	HB 24
15-55-104	repealed	Ch. 10	HB 24
15-55-105	repealed	Ch. 10	HB 24
15-55-106	repealed	Ch. 10	HB 24
15-55-108	repealed	Ch. 10	HB 24
15-55-109	repealed	Ch. 10	HB 24
15-55-110	repealed	Ch. 10	HB 24
15-55-111	repealed	Ch. 10	HB 24
15-59-126	enacted	Ch. 15	HB 44
15-59-226	enacted	Ch. 15	HB 44
15-65-121	amended	Ch. 11	HB 41
15-65-136	enacted	Ch. 15	HB 44

Title-Ch.-Sec.	Action	Chapter	Bill #
15-70-241	enacted	Ch. 15	HB 44
15-70-346	enacted	Ch. 15	HB 44
15-70-347	enacted	Ch. 15	HB 44
15-71-111	enacted	Ch. 15	HB 44
16-1-410	amended	Ch. 15	HB 44
16-1-411	amended	Ch. 15	HB 44
16-1-421	enacted	Ch. 15	HB 44
16-1-422	enacted	Ch. 15	HB 44
16-1-423	enacted	Ch. 15	HB 44
16-11-111	amended	Ch. 15	HB 44
16-11-119	amended	Ch. 3	HB 6
16-11-119	amended	Ch. 15	HB 44
16-11-202	amended	Ch. 15	HB 44
17-7-111	amended	Ch. 5	HB 8
17-7-138	amended	Ch. 8	HB 7
17-7-140	amended	Ch. 5	HB 8
17-7-304	amended	Ch. 5	HB 8
20-7-442	amended	Ch. 9	HB 22
20-7-504	amended	Ch. 11	HB 41
20-9-104	amended	Ch. 6	HB 62
20-9-168	enacted	Ch. 6	HB 62
20-9-212	amended	Ch. 6	HB 62
20-9-331	amended	Ch. 6	HB 62
20-9-333	amended	Ch. 6	HB 62
20-9-334	amended	Ch. 6	HB 62
20-9-335	amended	Ch. 6	HB 62
20-9-344	amended	Ch. 1	SB 1
20-9-344	amended	Ch. 6	HB 62
20-9-346	amended	Ch. 6	HB 62
20-9-347	amended	Ch. 6	HB 62
20-9-351	amended	Ch. 5	HB 8
20-10-144	amended	Ch. 9	HB 22
20-15-403	amended	Ch. 10	HB 24
23-5-610	amended	Ch. 15	HB 44
23-5-646	enacted	Ch. 15	HB 44
33-2-705	amended	Ch. 15	HB 44
33-2-736	enacted	Ch. 15	HB 44
50-60-508	amended	Ch. 11	HB 41
53-3-109	amended	Ch. 7	SB 10
53-3-121	amended	Ch. 7	SB 10
53-3-122	amended	Ch. 7	SB 10
53-3-201	amended	Ch. 7	SB 10
53-3-205	amended	Ch. 7	SB 10
53-3-206	repealed	Ch. 7	SB 10
53-3-209	amended	Ch. 7	SB 10
53-3-211	amended	Ch. 7	SB 10
53-3-212	amended	Ch. 7	SB 10
53-3-215	amended	Ch. 7	SB 10
53-3-303	amended	Ch. 7	SB 10
53-3-304	amended	Ch. 7	SB 10
53-3-305	amended	Ch. 7	SB 10
53-3-307	amended	Ch. 7	SB 10
53-3-310	amended	Ch. 7	SB 10
53-3-311	amended	Ch. 7	SB 10
53-3-321	amended	Ch. 7	SB 10
53-3-322	amended	Ch. 7	SB 10

Title-Ch.-Sec.	Action	Chapter	Bill #
53-3-323	amended	Ch. 7	SB 10
53-3-324	amended	Ch. 7	SB 10
53-3-325	amended	Ch. 7	SB 10
53-3-326	amended	Ch. 7	SB 10
53-3-327	amended	Ch. 7	SB 10
53-3-328	amended	Ch. 7	SB 10
53-9-109	amended	Ch. 11	HB 41
61-3-502	amended	Ch. 15	HB 44
61-3-551	enacted	Ch. 15	HB 44
61-5-121	amended	Ch. 11	HB 41
61-10-241	enacted	Ch. 15	HB 44
75-2-216	enacted	Ch. 16	HB 58
75-10-210	enacted	Ch. 16	HB 58
75-10-442	enacted	Ch. 16	HB 58
82-11-135	amended	Ch. 15	HB 44
82-11-171	enacted	Ch. 15	HB 44
90-6-107	amended	Ch. 11	HB 41

SESSION LAWS AFFECTED

Laws Affected	Action	Chapter	Bill #
Laws of 1991			
Ch. 680, sec. 13, 14, 15	amended	Ch. 13	HB 52
Ch. 774, sec. 13	amended	Ch. 17	HB 2
Ch. 775, sec. 3	amended	Ch. 17	HB 2
Ch. 779, sec. 1	amended	Ch. 17	HB 2
Sp. Laws of January 1992			
Ch. 13, secs. 1, 2, 11, 14	amended	Ch. 17	HB 2

BILL NUMBER

TO

CHAPTER NUMBER

Bill No.	Chapter No.
SB 1	Ch. 1
SB 10	Ch. 7
HB 1	Ch. 2
HB 2	Ch. 17
HB 6	Ch. 3
HB 7	Ch. 8

Bill No.	Chapter No.
HB 8	Ch. 5
HB 12	Ch. 4
HB 22	Ch. 9
HB 24	Ch. 10
HB 41	Ch. 11
HB 44	Ch. 15
HB 51	Ch. 12
HB 52	Ch. 13
HB 54	Ch. 14
HB 58	Ch. 16
HB 62	Ch. 6

CHAPTER NUMBER TO BILL NUMBER

Chapter No.	Bill No.
Ch. 1	SB 1
Ch. 2	HB 1
Ch. 3	HB 6
Ch. 4	HB 12
Ch. 5	HB 8
Ch. 6	HB 62
Ch. 7	SB 10
Ch. 8	HB 7
Ch. 9	HB 22
Ch. 10	HB 24
Ch. 11	HB 41
Ch. 12	HB 51
Ch. 13	HB 52
Ch. 14	HB 54
Ch. 15	HB 44
Ch. 16	HB 58
Ch. 17	HB 2

EFFECTIVE DATES

BY DATE

Effective Date	Chapter No.	Bill No.
07/13/92	Ch. 1	SB 1
07/15/92	Ch. 2	HB 1
07/21/92	Ch. 3	HB 6
07/21/92	Ch. 4	HB 12
07/24/92	Ch. 5	HB 8
07/24/92	Ch. 6	HB 62 (§§ 2-11, 13, 14)
08/01/92	Ch. 6	HB 62 (§ 1)
08/06/92	Ch. 8	HB 7
08/06/92	Ch. 9	HB 22
08/06/92	Ch. 10	HB 24
08/06/92	Ch. 11	HB 41
08/06/92	Ch. 12	HB 51
08/06/92	Ch. 13	HB 52
08/06/92	Ch. 14	HB 54
08/14/92	Ch. 15	HB 44
08/14/92	Ch. 16	HB 58
08/17/92	Ch. 17	HB 2
10/01/92	Ch. 7	SB 10
?	Ch. 6	HB 62

(Section 12 is effective on the date that the superintendent of public instruction certifies to the governor that written approval has been received from the U.S. Department of Education and applies to the school fiscal year beginning 07/01/93.)

SESSION LAW

TO

CODE

Ch.	Sec.	MCA
1	1	20-9-344
	2	Effective date — termination
2	1	Operations appropriations
	2	Legislative fiscal analyst appropriation
	3	Effective date
3	1	16-11-119
	2	Effective date — termination
4	1	15-1-504
	2	Effective date
5	1	17-7-140
	2	17-7-304
	3	20-9-351
	4	17-7-111
	5	Effective date — termination
6	1	Voided by sec. 14 (coordination section)
	2	20-9-104
	3	20-9-212
	4	20-9-331
	5	20-9-333
	6	20-9-334
	7	20-9-335
	8	20-9-344
	9	20-9-346
	10	20-9-347
	11	20-9-168
	12	20-9-104
	13	Superintendent to request opinion
	14	Coordination instruction
	15	Effective dates — retroactive applicability — contingent voidness
7	1	53-3-109
	2	53-3-121
	3	53-3-122
	4	53-3-201
	5	53-3-205
	6	53-3-209
	7	53-3-211
	8	53-3-212
	9	53-3-215
	10	53-3-303
	11	53-3-304
	12	53-3-305
	13	53-3-307
	14	53-3-310
	15	53-3-311
	16	53-3-321
	17	53-3-322
	18	53-3-323
	19	53-3-324
	20	53-3-325
	21	53-3-326
	22	53-3-327
	23	53-3-328
	24	Repealer
8	1	17-7-138
	2	Effective date — termination
9	1	20-7-442
	2	20-10-144
	3	Effective date
10	1	15-6-145
	2	15-23-101
	3	15-23-103
	4	15-23-104
	5	15-23-105
	6	15-23-201
	7	15-23-211
	8	15-23-212
	9	15-23-213
	10	15-23-214
	11	15-23-215
	12	15-23-216
	13	Transition
	14	20-15-403
	15	Repealer
	16	Codification instruction
	17	Effective date — retroactive applicability
	18	Termination

Ch.	Sec.	MCA
11	1	15-65-121
	2	20-7-504
	3	50-60-508
	4	53-9-109
	5	61-5-121
	6	90-6-107
	7	Severability
	8	Effective date — termination
12	1	10-3-312
	2	Effective date
13	1	Sec. 13, Ch. 680, L. 1991
	2	Sec. 14, Ch. 680, L. 1991
	3	Sec. 15, Ch. 680, L. 1991
	4	15-7-111
	5	15-7-132
	6	15-7-133
	7	15-7-134
	8	Effective date
14	1	15-30-101
	2	15-30-105
	3	15-30-112
	4	15-30-122
	5	15-30-131
	6	15-30-132
	7	15-30-136
	8	15-30-142
	9	Effective date
	10	Retroactive applicability
15	1	15-23-716
	2	15-30-199
	3	15-31-121
	4	15-1-516
	5	15-36-126
	6	15-37-126
	7	15-37-117
	8	15-37-226
	9	15-38-136
	10	15-51-126
	11	15-23-126
	12	Voided by sec. 40 (coordination section)
	13	15-59-126
	14	15-59-226
	15	15-65-136
	16	15-70-241
	17	15-70-346
	18	15-70-347
	19	15-71-111
	20	16-1-421
	21	16-1-422
	22	16-1-423
	23	16-1-410
	24	16-1-411
	25	16-11-111
	26	16-11-119
	27	16-11-202
	28	23-5-646
	29	23-5-610
	30	33-2-705
	31	33-2-736
	32	61-3-502
	33	61-3-551
	34	61-10-241
	35	82-11-135
	36	82-11-171
	37	Codification instruction
	38	Effective date
	39	Applicability — termination
	40	Coordination instruction
16	1	75-2-216
	2	75-10-210
	3	75-10-442
	4	Codification instruction
	5	Severability
	6	Effective date
17	1	Sec. 1, Ch. 13, Sp. L. January 1992
	2	Sec. 2, Ch. 13, Sp. L. January 1992
	3	Sec. 11, Ch. 13, Sp. L. January 1992
	4	Sec. 13, Ch. 774, L. 1991
	5	Sec. 3, Ch. 775, L. 1991
	6	Sec. 1, Ch. 779, L. 1991
	7	Sec. 14, Ch. 13, Sp. L. January 1992
	8	Effective date